

Philadelphia Board of Ethics
Meeting Minutes
October 15, 2014 - 1:00 p.m.
One Parkway Building
1515 Arch Street, 18th Floor

Board Present

Michael H. Reed, Esq., Chair
Judge Phyllis Beck (Ret.), Vice-Chair
Sanjuanita González, Esq.
Brian J. McCormick Jr., Esq.
Reverend C. Kevin Gillespie

Staff Present

J. Shane Creamer, Jr., Esq.
Nedda Massar, Esq.
Maya Nayak, Esq.
Michael Cooke, Esq.
Elizabeth Downey, Esq.
Jordan Segall, Esq.
Elizabeth Baugh
Bryan McHale
Tina Simone

Chair Reed recognized the presence of a quorum and called the meeting to order at 1:00 p.m.

I. Approval of Minutes

By a 5-0 vote, the Board approved the meeting minutes for the public meeting held on September 17, 2014.

II. Executive Director's Report

A. Litigation Update - Cozen O'Connor v. Philadelphia Board of Ethics

Mr. Creamer reported that oral argument was held before the Pennsylvania Supreme Court on September 10, 2014 on Cozen O'Connor's challenge to the Board's interpretation of the contribution limits in the City's Campaign Finance Law. The matter is now in its seventh year and the Board awaits the decision of the Pennsylvania Supreme Court.

Cozen argued on appeal that the City's contribution limits should not prevent Cozen from forgiving its \$448,000 legal bill to Bob Brady's 2007 mayoral campaign committee (even though debt forgiveness is included in the definition of "contribution") *and*, alternatively, that the limits should not apply to the Brady campaign committee after the election, because the law did not *expressly* apply the limits post-election. Cozen also argued that litigation costs related to a ballot challenge defense do not constitute expenditures to influence an election and therefore should not be subject to the campaign finance regulations.

Cozen's suit for declaratory judgment challenges the Board's interpretation of the campaign finance law. Mr. Creamer reported that under Pennsylvania law, an administrative agency's interpretation of a statute for which it has enforcement responsibility is entitled to "substantial deference" by the courts.

B. Training Update

Mr. Creamer reported that in preparation for the 2015 primary and general elections, staff has announced two campaign finance training sessions, on Wednesday, October 22, 2014 at 5:00 PM and on Tuesday, December 16, 2014 at 1:00 PM. Each of the training sessions will cover the requirements for candidates and political committees under the Pennsylvania Election Code and Philadelphia's campaign finance law. Mr. Creamer reported that Board staff will also schedule several more sessions in early 2015.

All City Council seats, the Mayor's office, the City Commissioners' offices, and the Sheriff's office will be on the ballot. Mr. Creamer reported that training is especially important because there are likely to be new candidates and PACs that are unfamiliar with the contribution limits and other requirements of the campaign finance laws.

C. Lobbying Update

Mr. Creamer reported that Board staff conducted a lobbying outreach event on October 9, 2014 to introduce members of the public to the data that is now available through the Board's online lobbying system. The event was presented with the City's Office of Innovation and Technology (OIT) and Code for Philly which includes interested citizens and people in the Philadelphia technology community, as well as representatives from OIT. Board staff met in the City's new Innovation Lab in the Municipal Services Building and had an in-depth discussion and demonstration of the lobbying database and the information it collects from reports filed by lobbyists, lobbying firms, and principals.

D. Annual Report

Mr. Creamer reported that the 2014 Annual Report was posted on the Board's website and delivered electronically to the Mayor, the members of City Council, the Chief Clerk of City Council, and the Department of Records on September 30, 2014. Mr. Creamer thanked the entire Board staff for their hard work on this project.

E. Workshop on Campaign Finance Coordination

Mr. Creamer reported that on October 14, 2014, he and Mr. Cooke attended a workshop on campaign finance coordination in Washington DC. Mr. Creamer and Mr. Cooke were invited to attend the workshop by its co-sponsors, the Campaign Legal Center and the Brennan Center for Justice. The workshop focused on how coordination rules in campaign finance laws could be drafted to provide meaningful distinctions between independent and coordinated expenditures. Mr. Creamer reported that this effort is in response to the dramatic increase in so-called "independent" election-related expenditures since the US Supreme Court's 2010 decision in *Citizens United v. FEC*. The Board's proposed changes to the coordination rule in Regulation No. 1, including the republication rule, were discussed in the workshop.

Mr. Creamer mentioned that Philadelphia is identified along with one other city and three states that have shown better approaches to regulating coordinated expenditures in a report published by the Brennan Center for Justice entitled “After *Citizens United*: The Story in the States.”

Mr. Creamer reported that the fact that Philadelphia was invited to the workshop and is being identified in the Brennan Center’s Report as a jurisdiction that is at the leading edge of the campaign finance regulation, are two signs of just how far Philadelphia has come in the area of campaign finance law.

III. General Counsel’s Report

A. Advisory Opinions

Ms. Nayak reported that the General Counsel issued Non-Public Opinion 2014-503 on August 26, 2014 to a City employee who requested advice about how the ethics laws would apply to the employee’s future post-City employment with a non-profit organization that receives funding pursuant to a City contract with the employee’s City agency. The Opinion advised that the employee’s new position would not raise an issue under the two City post-employment restrictions: (1) the two-year prohibition against becoming financially interested in actions the employee took in an official capacity; or (2) the prohibition on a former employee, at any time subsequent to City employment, assisting any person in a transaction involving the City in which the employee had participated. The employee had not taken action on the non-profit’s current City contract, and any City contracts the employee had taken action on as a City employee had expired. The Opinion also explained that a conflict of interest would arise if the employee takes action on a matter affecting a prospective employer that had offered the City employee a job or to which the City employee had applied for a job.

Ms. Nayak also reported that the General Counsel issued Non-Public Opinion 2014-504 on August 29, 2014. In that Opinion an employee of a registered lobbying principal who lobbies for that employer/principal requested advice about whether the City lobbying law requires the requestor or the requestor’s employer/principal to report hospitality that the requestor will provide to various City officials who will be guests at the requestor’s wedding reception. The Opinion advised that the hospitality provided at the wedding reception will not constitute lobbying and would not be reportable lobbying activity that the requestor’s employer/principal would need to report on a lobbying expense report.

Ms. Nayak reported that copies of the redacted versions of both General Counsel opinions 2014-503 and 2014-504 are available on the Board’s website.

B. Informal Guidance

Ms. Nayak reviewed the chart summarizing informal guidance provided from September 6, 2014 to October 3, 2014.

C. Regulations

Ms. Nayak reported that at this Board meeting, the Board will consider a draft report on the

September 17, 2014 public hearing that was held to receive testimony on the proposed amendments to Regulation 1. She also reported that Board staff plans to begin working on an amendment to Regulation 8 soon.

SUMMARY OF INFORMAL GUIDANCE PROVIDED, SEPTEMBER 6, 2014 – OCTOBER 3, 2014

General topic	Total #	Phone	Email	Phone & Email	In-person	Subtopics
Campaign Finance	10	5	--	5	--	Reporting requirements; coordinated expenditures; contribution limits; permissible expenditures; and updating committee information.
Lobbying	7	4	1	--	2	Registration and reporting requirements for principals and lobbyists; and reporting principal's employees who lobby.
Conflicts	3	1	1	1	--	Outside employment; and use of City resources to promote outside business.
Political Activity	3	3	--	--	--	Political activity by a Board member; use of City property for campaign activity; and attendance at fundraiser.
Post-Employment	2	1	1	--	--	
Gifts	1	1	--	--	--	Travel expenses.
Other	2	2	--	--	--	Board's jurisdiction; and no jurisdiction.

This chart provides a partial picture of informal guidance provided by Board Staff members during the specified time period. The General Counsel, Director of Enforcement, Deputy Executive Director, Public Integrity Compliance Supervisor, and Associate General Counsel tracked the assistance they provided, as reflected in the chart.

IV. Hearing Report for Amendments to Board Regulation No. 1

Mr. Cooke presented a draft hearing report that staff had prepared following the Board's September 17, 2014 public hearing concerning amendments to Board Regulation No. 1 (Campaign Finance). The draft hearing report addressed hearing testimony from Board staff and other witnesses and, in response to that testimony, proposed several changes to the proposed amendments to the Regulation. Mr. Cooke advised that the Law Department had reviewed the draft hearing report and the final version of the proposed amendment and had preliminarily advised that both were within the Board's authority and did not conflict with any other laws. Mr. Cooke presented several modifications to the draft hearing report and the proposed Regulation reflecting Law Department and Board member feedback over the last few days. In the course of his presentation, Board members asked Mr. Cooke a number of questions and discussed various provisions of the proposed Regulation.

After Mr. Cooke completed his presentation, Chair Reed asked if anyone present had comments. Adam Bonin requested that the Board schedule another opportunity for public comment due to the number of changes that would be made to the Regulation through the hearing report and in response to testimony. Hope Caldwell, the Chief Integrity Officer for the City of Philadelphia, stated that she agreed with the substantive changes to the Regulation and wondered from the Law Department's perspective whether the changes were *de minimis* or required restarting the regulatory process.

A discussion ensued regarding the timeline for finalization of the Regulation and the need for clarity for the upcoming City elections in 2015. Ms. González stated that she believed the Staff had considered all the testimony, had made necessary changes in response to the testimony presented, and had explained why they made changes in response to some testimony and rejected suggestions made in other testimony. She and Chair Reed confirmed with Mr. Cooke that all proposed changes were in response to testimony without other new concepts proposed by Board staff. Mr. Bonin stated that he believed the proposed excess pre-candidacy provisions were new. Mr. Creamer responded that the previous excess pre-candidacy approach is preserved and the proposed amendments simply add options for compliance with the rule.

Chair Reed stated that the Board needed to balance the interests of further public comment with finalizing the Regulation in a timely fashion. He noted that the Law Department had preliminarily approved the proposed Regulation, the proposed hearing report, and the process for finalizing the proposed amendments through the proposed hearing report.

By a 5-0 vote, the Board approved the hearing report and the version of the amended Regulation No. 1 reflecting the modifications discussed by Mr. Cooke at the meeting and directed staff to a) obtain final Law Department approval of the hearing report and amended Regulation and b) post the hearing report and the final Regulation at the Records Department.

By a 5-0 vote, the Board authorized Board staff to make any non-substantive changes to Regulation No. 1 requested by the Law Department prior to its approval of the Regulation, but to consult with the Chair before doing so.

V. New Business

There was no new business presented at the meeting.

VI. Questions/Comments

Ms. Caldwell announced that the City will be holding Integrity Week between November 17 and November 21, 2014. She announced various activities and speakers and said that the program would encourage individuals to attend the Board of Ethics' public meeting on November 19, 2014. Chair Reed stated the Board would support the program any way it can.

Mr. Bonin expressed concerns about Regulation No. 1 moving forward, the use of the term "public domain" in the Regulation, and the scope of the media exception in the Regulation. He also posed a question about the application of the term "pre-payment" in the Regulation to a particular situation. Mr. Creamer responded that Mr. Bonin's question can be resolved through an advice request from the Board. Ms. Nayak also responded that Board staff are available to answer questions through informal guidance as well as advisory opinions.

Chair Reed announced that the Board would meet in executive session to address non-public advice, legal advice, personnel matters, and confidential enforcement matters.

The public session of the Board meeting was adjourned at 2:23 p.m.