

Philadelphia Board of Ethics
Meeting Minutes
June 18, 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.
Elizabeth Baugh
Bryan McHale

Chair Reed recognized the presence of a quorum and called the meeting to order at 1:02 p.m.

I. Approval of Minutes

By a 4-0 vote, the Board approved the meeting minutes for the public meeting that was held on May 21, 2014.

Sanjuanita González arrived at 1:04 p.m.

II. Executive Director's Report

A. Litigation Update

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

Mr. Creamer reported that there has been no change in the status of this case, which began with the suit brought by the FOP on May 18, 2011 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. Oral argument before the Third Circuit was held on November 12, 2013, and the Board is waiting for the Court to issue a decision.

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

Mr. Creamer noted that the Pennsylvania Supreme Court granted Cozen O'Connor's Petition for Allowance of Appeal in this matter in an Order dated January 6, 2014. The case, which is now in its seventh year, challenges the Board's interpretation of the contribution limits in the City's Campaign Finance Law. Oral argument was scheduled to occur in May, but it has been postponed until the fall at Cozen's request.

B. Lobbying Update

Mr. Creamer said that he was delighted to report that all functions of the Philadelphia Lobbying Information System (PLIS) are now “live” and being used on a daily basis. The 2014 first quarter expense reports became available to the public on May 29th, and the searchable lobbying database and several summary reports were published on May 30th. As a result, a member of the public can now search for and view 2014 lobbying registrations and expense reports and generate spreadsheets containing detailed lobbying information and reports that summarize Philadelphia lobbying activity.

In May 2013, Board staff spoke to Alisha Green, a blogger with the Sunlight Foundation, about the status of lobbying data and disclosure in Philadelphia. The Sunlight Foundation is a “nonpartisan nonprofit that advocates for open government globally” and encourages the use of “technology to make government more accountable to all.” On May 3, 2013, Ms. Green blogged about Philadelphia and noted the history of our delayed lobbying project and the limitations of our online lobbying information. Staff invited her to contact the Board again when the online system was available.

Mr. Creamer said that Board staff spoke to Ms. Green again last week and in her June 12th blog, she recognized the strides made in the past year and also made suggestions for the Board’s website. She noted that it takes several “clicks” to find lobbying information on the Board’s website. Staff had already recognized this problem, which is created by the City’s required website template. Mr. Creamer explained that staff is already preparing a “workaround” to speed access to the search page. In her article, Ms. Green also noted that Board staff are currently working with the City’s Open Data team to make the growing lobbying database more easily accessible through an “Application Programming Interface” (“API”). As she explained, an API “would further improve access to the data” for programmers and developers who are capable of designing new ways of configuring and “display[ing] . . . the data.”

Mr. Creamer reported that, as required by the Lobbying Code, the next major task will be to design and offer training to registered lobbyists and principals. The training will begin in the fall and cover the Lobbying Law itself, as well as practical help with the mandatory electronic filing software. Staff is also planning to offer informal sessions for individuals who are interested in Philadelphia lobbying and may want to learn more about the lobbying database and search capabilities.

C. July Meeting Location

Mr. Creamer said that the Mayor’s Office will again use the Board’s regular public meeting room during the summer from June 19 through Labor Day weekend. Staff has therefore arranged to move the July Public Session to Room 18-025 which is the same room that the Board used last summer.

III. General Counsel's Report

A. Advisory Opinions

Ms. Nayak reported that General Counsel Non-public Opinion 2014-502 was issued on June 4, 2014. It provides guidance on the Ethics Code to a City board member. She explained that the Opinion would be redacted and that she would provide a more detailed summary of it at the next public Board meeting.

B. Regulations

Ms. Nayak explained that staff notified the Board's regulated community via email that the Board had approved a proposed amendment to Board Regulation No. 2 at its May meeting. The email also explained how a member of the public could request a hearing if he or she wanted to comment on the proposed amendment. Ms. Nayak noted that as of the morning of June 18, 2014, no one had requested a hearing. However, she recommended that the Board delegate to staff the ability to schedule a hearing if a member of the public requests a hearing. She said that the most likely date, if a hearing was necessary, would be July 16, 2014, the day of the next public Board meeting. By a 5-0 vote, the Board approved delegating to Staff the authority to schedule a public hearing if a member of the public requests a hearing before June 27, 2014.

Ms. Nayak said that staff has continued to work on a regulation interpreting the recent amendment to the Ethics Code's gift rule. Due to an abundance of advice-related work, staff did not make as much progress with the draft as we would have liked.

Ms. Nayak said that staff hoped to begin work on a proposed amendment to the Board's campaign finance regulation and may present a draft at the July Board meeting.

C. Informal Guidance

1. Informal Guidance Chart

Summary of Informal Guidance Provided, May 10, 2014 – June 6, 2014

General topic	Total #	Phone	Email	Phone & Email	In-person	Subtopics
Lobbying	53	42	10	--	1	Using electronic system to file expense reports and generate lobbying reports; what activity is considered lobbying; finding lobbying information; and affirmations.

General topic	Total #	Phone	Email	Phone & Email	In-person	Subtopics
Campaign Finance	10	7	1	2	--	Filing requirements including candidate information and 24-hour independent expenditure report; reporting contributions; jurisdiction questions; public announcement of candidacy; and doubling of limits.
Financial Disclosure	6	4	2	--	--	Filing status; which form to file; filing an amendment; reporting a meal paid for by a person who went on a personal date with the inquirer.
Conflicts	4	1	1	1	1	Application of Charter §10-102 regarding a prospective City employee who holds a City subcontract; official action that may impact interests of City officer's campaign staffer; and outside employment, including calling public City hotline as part of outside job.
Political Activity	2	1	--	1	--	City employee as officer of a political club or committee; and handling contribution checks.
Post-Employment	1	--	1	--	--	
Other	2	1	1	--	--	Party committeeperson election; and receiving rewards points gift card as a result of City work.

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.

2. Informal Guidance to the Office of Councilman Oh

Ms. Nayak briefed the Board on a request for informal guidance from a staff member of Councilman David Oh, who had no objection to a discussion of the request in public session. The guidance concerned Councilman Oh's intention to send a letter to approximately 7,000 registered Asian-American voters asking them to encourage other Asian-Americans to register to vote and to identify themselves as Asian-American when they do so. The Councilman's office explained to Board staff that the mailing was intended to increase voter registration in an underrepresented and underserved community. Ms. Nayak noted that constituent communications paid for by government funds are a commonly accepted practice. Ms. Nayak identified the City's political activity restrictions and conflict of interest provisions as two relevant areas of the laws over which the Board has jurisdiction.

Ms. Nayak explained that the Board has previously advised and provided by regulation that non-partisan voter registration drives are not prohibited political activity. She noted that in any case the Charter's political campaign activity restriction does not apply to the Councilman (although it does apply to his staff). Chair Reed asked whether targeting a specific ethnic group could be considered political activity or a conflict of interest. Ms. Nayak responded that political activity is defined in the Board's Regulation 8 as activity directed towards the success or failure of a political party, candidate, or partisan political group.

Ms. Nayak explained that she did not believe that the mailing would create a conflict of interest as it would not encourage anyone to vote for Councilman Oh and the mailing is not close in time to the next election. She noted that in addressing constituent communications by state legislators, the State Ethics Commission has been most concerned about mailings sent within 60 days of an election. She had referred the requestor to the State Ethics Commission and the Law Department for definitive guidance on the State Ethics Act.

Ms. Nayak said that due to a printing deadline, Councilman Oh's staffer had asked to receive guidance by today (June 18). Ms. Nayak said she would not be able to draft an advisory opinion in time but would give the requestor informal guidance after the Board meeting by telephone and would send a follow-up email later and give him informal guidance. Chair Reed noted that informal guidance was not legal protection against enforcement as a General Counsel or Board Opinion would be.

IV. New Business

No new business was discussed.

V. Questions/Comments

Adam Bonin, Esq. informed the Board that he would be requesting a public hearing on the proposed amendment to Regulation No. 2.

Mr. Bonin questioned whether, by using public resources to target a specific racial or ethnic community, Councilman Oh's mass mailing would violate the Equal Protection Clause of the 14th Amendment to the U.S. Constitution or constitute a conflict of interest or prohibited political activity. There was further discussion of the issue by Board members and staff. Ms. Nayak said

that she had informed Councilman Oh's staff that they should consult the Law Department for guidance on this type of issue.

Chief Integrity Officer Hope Caldwell told the Board that she thought the new lobbying site was fantastic. She said that the administration is moving forward with several Open Data efforts, including posting professional services contract data through Open Contract Data and hopes to follow up with procurement contracts and leases. She said that her ultimate goal would be to have something like Chicago's site, where a user can search for a vendor and automatically view any associated campaign finance or lobbying disclosures.

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

The public session of the Board's meeting was adjourned at 2:05 p.m.