

Philadelphia Board of Ethics
Meeting Minutes
October 16, 2013 - 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.
Elizabeth Baugh
Bryan McHale
Tina Formica
Hortencia Vasquez

Chair Reed recognized the presence of a quorum and called the meeting to order at 1:05 p.m.

I. Approval of Minutes

By a 5-0 vote, the Board approved the meeting minutes for the public meeting that was held on September 18, 2013.

II. Executive Director's Report

A. Litigation Update

i. Lodge No. 5 of the Fraternal Order of Police, *et al.* v. City of Philadelphia, *et al.*

Mr. Creamer explained that the FOP had brought suit against the City and the Board of Ethics seeking to strike down the Home Rule Charter's ban on members of the Police Department making political contributions. He reported that on February 21, 2013 Judge Sanchez of the Federal District Court granted the City's motion for summary judgment and dismissed the FOP's case, thereby upholding the ban. The FOP has appealed Judge Sanchez's ruling to the Third Circuit Court of Appeals. The FOP filed their brief in support of their appeal in late May and the Board's brief in response was filed on July 11, 2013. The case has been listed for oral argument on Tuesday, November 12, 2013. On behalf of the Board, Mr. Creamer thanked Eleanor Ewing and Mark Maguire of the Law Department for their representation in this matter.

ii. Cozen O'Connor v. Philadelphia Board of Ethics

As Mr. Creamer reported last month, a panel of the Commonwealth Court affirmed the trial court's ruling in the Board's favor in the case *Cozen O'Connor v. Board of Ethics*. Mr. Creamer added that Cozen filed a petition for allowance of appeal with the Pennsylvania Supreme Court on July 17, 2013 and the Board's attorneys at Dechert filed an answer to Cozen's petition on July 31, 2013. Whether Cozen's attempted appeal is allowed to go forward or not is up to the Supreme Court's discretion. On behalf of the Board, Mr. Creamer thanked the Board's counsel at Dechert for their excellent representation in this matter.

B. Lobbying Update

Mr. Creamer reported that October 17, 2013 is the kick-off meeting with Acclaim Systems, of Harrisburg, PA, the vendor for the lobbying project. He explained that since the September Board meeting, staff has spent many hours finalizing the Scope of Work and Service Level Agreement (SLA), and the Law Department, the Office of Innovation and Technology (OIT), and the Procurement Department have approved the contract. Board staff will work with Acclaim Systems, to design the registration, reporting and public search features as required by the City's Lobbying Law.

Mr. Creamer said that because Acclaim has experience with the State lobbying software system, staff is optimistic that the online lobbying registration component can be ready by early 2014. The two-day meeting that begins on October 17, 2013 will focus on requirements gathering and the Board's business processes, and will give a better sense of the project timetable.

C. Annual Report

Mr. Creamer said that the Board's 2012-2013 Annual Report was circulated to the Mayor, City Council, and the Records Department by the September 30, 2013 deadline. The Board's entire staff contributed to the project by writing the various sections summarizing our activities, preparing the detailed indices of opinions, and proofreading the text. The stunning picture on the cover was taken by Bryan McHale, and Elizabeth Baugh used publishing software to produce the final report. In an effort to conserve resources and save money, the report was published on the Board's website, and a paper copy will be provided to anyone who requests one.

III. General Counsel's Report

A. Advisory Opinions

Ms. Nayak reported that no advisory opinions have been issued since the September Board meeting.

B. Regulations

Ms. Nayak said that staff members have continued to spend a considerable amount of time working on the draft gift regulation, including determining how to address issues raised by Board members and interested parties as well as issues identified by staff. Ms. Nayak said that staff reached out to several other jurisdictions and spoke with staff at the relevant ethics agencies to learn how their gift rules work in practice. In addition, staff met or spoke with all the interested parties who provided significant feedback at the last Board meeting.

C. Informal Guidance

Ms. Nayak briefly reviewed the summary of informal guidance chart for Board members. She highlighted trends in the topics and modes of communication for informal guidance.

Summary of Informal Guidance Provided September 9 – October 8, 2013

General topic	Total #	phone	email	phone & email	in-person	Subtopics
Campaign Finance	13	11	1	1		Reporting and filing requirements; pre-candidacy fundraising; debt retirement; change in political committee treasurer.
Gifts	1		1			Discount available to all City employees.
Post-Employment	1	1				Rules applicable to former City employee.
Political Activity	1		1			Restriction on City employee assisting in a political fundraiser.
Financial Disclosure	1				1	Reporting of a gift from a government.
Other	3	1	2			Prior advisory opinions; non-competitively bid contract reform law; and no jurisdiction.

This chart is a partial picture of informal guidance provided during the specified time period. Five Board Staff members tracked the assistance they gave and provided data: the General Counsel, Director of Enforcement, Deputy Executive Director, Public Integrity Compliance Supervisor, and Associate General Counsel.

IV. Draft of Regulation No. 10, Gifts

Mr. Cooke stated staff has provided the Board with a proposed draft of Regulation No. 10 (Gifts) that staff would like the Board to approve for public comment. Mr. Cooke briefly reviewed the proposed procedure and timeline for adoption of the new regulation.

Mr. Cooke stated that the current draft of the Regulation incorporated changes based on input and feedback received at the Board's September meeting. Mr. Cooke said that staff had scrutinized other jurisdictions' rules and made telephone calls to the relevant agencies. He also noted the major concerns raised about the draft, which included the dollar amount constituting substantial economic value. Mr. Cooke stated that staff proposes that the amount be set at \$200 with an additional lower limit of \$50 for cash gifts.

Board members and staff had a lengthy discussion about various aspects of the draft regulation.

The Board discussed the solicitation of gratuities, and in particular the second sentence of Paragraph 10.17 concerning solicitation by an officer or employee within 60 days of official action. The Board directed staff to delete the second sentence of Paragraph 10.17 and the example that followed Paragraph 10.17.

The Board also approved an addition to the language of Paragraph 10.5, Subparagraphs (a) and (b), in the draft Regulation to clarify language about gifts of money from restricted sources.

By a vote of 4-0, the Board approved the draft of Regulation No. 10 (Gifts) with the discussed changes to Sections 10.5 and 10.17 for filing with the Records Department for public comment pending formal approval by the Law Department. Vice-Chair Beck abstained from the vote. The Board clarified that non-substantive changes may be made to the draft regulation filed at Records with the approval of Chair Reed.

By a vote of 5-0, the Board approved scheduling a public hearing on Regulation No. 10 on November 20, 2013 at 1:00 p.m.

V. New Business

No new business was discussed.

VI. Questions/Comments

The Board heard comments from Ellen Kaplan of the Committee of Seventy, Inspector General Amy Kurland, Chief Integrity Officer Joan Markman, and Adam Bonin, Esq. about the gift regulation.

Chair Reed announced the Board would meet in executive session to address confidential enforcement matters and personnel matters. The public session of the Board's meeting was adjourned at 2:55 p.m.