

Philadelphia Board of Ethics
Meeting Minutes
July 15, 2015 - 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.
JoAnne A. Epps, Esq.

Staff Present

J. Shane Creamer, Jr., Esq.
Nedda Massar, Esq.
Maya Nayak, Esq.
Michael Cooke, Esq.
Jordan Segall, Esq.
Ayodeji Perrin, Esq.
Diana Lin, Esq.
Bryan McHale
Tina Simone
Hortencia Vasquez

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 4-0 vote, the Board approved the minutes for the public meeting held on June 10, 2015, as presented.

Board Member Sanjuanita González arrived at 1:05 pm.

II. Executive Director's Report

A. Settlement Agreements

Mr. Creamer announced that on June 18, 2015, the Board of Ethics approved a settlement agreement with City Commissioner Anthony Clark relating to violations of the City of Philadelphia Ethics Code and resolving an administrative enforcement proceeding. The Settlement Agreement concerns Commissioner Clark's failure to follow the disclosure and disqualification process prior to City action affecting the financial interest of a relative, his failure to remove himself from a discussion regarding the financial interest of a relative, and his failure to cooperate with the Board's investigation.

Commissioner Clark agreed to an aggregate civil monetary penalty of \$4,000 to be paid by April 20, 2016. However, if payments totaling \$3,250 are received on time, Commissioner Clark will not have to pay the final installment of \$750 that is due by April 20, 2016.

Mr. Creamer stated in a related litigation update that on June 22, 2015, Commissioner Clark's lawyer filed a praeceipe to settle, discontinue, and end a declaratory judgment action in the Philadelphia County Court of Common Pleas against himself and the Board of Ethics. The declaratory judgment action was related to Commissioner Clark's administrative adjudication.

APPROVED BY BOARD OF ETHICS ON 9/16/15

Mr. Creamer also announced that on June 10, 2015, the Board of Ethics approved settlement agreements with the seven political committees, listed below, resolving violations of the City's Campaign Finance Law for the late filing of 2015 cycle 2 campaign finance reports:

1. Anna Verna Committee;
2. Bob Brady for Congress;
3. Friends of Andy Toy;
4. iHeart Media, Inc. – Clear Channel Outdoor PAC;
5. ILA Local 1291 PAC;
6. Phila AFL CIO PAC; and
7. Society Hill Towers PAC.

In each of the seven cases, the political committee was subject to a civil monetary penalty of \$2,000 for late filing. However, the penalty in each case was reduced to \$1,500 in recognition of the committee's cooperation and prompt resolution of the matter.

B. International Visitors

Mr. Creamer stated that Board staff was recently asked by Citizen Diplomacy International, formerly known as the International Visitors Council of Philadelphia, to host a delegation of visitors from Bulgaria, Macedonia, Romania and Slovakia. The trip was arranged by the U.S. Department of State and the visitors were especially interested in the relationship between open data and citizen access to government.

On June 15, 2015, Michael Cooke, Bryan McHale and Nedda Massar presented an overview of the campaign finance, lobbying and financial disclosure laws and demonstrated the different types of data that are made available online to the public as a result of the three disclosure laws.

C. FY16 Budget

Mr. Creamer noted that at the June 2015 public meeting of the Board he had reported that the Board had requested \$40,000 in additional funds in its Class 100 appropriation for salaries for FY2016. He explained that previously he had been informed by the Administration that the Board's request would be included as part of the Administration's Caucus List of budget changes to be considered before City Council's passage of the budget ordinance. As Mr. Creamer also explained to the Board at the June meeting, he was advised by the City's Budget Director, Rebecca Rhyhart, that \$32,000, not \$40,000, in additional Class 100 funds would be added to the Board's FY16 budget.

Mr. Creamer stated that City Council passed the budget ordinance on June 18th and it was signed by the Mayor that same day. Board staff confirmed that additional funds in the amount of \$32,478 were added to the Board's Class 100 appropriation. This amount will permit Board staff to fill all 12 staff positions during FY16.

Finally, Mr. Creamer recognized Board Staff Attorney Jordan Segall who has been with the Board for one year; starting in July 2014. Mr. Creamer said that Mr. Segall has been a great addition to the Board's staff.

III. General Counsel's Report

A. Advisory Opinions

i. General Counsel Opinion 2015-502

Ms. Nayak announced that on April 24, 2015, General Counsel Opinion 2015-502 was issued to Councilwoman Maria Quiñones Sánchez regarding a conflict of interest in a potential Council resolution to transfer vacant City property to the Councilwoman's husband.

The conflict of interest provision of the Philadelphia Code prohibits a member of City Council from taking official action with respect to a matter in which a spouse has a financial interest. A member of Council faced with a conflict of interest must comply with specific public disclosure and disqualification procedures. As the Opinion explains, the required disclosure and disqualification procedure for a member of Council with a conflict of interest related to legislation varies depending on when the financial interest occurs relative to the timing of any public hearing and Council action on the legislation.

Councilwoman Quiñones Sánchez promptly filed the disclosure and disqualification letter that the Opinion describes is required to be sent to the Chief Clerk of Council and to all members of Council. Ms. Nayak noted that based on guidance from the Board, the Councilwoman had also previously filed a separate but related disclosure and disqualification letter required for a conflict of interest related to matters other than legislation.

Councilwoman Quiñones Sánchez has authorized the Board to make the original Opinion public. Ms. Nayak said she appreciates the Councilwoman authorizing publication of the original Opinion. She said that it is helpful to have the Opinion available to others because it explains the application of Code provisions that are specific to members of Council with a financial interest in legislation. Ms. Nayak said she has added a footnote to the Opinion indicating that, although the Opinion was originally requested to be non-public, with the authorization of the requestor, the Opinion is being made public with a notation that it originally had been a non-public opinion.

Ms. Nayak provided to the Board a copy of General Counsel Opinion 2015-502 and announced that the Opinion is available on the Board's website.

ii. General Counsel Opinion 2015-503

Ms. Nayak announced that General Counsel Opinion 2015-503 was issued on June 16, 2015. The non-public opinion addresses the application of post-employment restrictions and is in the process of being redacted.

B. Informal Guidance

Ms. Nayak summarized the informal guidance that Staff provided from May 30, 2015 through July 3, 2015. She described in greater detail how Staff had assisted the Land Bank by reviewing and making suggestions for improving a draft policy for disclosure and disqualification related to conflict issues of Land Bank board members. She explained that, because it was a policy, Staff had suggested going beyond the minimal requirements of the City Code conflict provision. Ms. Nayak reported that her understanding was that the Land Bank had adopted such a policy at a public meeting the previous week.

C. Regulations

Ms. Nayak announced that the recent amendment to the City Campaign Finance Law that added additional reporting requirements became effective on July 1, 2015. The law now imposes an additional reporting requirement on September 22, 2015, six weeks before the November 3, 2015 General Election, for candidate committees of City candidates and any political committees that make expenditures to influence a City election. There are also new reporting requirements for electioneering communications and independent expenditures made within 50 days prior to the General Election, with that 50-day period beginning September 14, 2015.

Ms. Nayak stated that Board staff believes it is best at this time not to immediately begin the process of amending Board Regulation 1 (Campaign Finance) to incorporate this July 1 amendment to the Campaign Finance Law. Amendments to Regulation 1 would likely not be effective until October at the earliest. This would be after some of the new reporting deadlines and during the height of General Election campaign activity. Board staff believes amending the campaign finance regulation at that time could lead to confusion and is not necessary.

Ms. Nayak also stated that Board staff believes they will be able to communicate the new requirements to the regulated community by other means more quickly than regulation amendments. Staff planned to draft a plain language explanation of all reporting requirements, including the newly-added requirements. This plain language explanation would be appended to the copy of Regulation 1 that is posted on the Board's website and that Board staff distribute. Additionally, Board staff planned to add a disclaimer to the front page of Regulation 1 stating that the regulation does not reflect the July 1, 2015 amendment to the Campaign Finance Law and that the plain language summary and the ordinance may be consulted for full reporting requirements. Board staff also planned to convey the new reporting requirements through email alerts to the Board's campaign finance email distribution list and through Board staff's in-person campaign finance trainings.

Ms. Nayak noted that in addition, it would be beneficial to amend the campaign finance regulation after the General Election is over so that Board staff can draw from their experience during the entire election cycle.

SUMMARY OF INFORMAL GUIDANCE PROVIDED, MAY 30, 2015 – JULY 3, 2015

General topic	monthly total # (ytd total)	phone	email	phone & email	in-person	Subtopics
Campaign Finance	47 (396)	31	11	4	1	<ul style="list-style-type: none"> ▪ Filing process, requirements, and deadlines ▪ Online account assistance ▪ 24 hour report filings ▪ Sworn statement forms ▪ Candidate retaining campaign contact list for personal use ▪ Impact of doubling on post-candidacy contributions ▪ Reporting requirements for PACs ▪ Termination reports ▪ State candidate making personal contributions to City candidates ▪ Judicial candidate notification requirement under Reg. 1, ¶ 1.28 ▪ ability of related entities to make contributions
Political Activity	7 (73)	3	1	3		<ul style="list-style-type: none"> ▪ Serving on candidate host committee prohibited ▪ Attendance at candidate event in City building ▪ City employees communicating with campaign staff regarding transition to office or future City employment ▪ Resign to run restriction ▪ Fundraising restriction ▪ Restrictions for Council employees

SUMMARY OF INFORMAL GUIDANCE PROVIDED, MAY 30, 2015 – JULY 3, 2015 (CONTINUED)

General topic	monthly total # (ytd total)	phone	email	phone & email	in-person	Subtopics
Lobbying	6 (127)	5			1	<ul style="list-style-type: none"> ▪ Terminating registrations ▪ Early submission of expense reports ▪ Second quarter expense report filing deadlines ▪ Online filing system ▪ Payment process
Financial Disclosure	4 (789)	4				<ul style="list-style-type: none"> ▪ Filing requirements based on job ▪ Online filing system assistance
Post-Employment	3 (18)	1	2			<ul style="list-style-type: none"> ▪ Former City employee interactions with City government ▪ Consulting contract with former governmental body
Conflicts	2 (23)	1		1		<ul style="list-style-type: none"> ▪ Assistance to Lank Bank on a policy for conflict of interest disclosure and disqualification ▪ Former contractor became a City employee while City delayed payment
Gifts	1 (18)	1				<ul style="list-style-type: none"> ▪ Solicitation on City letterhead for non-profit

SUMMARY OF INFORMAL GUIDANCE PROVIDED, MAY 30, 2015 – JULY 3, 2015 (CONTINUED)

General topic	monthly total # (ytd total)	phone	email	phone & email	in-person	Subtopics
Other	4 (50)	4				<ul style="list-style-type: none"> ▪ Application of ethics requirements, including training, to City boards ▪ Non-competitively bid contracting law

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.

IV. Campaign Finance Update

Mr. Cooke provided an update to the Board about a recent amendment to the City’s Campaign Finance Law. This new amendment increased the reporting requirements under the law both for the types of activity that must be reported and for who needs to file reports. Mr. Cooke noted that Board staff will need to engage in extensive education and training on the new reporting structure. The first report under the new structure is due six weeks before the General Election in late September 2015. As part of this educational effort Board staff will be:

1. Creating written materials, including FAQ documents and Plain English summaries, with simple explanations of what the law requires, which will be posted on the Board’s website.
2. Holding trainings specifically on the new law’s reporting requirements. These trainings will be in addition to the traditional training providing an overview of the City’s Campaign Finance Law.
3. Working with the City’s software vendor to update the software to add the two new reporting cycles created by the amendment passed by City Council.

Mr. Cooke stated that Board staff hopes to update the Board in September 2015 regarding these educational efforts.

Mr. Cooke also updated the Board regarding enforcement staff’s efforts to ensure that all covered filers submitted 2015 Cycle 2 and Cycle 3 campaign finance reports. These reports were due on May 8 and June 18, 2015. Mr. Cooke stated that compliance efforts have gone fairly well. He hopes to have the remaining non-filers in compliance soon.

V. New Business

Mr. Creamer congratulated Stephanie Tipton, the new Chief Integrity Officer for the City of Philadelphia effective July 9, 2015.

Mr. Creamer suggested to the Board that it cancel the Board meeting scheduled for August 19, 2015. By a 5-0 vote, the Board cancelled its August 19, 2015 meeting.

V. Questions/Comments

Mr. Creamer provided to the Board and the public written comments from Adam Bonin, Esq. These written comments pertained to seven settlement agreements the Board approved in June resolving violations for the late filing of 2015 Cycle 2 campaign finance reports with the Board. Committees that were parties to these agreements each paid a \$1,500 civil monetary penalty. Mr. Bonin provided his comments to Board staff by email shortly before the meeting. In his written comments, Mr. Bonin asserted the penalties in the settlements agreements were too high. Mr. Bonin proposed a penalty framework that would result in lower penalties for the late filing of campaign finance reports.

Mr. Creamer stated Board staff was not prepared to respond to Mr. Bonin at this time, but that Board staff stands behind the penalties in the settlement agreements approved by the Board. Board members agreed that Board staff should consider Mr. Bonin's comments. Board members noted that they have Mr. Bonin's comments for future deliberations.

Chair Reed made the following public announcements regarding Board sessions that had been held and would be held pursuant to Sections 708(a) and 716 of the Pennsylvania Sunshine Act:

1. Since the June 10, 2015 Board meeting, the Board met regarding confidential enforcement matters by email from June 11, 2015 to June 16, 2015 and by email and telephone from June 17, 2015 to June 19, 2015.
2. After the public session of the Board meeting, the Board would meet to address non-public advice and confidential enforcement matters.

The public session of the Board meeting was adjourned at approximately 1:30 p.m.