



CITY OF PHILADELPHIA

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Philadelphia Board of Ethics Opinion No. 2007-006

December 18, 2007

Re: Political Activity – Boards and Commissions

On October 12, 2007, the Board of Ethics issued Opinion No. 2007-004, regarding the applicability of the political restrictions in the Charter (Charter §10-107) to the four departmental boards assigned by the Charter to the Department of Licenses & Inspections: the Zoning Board of Adjustment, the L & I Review Board, the Board of Building Standards, and the Malt and Brewed Beverage Hearing Board. Opinion No. 2007-004 (attached) was issued in response to a request for advice from staff for those four L & I departmental boards. When the request for advice was received, the Ethics Board initially intended to issue a broader opinion that would address the applicability of Charter §10-107 to all eighty-one City boards and commissions. However, in view of the then-approaching November general election and the complexity of analyzing all 81 City boards and commission, the Board determined that it was important to advise the L & I Commissioner on the four boards that were the subject of the request, and postpone a broader consideration of the question. Now, however, with a new Administration about to be sworn in, the Board has concluded that a fuller consideration of the question, applying to all boards and commissions of the City, is needed.

A. History

The Board incorporates, for purposes of this Opinion, the following sections of Opinion No. 2007-004: A. Background, B. Prior Opinions of the City Solicitor, and C. Policy. Note that we attach that Opinion for ease of reference.

B. Analysis

The Board notes again, as discussed in Opinion No. 2007-004, that all members of City boards and commissions, regardless of powers or compensation, are “appointed

officers of the City,” and thus are presumptively subject to the provisions of Charter Section 10-107. Thus, the question for the Board of Ethics is whether to retain any exception for some such officers. The Board particularly notes the 1954 Opinion by Solicitor Freedman that concluded that subsection 10-107(5) did not apply to members of unpaid boards and commissions, and subsequent opinions that reject a “mechanistic” approach based on compensation and refer to the possibility, for a particular body, of concluding that membership on that board or commission had evolved into something “quite different than City Solicitor Freedman’s concept of service by interested private citizens.”

The Board of Ethics has concluded that the time has come to reevaluate the method of determining which boards and commissions are subject to Charter Section 10-107. The Board has concluded that, as with the departmental boards discussed in Opinion No. 2007-004, it is necessary to give primary emphasis to the powers and responsibilities of the individual bodies, although the provision of significant compensation may also be a factor.

As to powers and responsibilities, the Board of Ethics again concludes that it is necessary to make an analysis of the powers and responsibilities of each board or commission to determine whether each body exercises significant powers of government. In this regard, the Board considers whether the board or commission has authority to expend public funds or otherwise exercise the power of the City, rather than being merely advisory.¹

In light of its decision that these determinations should no longer be based on compensation alone, the Board has concluded that members of any body listed in Section D below are subject to Section 10-107, whether or not the member is actually compensated. That is, no member may avoid application of Section 10-107 by declining or otherwise not actually receiving the statutory compensation.

C. Summary of Conclusions

In Opinion No. 95-06, the City Solicitor analyzed Charter §10-107(5) as to a member of the Planning Commission and noted the 1983 Opinion by a Deputy City Solicitor that suggested a determination based on whether the compensation provided to a member of a commission was sufficiently “substantial” to suggest that it has “evolved into something quite different than City Solicitor Freedman’s concept of service by interested private citizens.” Opinion No. 95-06, *1994-1996 City Solicitor’s Opinions* at 89-90 (citing *1983 City Solicitor’s Opinions* at 44). The 1995 Opinion observed:

¹ For comparison, note that the definition of “public official” in the State Ethics Act excludes members of advisory boards that “have no authority to expend public funds other than reimbursement for personal expense or to otherwise exercise the power of the State or any political subdivision thereof. 65 Pa.C.S.A. §1102 (definition of “public official”)

Although the suggested approach is not entirely satisfactory as a theoretical matter and requires us to determine in given cases how much compensation is “substantial” under the all the facts and circumstances, I do not think it appropriate to substitute an alternative approach, at least without providing some prior warning to the members of our boards and commissions.

1994-1996 City Solicitor’s Opinions at 90. The Board of Ethics agrees with this comment and concludes that now is the time to adopt a different approach, and provide some prior warning to members of City boards and commissions. Accordingly, the Board advises all members of City boards and commissions that, to the extent that this opinion applies Section 10-107 to a body that has not previously been advised that the provision applied to its members², this Opinion will not take effect until the new Administration begins on January 7, 2008. Section D below lists the bodies of the City (whether styled as “board,” “commission,” “committee,” “task force,” or some other term) that the Board of Ethics has concluded meet the criteria for compensation and powers that subjects their members to the restrictions of Charter Section 10-107.

We wish to emphasize that, unlike the typical request for an Opinion, in this matter there is no requestor who is providing the facts upon which we are relying. In analyzing the powers and responsibilities of various bodies, the staff has reviewed information generally available--in the Charter, the City Code, certain web sites, and in some cases, court opinions. Because particular boards or commissions have thus not had the opportunity to present the facts specific to their body, the Board of Ethics will consider any request from a particular board or commission, or a member or representative of such a body, especially where the requestor has additional or changed facts to present. The Board of Ethics will be pleased to consider facts specific to a particular body, especially where this Opinion is based on facts that are incomplete, incorrect, or have been changed. The Board recognizes that governmental bodies have evolved, and may evolve in the future, so that bodies that are now properly in Section D below may belong in Section F in the future, or vice-versa.

D. Boards whose members are subject to Charter §10-107

Applying the above policy, the Board concludes that members of the following bodies are subject to the restrictions of Charter §10-107:

1. Board of Ethics. The Board is made explicitly subject to Charter §10-107 by the last sentence of Charter §3-806(e), so this analysis is unnecessary. Compensation: none. Duties include (among others):

² See, in particular, Board of Ethics Opinion No. 2007-004 (departmental boards of L & I) and the Solicitor’s Opinion referenced therein of March 4, 2005 (Tax Review Board).

- (a) Enforce ethics provisions of Code and Charter, by administratively adjudicating alleged violations and imposing civil penalties.
- (b) Hire staff, outfit and maintain an office, and manage a budget of \$1 million or (after FY08) an amount adequate for its duties.
- (c) Promulgate rules and regulations to implement Code Ch. 20-600.
- (d) Prepare and disseminate educational materials, conduct trainings, develop manuals.
- (e) Render advisory opinions.
- (f) Submit an annual report.

Charter §§2-300(4)(e), 4-1100; Code §20-606. The Board concludes that these are significant responsibilities, and that even if Section 3-806(e) did not apply, the Board of Ethics would be subject to Section 10-107.

2. Civil Service Commission. The Commission is made subject to some of the restrictions of Charter §10-107 by the first paragraph of Charter §3-804, so this analysis is only partially necessary (Section 3-804 does not refer to general campaign activity.) Compensation: \$100 per meeting, annual maximum of \$17,500, except for the Chair, who receives \$125 per meeting up to an annual maximum of \$21,875. Code §20-304(6). The Commission's most significant duty is to hear and decide appeals of employment disciplinary actions. Charter §7-201. The Board concludes that in light of these very significant responsibilities adjudicating rights, in connection with the compensation, that the Civil Service Commission is subject to Section 10-107, including restrictions not encompassed in Charter Section 3-804..

3. Board of Revision of Taxes. Compensation: \$70,000 annual salary, except for the Chairman, who shall receive \$75,000 and the Secretary, who shall receive \$72,000. Code §20-304(7). The Board's principal duty is the annual reassessment of every parcel of real estate in the City. Code §2-113. The Board of Ethics concludes that in light of these very significant responsibilities affecting tax liabilities, in connection with the compensation, that the Board of Revision of Taxes is subject to Section 10-107. Note that the Pennsylvania Supreme Court held in 1954 that Section 10-107 applies to this Board. *Clark v. Meade*, 377 Pa. 150, 104 A.2d 465 (1954).

4. Board of Viewers. Compensation: \$50,000 annual salary, unless the member is appointed from the Board of Revision of Taxes, in which case the member continues to receive the salary for that Board (see #3 above). Code §20-304(9). The principal duty of a Board of Viewers is to determine damages in an eminent domain matter. See the State

Eminent Domain Code, 26 Pa. C. S. Ch. 5. At a salary of at least \$50,000, there is no question that under existing City Solicitor's Opinions, members of a Board of Viewers would be subject to the provisions of Section 10-107. Adding consideration of the very significant impact of eminent domain decisions only reinforces this conclusion.

5. Human Relations Commission. Compensation: \$100 per meeting, up to an annual maximum of \$10,000. The Chairperson receives an annual salary of \$55,000. Code §20-304(11). Duties include administering and enforcing all statutes and ordinances prohibiting discrimination where such jurisdiction is not vested specifically in any other agency. Charter §§4-700 and 4-701; Code §9-1106(1). The Board concludes that in light of these very significant responsibilities adjudicating rights, in connection with the compensation, the Human Relations Commission is subject to Section 10-107.

6. Tax Review Board. Compensation: \$100 per meeting, up to an annual maximum of \$10,000. Code §20-304(3). As to duties, the Tax Review Board is the official agency of the City to which taxpayers may appeal decisions of the executive branch of the government affecting their tax liability. Charter §6-207, Code §§19-1305(6), 19-2907. The Board of Ethics concludes that in light of these very significant responsibilities adjudicating rights, in connection with the compensation, the Tax Review Board is subject to Section 10-107.

7. Fair Housing Commission. Compensation: \$85 per meeting, up to an annual maximum of \$8,500. Code §20-304(10). The Commission has the power to hold hearings and conduct investigations in connection with any unfair rental or condominium conversion practice upon complaint or upon its own initiative. Code §§9-803, 9-1203. The Commission's rulings are adjudications of an administrative agency that may be appealed to the courts. See, e.g., *Daniels v. Philadelphia Fair Housing Comm'n*, 99 Pa. Commw. 155; 513 A.2d 501 (1986). The Board of Ethics concludes that in light of these very significant responsibilities adjudicating rights, in connection with the compensation, the Fair Housing Commission is subject to Section 10-107.

8. Planning Commission. Compensation: \$70 per meeting, up to an annual maximum of \$1,680. Code §20-304(36). The Planning Commission has significant responsibilities preparing the capital program and budget, approving zoning ordinances, and preparing a Plan for the City. Charter §§2-303(2), 4-101(d), 2-307, 4-600 through 4-604, 4-1300(4)(e), 8-206, and 6-105(d), among others, as well as numerous responsibilities assigned by City Council in the Philadelphia Code. On the important role of the Commission in planning, see especially the Annotations to Charter Sections 2-303, 2-307, 4-603 and 4-604. An illustration of the importance of the Planning Commission may be found in the current controversy over the location of casinos in the City. See the recent opinion of the Pennsylvania Supreme Court in *HSP Gaming, L.P. v. City Council of Philadelphia*, 2007 Pa. LEXIS 2539 at *32- *33 (Pa. December 3, 2007).

The Board notes that, on the basis of compensation alone, one might conclude that \$70 per meeting for the Planning Commission (and less for some other bodies as determined elsewhere in this Opinion) would not meet the test. Indeed, in 1995 the City Solicitor ruled that subsection 10-107(5) did not require a member of the Planning Commission to resign in order to run for office. Opinion No. 95-06, *1994-1996 City Solicitor's Opinions* at 88. In that Opinion, the Solicitor noted the 1983 Opinion by a Deputy City Solicitor that suggested a determination based on whether the compensation provided to a member of a commission was sufficiently "substantial" to suggest that it has "evolved into something quite different than City Solicitor Freedman's concept of service by interested private citizens." As noted above in "C. Summary of Conclusions" the Board of Ethics concludes that service on the Planning Commission has evolved, and service on City boards in general has evolved, so that different standards must now apply.

Applying these standards, the Board of Ethics concludes that in light of its very significant powers affecting planning and zoning throughout the City, in connection with the compensation, the Planning Commission is subject to Section 10-107.

9. Fairmount Park Commission. Compensation: none. The Commission is a departmental board within the Department of Recreation. Charter §3-100(f). The Commission has significant responsibilities with regard to maintaining the City's extensive park system. Charter §5-602. Moreover, as the Annotation to Section 5-602 notes, the 1951 Charter did not abolish the previously-existing Fairmount Park Commission, as it did with most other boards and commissions, for the express purpose of retaining the commissioners' powers to perform municipal functions related to City property and funds that might otherwise have been prohibited by the Pennsylvania Constitution. Charter §A-100(c). (See Pa. Const. art. III, §31) The web site of the Commission includes a fact sheet that contains the following information:

Origin

The Fairmount Park Commission (the "Commission") was established by an Act of Assembly, Commonwealth of Pennsylvania, March 26, 1867, Public Law 547. Supplements to the 1867 Act and later acts and ordinances expanded the Commission's duties. The Commission continues to be empowered by state law, presently codified at 53 P.S. Section 16471--16523. The Commission's powers were continued, substantially unchanged, under the Philadelphia Home Rule Charter of 1951, Section 5-602.

Jurisdiction and Duties

The 1867 Act created the Commission to oversee the creation of a public park along the Schuylkill and to "maintain [the Park] forever, as an open public place and park, for the health and enjoyment of the citizens [of Philadelphia],

and the preservation of the purity of the water supply to the City of Philadelphia." Over time, the Commission assumed responsibility for the management of additional outlying parks and parkways, the maintenance of street trees throughout Philadelphia, and the stewardship of many historic properties, artifacts, and art collections donated to the Commission. Presently, the Commission manages over 9,200 acres of land in 63 parks located throughout Philadelphia.

* * *

The Commissioners act as a "Committee of the Whole" when meeting and reviewing matters before them. Presentations at monthly Commission meetings are generally organized by the following subjects.

Finance - Matters of trust investments, including recommendations of professional investments managers and accountants; proposed budget submissions and testimony before City Council; items relating to the individual Commissioner's personal liability and responsibility to the Commission as a body in sponsoring, permitting, or granting a license to use Park facilities; requests and proposals to acquire, lend, maintain, repair, works of art (including fountains) under, or expected to become entrusted to, the care of the Commissioners.

Park Use Review - Matters related to all park regulations; requests and proposals to exhibit on a temporary basis works of art of any kind within the Park; requests and proposals for use of Park facilities or resources for special events of any nature, whether city or private.

Planning - Matters related to implementation of the Strategic Plan and individual master plans (trails, natural areas restoration, etc.) including long-range management and development plans; acquisitions and de-acquisitions of land and other property; capital projects, whether publicly or privately funded; landscape maintenance, planting, and interpretive programs for all gardens, squares, arboretums, natural areas, and open space including trails, paths, shelters, and other facilities; all proposals to install on a permanent basis works of art of any kind on ground, waterways, or air space under the jurisdiction of the Commission; re-designation of land or buildings; interdepartmental or Councilmanic transfers of properties or functions; vehicular and pedestrian traffic modifications to the extent of Commission jurisdiction.

Property - Matters related to all requests and proposals for occupancy of land, buildings, and other structures under contract, whether by lease, bid, city agency memo, ordinance, or other agreement; the termination or modification of any property-use contracts and requests for approvals under those contracts.

As the fact sheet makes clear, the Fairmount Park Commission has powers, unique among City boards and commissions, involving management and disposition of realty and other property, trust instruments, granting of licenses, capital projects, and property-use contracts. All such matters involve significant financial impact and affect property rights of the City and others, and are thus as significant as many of the above boards and commissions. The Board of Ethics concludes that in light of these very significant powers and responsibilities in spite of the lack of any statutory compensation, the Fairmount Park Commission is subject to Section 10-107.

10. Philadelphia Gas Commission. Compensation: none provided in Code §20-304. The Commission is a departmental commission of the Department of Public Property, but its duties and responsibilities are those assigned to it by the Operating Agreement between the City and the operator of the Philadelphia Gas Works, Philadelphia Facilities Management Corporation. Charter §3-909. We have reviewed the current contract. It provides for compensation as provided by City Council, presumably through amendment to Code §20-304. The Operating Agreement, approved by City Council, assigns significant powers and responsibilities to the Gas Commission in overseeing the operation³ of this multi-million dollar company. To cite a few examples, the Gas Commission has the following responsibilities:

- to approve the hiring of the managers and other employees of PGW
- to approve purchases of gas
- to approve contracts for the distribution and transmission of gas
- to approve location of facilities to test gas
- to approve PGW's operating budget and capital budget
- to approve loans that PGW might seek
- to approve PGW's annual financial statement
- to employ consultants
- to fix and regulate rates and charges for providing gas to customers; and
- to approve procurement standards for the purchase of non-gas supplies, material, repairs, maintenance, etc.

³ Paragraph 9 of Section VI ("Gas Commission") of the Operating agreement provides:

The Gas Commission shall have the responsibility for the overseeing of the operation of the Gas Works by the Company. All power not specifically granted to the Company shall reside in the Gas Commission.

There is no question that such responsibilities, in relation to an operation that provides gas to the entire City, and has an operating budget in excess of \$50 million and debt in the range of \$1 billion, are very substantial. The Board of Ethics concludes that in light of these very significant powers and responsibilities in spite of the lack of any statutory compensation, the Gas Commission is subject to Section 10-107.

11. The Sinking Fund Commission. The Sinking Fund Commission is a departmental commission of the Revenue Department. Compensation: none. There is only one member who is not a City employee. The Commission has the duty to invest the moneys in the sinking fund, and to redeem or purchase bonds of the City. Charter §6-208. It also manages the Insurance Fund. Code §19-401. Each bond ordinance approved by City Council involves the Sinking Fund Commission in duties overseeing a multi-million dollar transaction. See, e.g., Bill No. 070673 (approved November 15, 2007) The Board of Ethics concludes that in light of these very significant powers and responsibilities in spite of the lack of any statutory compensation, the Sinking Fund Commission is subject to Section 10-107.

12. The Historical Commission. Compensation: \$40 per meeting, up to an annual maximum of \$480. Code §20-304(29). Duties are set out in Code §14-2007(4) and include:

(a) Designate as historic those buildings, structures, sites and objects which the Commission determines, pursuant to the criteria set forth in subsection (5) of this Section, are significant to the City;

(b) Delineate the boundaries of and designate as historic those districts which the Commission determines, pursuant to the criteria set forth in subsection (5) of this Section, are significant to the City;

(c) Prepare and maintain or cause to be prepared and maintained a comprehensive inventory of historic buildings, structures, sites, objects, and districts;

(d) Review and act upon all applications for permits to alter or demolish historic buildings, structures, sites or objects; to alter or demolish buildings, structures, sites or objects located within historic districts, and to review and comment upon all applications for permits to construct buildings, structures or objects within historic districts as provided in this Section;

(e) Make recommendations to the Mayor and City Council concerning the use of grants, gifts and budgetary appropriations to promote the preservation of buildings, structures, site, objects or districts of historic importance to the City;

(f) Make recommendations to the Mayor and City Council that the City purchase any building, structure, site or object of historic significance where private preservation is not feasible, or that the City acquire facade easements, development rights, or any other property interest that would promote historic preservation;

- (g) Increase public awareness of the value of architectural, cultural and historic preservation;
- (h) Adopt rules of procedure and regulations and establish such committees as the Commission deems necessary for the conduct of its business;
- (i) Keep minutes and records of all proceedings, including records of public meetings during which proposed historic designations are considered.

Historic designations and the consideration of permits by the Commission implicate property rights, and can result in significant litigation. See, e.g., *Society Hill Tower Owners' Ass'n v. Rendell*, 210 F.3d 168 (3d Cir. 2000); *Samerica Corp. of Delaware, Inc. v. City, Historical Comm'n*, 142 F.3d 583 (3d Cir. 1998); *Society Hill Civic Ass'n v. Phila. Bd. of L & I Review*, 905 A.2d 579 (Pa. Commw. 2006); *Est. of Merriam v. Phila. Historical Comm'n*, 777A.2d 1212 (Pa. Commw. 2001). The Board of Ethics concludes that in light of these very significant powers and responsibilities in spite of the lack of significant statutory compensation, the Historical Commission is subject to Section 10-107.

In addition, the Board notes that its staff has become aware in recent years that, without any formal public process, the Historical Commission has apparently acquired several committees, including an Architectural Committee and a Committee on Historic Designation. We are informed that these committees, rather than having the usual make-up of being appointed solely out of members of the parent body, instead include some members who are not appointed to the Historical Commission itself. Thus, the question arises whether these committees are separate "boards or commissions" of the City themselves. We conclude that they are. Moreover, it appears that these committees have responsibilities that involve decisions of the full Commission that affect property rights. Accordingly, the Board of Ethics concludes that members of the Architectural Committee and the Committee on Historic Designation who are not members of the Historical Commission are also subject to Section 10-107.

13. Board of Trustees of the Philadelphia Prisons. Compensation: \$70 per meeting, up to an annual maximum of \$1,680. Code §20-304(33). This is a departmental board within the Department of Human Services.⁴ Code §§2-104, 2-107. The Philadelphia Prison System involves operation of six major correctional institutions, housing more than 9,000 inmates (August 2007 Inquirer article) and has an annual budget of approximately \$190 million (2005 figure). The Board of Trustees presumably has authority over the hiring of staff, letting of contracts, major policy decisions, and other major operational aspects of this

⁴ Although the names of the board and of the department have changed in customary use, the Charter has never been amended to change them, so formally the board is the "Board of Trustees of House of Correction" and it is a board within the "Department of Public Welfare." Charter §§3-100(f); 3-903; 5-701.

extensive system. The Board of Ethics concludes that in light of these very significant powers and responsibilities in spite of the lack of more significant statutory compensation, the Board of Trustees of the Philadelphia Prisons is subject to Section 10-107.

14. Board of Trustees of the Philadelphia Free Library. Compensation: \$30 per meeting, up to an annual maximum of \$360. Code §20-304(37). The Board existed prior to the Home Rule Charter. See Charter §§3-100(e), 3-802, 4-800. The City's web site provides this summary:

The Free Library of Philadelphia, initially established through private donations, was incorporated and granted a charter in 1891. The Board of Trustees of the Free Library of Philadelphia was established in 1894 to enable the Library to receive appropriations from the City. Established by an ordinance of December 31, 1894, succeeding a group privately incorporated in 1891 under a similar name. It was composed of the Mayor and Presidents of both Councils ex-officio, a member chosen by each Council, and eighteen other citizens designated by the ordinance, vacancies among whom were filled alternately by the Mayor and the remaining trustees. They have continuously administered the City's system of free libraries. The City Charter of 1951 directed that all twenty two members be appointive (eighteen for life) and added to the Board the Commissioner of the Department of Recreation.

As a board of trustees, charged with administering a system of libraries, the analysis is similar to that for the Prison System, above. Such responsibilities are significant. The Board of Ethics concludes that in light of these very significant powers and responsibilities in spite of the lack of more significant statutory compensation, the Board of Trustees of the Philadelphia Free Library is subject to Section 10-107.

15. Board of Pensions & Retirement. Compensation: none. The Board of Pensions is charged with administering the City of Philadelphia Public Employees Retirement System. Charter §6-601; Code §22-1201. This includes investing and managing the assets of the System, which approximate \$4 billion, and managing the pension rights of the City's approximately 26,000 active employees and 30,000 retirees, including adjudicating employee rights as an administrative agency under the Pennsylvania Local Agency Law, similar to the Civil Service Commission, the Human Relations Commission, and the Fair Housing Commission. The Board of Ethics concludes that in light of these very significant powers and responsibilities in spite of the lack of statutory compensation, the Board of Pensions & Retirement is subject to Section 10-107.

16. Board of Health. Compensation: \$30 per meeting, up to an annual maximum of \$360. Code §20-304(21). The Board is a departmental board in the Department of Public Health. Charter §3-901. The Board's duties are limited to promulgating regulations to protect the health of the City's citizens. See, e.g., Charter §5-301; Code §§6-201, 6-204, 6-301, 6-401,

and 6-602. Duly promulgated regulations have the effect of law. Health regulations affect all citizens of the City. The Board of Ethics concludes that in light of the impact of the Board's powers in spite of the lack of significant statutory compensation, the Board of Health is subject to Section 10-107.

17. Zoning Code Commission. Compensation: none. Duties are spelled out in Charter §4-1300, and include the following:

(a) (1) The Commission shall conduct a comprehensive analysis of and make recommendations regarding reforms to the Philadelphia Zoning Code.

(2) The Commission shall, subject to the availability of appropriations, appoint and fix the compensation of an executive director and such other staff as may be required for the proper conduct of its work (provided that the appointment of an executive director shall require a vote of two-thirds of all the members of the Commission), and it shall invite the participation of any staff of the Mayor or the Council and any member or staff of the City Planning Commission, as well as utilize any available resources, studies or reports of any such office. The Commission may also, subject to the availability of appropriations, retain as consultants any organization or individual with regionally or nationally recognized expertise in city planning or zoning.

(3) All departments, boards, commissions and other City agencies shall cooperate fully with the Commission in the performance of its responsibilities and shall provide any and all documents, data, analyses or other information related to construction, development and zoning requested by the Commission . . . The Commission shall hold at least two public hearings in the Council chambers to receive testimony from the public concerning zoning code reform

(b) On or before June 30, 2008, unless Council by a resolution adopted by a two-thirds vote of all the members of the Council approves an extension, the Commission shall by a vote of two-thirds of all members of the Commission adopt a written preliminary report containing specific recommendations solely related to proposed changes to the Philadelphia Zoning Code. . . .

(d) Within forty-five (45) days after the Commission issues its report, Council shall convene public hearings in Council Chambers to review the Commission's Zoning Code Proposals. Within thirty (30) days of the close of said hearings, Council may enact a resolution setting forth recommendations to the Commission concerning the Zoning Code Proposals, which the Chief Clerk of Council shall transmit to the Commission. The Commission shall review and may incorporate such recommendations into a final report. The Commission shall issue its final report within thirty (30) days of receiving Council's recommendations, or, if Council does not enact a resolution setting

forth its recommendations within thirty (30) days after the close of the required public hearings, the Commission shall issue its final report no later than sixty (60) days after the close of such hearings. Council shall either enact into law, reject or table the Commission's Zoning Code Proposals contained within the final report in their entirety by the later of (i) sixty (60) days after the Commission issues its final report or (ii) the fifth Council meeting after the Commission issues its final report.

(e) Within one hundred eighty days after the Commission issues its report, the City Planning Commission shall adopt or reject the Commission's Zoning Map Revision Plan in its entirety. If the City Planning Commission rejects the Commission's Zoning Map Revision Plan, the City Planning Commission shall simultaneously adopt an Alternate Zoning Map Revision Plan, including a timetable and specific milestones. The City Planning Commission shall thereafter proceed pursuant to said adopted plan or alternate plan, provided that the City Planning Commission may from time to time adopt amendments to said plan, as appropriate.

Although the general function of the Commission is, on its face, only to make a recommendation, not to take final official action, the impact of the highlighted language is to give the Commission's recommendations significant weight, because of the "take it or leave it" effect of the recommendations. In addition, the Commission's authority to hire staff, retain consultants, and require the cooperation of other City departments amount to the exercise of significant power. In such a case, it cannot be said that such a body is merely advisory. The Board of Ethics concludes that in light of these significant powers and responsibilities in spite of the lack of statutory compensation, the Zoning Code Commission is subject to Section 10-107.

18. Minority Business Enterprise Council. Compensation: none. Duties and powers are set out in Code Section 17-506(1). In general, Code Chapter 17-500 seeks to address discrimination in contracting by setting goals for participation by Disadvantaged Business Enterprises, or DBEs. Code §17-504 provides that the MBEC shall establish contract goals for levels or amounts of DBE participation for each contract, subject to the provisions of this Section, and unless exemptions have been granted under § 17-509. Section 17-506(1) provides:

The MBEC, or any subsequent successor shall:

- (a) Devise a certification procedure to assure that businesses taking advantage of this Chapter are legitimate DBEs.
- (b) Ascertain, within ninety (90) days of the enactment of this Chapter the total number of DBEs in the Philadelphia Standard Metropolitan Statistical Area. The MBEC shall maintain a listing of all such businesses and make it available to all agencies.

- (c) Survey such businesses ascertained in (b) to establish past and current participation levels.
- (d) Establish annual reporting requirements for all agencies to document the percentage of contracts which have been let to DBEs by the reporting agency.
- (e) Devise such regulations as may be necessary and appropriate for the implementation of the powers and performance of the duties created by this Chapter.
- (f) Devise regulations and procedures for including the participation of DBEs in prime contracts with the City. The affirmative programs to be reviewed by the MBEC in this regard shall include, but shall not be limited to the following:
 - (i) including qualified DBEs on solicitation lists;
 - (ii) assuring that DBEs are solicited whenever they are potential sources;
 - (iii) structuring contract requirements, when economically feasible, to permit maximum participation of DBEs;
 - (iv) implementing a bonding program for participants under this Chapter for construction jobs;
 - (v) implementing the use of other legally permissible means of fostering the award of prime contracts to DBEs, such as joint ventures;
- (g) Recommend contractual language which provides that compliance with DBE participation requirements is material to the City contract and further provides for remedies, including but not limited to, termination of the contract in the event of noncompliance, and further provides that prime contractors will agree to the assignment of the proceeds of their subcontracts with disadvantaged business enterprises, by the disadvantaged business enterprises, to financial institutions providing working capital financing for the subproject, when requested by such DBEs and financial institutions, and pursuant to equitable regulations developed by the MBEC;
- (h) Devise appropriate procedures for monitoring and enforcing compliance with this Chapter;
- (i) Devise procedures for the waiver of these participation goals in appropriate circumstances;
- (j) Devise and operate a grievance procedure for the processing of complaints by any person aggrieved by any finding, recommendation, proposal or other action implemented pursuant to this Chapter;
- (k) Issue a written annual report indicating the progress made toward achieving the goals set out above. Said report shall include, but not be limited to, a summary of City contracts let during the relevant periods, the extent and percentage of DBE participation, and recommendations as to the appropriate future goals. The annual report shall be available for public review;
- (l) Propose its own operating procedures, staffing needs, physical facilities requirements and operating budget;

(m) Issue a report to City Council every six months that outlines the participation of DBEs in contracts of the City and its agencies.

(.1) In each such report, MBEC shall certify whether or not each covered Agency or Quasi-Public Agency has provided to MBEC within the preceding six months the necessary information for MBEC to prepare such report.

(.2) Council shall not approve any City participation in or contribution to any development or other project in which a Quasi-Public Agency participates or provides contributions unless MBEC shall have certified, in its most recent semi-annual report, that the Quasi-Public Agency has provided to MBEC the necessary information for MBEC to prepare such report.

Although the findings and certifications of the MBEC are formally only recommendations (see Code §17-510), it is clear that, as the expert agency, the MBEC's recommendations bear significant weight. Moreover, Code §17-512 provides that a person aggrieved by a finding of the MBEC must file a grievance with the MBEC, which makes a finding. Only then may the finding be appealed to the Director of Finance. Such actions amount to the making of final official decisions. The Board of Ethics concludes that in light of these very significant powers and responsibilities in spite of the lack of statutory compensation, the Minority Business Enterprise Council is subject to Section 10-107.

19. Board of Labor Standards. Compensation: \$40 per meeting, up to an annual maximum of \$480. Code §20-304(28). The Board adjudicates rights under the Local Agency Law, as provided in Code §17-107(7), which provides:

(b) The Board shall serve as an appeal body to review the findings made under subsection (6)(b) of this Section or any other violation found by the Director.

Those findings involve investigations involving the various detailed provisions of Code subsection 17-107(2), which basically seek to require City contractors to pay their workers the prevailing wage, as provided in the Davis-Bacon Act. Section (6)(b) referred to above, provides that the City's Labor Standards Unit shall have the following responsibilities:

Receive and refer to the Commissioner under whose supervision a City-work contract is being performed, complaints against any contractor or subcontractor for alleged violations of this Section or the provisions of the City-work contract required hereby. Thereafter, the Director shall investigate such complaints and in connection therewith or with respect to any investigation shall have full power and authority to subpoena any witness, books, records, or other data of any person for the purposes of obtaining information pertinent to such investigation. The Director shall make a finding in writing with respect to each complaint filed, and shall send a copy thereof to the complainant and the contractor and shall maintain it on file. Upon request,

the unit shall provide any affected contractor or subcontractor with a hearing, pursuant to subsection 8(e).

The Board of Ethics concludes that in light of these powers to adjudicate rights in spite of the lack of significant statutory compensation, the Board of Labor Standards is subject to Section 10-107.

20. Board of Surveyors. Compensation: none. Duties: The Board of Surveyors is a departmental board in the Department of Public Health, existed prior to the 1951 Charter, and continued the duties it had previously. Charter §§3-100(f), 3-904 (annotation), 5-502 (annotation). The Board has significant duties and powers relating to plans and cross-sections of streets showing the locations and widths of sidewalks, roadways, and planting spaces, in addition to bridges, railways, street names, and water and sewer assessments. In addition, the Board confirms additions to the City Plan. Code Ch. 11-300. The Board of Ethics concludes that in light of these significant powers and duties in spite of the lack of statutory compensation, the Board of Surveyors is subject to Section 10-107.

21. Art Commission. Compensation: \$40 per meeting up to an annual maximum of \$960. Code §20-304(27). Duties and powers are set out in Sections 5-900(3) and 5-903 of the Charter, and in numerous Sections of the Code, including 8-205, 8-207, 9-210(2)(a)(.3), 9-212(2)(b)(.4), 9-212(5)(g), 9-601(8)(c), 11-603(2)(d)(.2), 11-603(3)(b)(.3), 14-214(9)(g)(.5)(a), 14-305(9)(g)(.5)(a), and many similar provisions of the Zoning Code. Many of these provisions involve some aspect of a building project, a sign for a service, or disposition of a work of art that cannot go forward without Art Commission approval. Since Art Commission approval is necessary for many matters that involve property rights and financial interests, the Commission's powers have significant impact. The Board of Ethics concludes that in light of these significant powers and responsibilities in spite of the lack of significant statutory compensation, the Art Commission is subject to Section 10-107.

E. Various Boards of Directors / Trustees named in the Charter, but not subject to Section 10-107.

The following bodies are named in the Charter, and although, as boards of directors or boards of trustees, likely have substantial powers over the particular institution they manage, as to budgeting, contracting, hiring staff, and setting policy, in all of the below, those duties have limited impact outside the institution itself. Hence, these bodies cannot be said to exercise the power of City government in any significant way. Moreover, since the Charter was adopted in 1951, some of these institutions have gone out of existence, been taken over by private contractors, or are currently operated by a private nonprofit corporation. Thus, in such cases the current board is not an active board or commission of the City.

Camp William Penn Board of Trustees (formerly Camp Happy)

Board of Directors, Atwater Kent Museum
Philadelphia Civic Center Board of Directors (formerly Board of Trade and Conventions)
Board of Trustees of Phila. Nursing Home (formerly Phila. General Hospital)
Board of Trustees of American Flag House & Betsy Ross Museum
Board of Trustees of Riverview (formerly Home for the Indigent)

The Board of Ethics concludes that in light of the above discussion none of the above bodies are subject to Section 10-107.

F. Advisory Bodies that do not exercise the power of the City and are thus not subject to Section 10-107.

The Board of Ethics concludes that the remaining boards and commissions of the City⁵ are not subject to the requirements of Charter Section 10-107, because of the combined effect of little or no compensation and powers that do not amount to the exercise of the power of the City.

Accessibility Advisory Board
Air Pollution Control Board
Airport Advisory Board
Board of Safety and Fire Prevention
Central Delaware Advisory Group
Child Welfare Advisory Board
Commission on African and Caribbean Immigrant Affairs
Community Oversight Board (DHS)
Education Advisory Task Force
Electrical Code Advisory Board
Environmental Cabinet
Hospitality Cabinet
LGBT Advisory Board
Liquor by the Drink Tax Advisory Committee
Mayor's Action Council for Visitors
Mayor's Advisory Cultural Council
Mayor's Commission for Women
Mayor's Commission on Gambling

⁵ What follows is the most complete list that our staff has been able to compile. The Board notes that staff has had some difficulty assembling this information, and urges the Nutter Administration to ensure that measures are taken to track the boards and commissions in existence within City government, their contact information, and lists of members, to carefully record appointments and vacancies, to assign an employee within the Administration to be a liaison to the Board of Ethics for this purpose, and to ensure that ethical requirements as to members of City boards and commissions, such as attending ethics training and filing financial disclosure forms, are carefully and fully adhered to.

Mayor's Commission on Native American Affairs
Mayor's Commission on Neighborhoods
Mayor's Commission on People with Disabilities
Mayor's Commission on Puerto Rican/Latino Affairs
Mayor's Commission on Services to the Aging
Mayor's Commission on Sexual Minorities
Mayor's Consumer Advisory Council
Mayor's Drug and Alcohol Executive Commission
Mayor's Housing Policy Board
Mayor's Housing Trust Fund Board
Mayor's Office of Community Services Advisory Council
Mayor's Scholarship Advisory Committee
Nonprofit Contributions Advisory Board
Office of Behavioral Health and Mental Retardation Services Advisory Board
Oversight Commission for the Center City Plan
Parking Adjudication Advisory Panel
Philadelphia City Scholarship Committee
Philadelphia Commission on Asian American Affairs
Philadelphia Community Reinvestment Commission
Plumbing Advisory Board⁶
Police Advisory Board
Productivity Bank Loan Committee
Project Labor Agreement Advisory Committee
Records Advisory Board
Recreation Coordination Board
Recycling Advisory Commission
Risk Management Advisory Board
Solid Waste Advisory Committee
Telecommunications Policy Advisory Committee
Vendor Advisory Board
Veterans Advisory Board
Youth Services Coordinating Commission

G. Conclusion

In summary, the Board of Ethics hereby issues its public advice to all relevant City officials that members of all bodies named in Section D above are subject to Section 10-

⁶ The Plumbing Advisory Board is the only advisory board that receives compensation of at least \$60 per meeting. Although the Plumbing Advisory Board makes recommendations with respect to appeals before the Board of Building Standards, see Code §A-802.2.1.4, it is the Board of Building Standards that is the technical appeals board. Accordingly, this board is merely advisory.

107 of the Home Rule Charter, and must abide by the political activity restrictions of Section 10-107(4), the restrictions on political fund-raising in Section 10-107(3), and the requirement to resign if announcing a run for elected office, as provided in Section 10-107(5).⁷ Members of all bodies named in Sections E and F above are not subject to Section 10-107, except to the extent that all citizens are subject to subsections (1) and (2).

With the exception of the Tax Review Board and the four departmental boards of the Department of Licenses & Inspections, the Board intends that this Opinion have prospective effect only, beginning on January 7, 2008. The Board intends that if additional information becomes available with regard to any particular board or commission, or if circumstances surrounding the facts as to any particular body change, the Board will review, upon request, any such additional or corrected facts and make any adjusted finding appropriate.

By the Board:



Richard Glazer, Esq., Chair
Richard Negrin, Esq., Vice-Chair
Phoebe A. Haddon, Esq., Member

Stella M. Tsai, Esq., was not in attendance at the meeting and did not vote on the motion to approve this Opinion.

Issued December 18, 2007.
Attachment: Opinion No. 2007-004

⁷ Subsections (1) and (2) of Section 10-107 apply to any person, not just City officers and employees.



CITY OF PHILADELPHIA

BOARD OF ETHICS
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Philadelphia Board of Ethics Opinion No. 2007-004

October 16, 2007

Robert Solvibile, Commissioner
Department of Licenses & Inspections
1401 Arch Street
Philadelphia, PA 19102

Re: Political Activity – Boards and Commissions

You have requested an opinion as to the applicability of the political restrictions in the Charter (Charter §10-107) to the three departmental boards assigned by the Charter to the Department of Licenses & Inspections¹: the Zoning Board of Adjustment, the L & I Review Board, and the Board of Building Standards. The Board notes that since the original inquiry by your deputy, Fran Burns (who has since left City employment), a fourth departmental board, the Malt and Brewed Beverage Hearing Board, has been added to your department by Council ordinance, pursuant to State legislation². Accordingly, we will interpret your request to include the Malt and Brewed Beverage Hearing Board.

A. Background

Charter Section 10-107 reads as follows:

§ 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

¹ See Charter §3-100(f).

² See Code §9-2907 as amended by Bill No. 070367-A (approved June 15, 2007); 47 P.S. §§4-407, 4-442.

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.

(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-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.

Since subsections (1) and (2) apply to "any person" and subsection (6) relates to penalties, this opinion is concerned only with subsections (3), (4), and (5), which are the substantive provisions that might apply differently depending on which board or commission members are considered to be "officers or employees" of the City.

The Charter does not define "officer or employee." It is perhaps notable that the Ethics Code defines "officer or employee" to include "any person . . . appointed to a position in any branch of the government of the City . . . including, but not limited to, members of . . . boards and commissions however elected or appointed; persons serving full-time or intermittently; persons serving with or without compensation." Code §20-601(2). We conclude that the common understanding of the word 'officer' might well include all appointed members of City boards and commissions, regardless

of term, powers, or compensation. However, since 1954, the interpretation of the City Solicitor has not been that expansive.

In 1995 the Law Department issued, and has reissued at least yearly since, the "Law Department Political Activity Guide," which quotes in full Charter Section 10-107. Although the Guide notes that it is not a formal opinion of the Solicitor, it was published as "Opinion No. 95-20" at page 143 of the volume, 1994-1996 City Solicitor's Opinions. Beginning on page 144 is a "Question and Answer" section, the first example of which is the following:

Question: Does Section 10-107 apply to members of City boards and commissions?

Answer: 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. The provision also may not apply to some boards for which the compensation is above that figure, but no precise dividing line has been set. Individual questions should be addressed to the City Solicitor for interpretation.

B. Prior Opinions of the City Solicitor

As noted by the excerpt from the Political Activity Guide, quoted above, no "dividing line" has been set between statutory compensation of \$40 per meeting (which does not subject members to Charter §10-107) and that of \$100 per meeting (which has been held to subject members to §10-107). In Opinion No. 95-06, Solicitor Dworetzky noted that unpaid positions on boards and commissions have not been subject to Section 10-107 since a 1954 opinion³ by Solicitor Freedman in which:

the Solicitor noted that the drafters of the Charter created numerous unpaid boards and commissions and desired to attract to these agencies "the same kind of devoted and civic-minded volunteer service that has so greatly enriched private civic, health and social service agencies." The Solicitor concluded that the Charter drafters did not intend to discourage volunteer participation on these boards and commissions by prohibiting "all persons who participate in the political life of the City" from serving on them. Accordingly, the Opinion concluded that Section 10-107(5) did not apply to members of unpaid boards and commissions. Formal Opinion No. 133, 1954 City Solicitor's Opinions at 120.

³ In an apparent typographical error, the 1995 Opinion referred to Opinion No. 133 of 1954 as a "1974 opinion."

At the time Solicitor Freeman authored that opinion, members of the Planning Commission, like the members of most of the other City boards and commissions, were unpaid. Over the years, however, that has changed and now the members of most boards and commissions are entitled to some remuneration for their service to the City

The 1995 Opinion concluded:

In 1966, City Solicitor Bauer concluded that Section 10-107(5) did apply to a member of the L&I Review Board who held a compensated--although only modestly compensated (\$25 per meeting)--position. Formal Opinion No. 290, 1966 City Solicitor's Opinions at 8. That opinion was subsequently eroded by a 1983 Solicitor opinion that suggested that the appropriate inquiry should not be a "mechanistic 'compensation or no compensation' test," but rather a determination--based on all the factors--of whether the compensation provided to a member of a board or commission was sufficiently "substantial" to suggest that membership on that board or commission had evolved into something "quite different than City Solicitor Freedman's concept of service by interested private citizens." Formal Opinion No. 6, 1983 City Solicitor's Opinions at 39, 44.

Although the suggested approach is not entirely satisfactory as a theoretical matter and requires us to determine in given cases how much compensation is "substantial" under all the facts and circumstances, I do not think it appropriate to substitute an alternative approach, at least without providing some prior warning to the members of our boards and commissions.

1994-1996 City Solicitor's Opinions at 89-90.

In 2005, Solicitor Ramos concluded that Section 10-107 applied to members of the Tax Review Board:

[T]here are certain positions that are so bound up in City work and City responsibility, and carry with them such significant governmental power, that Charter Section 10-107 necessarily must apply to them. One very significant factor we use in determining whether a position meets this test is whether the position comes with material compensation. Even if we were to apply some kind of "inflation" analysis to Opinion No. 95-06, as your letter seems to suggest, I do not conclude that because an annual maximum compensation of \$1680 in 1995 was held to be not sufficiently "substantial" to subject board members to Section 10-107, it necessarily follows that ten years later,

\$10,000 is equivalent to \$1680. I conclude that previous opinions of this office must be interpreted to require that members of boards and commissions that are compensated at amounts comparable to the Human Relations Commission and the Civil Service Commission are subject to Charter Section 10-107, and that this includes the Tax Review Board. Thus, you are advised that members of the Tax Review Board are subject to the political activities restrictions in Charter Section 10-107, and in particular the resignation provision of Section 10-107(5), based on the statutory compensation for such service and the powers and responsibilities of the Board. Therefore, a member of the Tax Review Board must resign his or her position upon becoming a candidate for elective office.

Unpublished opinion of March 4, 2005. In summary, prior rulings have concluded that a mechanistic test based solely on compensation, without consideration of the powers and responsibilities of the board or commission, is not desirable.

C. Policy

Annotation No. 1 to Charter Section 10-107 sets forth the policy for the provision:

Merit principles of governmental employment require the divorcement of politics from such employment. They presuppose employment upon merit and not because of political connections, powers and pressures. They also presuppose that governmental employment will not serve as a means for political tribute to maintain political parties and regimes. The prohibitions of this section are intended to sustain these basic principles and precepts subject to certain qualifications which political necessities require to be made at certain levels of employment and office-holding. Absolutism in this area is neither necessary nor practicable for the fact is that political parties are essential parts of the democratic form of government in the United States. This section attempts to balance the public interest involved.

In a column in the Philadelphia Inquirer on September 30, 2007, Tom Ferrick, Jr. noted:

In a poll done in March by Temple's Public Affairs Institute for the Economy League of Greater Philadelphia, 74 percent of city residents said government was doing only a fair to poor job. Only 26 percent graded it good or excellent. That's a C-minus.

Adding to the poor public perception is a widespread feeling that city government is, as the Temple report put it, "pretty much run by a few big interests looking out for themselves."

Forty-two percent of those surveyed believe that many people running government are corrupt.

A history of the Charter by The Committee of Seventy reinforces these points:

In the five (5) decades preceding the adoption of the 1951 Home Rule Charter, Philadelphia's County and City Governments were completely dominated by political party organizations. . . . Determining who was elected, whom the City employed and to whom lucrative City contracts were awarded, those in control of the political organization manipulated City government to serve and sustain the machine. . . . Philadelphia, as one observer described, was "a city of petty crimes, small-time gamblers and give-and-dime shakedowns, where too often a citizen's first protection [was] not the law, the court, or the police, but his ward leader."

The Committee of Seventy, *The Charter: A History* at 1 (footnote omitted). Reforms imposed by the 1919 legislative charter failed to prevent the political machine from continuing to infiltrate and exploit city government, *id.* at 1, 3, and local professional, business, and civic organizations pressed for home rule as a means of placing the city's fate into the hands of its own citizens "instead of relying on the distant state legislature." *Id.* at 3.

The Board of Ethics strongly affirms the principle that the public interest lies in maintaining a system of public office holding based on merit and not on political connections or willingness to serve political purposes.

D. Analysis

The Board of Ethics has concluded that, in order to answer your query regarding the four departmental boards of the Department of Licenses and Inspections, it is necessary to consider the powers and duties of the individual bodies in conjunction with the compensation provided for members.

As to "powers and responsibilities," the Board of Ethics concludes that a relevant consideration should be whether a board or commission exercises significant powers of government. In this regard, it is instructive whether the City has considered members of a particular body to be "public officials" as defined in the State Ethics Act, and thus required, as members of their board or commission, to file the State Financial

Disclosure Form⁴ and to be subject to other provisions (such as the conflict of interest section) of the act that apply to “public officials.”

The definitions section of the State Ethics Act defines “public official” as follows:

“Public official.” Any person elected by the public or elected or appointed by a governmental body or an appointed official in the executive, legislative or judicial branch of this Commonwealth or any political subdivision thereof, provided that it shall not include members of advisory boards that have no authority to expend public funds other than reimbursement for personal expense or to otherwise exercise the power of the State or any political subdivision thereof.

65 Pa.C.S.A. §1102. All three of the Charter-designated departmental boards of the Department of Licenses and Inspections have long been determined by the Law Department to be subject to the State Ethics Act. In addition, it is clear that, since it conducts due process hearings in matters relating to substantive rights with significant financial impact, the Malt and Brewed Beverage Hearing Board also exercises the power of City government and is not merely advisory. Thus, we conclude that its members, too, are subject to the State Ethics Act.

E. Conclusion

Nevertheless, the Board of Ethics does not necessarily conclude that being subject to the State Ethics Act is dispositive of whether a City board’s members are subject to Charter §10-107. Moreover, the Board concludes that this is not the appropriate time to decide the question as to all the City’s boards and commissions. Accordingly, the Bill addresses only the four departmental boards of the Department of Licenses and Inspection. The Board concludes as follows:

1. Zoning Board of Adjustment. Compensation: \$100 per meeting, annual maximum of \$22,000. Duties include:

(a) Hear and decide appeals in zoning matters where error is alleged in any order, requirement, decision or determination made by an administrative official in the enforcement of zoning ordinances, regulations and maps;

⁴ The Commonwealth of Pennsylvania Statement of Financial Interests, as required in the State Ethics Act, 65 Pa.C.S. §1104.

(b) Hear and decide special exceptions to any zoning ordinance upon which the Board is required to pass;

(c) Authorize, upon appeal, in specific cases, such variance from the terms of any zoning ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

Charter §5-1006. See also Code Ch. 14-100 and Ch. 14-1800. The Board concludes that these are significant duties and significant compensation, and that the Zoning Board is subject to Section 10-107.

2. Licenses & Inspections Review Board. Compensation: \$85 per meeting, annual maximum of \$6,375. Duties include: Hearing appeals of actions of the Department of Licenses and Inspections. Code §§6-602, 6-603, 6-604, 6-605, 9-617, 9-909, 19-2602(4)(h). The Board concludes that in light of these very significant duties adjudicating rights, in connection with the compensation, that the L & I Review Board is subject to Section 10-107.

3. Malt and Brewed Beverage Hearing Board. Compensation: \$100 per meeting, annual maximum of \$22,000. Duties include: receiving applications for permits for the take-sale of malt or brewed beverages and protests against such applications, holding hearings on such protests, and approving or disapproving the application. Code Chapter 9-2900, as amended by Bill No. 070367-A (approved June 15, 2007). The Board concludes that in light of these very significant duties adjudicating rights, in connection with the compensation, that the Malt and Brewed Beverage Hearing Board is subject to Section 10-107.

4. Board of Building Standards. Compensation: \$60 per meeting, annual maximum of \$4,500. Duties include:

- a) Advise the Commissioner of Licenses and Inspections, upon his request, on the interpretation of the Building Code and of any regulations relating to building safety and sanitation;
- (b) Suggest regulations applying standards of good practice in the enforcement of statutes and ordinances dealing with building safety and sanitation;
- (c) Upon request of the Commissioner of Licenses and Inspections pass upon the worth of new and substitute materials proposed to be used in building construction and also upon new methods of construction;
- (d) Consider any suggested changes in standards and regulations, new and substitute materials, or new methods of construction, either with or

without holding public hearings; but before the Board shall recommend any change or modification of such standards and regulations, it shall hold a public hearing at which all interested parties may present their views. After such public hearing the Board shall submit its findings and recommendations to the Commissioner of Licenses and Inspections for his approval. Upon approval by the Commissioner they shall become a part of the standards and regulations.

Charter §5-1007. Also, the Board makes recommendations to the Commissioner, Code §A-203.3, A.802.2.1; makes determinations on damage to buildings, Code §A-302.1.2; and is the Technical Appeal Board for various Codes. Code §A-802 (see Table A-802.1) and Code §9-2201(3). The Board concludes that in light of these very significant duties making determinations having a significant impact on public safety and the costs and methods of building construction, in connection with the compensation, that the Board of Building Standards is subject to Section 10-107.

In summary, the Board of Ethics advises you that members of all four departmental boards of the Department of Licenses and Inspections are subject to Section 10-107 of the Home Rule Charter, and must abide by the political activity restrictions of Section 10-107(4), the restrictions on political fund-raising in Section 10-107(3), and the requirement to resign if announcing a run for elected office, as provided in Section 10-107(5).⁵

By the Board:



Richard Glazer, Esq., Chair
Stella M. Tsai, Esq., Member
Phoebe A. Haddon, Esq., Member

Issued October 16, 2007. Richard Negrin, Esq., Vice-Chair, participated in all prior consideration of this matter, but was not present for the approval vote on October 16, 2007. Pauline Abernathy participated in an initial general discussion of this matter at the July 2007 Board meeting, but did not participate in the consideration or approval of this Opinion.

⁵ Subsections (1) and (2) of Section 10-107 apply to any person, not just City officers and employees.