

**Philadelphia Board of Ethics**  
**Meeting Minutes**  
September 16, 2009  
Board of Ethics  
Packard Building  
1441 Sansom Street, 2<sup>nd</sup> Floor  
1:00 pm

**Present:**

Board

Richard Glazer, Esq., Chair  
Pastor Damone Jones  
Kenya Mann, Esq.

Staff

J. Shane Creamer, Jr., Esq.  
Nedda Massar, Esq.  
Evan Meyer, Esq.  
Michael Cooke, Esq.  
Tina Formica

**I. Call to Order**

Mr. Glazer recognized that a quorum was present and called the meeting to order.

**II. Approval of Minutes**

The Board approved the meeting minutes, as corrected, for the public meeting that was held on July 22, 2009.

**III. Message from the Chair**

Mr. Glazer announced the resignation of Phoebe Haddon, who was appointed by Mayor Street and was a Professor at Temple School of Law. She was a legal scholar and a voice of good judgment and common sense and will be missed.

Mr. Glazer wished Ms. Haddon good luck as the Dean of the University of Maryland School of Law.

#### **IV. Executive Director's Report**

##### **A. Enforcement Update**

###### **1) Knox for Philly**

Mr. Creamer stated that he was pleased to report that the Ethics Board has entered into a Settlement Agreement with Tom Knox and the Knox for Philly committee for multiple violations of the City's campaign finance law committed by Mr. Knox and his Candidate Committee. Mr. Knox and the Knox Campaign have agreed to pay a \$5,500 civil penalty for five violations of the campaign finance law and also to pay an additional \$10,000 towards the Board's investigation costs, for a total payment of \$15,500.

Mr. Creamer reported that Mr. Knox and the Knox Campaign have admitted to violating "the single committee rule" (§20-1003) by using a second political committee to make expenditures to influence his election to office. Specifically, the Knox Campaign wired \$13,215 to a political committee called the West Philadelphia Democratic Club. The funds were to pay radio stations \$13,215 to air a negative campaign advertisement created by the Knox Campaign that criticized Michael Nutter's opposition to the proposed relocation of the Christian Stronghold Baptist Church. The radio ad said that it was paid for by the "Alliance for Better Christians," however, Mr. Knox and the Knox Campaign admit that the "Alliance for Better Christians" does not exist and was fabricated to mislead the public to make it appear that an independent Christian organization was against Mr. Nutter and had created and funded the radio ad.

He also reported that Mr. Knox signed the \$13,215 wire transfer request to the West Philadelphia Democratic Club, which was used on the same day of the wire transfer to fund four treasurer's checks drawn on the West Philadelphia Democratic Club's bank account that were payable to the four radio stations. The four treasurer's checks added up to \$13,215. One of the radio stations refused to air the ad.

Mr. Creamer said that after the May 2007 Primary Election, the Knox Committee misstated the true purpose of the expenditure to the West Philadelphia Democratic Club as "Reimburse-Election Day" in its 2007 Cycle 3 campaign finance report, in violation of §20-1006(4) of the City's campaign finance law.

Mr. Creamer stated that Mr. Knox and the Knox Campaign have agreed to pay a \$1,000 civil penalty for each of the four expenditures to the radio stations made by the second political committee and to pay a \$1,500 civil penalty for the material misstatement in the Committee's 2007 cycle 3 campaign finance report. Mr. Knox and the Knox Campaign have also agreed to pay an additional \$10,000 to offset some of the Board's investigative costs. This is the first time that the Board has recovered investigation costs in a settlement agreement.

Mr. Creamer asked Mr. Cooke to play the radio ad for the audience. He stated that the full text of the ad is included in the settlement agreement.

Vice Chair Negrin asked Mr. Creamer to elaborate on the issue of the Board's resources that were expended in this matter.

Mr. Creamer responded that the investigation was opened in March 2008. Staff conducted an investigation which included electronic discovery of hard drives, depositions, dealing with an outside third party vendor, emails, electronic data in native format the costs for the information to be stored on a remote website. The Knox Committee agreed to pay for half the cost of the expenses.

2) Ethics Board v. Friends of Maria

Mr. Creamer announced that the Board has also entered into a Settlement Agreement with Councilwoman Maria Quinones Sanchez and the Friends of Maria Committee for violations of the City's campaign finance law. Councilwoman Sanchez and her candidate committee have admitted to three violations of the "single committee rule" (§20-1003) by using a second political committee to make an expenditure to influence her election to office and to receive two contributions. The Campaign has agreed to pay a \$2,250 civil penalty for three violations of the single committee rule. In exchange, the Board has agreed to withdraw the Petition filed in the Court of Common Pleas on June 11<sup>th</sup>.

He said specifically, Councilwoman Sanchez and her Committee admit that their use of the political committee called "New Direction.org" to pay for advertisements in the Inquirer and Daily News violated the single committee rule, and agree to pay a \$750 civil penalty for that violation. In addition, they admit that its use of that second committee to accept two contributions – one from Spring Property Development and the other from Leithgow Investments – also violated the single committee rule, and agree to pay a \$750 civil penalty for each of those two violations.

Mr. Creamer said that here are two examples of Candidate Committees violating the single committee rule: one attempting a legitimate ad but having insufficient funds and the other trying to obscure expenditures. Candidates must be careful because they will be held accountable.

3) Compliance Report

Mr. Creamer reported on the following Committees that did not Initially File Required Reports:

i. 50<sup>th</sup> Democratic Ward Committee

The 50<sup>th</sup> Ward Committee received contributions from multiple City candidates in 2007, and should have electronically filed reports with the Board for cycles 2, 3, 6 & 7. A letter was sent to the Committee on July 17, 2009 and all reports were filed electronically by the July 31<sup>st</sup> deadline. Accordingly, the Board will not take any enforcement action.

ii. Concerned Irish Americans of Philadelphia Committee

The Concerned Irish Americans of Philadelphia Committee made an in-kind contribution of pole posters to the McCaffery for DA Candidate Committee, but did not electronically file a required 2009 cycle 3 report with the Board. A letter was sent to the Committee on July 16, 2009 and the Committee filed an electronic report by the July 31<sup>st</sup> deadline. Accordingly, the Board will not take any enforcement action.

iii. Blarney PAC

The Blarney PAC made contributions to the McCaffrey for DA Candidate Committee, but did not electronically file required reports with the Board for cycle 7 in 2008 and cycles 1, 2 & 3 in 2009. A letter was sent to the Committee on July 10, 2009 and the Committee electronically filed all reports by the August 14<sup>th</sup> deadline. Accordingly, the Board will not take any enforcement action.

iv. Better Mayfair PAC

The Better Mayfair PAC made contributions to the McCaffrey for DA Candidate Committee, but did not electronically file required reports with the Board for cycle 7 in 2008, and cycles 1, 2 & 3 in 2009. A letter was sent to the Committee on July 10, 2009 and the Committee electronically filed all reports by the August 19<sup>th</sup> deadline. Accordingly, the Board will not take any enforcement action.

v. Philadelphia Phuture

Philadelphia Phuture made an in-kind contribution of lawn signs to the McCaffrey for DA Candidate Committee, but did not electronically file a required 2009 cycle 3 report with the Board. A letter was sent to the Committee on July 10, 2009 and the Committee filed an electronic report by the July 24<sup>th</sup> deadline. At the same time, the PAC also electronically filed its cycle 7 report for 2008 and its cycles 1 & 2 reports for 2009. Accordingly, the Board will not take any enforcement action.

vi. Friends of Brendan Boyle

The Friends of Brendan Boyle Committee received a contribution from the Greenlee for Council at Large Committee in 2007, and should have filed its 2007 cycle 7 report electronically with the Board. A letter was sent to the Committee on August 17, 2009 and the Committee electronically filed its 2007 cycle 7 report with the Board. Accordingly, the Board will not take any enforcement action.

4) McCaffrey for DA

Mr. Creamer reported that a status conference was conducted with Judge Idee Fox. He said that the excessive contribution issue has been resolved because the parties have determined that no funds were received in 2008 that would have created an excess contribution. As a result, he explained that we will amend the Petition in this matter by September 30<sup>th</sup> to drop the excessive contribution allegation, but the two material misstatement allegations will remain.

B. FY09 Annual Fiscal Report

Mr. Creamer stated that Section 3-806(k) of the Philadelphia Charter requires that the Board 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 30<sup>th</sup>. Staff has prepared a draft Fiscal Report which indicates that expenditures totaling \$749,182 were made in FY09, as follows:

Class 100 (Salaries): \$674,988

Class 200 (Purchase of Services): \$60,626

Classes 300/400 (Materials, Equipment & Supplies): \$13,568.

He also stated that the Report notes the Board expanded their staff in FY09 from six to nine and explains the positive impact of that growth on their work. The Report stresses the importance of the Board's accomplishments in FY09, including: the expansion of the ethics training program; work to increase compliance with the financial disclosure requirements for City officials, employees, and board and commission members; the significant amount and variety of advice that the Board provides, and their enforcement efforts. Plans to launch an online ethics training pilot project in early 2010 were also mentioned. Finally, the impact of the reduced FY10 budget on the Board's work was briefly discussed.

#### C. FY2010 Budget

Mr. Creamer reported that the Board's budget for FY2010 is currently \$810,000. Should the City be required to implement "Plan C," the Board has been advised that their total FY2010 budget would be \$390,000. This amount effectively means that the Board can't operate essential training, advice, and enforcement functions. Should the State Legislature not approve the legislation needed by the City, and should "Plan C" be implemented, staff will immediately advise the Board and reassess and evaluate their options as an independent agency.

#### D. 2009 Training Plans

Mr. Creamer announced that the full schedule of ethics training sessions began in August, and five sessions have already been held. Nineteen more sessions are scheduled between now and December and will reach officeholders, City officials, Integrity Officers, members of City boards and commissions, and new City employees. The calendar also includes four Campaign Finance training sessions that will begin on September 30<sup>th</sup>.

He was pleased to report that staff has begun to work on an online ethics training project. Maya Nayak, Danielle Cheatam, and Nedda Massar are reviewing online ethics training programs that are being offered by other agencies and are working on the content for the Board's programs. Several different modules are expected to be developed to meet the needs of the various groups who attend ethics training, including elected officials, employees, and board and commission members.

Mr. Creamer said that the Board's goal is to launch a pilot project in early 2010, and staff is working with the Department of Technology who will host the software application and will create an email verification process so that the Board and the user will receive confirmation when a user has completed the training.

#### E. New Regulations Working Group

Mr. Creamer said that Michael Cooke, Maya Nayak, and Nedda Massar expect to work over the next several months to draft possible regulations for review by the Board. Their work will focus on campaign finance issues such as excess pre-candidacy contributions, the single committee

rule, and penalties. They worked during the summer on the proposed regulation on confidentiality of Board matters that is on today's agenda.

#### F. Newsletter

Mr. Creamer announced that the Summer 2009 edition of the Board's newsletter was published on August 12<sup>th</sup>. The items include a profile of the newest Board member, Pastor Jones; an article by General Counsel Meyer entitled "Ten Things You Might Not Know About City Ethics Laws"; and information about this year's financial disclosure filing. The newsletter is available on the website. The Board would like to thank Paul Jablow for his assistance with the content of the newsletter and Tina Formica for her design and formatting expertise.

#### G. Staff

Mr. Creamer announced that Brandon West, Information Specialist, resigned from the Board to pursue higher education opportunities. The staff is now down to eight employees.

#### H. Questions/Comments

Mr. Glazer commended staff on the two enforcement matters. The estimated costs don't indicate the hundreds of hours of work involved. The Board believes that the law is not an unreasonable burden.

The costs of the investigation were high and the City received fifty percent back

Mr. Negrin said that if the "Plan C" budget is implemented, it will have a devastating effect on our efforts to change the City's ethical culture.

Mr. Creamer said that if Plan C goes into effect, the Board's salary line would be cut well below \$680,000. As an independent agency, the Administration can't lay off Board staff, but the Board would be forced to make hard choices. We have talented dedicated staff and it would be a shame to lose any of them.

#### **Pastor Jones arrived at the meeting.**

#### V. General Counsel's Report

1. Advices of Counsel. Mr. Meyer reported that one Advice of Counsel was issued since the last report:

Nonpublic Advice of Counsel No. GC-2009-509 (September 14, 2009).

A member of a City board or commission, requested nonpublic advice on whether he would have a prohibited conflict of interest or the appearance of a conflict resulting from the fact that he volunteers as the president of a nongovernmental group that is considering applying for a City grant where staff of a City department affiliated with the requestor's City Board will have a role in reviewing applications and awarding the grants. The Board advised that, applying the City

Ethics Code to the facts the requestor presented, he would not have a conflict of interest to disclose and need not disqualify himself from any Board action. The Board suggested that the requestor follow the recommendations that were provided at his request on how to minimize an appearance of impropriety.

Nonpublic Advice of Counsel No. GC-2009-509 should be available on the Board's website soon.

2. Informal e-mail guidance. Mr. Meyer said that through Thursday, September 10, 2009, there were approximately eight of these since the July report.

a. Responded to a City board member's question about the Code's representation restriction by explaining that an Advice of Counsel needed to be issued in response to the question because the requestor was asking for a ruling on his or her particular situation. Asked follow up questions to obtain the necessary facts to provide and Advice. Staff was later informed that the situation changed and the potential representation issue was removed.

b. Responded to a City employee with employment concerns by explaining that the Board of ethics could not help with the issue. Described the kinds of concerns the Board does address.

c. Received an inquiry from a City employee concerning outside employment in a teaching capacity. As general guidance, provided the employee two recent opinions on the topic, one from the Board of Ethics and one from the State Ethics Commission. Also, explained that an Advice of Counsel needed to be issued in response to the requestor's question because a ruling on a particular situation was being sought. Asked follow-up questions to obtain the necessary facts to provide an Advice.

d. Responded to an ask for Advice inquiry from a non-City employee by explaining that under Regulation No. 4 the person did not have standing for us to provide advice and to answer the specific questions presented. Pointed to helpful information available on our website.

e. Provided a City board member general information about the Code's representation restriction.

f. Advised staff for an elected official on use of the City seal. Provided a copy of a relevant Law Department opinion.

g. Received, through the "Ask for Advice" feature of the website, a question from a citizen about a family member obtaining a copy of a deceased person's will. Advised that this is not the sort of information that staff is equipped to provide, but provided link to the website of the Register of Wills Office.

h. Advised a City employee that in general for a City employee to serve as an unpaid member of the board of a nonprofit agency, even one with a contract with the City, is not a problem, provided that: (1) the employee does not represent the agency in any contact with the City; (2) the employee does not take any action in his or her City job that impacts the agency (which would be a conflict of interest) and (3) the employee has no financial interest in the agency at all, so there is no question of an interest in the City contract.

### 3. Memorandum of Penalties for Violation of the Campaign Finance Chapter.

Mr. Meyer reported that the Board had asked to be advised as to the applicability and effect of the forfeiture clause of the “Penalties” provision of the City Ethics Code, Section 20-612(1), particularly as it relates to the Campaign Finance Chapter of the Code, Chapter 20-1000. The forfeiture clause provides:

Expect with respect to Section 20-610, any person in violation of this Chapter is forever disqualified from holding any elected or appointed City office or employment with the City, its agencies, authorities, boards or commissions.

Mr. Meyer said he examined the legislative history and sequence of amendments to the Code’s “Penalties” section and to the Code’s Campaign Finance Chapter. Applying the principles set forth in the Pennsylvania Statutory Construction Act, he concluded that the forfeiture provision does not apply to the Campaign Finance Chapter, and the sole penalty for a campaign finance violation is as set forth in Code Section 20-1008, “a civil penalty in the amount set forth in § 20-612,” which is limited to a fine of \$2000 per violation. A copy of the memo, which is public, is attached to this report.

Mr. Glazer said that it’s important in negotiations regarding campaign finances allegations where people are concerned that the forfeiture clause (Section 20-612) might apply. It’s important to know that the Board doesn’t believe it applies to campaign finance violations.

Mr. Negrin suggested sending the memo to the Task Force.

## **VI. Discussion of Proposed Regulation 5 Concerning Confidentiality of Enforcement and Investigative Matters and Prohibited Disclosures**

This Regulation proposes to clarify the limitations imposed by Section 20-606(1)(i) of the Philadelphia Code on the disclosure of information related to Board enforcement and investigation activities.

Mr. Cooke stated that there were instances in the May primary election where people publicized complaints. Staff looked at the applicable case law and related policy issues and created a Resolution, adopted by the Board in May, 2009, to clarify the code provision. This Regulation would supersede the Resolution. Mr. Cooke explained that the proposed Regulation carefully distinguishes between restrictions that apply to members of the public and those that apply to the Board and its staff.

Mr. Creamer stated that the proposed regulation narrows the scope of the Code Section to comply with our understanding of the applicable constitutional law.

Mr. Glazer asked why there was separate mention of the exemption for the press in the proposed Regulation. Mr. Cooke explained that the case law provides protection for the press, and the draft is intended to make it clear that the press can publish legally obtained information with impunity.

There was a motion to adopt Regulation 5 pursuant to Section 8-407 of the Charter. The motion passed unanimously with a 4-0 vote. The Regulation will be submitted to the Law Department, then sent to the Department of Records, and a hearing will be held at the October 21<sup>st</sup> board meeting.

## **VII. Discussion of Proposed Regulation 6 Concerning Application of Charter Section 10-102 (Interest in Contracts) to City Boards and Commission**

This Regulation proposes to determine how the phrase “any other governmental officer or employee whose salary is paid out of the City Treasury,” as set forth in Section 10-102 of the Home Rule Charter, is applied to members of City boards and commissions.

Mr. Meyer said that this is a recurring issue raised in Board and Commission training sessions. The issue is what constitutes a salary for Section 10-102. Compensation paid to various boards and commissions ranges from \$30 per meeting to \$70,000 per year and can be up to an annual maximum of \$120,000. He said that it therefore makes sense to settle the question with a Regulation, and the proposed Regulation relies on use of the term “salary” rather than a per meeting standard.

There was a discussion among the Board and a motion to adopt the Regulation. The motion was unanimously approved with a 4-0 vote. The Regulation will be submitted to the Law Department, then sent to the Department of Records and a hearing will be held at the October 21<sup>st</sup> board meeting.

## **VIII. New Business**

There was no new business to discuss.

## **IX. Questions/Comments**

Marcia Gelbart asked if there is any distinction, intentional or not, with the two enforcement actions.

Mr. Creamer responded that Mr. Knox admits that the entity was made up to hide responsibility for a negative ad but wasn't thinking about the single committee rule. The costs of the investigation were high, but the City was reimbursed for half of those costs by the Knox Committee. Councilwoman Sanchez wanted to do a legitimate ad but had a cash flow issue. Mr. Creamer explained that the campaign finance law is a strict liability law and intent doesn't matter.

Marcia Gelbart asked where the money came from to pay the Knox fine.

Mr. Creamer stated that it was paid for through his Committee.

Marcia Gelbart asked if this was the first time the Board asked for costs it incurred from and

investigation?

Mr. Creamer said yes.

Marcia Gelbart asked why the Board asked for the costs this time.

Mr. Creamer said that under the circumstances it felt appropriate.

Marcia asked if there was an additional penalty.

Mr. Creamer stated that there was additional consideration for the Settlement Agreement.

Bob Warner asked if the Knox Committee misled the Board during the investigation.

Mr. Creamer responded that he will not comment on what happened during an investigation.

Bob Warner asked if it would be necessary to ask for the repayment of the costs of the investigations if there was full disclosure.

Mr. Creamer said that he could not comment.

Marcia Gelbart stated that the Board is leaving a lot open to interpretation.

Mr. Glazer stated that the totality of the circumstances prompted the Board to ask for the costs.

Mr. Creamer said any information that he talked about in the Board meeting was in the Settlement Agreement.

Ms. Mann said she is happy that they took responsibility.

Bob Warner asked if it is wrong to surmise that there was failure on the Committee's part.

Mr. Creamer encouraged him to read the Settlement Agreement

Mr. Glazer thanked everyone for attending the meeting and the Board adjourned into Executive Session.