

**Philadelphia Board of Ethics**  
**Meeting Minutes**  
May 18, 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.  
JoAnne Epps, 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. Minutes**

By a 4-0 vote, the Board approved the minutes for the public meeting held on March 16, 2016, as presented.

By a 3-0 vote, the Board approved the minutes for the public meeting held on April 20, 2016, as presented. Dean Epps abstained from voting on the minutes because she did not attend the April 20, 2016 public meeting.

**\*Board member Sanjuanita González, Esq. arrived at the Board meeting at 1:10 pm\***

**II. Executive Director's Report**

**A. Settlement Agreements**

Mr. Creamer said that since the April Board meeting, the Board had approved and Board staff had announced two settlement agreements. Both agreements concern violations of the City's Campaign Finance Law in 2015 election-related activity. The settlement agreements are available on the Board's website.

- The Board approved an April 21, 2016 settlement agreement with the Local 692 Sprinklerfitters PAC resolving a violation of the City's Campaign Finance Law for the late filing of a campaign finance report with the Board.

**APPROVED BY BOARD OF ETHICS ON 6/15/16**

- The Board approved a May 2, 2016 settlement agreement with the Latinos United for Political Empowerment (LUPE) PAC, the 7<sup>th</sup> Ward/Friends of Angel Cruz PAC, the Hon. Angel Cruz, Jose Giral, and Joseph Evangelista resolving violations of the City's Campaign Finance Law for (1) making excess in-kind contributions to the campaign of 2015 Council candidate Manny Morales, and (2) making material misstatements in campaign finance reports that LUPE PAC and the 7<sup>th</sup> Ward/Friends of Angel Cruz PAC filed with the Board.

## **B. May 2, 2016 Financial Disclosure and Lobbying Filing Deadlines**

Mr. Creamer noted that lobbying expense reports for January through March of 2016 were due on May 2, 2016. Ninety lobbying entities reported spending a total of approximately \$1,980,817 in the 2016 first quarter. That amount was almost three times the \$681,454 total spent in the first quarter of 2015. Mr. Creamer said that it was also interesting that 75% of the spending in the first quarter of 2016 was for indirect communications compared with only 13% that was spent on indirect communications in the first quarter of 2015. Board staff fielded dozens of questions on the contents of the quarterly reports and on use of the online system.

In contrast to lobbying, Mr. Creamer said the May 2, 2016, financial disclosure filing requirement affected thousands of City employees and board and commission members and had a significant impact on Board staff workload. To date, approximately 4,300 disclosure forms have been filed and about 91% of those were filed electronically. Mr. Creamer said that when Ms. Nayak presented her General Counsel report, Board members would get a sense of the volume of calls to the Board generated by the financial disclosure process. Mr. Creamer noted that on a daily basis, as many as five Board staff members assisted filers by phone, email, and in-person with technical and reporting questions.

The Office of Human Resources coordinated email financial disclosure reminders to thousands of current City employees. Board staff issued email reminders to hundreds of members of City boards and commissions and mailed letters to almost 700 employees who left City government during the past year, but still had to file one last time. Each set of reminders triggered a steady stream of phone calls to the Board.

## **C. Hiring to Fill Two Vacancies**

Mr. Creamer said that for the past year, Board staff have been involved in the process of filling two staff vacancies. One was created when Elizabeth Baugh, the Board's former Public Integrity Compliance Services Supervisor, resigned and moved to Virginia. The Public Integrity Compliance Services Supervisor position is a Civil Service position and was filled by a Civil Service in-position promotion of Board staff member Bryan McHale from the position of Public Integrity Compliance Specialist to the position of Compliance Services Supervisor.

As a result of his promotion, Mr. McHale's previous position became vacant and Board staff began the Civil Service process to fill both that position and the other vacant Compliance Specialist position. Compliance Specialists perform support functions, which include helping filers with online campaign finance disclosure and financial disclosure; matters relating to lobbying software; and assisting with training and outreach programs. They also provide support for Board enforcement staff.

Board staff requested and received a list from the Civil Service Commission of the three individuals who are "on the Civil Service list" and eligible for the Compliance Specialist positions. One of the three candidates declined the Compliance Specialist position and Board staff expect to conclude the review of the remaining two candidates on the Civil Service list within the next two weeks.

Mr. Creamer requested Board authority to fill the two Compliance Specialist vacancies. He said that while Charter Section 3-806 requires that the Board appoint the Executive Director and General Counsel, the Law Department has advised the Board that it is permitted by the Charter to delegate its authority to him, as Executive Director, to fill other staff positions, such as the two Public Integrity Compliance Specialist positions. He therefore requested a Board motion to delegate authority to him to fill the two vacant Civil Service positions. By a 5-0 vote, Board members delegated authority to Mr. Creamer to fill the two vacant Civil Service positions.

#### **D. FY17 Budget Update**

Mr. Creamer noted that at the April public meeting he reported that the Board's proposed operating budget for FY17, as submitted by the Administration, will be \$1,071,403, which includes \$961,403 for salaries, \$96,000 for purchase of services, and \$14,000 for supplies and equipment. He also said that he explained in April that Board staff had requested additional funding in the amount of \$250,000 for FY17, but that the budget, as introduced, did not include the additional funding. To date, there has been no change in the status of the Board's budget appropriation for FY17.

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

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

Ms. Nayak reviewed a chart summarizing informal guidance provided by Board staff from March 5, 2016 through April 8, 2016.

**SUMMARY OF INFORMAL GUIDANCE PROVIDED, MARCH 5, 2016 – APRIL 8, 2016**

General Topic	monthly total (#) (ytd total)	email	phone	phone & email	in-person	Subtopics
Financial Disclosure	292 (293)	154	137		1	<ul style="list-style-type: none"> <li>▪ Disclosure requirements for new City employees for gifts, etc. received in year prior to City employment</li> <li>▪ Financial disclosure requirement for members of City board</li> <li>▪ Judicial employees are not subject to City or State reporting requirements</li> <li>▪ Assisting filers with: accessing and utilizing online filing system; technical issues related to filing system; explaining filing and disclosure requirements (re: former City employees; gifts; sources of income; student loan creditors, sale of house, etc.)</li> <li>▪ Assistance for HR managers -- explaining filing requirements and online filing system</li> <li>▪ General explanations of the City, State and Mayor forms; general explanations regarding the various roles of the Board of Ethics, State Ethics Commission and Mayor's Chief Integrity Officer with regard to financial disclosure</li> </ul>

**APPROVED BY BOARD OF ETHICS ON 6/15/16**

**SUMMARY OF INFORMAL GUIDANCE PROVIDED, MARCH 5, 2016 – APRIL 8, 2016  
(CONTINUED)**

General Topic	monthly total (#) (ytd total)	email	phone	phone & email	in-person	Subtopics
Political Activity	21 (44)	6	8	6	1	<ul style="list-style-type: none"> <li>▪ Volunteering related to the Democratic National Convention and to the Philadelphia 2016 Host Committee</li> <li>▪ City employee acting in official capacity is permitted to provide information and City services to partisan political group or political party</li> <li>▪ City employees are permitted to carry out their City duties even if doing so would involve attending the Democratic National Convention or interacting with the DNCC or the Democratic Party</li> <li>▪ City employee's attendance permitted at political fundraiser for employee's superior, an elected official</li> <li>▪ Commission for Women is likely advisory only and not a City commission that exercises significant powers of government</li> <li>▪ Current City employee considering running for elected office</li> <li>▪ Making political contributions to candidates for elected office</li> <li>▪ Philadelphia 2016 Host Committee's display of donkey statutes on City property</li> <li>▪ Political activity restrictions applicable to a particular intern of a City agency</li> <li>▪ Political activity restrictions do not apply to individuals who are not actual City board members and merely attend City board meetings</li> <li>▪ Political activity restrictions do not apply to spouse of City employee and do not apply to prohibit a City employee's spouse from hosting a political fundraiser</li> <li>▪ Use of political committee funds for City purpose</li> <li>▪ Whether members of various boards are subject to political activity restrictions (includes Commission for Women, Board of Revision of Taxes, Philadelphia Housing Development Corporation and Gas Commission)</li> </ul>

**APPROVED BY BOARD OF ETHICS ON 6/15/16**

**SUMMARY OF INFORMAL GUIDANCE PROVIDED, MARCH 5, 2016 – APRIL 8, 2016  
(CONTINUED)**

General Topic	monthly total (#) (ytd total)	email	phone	phone & email	in-person	Subtopics
Campaign Finance	12 (70)	1	8	2	1	<ul style="list-style-type: none"> <li>▪ Filing requirements for candidate political committee in non-election year</li> <li>▪ Filing requirements with Board if political committee contributes to former candidates for debt reduction or transition/inauguration purposes</li> <li>▪ No filing requirement with Board when political committee only makes expenditures to influence a non-City election</li> </ul>
Lobbying	9 (50)		8		1	<ul style="list-style-type: none"> <li>▪ City officials approaching an entity about policy position</li> <li>▪ Overview of lobbying law requirements</li> <li>▪ Questions of whether specific behaviors are reportable lobbying, including interactions with a City agency and internal corporate e-mail communications</li> <li>▪ Registration inquiries related to topics such as new registration, renewal and reporting thresholds</li> <li>▪ Technical assistance</li> </ul>
Gifts	8 (29)	2	6			<ul style="list-style-type: none"> <li>▪ \$99 limit for gifts from restricted sources is not flexible</li> <li>▪ Explanation and application of restricted source concept</li> <li>▪ Free class for employees of a City department</li> <li>▪ Honorarium for speaking engagement</li> <li>▪ Procedure regarding returning prohibited gift/gratuity</li> <li>▪ Acceptance of free event admission when City employee's attendance at event would benefit the City and be reasonably related to the employee's official duties</li> </ul>

**APPROVED BY BOARD OF ETHICS ON 6/15/16**

**SUMMARY OF INFORMAL GUIDANCE PROVIDED, MARCH 5, 2016 – APRIL 8, 2016  
(CONTINUED)**

General Topic	monthly total (#)  (ytd total)	email	phone	phone & email	in-person	Subtopics
Conflicts	6  (30)		3	2	1	<ul style="list-style-type: none"> <li>▪ City employees soliciting donations for non-profits</li> <li>▪ Overview of ethics restrictions applicable to City official serving on a non-profit board</li> <li>▪ Restrictions relevant to City employee who owns a private business</li> </ul>
Post-Employment	5  (11)	2	3			<ul style="list-style-type: none"> <li>▪ Acting as consultant in work that intersects with former City work, but no ongoing transaction</li> <li>▪ Application of post-employment restrictions to attorneys</li> <li>▪ Application of post-employment restrictions to part-time employee of City-created non-profit affiliated with employee's former City department</li> <li>▪ Overview of post-employment restrictions</li> </ul>
Other	2  (11)	2				<ul style="list-style-type: none"> <li>▪ No Board jurisdiction</li> </ul>

*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. Land Bank Public Advisory Opinion Request**

Ms. Nayak presented General Counsel staff notes and a working draft regarding a proposed response to the Land Bank’s public advisory opinion request about the application of the City’s Ethics Code and the City’s Lobbying Law to the Land Bank. Ms. Nayak discussed with Board members the Board’s jurisdiction over the Land Bank, the general application of the City’s Lobbying Law and the City’s Ethics Code to the Land Bank, and the six specific questions that the Land Bank asked in its public advisory opinion request.

**APPROVED BY BOARD OF ETHICS ON 6/15/16**

After discussion with Board members, Ms. Nayak said General Counsel staff would continue to work on a draft response to the Land Bank's advisory opinion request. The earliest she expected to provide the Board a draft opinion would be the July public meeting. She said that in April of 2016 General Counsel staff informed the Land Bank's interim Executive Director, Nicholas Scafidi, that it would likely take the Board several months to respond to the Land Bank's advisory opinion request. Mr. Scafidi did not raise concerns about this projected timeframe.

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

Mr. Cooke said a student at the Fels Institute of Government at the University of Pennsylvania will be working with Board staff on a research project as part of her required course work. The subject matter of the project will likely involve how the Board receives, processes, and makes available to the public campaign finance data.

Mr. Cooke said Board enforcement staff intend to provide to Board members at the June public meeting a list of any parties to settlement agreements who have civil monetary penalty payments in arrears.

Mr. Cooke noted that the current practice in Board settlement agreements for those suffering an economic hardship is to permit payment of civil monetary penalties in installments over time. He explained that enforcement staff are exploring whether or not community service could, in some cases, be used as a substitute for monetary penalties in Board settlement agreements. After discussion with Board members, Mr. Cooke said Board enforcement staff will conduct further research and report back to Board members at the June public meeting.

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

Adam Bonin asked if the community service penalties that might be proposed by Board staff for Board settlement agreements would be in lieu of a civil monetary penalty or an additional penalty for violations of the City's Public Integrity Laws. He also asked whether private and public community service organizations were being considered by Board staff as possible candidates for such treatment. Mr. Cooke said those suffering financial hardship would potentially be subject to community service in lieu of a civil monetary penalty in a Board settlement agreement. Those not suffering financial hardship could potentially be subject to community service in addition to a civil monetary penalty in a Board settlement agreement. Mr. Cooke also said, at this time, only private community service organizations are being considered by Board staff.

\*\*\*

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

1. The Board held a session regarding confidential enforcement matters by email from April 29, 2016 – May 2, 2016.

**APPROVED BY BOARD OF ETHICS ON 6/15/16**

2. After the public 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 2:30 p.m.