

City of New York
Conflicts Of Interest Board
Memorandum

To: Members of the Board
From: Mark Davies
RE: Charter Amendment
Date: March 19, 2014

The issue has been raised whether Board members should be prohibited from engaging in any political activity, including political fundraising.

Such prohibitions are not uncommon for ethics board members, at least at the state level. For example, members of the California Fair Political Practices Commission may not “participate in or contribute to an election campaign....” Cal. Gov’t Code § 83105. So, too, members of the Massachusetts Ethics Commission may not “participate in or contribute to the political campaign of any candidate for public office.” Mass. Gen. Laws, Ch. 268B, § 2(f)(3). Pennsylvania Ethics Commission members may not “actively participate in or contribute to any political campaign.” Pa. Stat. § 1106(d)(3). Rhode Island Ethics Commission members may not “[p]articipate in or contribute to any political campaign.” R.I. Gen. Laws § 36-14-8(f)(3). So, too, members of the Chicago Board of Ethics shall not “engage in political activity as defined in Chapter 2-156 of the Municipal Code of Chicago,” which broadly defines that phrase. Chicago Mun. Code §§ 2-156-320, 2-156-010(s) (defining “political activity”).¹ Philadelphia prohibits its ethics board members from taking part in any political campaign (“except to exercise his right as a citizen privately to express his opinion and to cast his vote”) and from making financial contributions to any candidate for any city office or to any incumbent city official. Philadelphia Home Rule Charter §§ 3-806(e), 10-107(4).

Other municipalities are less restrictive. Jacksonville allows ethics commission members to sign candidate petitions, make contributions, and support a candidate. *See* Jacksonville Code of Ordinances § 602.912(c)(4). Los Angeles, San Francisco, and Seattle have essentially adopted the New York approach,

¹ Each of these codes provides additional restrictions on holding public and political office and on running for public or political office.

focusing on the nexus between the campaign activity and the city. *See* Los Angeles Charter § 700(d) (also prohibits ethics commission members from contributing to a city election campaign or to a city official running for any elective office); San Francisco Charter § 15.100(c); Seattle Mun. Code § 3.70.060(D).

In staff's view, to avoid even the appearance of partisanship, Board members should be prohibited from engaging in any political activity or soliciting any political contributions, although Board members themselves, it would seem, should be able to make such contributions. Thus, staff recommends that Charter § 2602(b) be amended to include the following prohibition:

No person while a member of the board shall participate in a political campaign, as defined in subparagraph (b) of paragraph 9 of section 2604 of this chapter, or directly or indirectly request any person to make or pay any political assessment, subscription or contribution for any candidate for an elective office.

The proposed language on the restriction on political activity is derived from § 2604(b)(9)(b) (prohibiting a superior from requesting a subordinate to participate in a political campaign). The proposed language on the restriction on political fundraising is derived from § 2604(b)(12) (prohibiting certain high-ranking City officials from soliciting contributions to the campaign of anyone running for elective City office or of a City elected official running for any elective office). Employing the language of those Charter sections will help ensure uniformity of interpretation.

Annexed hereto is a draft of the Board's already-approved proposed amendments to Charter § 2602, revised to include the foregoing proposed amendment to section 2602(b) (last sentence), with accompanying commentary (last paragraph of section 2602(b) commentary).