



Allegheny County Council

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Legislation Text

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An Ordinance of the County of Allegheny, Commonwealth of Pennsylvania, amending and supplementing the Administrative Code of Allegheny County, Article 1013, entitled "Political Activity; Accountability, Conduct and Ethics Code," §5-1013.09, entitled "Standards of Conduct," through the creation of a new Subsection R, in order to establish specific prohibitions on exerting improper influence in official matters within Allegheny County.

WHEREAS, existing Commonwealth of Pennsylvania law, specifically 18 Pa.C.S.A. §§4701(a)(1) and (2), classifies as a third degree felony any attempt to influence judicial, administrative, or legislative proceedings by offering, conferring, agreeing to confer, soliciting, accepting or agreeing to accept (1) any pecuniary benefit as consideration for a decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter, or (2) any benefit as consideration for a decision, vote, recommendation or other exercise of official discretion in a judicial, administrative or legislative proceeding; and

WHEREAS, in addition to the criminalized actions delineated above, §4701(a)(3) also grades as a third degree felony offering, conferring, agreeing to confer, soliciting, accepting, or agreeing to accept any benefit as consideration for a violation of a known legal duty as public servant or party official; and

WHEREAS, for the purposes of §4701, the term "benefit" is defined as gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose, *see*, 18 Pa.C.S.A. §4501; and

WHEREAS, as a result of the provisions of §4701, activities such as trading or attempting to trade votes for employment of friends or family, monetary compensation, job security, appointment - even to unpaid positions - with boards, authorities or commissions, campaign funding, or political support are specifically criminalized within the Commonwealth of Pennsylvania and punishable as third degree felonies; and

WHEREAS, in addition to the provisions of §4701, the provisions codified at 18 Pa.C.S.A. §4702(a) also criminalize (1) threatening unlawful harm to any person with intent to influence his decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter, (2) threatening unlawful harm to any public servant with intent to influence his decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding, or (3) threatening unlawful harm to any public servant or party official with intent to influence him to violate his known legal duty; and

WHEREAS, offenses committed under §4702 are graded as misdemeanor of the second degree, unless the actor threatened to commit a crime or made a threat with intent to influence a judicial or administrative proceeding, in which case the offense is graded as a felony of the third degree; and

WHEREAS, for the purposes of §4702, the term "harm" is defined as loss, disadvantage or injury, or anything so regarded by the person affected, including loss, disadvantage or injury to any other person or entity

in whose welfare he is interested, *see*, 18 Pa.C.S.A. §4501; and

WHEREAS, as a result of the provisions of §4702, attempting to influence votes or opinions through the exercise of activities such as threatening a part time officeholder’s job security, disadvantageous treatment for employment applicants in whose welfare an officeholder is interested, financial or other harm to an officeholder’s business or employment, refusal to nominate or support an officeholder’s appointment to a judicial post or other board, authority or commission, or offering campaign financing to potential opponents of an officeholder are specifically criminalized within the Commonwealth of Pennsylvania and punishable as second degree misdemeanors or third degree felonies, depending upon the circumstances involved; and

WHEREAS, in addition to the provisions of §§4701 and 4702, the provisions codified at 18 Pa.C.S.A. §4703 also criminalize harming another individual by any unlawful act in retaliation for anything lawfully done by the latter in the capacity of public servant; and

WHEREAS, for the purposes of §4703, the term “public servant” is defined as any officer or employee of government, including members of the General Assembly and judges, and any person participating as a juror, advisor, consultant or otherwise, in performing a governmental function, and the term “harm” is defined as it is for §4702; and

WHEREAS, violations of §4703 are graded as second degree misdemeanors in all cases; and

WHEREAS, as a result of the provisions of §4703, actions taken in retaliation for past acts undertaken by public servants such as attempts to limit pay or duties of government staff members, attempting to secure dismissal of government staff members, or conspiring with employers to terminate officeholders from regular employment, are specifically criminalized within the Commonwealth of Pennsylvania and punishable as second degree misdemeanors; and

WHEREAS, while the Council is of the considered opinion that existing Commonwealth law, specifically 18 Pa.C.S.A. §§4701, 4702 and 4703, criminalize behavior involved in most improper influence and retaliation scenarios, it is also the judgment of Council that such conduct is entirely inconsistent with the County’s Ethics Code provisions relating to ethical conduct; and

WHEREAS, while the County’s Ethics Code does prohibit certain forms of improper influence in Sections 5-1013.09.E. and F., these provisions are primarily framed in terms of financial benefits, and largely are silent with regard to offering improper incentives and/or the broader scope of activities prohibited under the terms of the Commonwealth statutes described above; and

WHEREAS, it is accordingly the desire of Council to clarify the applicability of the Ethics Code to cases in which the improper influence exerted is not purely financial in nature;

The Council of the County of Allegheny hereby enacts as follows:

SECTION 1. Incorporation of the Preamble.

The provisions set forth in the preamble to this Ordinance are incorporated by reference as set forth in their entirety herein.

SECTION 2. Amendment of the Code.

The Administrative Code of Allegheny County, Article 1013, entitled “Political Activity; Accountability, Conduct and Ethics Code,” is hereby amended as follows:

§5-1013.03. Definitions.

The following words and phrases, when used in this code, shall have the meanings given to them in this section:

* * *

PUBLIC SERVANT - A category of individuals including all Covered Persons as defined within this Article, as well as individuals involved in a judicial proceeding in the Fifth Judicial District of Pennsylvania.

* * *

§5-1013.09. Standards of conduct.

All covered persons shall set and follow an example of proper conduct that shall include the following:

* * *

R. Official oppression and non-monetary improper influence.

(1) No Covered Person shall offer, confer or agree to confer, solicit, accept or agree to accept from another any benefit as consideration for any decision, opinion, recommendation, vote, or exercise of discretion in a judicial or administrative proceeding by the recipient.

(2) No Covered Person shall:

a. Threaten unlawful harm or disadvantage to any person with intent to influence that person’s decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter;

b. Threaten unlawful harm or disadvantage to any public servant with intent to influence that person’s decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding, or

c. Threaten unlawful harm or disadvantage to any public servant or covered person with intent to influence that person to violate his known legal duty.

(3) No Covered Person shall disadvantage or threaten to disadvantage any individual(s) in retaliation for anything lawfully done by the latter in the capacity of public servant.

(4) For the purposes of Subsection R only:

- a. “Benefit” shall be defined as gain or advantage, or anything regarded by the beneficiary as gain or advantage, including but not limited to a benefit to any other person or entity in whose welfare he is interested either personally or through representation in a judicial, administrative, or other similar proceeding. Benefits need not be financial in nature and shall include preferential treatment via the performance or nonperformance of any official duty or exercise of discretion.
- b. “Disadvantage” shall be defined as loss, disadvantage or injury, or anything so regarded by the person affected, including loss, disadvantage, or injury to any other person or entity in whose welfare he is interested either personally or through representation in a judicial, administrative, or other similar proceeding. Disadvantages need not be financial in nature, and shall include adverse treatment threatened or imposed via the performance or nonperformance of any official duty or exercise of discretion.
- c. “Unlawful harm” shall be defined as any action that is subject to penalties as a summary offense, misdemeanor of any grade, or felony of any grade within the Commonwealth of Pennsylvania.

(5) Defenses prohibited. It shall be no defense to an ethics complaint alleging violation of the terms of this Subsection that a person whom the actor sought to influence was not qualified to act in the desired way whether because he or she had not yet assumed office, had left office, or lacked jurisdiction, or for any other reason.

SECTION 3. Severability. If any provision of this Ordinance shall be determined to be unlawful, invalid, void or unenforceable, then that provision shall be considered severable from the remaining provisions of this Ordinance, which shall be in full force and effect.

SECTION 4. Repealer. Any Resolution or Ordinance or part thereof conflicting with the provisions of this Ordinance is hereby repealed so far as the same affects this Resolution.