



City of Atlanta Board of Ethics
Formal Advisory Opinion 2008-4
Use of City Property in Elections to City Pension Boards

Opinion Summary

City employees may not use city property to advocate the candidacy of any individual to serve on the city's three pension boards. Under the exception for official city business, the City of Atlanta, its agencies, and employees may use city property to conduct the elections of the pension board members under policies and procedures that give all candidates equal access to the property.

Question Presented

May city officials or employees promote a candidate for election to a city pension board by posting flyers on city property and sending emails to city employees at their city email addresses?

Facts

The General Employees Pension Fund is a defined benefit pension plan for employees of the City of Atlanta and the Atlanta Board of Education. The fund is administered by a board of directors composed of the mayor or her appointee, the chief financial officer, a city council member, a school board member, and members elected from active and retired employees. Atlanta, GA Code § 6-141 (b). The board is an independent city board created under state law with authority to hire a third-party administrator and outside counsel. See City of Atlanta v. Southern States Police Benevolent Ass'n, 276 Ga. App. 446 (2005). The Department of Finance currently provides administrative services to the board.

Active city employees who are pension fund members elect two members to the board every three years. Originally scheduled for last December, the 2007 election was finally held in February 2008 after two postponements. As part of the election process, the pension board sends a letter to all eligible employees announcing the election; citywide emails were sent announcing the postponement; and department contacts pick up the election ballots from the Department of Finance's Office of Retirement Services.

In February 2008, eligible employees reelected the two incumbents to the board from a field of five candidates. The board members received 896 and 752 votes; their challengers received 120, 152, and 161 votes. As part of his successful reelection campaign, one candidate posted a flyer in City Hall and other city facilities displaying his

photograph, experience, and platform, and the dates of the election. He also sent an email to selected city employees using their city email addresses, attaching the flyer. The Ethics Officer wrote an informal advisory letter to the candidate concluding that he could not use city property to campaign for reelection to the pension board, and wrote a cease and desist letter directing him to remove his campaign flyers from public areas in City Hall. He complied with that directive. Although this year's election is over, he requests that the board provide guidance on what he can do in the future as a city employee seeking election by other city employees to a city board.

Discussion

The Code of Ethics applies to city officials and employees. The term "official or employee" is defined as "any person elected or appointed to or employed or retained by the city or any agency, whether paid or unpaid and whether part time or full time." See Atlanta, GA Code § 2-801. An "agency" means "any board . . . of the city, including any joint board to which the council or the mayor has appointment powers." Based on these provisions, the members of the General Employees Pension Board are subject to the code's ethical standards as officials elected to a city board; any board member who is an active city employee is also subject to the code as a city employee.

The Code of Ethics prohibits city officials and employees from using city property for the private advantage of the official or employee. Section 2-811 states:

No official or employee shall request, use or permit the use of any publicly owned or publicly supported property, vehicle, equipment, labor or service for the private advantage of such official or employee or any other person or private entity. However, no official or employee is prohibited from requesting, using or permitting the use of any city-owned or city-supported property, vehicle, equipment, material, labor or service which as a matter of city policy is made available to the public at large or which is provided as a matter of stated public policy for the use of officials and employees in the conduct of official city business.

A Candidate Seeking Election Is Not Performing Official City Business

The Board of Ethics has interpreted section 2-811 as permitting city officials and employees to use city facilities without charge when they are acting in an official capacity and performing official duties on behalf of the City, but not when an event is held solely for the personal benefit of an individual official or employee. See Formal Advisory Opinion 2004-1 (defining "official city business"). The Board explained that a political campaign activity, a private business transaction, or an event sponsored by a private or non-city group is not official city business. In each situation, the individual is acting in a personal or private capacity and performing duties for his or her own private advantage or the advantage of another person or private entity. Based on that opinion, the Code of Ethics does not permit a candidate for election to a city pension board to use city property, including email addresses, to advocate his candidacy.

There are two exceptions to the prohibition on use of city property for private advantage. A city official or employee may use city property that as a matter of city policy is made available to the public at large. In the context of pension board elections, this exception means that any candidate may obtain a mailing list of all pension fund participants on the same terms as any member of the public and mail a flyer to eligible voters.

The second exception permits city officials and employees to use city property for “official city business.” Under this exception, city employees are conducting official city business while they serve on a city pension board and attend its meetings, receive emails, and read documents related to the board’s activities. In the context of elections, the chief financial officer as secretary for the pension fund may notify city employees through a citywide email about the candidates and election dates and procedures; the employees who manage city facilities may designate areas where any candidate or employee may post flyers promoting their candidacy for election to the board; and the City may sponsor a public forum in one of the city’s meeting rooms for pension fund members to hear candidates speak. In each situation, the city employee is acting in an official capacity and performing official duties on behalf of the City.

Candidates May Not Use City Property Except during Public Forums

During the last municipal elections, the Board addressed when city property could be used during a political campaign. The Board adopted the following guidelines:

- No official, candidate, or employee should use the city’s email directory and city email addresses to solicit political support for a candidate
- City officials and employees may not use city computers, telephones, vehicles, copiers, or staff to promote a candidacy of any individual running for city, county, state, or federal elective office
- City officials may not campaign or distribute campaign literature in a city building unless, as a matter of city policy, the public at large is permitted to engage in similar activity
- A candidate may use a city facility during a campaign if the property is a public forum open to all members of the general public, such as the steps of City Hall
- City facilities may be used for political forums when the forum is open to all candidates in a specific race and the general public is invited to attend the event

Although that opinion dealt with campaigns for municipal office, including the race for mayor, council president, and city council, it applies equally to candidates for election to the city’s pension fund boards. Both situations involve an individual candidate who wants to use city property to solicit support from voters for election to a city office.

In summary, the City’s Code of Ethics allows the City or its agencies to use city property and labor to inform city employees about the candidates and to conduct the elections. In addition, candidates running for the pension board may participate in any public forum or mailing sponsored by the City for the benefit of city employees who are eligible to vote in the election. A candidate, however, may not use city email addresses to solicit votes, post campaign flyers in city facilities, or campaign for office on city time because none of these activities is official city business.

Approved March 20, 2008

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