

Philadelphia Board of Ethics
Meeting Minutes
October 17, 2012
Board of Ethics
One Parkway Building
1515 Arch Street, 18th Floor
11:00 am

Present:

Board

Richard Glazer, Esq., Chair
Michael Reed, Esq., Vice Chair
Judge Phyllis Beck (Ret.)
Sanjuanita González, Esq.

Staff

Shane Creamer, Esq.
Nedda Massar, Esq.
Evan Meyer, Esq.
Michael Cooke, Esq.
Maya Nayak, Esq.
Elizabeth Baugh
Bryan McHale
Tina Formica

I. Call to Order

Chair Glazer recognized that a quorum was present and called the meeting to order at 11:07 am.

II. Message from the Chair

Chair Glazer announced that he was advised by Mayor Nutter last week that the Mayor was allowing his term on the Board to expire and had submitted to City Council the nomination for the appointment of a successor.

Chair Glazer said he was the first Board member named in 2006 to a five year term. Theoretically his term expired in November 2011. Within 30 days of November 16, 2011 Mayor Nutter was required by the Charter to submit a nomination for a successor. The Mayor did not submit a timely nomination in 2011, so Chair Glazer said he served for an additional year.

Chair Glazer stated that pursuant to the Charter he will remain on the Board until his successor is confirmed; however, in the event that this occurs before the next Board meeting, he wanted to say a few words:

I will leave to others to take stock and evaluate the Board's work over the past six years. On a personal note, I am honored to have been present at the birth of this unique institution. I am immensely proud of all that the Board accomplished. There is convincing evidence that the Board of Ethics had made a dramatic difference in the ethical and political landscape of Philadelphia and I am gratified to have played a role in that process.

How liberating and what a joy it has been to get up every morning and know that as far as matters for the Board of Ethics were involved, there was no need to be concerned about being popular and that we could face off against powerful interests without fear of reprisal. With the back-up of a talented and dedicated staff, we need be motivated by only one abiding interest- to do the right thing for the citizens of Philadelphia.

Not many people have that luxury. I will miss that.

Mr. Creamer said that Chair Glazer has been the backbone of the Ethics Board since it was established six years ago. Staff is very proud of what they have accomplished under his leadership. Beginning on Day 1, Chair Glazer rolled-up his sleeves and worked alongside staff to build this agency. The Board literally started with nothing more than a mandate, but, with his leadership and tenacity, the Philadelphia Board of Ethics has become one of the top municipal ethics agencies in the country.

Mr. Creamer said that as the last remaining original Board member, and one who – as an unpaid volunteer – has come to the office to work alongside staff four days a week for six years, his removal represents a loss of leadership, experience and continuity for this relatively young agency. Mr. Creamer said that it has been an honor to work with Chair Glazer over the past six years and his removal is a tremendous loss for the Board.

Vice Chair Reed said it was an honor to work with Chair Glazer. He wonders how the Board will fare without him.

Ms. Gonzalez said that Chair Glazer is an inspiration and a role model. He will be missed.

Judge Beck extended a personal thanks to Chair Glazer for being a mentor to her.

III. Approval of Minutes

By a 4-0 vote, the Board approved the meeting minutes, as corrected, for the public meeting that was held on September 19, 2012.

IV. Executive Director's Report

A. Litigation Update

i. McCaffery v. Creamer, et al.

Mr. Creamer reported that discovery in this matter closed on September 4th. The Board's outside counsel at Dechert took extensive discovery, including numerous depositions. On October 1, the parties appeared before Judge Mazer Moss for a status conference. Summary Judgment motions are due on November 5th. Judge Mazer Moss will hold a settlement conference on November 13th and will also hear argument on any Summary Judgment motions that have been filed. The case is scheduled to begin trial on March 4, 2013. Staff anticipates that litigation of this case will continue to consume significant amounts of their time.

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

Mr. Creamer reported that on July 11th, Judge Sanchez heard oral argument on the parties' cross motions for summary judgment. Staff awaits Judge Sanchez's ruling. He thanked Mark Maguire and Eleanor Ewing, the Board's counsel at the Law Department, for their representation on this matter.

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

Mr. Creamer reported that on July 18th, Judge Tucker ruled in the Board's favor in resolving the case *Cozen O'Connor v. Board of Ethics*, a case challenging the Board's interpretation of the contribution limits found in the City's campaign finance law. Judge Tucker ruled that post-election forgiveness by Cozen O'Connor of the debt owed to it by the Friends of Bob Brady at one time and *in toto* would be subject to the City's contribution limits. Cozen has appealed Judge Tucker's ruling to Commonwealth Court. The Court has not yet set a schedule for briefing and oral argument.

B. Lobbying Update

Software Project: Mr. Creamer informed the Board that the Request for Proposals (RFP) to select a vendor for the online lobbying software project was posted on the eContractPhilly website on September 26th. OIT and members of the Board's staff conducted a Pre-Proposal Meeting for prospective vendors on October 9th. Staff was very pleased that more than 20 people, representing many vendors, attended the meeting where staff provided informal answers to their questions.

Mr. Creamer explained that staff is now in the formal question period when vendors can submit written questions, and the Board's staff, OIT and the Law Department prepare answers and post them on eContractPhilly. Proposals are due from vendors by November 5th, and the current schedule anticipates that the vendor selection process will be complete by November

26th. If staff keeps to that schedule, OIT expects they can begin the actual design project on January 2nd.

Mr. Creamer further explained that on this schedule, the online system cannot be in place to accept lobbying registrations on January 1, 2013. However, staff will have a better idea about how quickly a registration module will be available once they have reviewed the proposals. Once staff has this information, they expect to present alternatives to the Board concerning the 2013 registration process which may include a modified filing schedule so that the Board can use the electronic system rather than paper forms. There is also a possibility that the expense report module may be ready in time for filing the 2013 first quarter reports that are due on April 30th.

Filing Update: Mr. Creamer reported that staff contacted all registered principals who may have been delinquent in filing 2012 first and second quarter expense reports. All have responded to staff's outreach and have either already filed the expense reports or have said they will file within the next two weeks.

Mr. Creamer said that third quarter expense reports are due by October 30th, and staff sent reminder emails concerning the filing due date. Staff will again work with OIT to make images of these reports available on our website. As suggested at last month's Board meeting, staff posted a message on the lobbying page of the Board's website to tell the public that copies of all prior quarterly reports may be obtained by contacting the Board's office. Staff will either provide paper copies of the reports or a member of the public can review copies of the reports in the Board's office.

C. Training

Mr. Creamer reported that staff conducted three ethics training sessions since the last Board meeting, including one session for City Council. More than 60 people attended these sessions. There are several more sessions scheduled for new employees and board and commission members between now and the end of the year.

D. November Board Meeting

Mr. Creamer reminded the Board that the November meeting is on the 14th and will be at our usual 1:00 p.m. time, but the December 19th meeting will begin at the earlier 11:00 a.m. time. Staff expects that all of the Board's 2013 meetings will all be at 1:00 p.m.

Mr. Meyer highlighted the fact that the November Board meeting is being held on the second Wednesday of the month instead of the normal third Wednesday of the month.

V. General Counsel's Report

1. **Formal Opinions.** Mr. Meyer reported that there were two Formal Opinions since the September report.

a. Nonpublic Formal Opinion 2012-001 (September 19, 2012). A City official asked for advice concerning the application of the Public Integrity Laws as to his outside employment position as an independent contractor of a professional firm, in light of his public position. Based on the facts provided, the requestor was advised as to the following. Charter Section 10-100/102 and Philadelphia Code Section 20-602(1)(a) are absolute restrictions on his activity. Code Section 20-607(a), may require, in certain circumstances, that the official publicly disclose an interest and disqualify himself from City official action, in accordance with Section 20-608. Code Sections 20-602(5) and 20-607(b) do not restrict the official since, as an independent contractor, he is not a "member" of the outside firm.

Formal Opinion No. 2012-001 is available on the Board's website.

b. Nonpublic Formal Opinion 2012-002 (September 19, 2012). A City official asked whether employees of the Office of the City Commissioners may, while on duty and acting in their official capacities, engage in certain activities related to campaigns, raising questions as to Charter political activity restrictions and Regulation 8. These restrictions prohibit appointed City employees from, among other things, participating in political activity while on duty or with City resources and from using their City positions for political purposes. Some of the proposed activities are prohibited, but many are permissible as long as employees of the City Commissioners carry out the activities in a non-partisan manner and treat similarly-situated political parties, candidates and partisan political groups the same.

In brief, the Opinion advised as follows:

--The Opinion discussed the meaning of "political activity" and of "on duty."

--The employees may distribute and collect voter registration forms; give a candidate information about the electoral process; participate in the nonpartisan Pennsylvania Vote ID Coalition; and attend a candidates forum or a ward committee meeting, to provide information about elections and the Voter ID Law.

--The employees may, under certain circumstances, attend and use City resources at a nonpartisan rally regarding the Voter ID Law. However, this is only to the extent that such a rally is and remains nonpartisan, which may be difficult to ensure.

--The employees would be prohibited from attending an event held by a candidate or campaign committee to provide information or recruit poll workers.

--The employees would be prohibited from distributing advocacy information created by political parties, even if designed to help new registrants choose a party.

--All of the above related to appointed employees. Elected officials, such as the City Commissioners themselves, are not subject to Charter subsection 10-107(4) and are not restricted in any of the above activities.

Formal Opinion No. 2012-002 is available on the Board's website.

2. Advices of Counsel. Mr. Meyer reported that there was one Advice of Counsel since the September report.

a. Nonpublic Advice of Counsel GC-2012-512 (September 20, 2012). An appointed City employee requested nonpublic advice regarding the Charter's restrictions on political activity. The employee advised that she was formerly a candidate for elected non-City office; that following the campaign, she appointed herself as committee chair; that the committee is no longer active but cannot be closed because of an outstanding debt to a vendor.

Based on the facts that were provided to us, the requestor was advised that Charter Section 10-107(3), as interpreted by Regulation No. 8, would prohibit her from being in any manner concerned in demanding, soliciting, collecting or receiving any political contribution, including any contribution to the political committee. Although the requestor was not a City employee when she first authorized the committee to receive political contributions, the continuing authorization now that she is an appointed City employee raises issues under Paragraphs 8.6 and 8.7 of Regulation No. 8. Accordingly, the requestor was advised to take necessary remedial action to remove herself as authorizing the committee to raise funds, consistent with the State Election Code.

Nonpublic Advice of Counsel GC-2012-512 should be available on the website of the Board of Ethics soon.

3. Informal e-mail guidance. Mr. Meyer reported that through Thursday, October 11, 2012, there were nine of these since the September report, issued either by myself or Associate General Counsel Maya Nayak. *Note that in every such email we state the following: "This informal general guidance is not a ruling on your particular situation and does not provide you protection from an enforcement action." We add that if the requestor would like a definitive ruling that applies the Public Integrity Laws to his/her specific situation and that protects against a possible enforcement action, then they should ask us for an advisory opinion, providing, in writing, full and specific facts on which the opinion is to rely, including their name and title, specific question, and whether they are requesting a public or nonpublic advisory.*

a. We received two different requests for advice on post-employment restrictions. We provided our standard summary, forwarding links to prior advisories.

b. We advised a City appointed board/commission member that serving as an officer of a partisan political club was prohibited under Charter Section 10-107. An organization that endorses candidates for election to political offices and distributes sample ballots is a partisan political club.

c. We received an inquiry from a City employee regarding volunteer service for a local nonprofit advocacy organization. We advised as follows: the employee has no conflict of interest, since not paid by the organization; he may not represent the organization or its clients in a "transaction involving the City"; and he may not participate if the organization endorses candidates.

d. We advised two different requestors that a non-employee spouse of a City employee may engage in political activity, so long as it is not a device for the City employee to be involved and avoid the prohibition. Also, Charter Section 10-107 does not apply to employees of the courts.

e. We received a query from a City employee involving co-workers who had photos of candidates on their desks and related activity. We advised that we can only advise as to the employee's personal actions. However, to the extent that he was asking about what he may permissibly do, we advised as follows: Example 1 of Subpart B (after Para. 8.3) of Reg 8 says "An employee may not display political stickers in her City workplace." Also Para. 8.3 in general prohibits "political activity" on duty. "Political Activity" is defined in Para. 8.1(n) as activity "directed toward the success or failure" of a political candidate, party, etc. As we always say, the precise facts are crucial, and to provide advice on a proposed display of a picture of an elected official currently running for re-election, it would be helpful to know the time, place, and manner of such proposed display. However, generally a City employee would be well-advised, at this point--less than 6 weeks before Election Day--not to display a picture of a candidate who is on the ballot on November 6.

f. We advised a requestor that the political activities restrictions generally do not apply to an employee of a nonprofit corporation that contracts with the City.

g. We advised that an invitation to a party with an admission price of \$10 raised no issues under the laws over which we have jurisdiction, and referred the requestor to the Chief Integrity Officer for an interpretation of the Mayor's Executive Order on gifts.

V. Proposed Amendments to Regulation No. 4, Seeking Advice from the Board of Ethics

Mr. Cooke explained that at last month's Board meeting staff submitted to the Board a proposed draft of Regulation No. 4, Seeking Advice from the Board of Ethics. There was a discussion regarding the amendments. The Board suggested some edits and asked staff to present a revised draft to the Board.

Mr. Cooke explained that staff made changes to address the concerns of the Board and presented another draft for their review and comment.

Mr. Cooke noted that part of the process is to post the draft Regulation with the Records Department, but before that staff has to get approval from the Law Department. He sent the current draft to the Law Department for review and received some questions and recommended edits, which he reviewed for the Board.

In Paragraph 4.11, dealing with signatures on requests for advisory opinions, the Law Department suggested that the language stating that a requestor must sign a request for an advisory opinion may not best cover the scenario in which a representative is making the

request. Staff suggested altering the language in the regulation to make explicit that either the requestor or the requestor's authorized representative must sign the request.

Law also questioned Paragraph 4.18 and why the advisory opinions of the Solicitor were left off the list of relevant authorities for advisory opinions by the General Counsel. Mr. Cooke explained that this was intentional because if the only source was an advisory opinion from a Solicitor, staff felt that it would be more appropriate for consideration by the Board.

Mr. Cooke walked the Board through staff's recommended edits and the Law Department's suggestions and questions.

Ms. Gonzalez said she had some concerns regarding establishing a timeframe by which the Board will respond to a request for advice, reconsideration or appeal.

Mr. Cooke explained that staff added Paragraph 4.21 to address her concerns.

Vice Chair Reed inquired as to whether the 35 days indicated in Paragraph 4.21 would be enough time to make a determination.

Mr. Cooke replied that it was staff's experience that instances where it would take longer than thirty-five days to dispose of a request, which is longer than the time between successive Board meetings, would generally become matters to be addressed by the Board on a longer timeline anyway. Staff would then keep the requestor apprised of when an answer would be forthcoming.

Judge Beck noted that the 35-day time period in Paragraph 4.21 is a notice requirement, not a requirement that an advisory opinion be issued in that timeframe.

By a 4-0 vote, the Board approved the draft Regulation No. 4, including the edits suggested by the Board.

Chair Glazer asked if the Regulation was ready to be posted at the Records Department.

Mr. Cooke explained that the Board has to receive formal approval from the Law Department before Regulation No. 4 is posted at Records.

Chair Glazer said that the changes to Regulation No. 4 weren't significant and he didn't think there would be enough public interest to set a hearing date, which has been Board practice with many other regulations. The Board agreed.

VI. Formal Opinion 2012-004

Mr. Meyer summarized the discussion from the previous Board meeting and the new direction taken in crafting the opinion, which concerned a reimbursement to Commissioner Singer for

travel expenses from the Pew Foundation. He pointed out that there was no redline version of the Opinion because the changes in the structure of the text were so substantial.

It was staff's recommendation to focus more on the issue of expectation of influence and less on the issue of "substantial economic value." While the opinion still refers to "substantial economic value," it becomes unnecessary to try to define those limits.

Chair Glazer said that the issue which caused the Opinion to be deferred a month was trying to define "substantial economic value." He concluded that if these revisions had been in the initial presentation, this probably did not have to be a Board opinion, but there is no harm in it being a Board opinion.

Vice Chair Reed asked whether all of the necessary precedents had been cited in the Opinion. Mr. Meyer responded that in a general sense they were, but that some of the previous opinions may have had language in their entirety which the Board wouldn't necessarily want to adopt in the particulars of this Opinion.

Chair Glazer concluded that the Opinion was really one of factual application. Judge Beck made the motion to adopt. The Opinion was approved by a 4-0 vote.

VII. Board Annual Reports

Ms. Massar summarized a memorandum provided to the Board regarding the Board's annual reporting requirements. She noted that Section 3-806(k) of the Charter requires the Board to submit an annual fiscal report to the Mayor, City Council, the Chief Clerk of City Council, and the Department of Records no later than September 30th. At its September 19th meeting, the Board approved the Fiscal Year 2012 report required by Section 3-806(k), which has now been distributed as required by the Charter. In September, Ms. Massar explained that the Annual Fiscal Report is in addition to an annual report of Board and staff activity that has been prepared and filed each spring pursuant to City Code Section 20-606(1)(l). Section 20-606(1)(l) does not specify any filing deadline for this annual report requirement.

Ms. Massar said that the Board recognized the amount of work necessary to prepare two separate reports and asked staff to determine whether it was possible to consolidate the reporting requirements into one annual report.

Mr. Massar explained that staff therefore reviewed Charter Section 8-404, Reports, which establishes the requirement that each independent City board and commission shall "[n]ot later than ninety days after the end of the fiscal year . . . make an annual report in writing to the Mayor" Staff determined that the deadlines in Charter Sections 3-806(k) and 8-404 are identical, that is, each report is required to be filed on or before 90 days after the end of the fiscal year. Because the filing deadlines in the Charter provisions are the same, and because Code Section 20-606(1)(l) does not include a deadline, Ms. Massar said staff believes that it is

reasonable to combine the Board's fiscal information and other activities into one report to satisfy its reporting requirements.

Ms. Massar recommended that the Board authorize staff to prepare a unified Annual Report for delivery by September 30, 2013. This report will include the Board's fiscal and activity information for the period of time from July 1, 2012 through June 30, 2013 (FY13) and will also include "catch up" information on the Board's activity for January through June 2012 which would have been included in the Annual Report that would have been filed in April of 2013.

By a 4-0 vote the Board approved the staff recommendation and directed staff to prepare a unified Annual Report for delivery by September 30, 2013.

VIII. New Business

There was no new business to discuss.

IX. Questions and Comments

There were no questions or comments from the public.

The public session of the Board's meeting was adjourned at 12:03 p.m.