

Philadelphia Board of Ethics
Meeting Minutes
February 17, 2016 - 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 McCormick, Esq.

Staff Present

J. Shane Creamer, Jr., Esq.
Nedda Massar, Esq.
Maya Nayak, Esq.
Michael Cooke, Esq.
Diana Lin, Esq.
Jordan Segall, Esq.
Thomas Klemm, Esq.
Bryan McHale
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 4-0 vote, the Board approved the minutes for the public meeting held on January 20, 2016, as presented.

II. Executive Director's Report

Mr. Creamer welcomed City Council's new Chief Ethics Officer, Mary McDaniel, whose position was recently created by a City Council resolution.

A. Settlement Agreements

Mr. Creamer noted that, since his report at the January Board meeting, the Board had approved and Board Staff had announced three Settlement Agreements. Each settlement agreement concerned violations of the City's Campaign Finance Law. All settlement agreements are available on the Board's website.

- The Agreement with **Citizens for Will Mega** resolved violations of the City's Campaign Finance Law for: (1) the late filing of the thirty day post-primary (cycle 3) campaign finance report with the Board and (2) the late filing of 24 hour campaign finance reports with the Board.
- The Agreement with **Friends of Jannie Blackwell** resolved a violation of the City's Campaign Finance Law for the late filing of a 24 hour campaign finance report with the Board.

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- The Agreement with **Society Hill Towers PAC** resolved a violation of the City's Campaign Finance Law for the late filing of the second Friday pre-election (cycle 5) campaign finance report with the Board.

These three approved agreements bring the total number of Board approved settlement agreements to 44 addressing violations of the City's Campaign Finance Law for the 2015 Philadelphia Municipal Elections.

B. Office Renovation Project

Mr. Creamer said that before the Board moved into the One Parkway Building in July 2012, Board staff advised the Public Property Department that the existing office space was inadequate for the Board's expected staff. Board staff were told that no additional space was available for them. The need for additional office space became more apparent in 2014 when the Board approved a realignment of staff and converted an entry level position into a Staff Attorney position. This meant that as soon as Board staff filled all vacancies and reached its full staffing level of 12, Board staff would need additional office space. Board staff expect to be at their full complement of staff within the next three months and will therefore be one office short at that time.

As a result, several months ago, Board staff looked for a way to carve out a new office space from the Board's existing space. Board staff focused on the infrequently-used small conference room that was only accessible from the outside 18th floor hallway and not from inside the office. Board staff determined that they could convert the small conference room into an office by breaking through a wall and creating a new doorway into the space from the interior office hallway. Public Property approved the idea, drafted plans for the new space and selected a firm from the City's list of approved vendors to make the changes. The project began on February 10th and Board staff expect to have the new office ready in six weeks.

IV. General Counsel's Report

A. Guidance Related to Philadelphia 2016 Host Committee Volunteering

Ms. Nayak discussed with the Board guidance related to Philadelphia 2016 Host Committee volunteering. Given the Board's jurisdiction over the political activity restrictions in Charter Section 10-107, the Board has been asked to provide guidance about whether City employees in their individual capacities and while off-duty may participate in the volunteer opportunities that the Philadelphia 2016 Host Committee will offer during the Democratic National Convention. The Convention will take place in Philadelphia from July 25-28, 2016. Although requestors normally provide all relevant facts on which the Board bases its advice, in this particular instance, General Counsel staff is currently trying to gather the relevant facts from the Host Committee about its volunteer opportunities and the Convention. Ms. Nayak provided to Board members a Philadelphia 2016 Host Committee document that provides an overview of volunteer opportunities.

In the course of fact-gathering, General Counsel staff were directed by the Host Committee to speak to its counsel, Joe Sandler, a member of the firm Sandler Reiff Lamb Rosenstein & Birkenstock, P.C., in Washington, D.C. Ms. Nayak and Ms. Lin had an initial conversation with Mr. Sandler last week, in which he provided helpful background information on host committees in general as well as some description of the volunteer opportunities that the Host Committee will offer. Ms. Nayak and Ms. Lin learned from Mr. Sandler that the Philadelphia 2016 Host Committee is a 501(c)(6) nonprofit organization that has the principal purpose, according to federal regulations that govern host committees, of encouraging commerce in Philadelphia and of projecting a favorable image of Philadelphia to convention attendees. Mr. Sandler informed Ms. Nayak and Ms. Lin that the Host Committee is responsible for providing all facilities, supplies, services, and goods needed for the infrastructure to put on the Convention. He estimates that the Host Committee will recruit approximately 7,000 volunteers, and it seems that most volunteer opportunities related to the Convention will be available through the Host Committee. The Host Committee has begun seeking volunteers and, according to Mr. Sandler, expects the main push for recruiting volunteers to occur in July, closer to the time of the Convention.

Mr. Sandler suggested some specific areas of volunteering that the Board may wish to advise City employees to avoid given the political activity restrictions that apply to them. He also suggested that the Committee's Deputy Executive Director would be a good person for General Counsel staff to contact for more specific details because she is on the ground in Philadelphia. General Counsel staff plan to speak with Deputy Executive Director Angela Val later this week to further gather and confirm facts.

Ms. Nayak provided to Board members a copy of Board Regulation 8 (Political Activity). She expected that City employees will be able to engage in many Host Committee volunteer opportunities. This is based on two threshold conclusions: (1) that the Host Committee is not a "partisan political group," which is defined in relevant part at Board Regulation 8, Paragraph 8.1(1) to include an organization that is affiliated with a political party or of which engaging in political activity is a primary purpose; and (2) that the Host Committee is not an entity that is engaged in activities that are directed toward the success of a political party and that are being conducted in concert or coordination with a political party as described in Paragraph 8.15 of Regulation 8. These conclusions rest in part on viewing the Convention as a large-scale event that the City is hosting akin to other large-scale events, and not viewing it solely as a political party event aimed at the success of the party or its chosen candidates. Ms. Nayak noted that "political activity" is defined as "[a]n activity directed toward the success or failure of a political party, candidate, or partisan political group." Reg. 8 at ¶ 8.1(n).

Ms. Nayak said that restrictions in Regulation 8 that are relevant to determining whether some types of volunteering may be prohibited are: (1) Paragraph 8.11 ("An appointed officer or employee shall not take any part in the management or affairs of any political party . . . which includes any political activity that is performed in concert or coordination with a political party"); and (2) Paragraph 8.14(e) ("An appointed officer or employee may . . . [a]ttend [] political rallies, conventions, fundraisers or other political events solely as a spectator.") (emphasis added). In gathering facts from the Host Committee, General Counsel staff are trying to clarify whether (and which) volunteer opportunities will involve: providing

assistance at the Convention itself; the distribution of political content geared toward promoting a political party or candidate; political fundraising; or supporting of events that are political party meetings or campaign events.

In terms of immediate next steps, General Counsel staff needed to complete the process of gathering and confirming facts from the Host Committee. After that, Ms. Nayak recommended that the Board issue Advisory Alerts providing general guidelines for City employees who may be considering volunteering with the Host Committee during the July Convention. She thought it would be helpful to issue simultaneously two separate Advisory Alerts, one for general City employees and one specific to City Council employees since the political activity restrictions apply in a more limited way to City Council employees. The Advisory Alerts could be posted on the Board's website and Twitter account and distributed by a Board press release and by working with the Chief Integrity Office and City Council's Chief Ethics Officer.

Board members agreed with Ms. Nayak's proposed course of action and agreed they would review and discuss drafts of the Advisory Alerts at the March public Board meeting. Judge Beck asked that General Counsel staff send the draft Advisory Alerts to Board members as soon as Staff has completed gathering facts from the Host Committee and has drafted the Alerts. Ms. Nayak said she would provide draft Advisory Alerts to Board members by email as soon as the Alerts are drafted, and she would not wait to only provide them in the Board book.

B. Informal Guidance

Ms. Nayak reviewed the chart summarizing informal guidance provided from December 5, 2015 through January 8, 2016, which included the annual totals of informal guidance provided by Board staff in calendar year 2015.

SUMMARY OF INFORMAL GUIDANCE PROVIDED, DECEMBER 5, 2015 – JANUARY 8, 2016

General topic	monthly total # (2015 total)	phone	email	phone & email	in-person	Subtopics
Conflicts	12 (72)	5	3	4		<ul style="list-style-type: none"> ▪ Overview of conflict restrictions ▪ Potential conflict regarding spousal position with entity that interacts with the City ▪ Participating in media coverage of inauguration events ▪ Serving as a volunteer and on the board or as an officer of a nonprofit organization ▪ Restrictions associated with serving as a board member or other type of officer of a nonprofit organization ▪ City employee’s previous employer doing business with the City and employee’s department ▪ Acceptance of an outside employment bonus related to a client with business before the City ▪ Overview of application of ethics restrictions to a part-time employee, independent contractor, and outside counsel
Post-Employment	8 (45)	7		1		<ul style="list-style-type: none"> ▪ Overview of post-employment restrictions ▪ Representation by a City employee before a state authority that is unrelated to prior City work ▪ Multiple scenarios related to possible post-City employment projects

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**SUMMARY OF INFORMAL GUIDANCE PROVIDED, DECEMBER 5, 2015 – JANUARY 8, 2016
(CONTINUED)**

General topic	monthly total # (2015 total)	phone	email	phone & email	in-person	Subtopics
Political Activity	7 (116)	3	3		1	<ul style="list-style-type: none"> ▪ Ability of a City employee in uniform to use a computer in a government official's office between shifts ▪ Participation in working group associated with Philadelphia 2016 Host Committee ▪ Spouse serving as a delegate at a political party convention ▪ City elected officials can serve as delegates to political party conventions, unlike appointed employees ▪ Restrictions differ for elected officials versus appointed employees ▪ No exception to City political activity restrictions for new City employees who had recently worked in campaigns ▪ City employees prohibited from assisting political committees in preparing and/or filing campaign finance reports
Gifts	4 (43)	3	1			<ul style="list-style-type: none"> ▪ City employee entry into a raffle to win a departmental gift basket ▪ Accepting event ticket from entity known through pre-City employer ▪ Attendance at non-ticketed reception-style event ▪ Free lunches

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**SUMMARY OF INFORMAL GUIDANCE PROVIDED, DECEMBER 5, 2015 – JANUARY 8, 2016
(CONTINUED)**

General topic	monthly total # (2015 total)	phone	email	phone & email	in-person	Subtopics
Campaign Finance	15 (588)	13	1	1		<ul style="list-style-type: none"> ▪ Technical assistance, including how to search the campaign finance database ▪ Filing requirements, including the length of time a committee must keep records of contributions and disbursements and where to file reports ▪ Post-candidacy contributions and limits
Lobbying	14 (212)	14				<ul style="list-style-type: none"> ▪ Registration renewal process ▪ Reporting and registration requirements ▪ Reportability of ticketed and non-ticketed free event admittance to City officials
Financial Disclosure	3 (792)		2	1		<ul style="list-style-type: none"> ▪ Disclosure of retirement benefits from pre-City employer ▪ Disclosure of bonus payments from pre-City employer
Other	3 (75)	2	1			<ul style="list-style-type: none"> ▪ Non-competitively bid contracting law ▪ Issues outside Board jurisdiction

This chart summarizes the informal guidance provided by a number of Board staff members during the specified time period. The figures provided reflect the approximate number of inquiries that Board staff has responded to and do not indicate the amount of time spent per topic or inquiry.

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V. New Business

There was no new business presented at the meeting.

VI. Questions/Comments

Deputy Chief Integrity Officer Stephanie Tipton thanked Ms. Nayak and Ms. Lin for their work on the question of City employees volunteering for the Philadelphia 2016 Host Committee.

Chair Reed made the following announcement regarding Board sessions that were to be held pursuant to Sections 708 and 716 of the Pennsylvania Sunshine Act:

After the public meeting, the Board would meet pursuant to Sections 708 and 716 of the Pennsylvania Sunshine Act to address confidential enforcement matters.

The public session of the Board meeting was adjourned at approximately 1:40 p.m.