

**Philadelphia Board of Ethics**  
**Meeting Minutes**  
March 18, 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.  
Elizabeth Downey, Esq.  
Jordan Segall, Esq.  
Ayodeji Perrin, 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 5-0 vote, the Board approved the minutes for the public meeting held on February 18, 2015, as presented.

**II. Executive Director's Report**

**A. Update On Executive Order 7-14, Concerning the Office of the Inspector General**

Mr. Creamer reported that on October 7, 2014, Mayor Nutter signed Executive Order 7-14, which was described by the Administration in a press release as a “reauthorization” of the Office of Inspector General. The Administration’s press release also explained that “[u]ntil now, the OIG has operated under a series of Executive Orders that do not reflect the growth and scope of activities undertaken by the Office during the Nutter administration.”

However, Mr. Creamer stated that the new Executive Order appears to expand the OIG’s jurisdiction from the original authority to investigate 16 “criminal acts” and “other misconduct” listed in Executive Order 4-94, to the apparent authority to investigate any potential violations of the *entire* Home Rule Charter, the *entire* Philadelphia Code and *all* City Regulations, including those promulgated by the Board. He cited Section 3, paragraphs B & D of the Executive Order and provided the Executive Order to Board members.

Mr. Creamer explained that the new Executive Order appears to invest the OIG with expansive new authority and creates the appearance that the OIG now has concurrent jurisdiction with the Board to investigate potential violations of the laws that the Board administers, interprets and enforces pursuant to the Home Rule Charter and the Philadelphia Code. He said that Board staff

are concerned that this Executive Order will lead to interference with the Board's mandate, confusion about the relative roles of the two agencies, and duplication of effort.

While Board staff understand that the OIG serves an important role in City government, Mr. Creamer noted, they believe that the OIG and the Ethics Board have separate and distinct functions and duties and that both agencies should seek to reduce duplication of effort. Mr. Creamer noted that Board staff and the OIG have been able to work cooperatively in a limited number of investigations where there is overlapping jurisdiction between the two agencies. Board staff and the OIG also share information on occasion and make referrals to each other.

Mr. Creamer reported that on October 21, 2014, Chair Reed and Mr. Creamer presented the Board's concerns to members of the Administration and asked for a clarification that the Executive Order was not intended to grant the OIG concurrent jurisdiction with the Board. It has been nearly six months since Chair Reed and he presented the Board's concerns and made that request, but so far, they are not aware that any action has been taken to address the Board's concerns.

Mr. Creamer stated that the appearance of jurisdictional overlap created by the Executive Order between the Board and the OIG will, in the Board's view, lead to duplication of effort and waste of limited resources, competing investigations with potentially conflicting results, and confusion among City employees and others about the relative roles and responsibilities of the two agencies.

Mr. Creamer advised the Board that, under the circumstances, the Board needs to make a public record of its concerns with Executive Order 7-14. He recommend that the Board begin that record with a formal letter to the Mayor, which details the Board's concerns and requests that he clarify the Order's grant of jurisdiction to the OIG in relation to the Board. He asked the Board for authorization to work with Chair Reed to draft and send a letter to the Mayor expressing the concerns that he outlined at the meeting regarding Executive Order 7-14. Mr. Creamer said that Chair Reed and he will solicit feedback from Board members individually before sending the letter to the Mayor.

There was brief discussion among Board members and Mr. Creamer regarding the OIG Executive Order. Following this discussion, by a 5-0 vote, the Board authorized Chair Reed and Mr. Creamer to draft and send a letter to the Mayor expressing the Board's concerns with Executive Order 07-14, which expanded the authority of the OIG, but not before a draft of the letter is communicated to individual Board members for review.

## **B. Campaign Finance Update**

Mr. Creamer stated that later at the meeting Mr. Cooke would provide an update to the Board on staff activities related to the May 19, 2015 Primary Election.

### **C. Preparations for May 1, 2015 Financial Disclosure Filing**

Mr. Creamer stated that each year, thousands of City officials and employees and the members of City boards and commissions are required to file one or more of three annual financial disclosure forms on or before May 1<sup>st</sup>. The three forms are the City Form (required by the City Ethics Code), the Mayor's Form (required by an executive order), and the State Form (required by the State Ethics Act). Several of the Board's staff members have begun to focus on the many tasks necessary to implement the financial disclosure process.

Board staff members have been working with Joan Decker, the City's Records Commissioner, to upgrade the financial disclosure electronic filing software which is maintained by the Records Department. Board staff expects the software enhancements to be available for use by April 1, 2015. Board staff have also scheduled several small group refresher training sessions for the City's departmental Human Resources Managers to review the financial disclosure process and the online system. Human Resources Managers work directly with City employees and board and commission members who are required to file financial disclosure statements.

Mr. Creamer noted that there has been a major change in the Mayor's Form filing requirements as a result of Executive Order 11-14 that was signed by Mayor Nutter on December 19, 2014. Among several changes, the Executive Order clarified the list of City officials and employees who are required to file the Mayor's Form and stressed the importance of electronic filing of all forms because electronic filing "advances the cause of transparency." The Executive Order also requires that members of the "Mayor's Office Staff," as designated by the Mayor, file the City Form. The new Executive Order also requires that department and agency heads monitor compliance by their employees with the filing requirements.

### **D. FY16 Budget Update**

Mr. Creamer explained that Board staff have been advised by the Finance Department that the Board's proposed operating budget for FY16 will be \$1,034,511 and Board staff have submitted budget documents based on that anticipated level of funding. That amount includes \$924,511 for salaries, \$96,000 for purchase of services, and \$14,000 for supplies and equipment.

It is Board staff's goal to fill all 12 staff positions as soon as possible. However, the \$924,511 allocated to salaries for FY16 is not sufficient to fully fund all 12 Board staff positions at the anticipated levels for next year. Therefore, as part of the Board's FY16 budget documents, Board staff requested \$40,000 in additional funding in Class 100 for Salaries. Board staff will reach out to the Administration to secure the additional funding for FY16 and will advise the Board next month of the outcome. Because Board staff currently has two vacant positions, the Board will not need additional funding in this fiscal year.

Mr. Creamer noted that all City-funded departments were also asked to prepare FY16 Budget Impact Statements to describe the impact if budget cuts of 2%, 4% or 5% were needed. Board staff responded that the Board would not cut Class 100 (Salary) because the Board cannot operate all of its mandatory tasks with fewer staff. Instead Board staff said that the Board would

**APPROVED BY BOARD OF ETHICS ON 4/15/15**

be forced to cut spending in Classes 200 (Purchase of Services), 300 (Supplies), and 400 (Equipment).

Typically, budget hearings occur in early April. Board staff will work with Chair Reed to prepare testimony to report on the Board's many accomplishments during the past year. Further, in the Board's testimony it will again acknowledge the crucial role played by the Dechert firm in providing *pro bono* representation of the Board in major litigation during the past year.

### **E. 2015 COGEL Conference**

Mr. Creamer stated that on March 6<sup>th</sup> and 7<sup>th</sup>, Mr. Cooke attended the first meeting of the Program Committee for the December 2015 COGEL Conference. The meeting was held in Boston, the site of the 2015 Conference. The Program Committee is crucial to the Conference because it shapes the Conference agenda with more than 40 sessions, panels and plenary speakers.

Mr. Creamer announced that Board staff are very proud of the role that they play in COGEL whose members are local, state, national and international government officials who regulate ethics, campaign finance, lobbying, freedom of information, and election administration laws. COGEL members also include good government groups, private sector law and lobbying firms, and lobbyists and their clients. This unique combination of regulators and the regulated community ensures that conference sessions and discussions are provocative and stimulating.

### **III. General Counsel's Report**

#### **A. Informal Guidance**

Ms. Nayak reviewed the chart summarizing informal guidance provided from February 7, 2015 to March 6, 2015.

#### **B. Land Bank Inquiry**

Ms. Nayak stated that she recently responded to a question about the application of the City Ethics Code to the Philadelphia Land Bank. The Philadelphia Land Bank is a newly created entity that has a mission of returning vacant, underutilized, and tax delinquent property to productive reuse by acquiring, holding, and disposing of vacant property with the participation and approval of City Council. Legislation creating the Land Bank was signed by Mayor Nutter on December 18, 2013. Code Chapter 16-700 describes the structure and responsibilities of the Land Bank and identifies ethics provisions that apply to the Land Bank. Code Section 16-709(2) provides in relevant part that "[t]he Land Bank shall also be governed by Chapter 20-600 (Philadelphia's 'Standards of Conduct and Ethics') and Chapter 20-1200 ('Lobbying')." <sup>1</sup> Board

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<sup>1</sup> Code Section 16-709(2) reads in full as follows:

Ethics and Conflicts of Interest. The Land Bank shall be governed by the State Adverse Interest Act of July 19, 1957 (P.L.1017, No. 451) and 65 Pa. C.S. Ch. 11 (relating to ethics standards and financial disclosure). The Land Bank shall also be governed by Chapter 20-600 (Philadelphia's "Standards of Conduct and Ethics") and Chapter 20-1200 ("Lobbying"). As part of its policies, the Land Bank shall adopt strict ethical guidelines for Land Bank board

Staff examined the legislative history of the creation of the Land Bank, but did not find discussion or information that addressed ethics provisions or how such provisions would apply to the Land Bank and its Board of Directors and staff.

The Executive Director of the Philadelphia Land Bank, Nicholas Scafidi, asked Board staff to provide ethics training to the Land Bank's Board of Directors, which Board staff did on March 12, 2015. Mr. Scafidi also specifically asked whether the members of the Board of Directors of the Land Bank are required to file the City financial disclosure form. Board staff told him that their expectation and informal guidance was that yes, members of the Land Bank's Board of Directors are required to file City financial disclosure forms.

The provision of Chapter 20-600 that describes the City financial disclosure requirement, Code Section 20-610, provides that: "All individuals who are paid an annual salary pursuant to the provisions of Sections 20-303, 20-304 and 20-305 of this Chapter and all members of boards and commissions whether compensated or not shall file a statement of financial interests for the preceding calendar year with the Board of Ethics no later than the first day of May of each year that he holds office and of the year after he leaves such office . . . ." Board staff advised Mr. Scafidi that members of the Land Bank's Board of Directors should file the City financial disclosure form because Board staff expects that is what was intended by the Land Bank ordinance. The ordinance emphasizes strict ethical standards and avoidance of conflicts of interest for the Land Bank, and it states the Land Bank is governed by the City Ethics Code. Financial disclosure is a prominent requirement in the City Ethics Code that helps identify potential conflicts of interest. It identifies financial interests and ties that the filer has that could give rise to a conflict of interest or an appearance of impropriety.

Ms. Nayak noted that since the Land Bank is a new entity and Code Section 16-709(2) is a new assignment of authority by City Council to the Board of Ethics, Board staff told Mr. Scafidi that it would be best to have this question answered in an advisory opinion, which he said he would take under consideration.

### **C. Associate General Counsel Position**

Ms. Nayak stated that some weeks ago, Associate General Counsel Liz Downey informed her that she plans to leave the Board's staff to move on to other opportunities. Ms. Downey kindly asked Ms. Nayak to express how much she has enjoyed her work at the Board and how she is grateful for the opportunity she has had to work with the Board as well as her intelligent, kind, and fun co-workers on the Board's staff. Ms. Nayak said that the Board and Board staff will very much miss Ms. Downey.

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members and employees, and promulgate rules addressing and protecting against potential conflicts of interest. These guidelines and rules shall supplement any applicable state and local laws.

<sup>2</sup> Code Section 20-303 lists approximately twenty high-level City officers such as the Managing Director and department heads. Code Section 20-304 lists forty City boards and commissions. Code Section 20-305 addresses City elected officials.

In light of Ms. Downey's coming departure and an anticipated vacancy in the Associate General Counsel position, Ms. Nayak has publicly posted the Associate General Counsel position description. Ms. Nayak provided the Associate General Counsel position description to Board members. The description is posted on the Board's website, the City Human Resources website, lawjobs.com, the Philadelphia Bar Association website, and the website of the Council on Governmental Ethics Laws (COGEL). Board staff have also reached out to local law schools to ask that the position description be posted with the schools' alumni lists. Ms. Nayak encouraged everyone to circulate the position description to any attorney or group they think may be interested in the position.

Ms. Nayak advised that Charter Section 3-806(g) empowers the Board to appoint its Executive Director and General Counsel and to appoint and fix the compensation of such other staff as may be required to meet its obligations. The Law Department has advised that the Board may delegate its authority to hire counsel-related staff to the General Counsel. The Board has previously delegated to the General Counsel the authority to hire an Associate General Counsel.

Ms. Nayak stated that she planned to consult Board members during the hiring process. She will share with Board members the applications of the attorneys Board staff interview in-person and she also plans to provide Board members an opportunity to interview a final candidate or final candidates prior to an employment offer being made. Once a candidate is selected, Board staff will take the three additional steps that are required in the City's hiring process: a City-mandated background check; a City tax compliance check; and Finance Department approval.

At Ms. Nayak's request, the Board voted 5-0 to delegate its authority to hire counsel-related staff to her as General Counsel to fill the anticipated Associate General Counsel vacancy and to appoint and fix the compensation of an Associate General Counsel, subject to the allocated budget amount and subject to consultation with Board members as she had described.

**APPROVED BY BOARD OF ETHICS ON 4/15/15**

**SUMMARY OF INFORMAL GUIDANCE PROVIDED, FEBRUARY 7, 2015 – MARCH 6, 2015**

*(continued next page)*

<b>General topic</b>	<b>Monthly total # (ytd total)</b>	<b>Phone</b>	<b>Email</b>	<b>Phone &amp; email</b>	<b>In-person</b>	<b>Subtopics</b>
Campaign Finance	37 (141)	28	4	4	1	Reporting requirements; amending a report; 24-hour reporting; providing candidate committee information to Board; contributions from husband and wife; providing loan to candidate committee; coordinated expenditures; calculating excess pre-candidacy contributions; date of acceptance of contribution; aggregate contribution limit for PACs; pass-through contributions; registration process and SmartClient software; and searching campaign finance database.
Political Activity	21 (35)	9	8	3	1	Restrictions on appointed officers and employees, including City Council employees and appointed officers on leave of absence; providing media outlet for a candidate; spouse's political activity; and restrictions on circulating nominating petitions, participating in activities of partisan political group, and political fundraising, including use of social media and forwarding fundraiser invitation.
Lobbying	17 (67)	16	1	--	--	Registration process; renewing registration; registration thresholds; contents of expense report; and searching lobbying information.
Conflicts	2 (9)	--	2	--	--	Disclosure and disqualification process.
Financial Disclosure	2 (5)	2	--	--	--	

**APPROVED BY BOARD OF ETHICS ON 4/15/15**

**SUMMARY OF INFORMAL GUIDANCE PROVIDED, JANUARY 10, 2015 – FEBRUARY 6, 2015**

Post-Employment	3 (8)	1	1	--	1	
Gifts	2 (10)	1	1	--	--	Gift provided by owner of meeting site; and lunch provided at site of meeting by vendor.
Other	9 (19)	7	2	--	--	No Board jurisdiction; non-competitively bid contract reform law; and general information about the Board.

*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.*

**APPROVED BY BOARD OF ETHICS ON 4/15/15**

#### **IV. Update on Education and Outreach for 2015 Elections**

Mr. Cooke presented an update on the Board's education and outreach efforts associated with the 2015 elections.

He said that Board staff have confirmed 75 candidates for City office. They have been successfully working to obtain information about candidate committees to track compliance and ensure that candidates and campaigns are informed of all Board campaign finance trainings and other developments as the election approaches.

He said that Board staff have scheduled a campaign finance training on April 14, 2015 at 5:00 pm. Board staff expects a large response and an informative training session.

Mr. Cooke stated that Board staff have publicized and distributed a guide to complying with the City's Campaign Finance Law. The guide is an attempt to provide basic guidance for those participating in the election this year. Mr. Cooke and Board staff are happy with the final product of the guide.

Mr. Cooke discussed the next upcoming campaign finance reporting deadline of May 8, 2015 for pre-primary reports (Cycle 2). He said this is the largest filing in terms of number of reports and size of reports. Mr. Cooke informed the Board that enforcement staff intends to seek penalties for any late filings of Cycle 2 reports and 24 hour reports. Mr. Creamer noted that this is now the 5<sup>th</sup> election cycle where the City's Campaign Finance Law and electronic filing system have existed. Mr. Cooke added that Board staff continually notifies and trains individuals regarding the filing requirements. Additionally he noted that these reports are due 2 weeks before the election and are the public's last chance to see campaign finance data before the election. He said that Board staff would be flexible if someone contacted the Board in advance advising of a technical or health issue but, absent extraordinary circumstances, enforcement staff will seek penalties for late filing. The fee is \$250 per day with a maximum fee of \$2,000 for the first thirty day non-filing period with an additional maximum fee of \$1,000 for each additional thirty day non-filing period. Chair Reed expressed support for Mr. Cooke's proposal.

Enforcement staff will notify the regulated community of the requirement to timely file Cycle 2 and 24 hour reports or be subject to penalties. Board staff are discussing ways to streamline the process of assessing penalties for late filing.

#### **V. New Business**

There was no new business presented at the meeting.

#### **VI. Questions/Comments**

There were no questions or comments presented at the meeting.

Chair Reed announced that the Board conducted an Executive Session meeting by email on February 20, 2015 regarding confidential enforcement matters, and the Board also conducted an

**APPROVED BY BOARD OF ETHICS ON 4/15/15**

Executive Session meeting by email between March 11 and March 16, 2015 regarding confidential enforcement matters.

Chair Reed announced that the Board would meet in executive session to address confidential enforcement matters.

On behalf of the Board, Chair Reed thanked Ms. Downey for her excellent service, expressed appreciation for her good work for the Board and said that she will be missed.

The public session of the Board meeting was adjourned at approximately 1:45 p.m.

**APPROVED BY BOARD OF ETHICS ON 4/15/15**