

**Philadelphia Board of Ethics**  
**Meeting Minutes**  
April 27, 2011  
Board of Ethics  
Packard Building  
1441 Sansom Street, 2<sup>nd</sup> Floor  
1:00 pm

**Present:**

Board

Judge Phyllis Beck  
Richard Glazer, Esq., Chair  
Sanjuanita Gonzalez, Esq.  
Michael H. Reed, Esq.

Staff

J. Shane Creamer, Jr., Esq.  
Nedda Massar, Esq.  
Michael Cooke, Esq.  
Maya Nayak, Esq.  
Elizabeth Baugh  
Tina Formica

**I. Call to Order**

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

**II. Installation of New Board Members**

Chair Glazer said that it took a mother and daughter to break the Board's tradition of having Judge Ida Chen install the newest Board members.

Chair Glazer asked Judge Alice Beck Dubow to install Judge Phyllis Beck and Michael Reed, with the following oath:

I, Judge Phyllis Beck/Michael Reed, do solemnly swear that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and the Philadelphia Home Rule Charter and that I will discharge the duties of member of The Philadelphia Board of Ethics with fidelity.

### **III. Approval of Minutes**

The Board approved the meeting minutes, as corrected, for the public meeting that was held on March 16, 2011.

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

#### **A. Compliance Update**

##### **i. Notice Compliance**

Mr. Creamer explained that amended section 20-1003 of the City's campaign finance law and Board of Ethics Regulation No. 1 (Campaign Finance), paragraph 1.32 requires that all candidates for City elective office provide the following information to the Board:

- a. The candidate committee's name and street address (other than a P.O. box);
- b. The name of the bank where the candidate committee's checking account is established; and
- c. The name and telephone number of the treasurer of the candidate committee, and the treasurer's email address, if he or she has one.

Mr. Creamer informed the Board that in January and February, whenever Board staff obtained an email address for a candidate, they would send an email explaining the requirement to provide this information. In addition, Board staff prepared an information packet about the campaign finance law, the first page of which quoted paragraph 1.32. Staff gave copies of the packet to the Records Department, the City Commissioners office, and the Committee of 70 to distribute to potential candidates. Staff also mentioned the requirement during campaign finance trainings.

Mr. Creamer said that by the time candidates filed their nomination petitions by the March 8 deadline, about half of them had provided the Board the information required by paragraph 1.32. Shortly after March 8, Board staff sent a letter via postal mail to each candidate explaining the requirement. The letter also included a packet of information about the City's campaign finance law and a registration form for campaign finance training. The letter set a deadline for candidates to provide the required information.

Mr. Creamer reported that not all candidates provided the required information by the deadline. On April 12, we sent those non-complying candidates another letter in which we reiterated the requirement and informed them that we would initiate enforcement if they did not comply by April 15. Those letters were sent by courier. The courier was unable to deliver a handful of the letters. For those individuals, Board staff tracked down telephone numbers or email addresses to contact the candidates and inform them of their obligation.

Mr. Creamer explained that as a result of these efforts, to date, all but two of the candidates currently on the ballot have either provided the required information to the Board or have informed us that they do not have a candidate committee. The City Commissioners office informs us that one of the two has not set up a candidate committee.

## **ii. Non-filer Compliance**

Mr. Creamer reported that three political committees filed 2011 cycle 1 campaign finance reports with the Secretary of State that disclosed contributions to City candidates. However, the committees did not electronically file those reports with the Ethics Board as required by the City's campaign finance law. The three committees are Philadelphia Phuture, Building a Better Philadelphia, and Blarney PAC.

Mr. Creamer said that, pursuant to their standard practice, on April 18, 2011, Board staff sent the treasurers of the committees a letter informing them of the failure to file required reports. Staff informed the treasurers that, if the committees filed the reports by April 26<sup>th</sup>, we would not initiate enforcement proceedings for the failure to file. All three committees filed their 2011 cycle 1 reports electronically with the Board by the additional April 26<sup>th</sup> deadline. Accordingly, we will not initiate any enforcement proceedings against them.

## **B. Litigation Update**

### **1) Cozen O'Connor v. Philadelphia Board of Ethics**

Mr. Creamer explained that on February 23, 2011, the Pennsylvania Supreme Court reversed the Commonwealth Court's decision affirming the trial court's dismissal of Cozen's Complaint and ruled that the firm has standing to bring a declaratory judgment action against the Ethics Board and the City to determine whether it may forgive, at one time and *in toto*, the outstanding debt of \$448,469.09 owed to the firm by the Friends of Bob Brady without violating the \$10,000 contribution limit in section 20-1002 of the City's campaign finance law. The Court limited its decision to the narrow question of standing and declined to address the mootness issue we raised at oral argument and by a subsequent motion. The Court remanded the case to the Commonwealth Court for further proceedings.

He also explained that on April 12<sup>th</sup>, Cozen filed a Motion for Remand with the Commonwealth Court. Our attorneys are preparing a response to their Motion.

Mr. Creamer reported that Cozen filed its Complaint against the Board just over three years ago, making it the longest running challenge to the City's contribution limits since the law took effect seven years ago. The firm has argued alternatively that the contribution limit rule impairs the Friends of Bob Brady's ability to raise money to retire the firm's debt or that the firm should be permitted to make a \$448,000 in-kind contribution to Congressman Brady's mayoral campaign by forgiving the debt at one time, notwithstanding the \$10,000 contribution limit. Essentially, the firm argues that the rules should not apply to its fees or to its former client.

Mr. Creamer said regrettably, the Board's *pro bono* counsel Gregory P. Miller and Gregg W. Mackuse at Drinker Biddle are unable to continue their representation of the Board in this matter now that the Supreme Court has issued its opinion. However, he was pleased to report that Cheryl Krause and Karen Daly from Dechert have agreed to represent the Board on a *pro bono* basis going forward. He again thanked Gregory P. Miller and Gregg W. Mackuse at Drinker Biddle for their excellent representation in this matter.

## 2) McCaffery v. Creamer, et. al.

Mr. Creamer said that as he reported last month, a three-judge panel of the Commonwealth Court heard oral argument on February 7<sup>th</sup> in the case of Daniel McCaffrey v. Shane Creamer and the Philadelphia Board of Ethics. On March 16<sup>th</sup>, in an unpublished, memorandum opinion, the Commonwealth Court reversed the trial court and remanded to the Court of Common Pleas for disposition of the preliminary objections the court dismissed as moot.

Mr. Creamer reported that on March 30<sup>th</sup>, the Board filed an Application for Reargument with the Commonwealth Court. In the Application, the Board argued that the panel overlooked directly relevant law establishing that press conferences are within the scope of public officials' duty and authority and that agencies and officials are absolutely immune for informing the public about pending enforcement matters. The Board also argued that the panel improperly limited the scope of quasi-judicial immunity to exclude prosecutorial functions. Finally, the Board argued that the panel overlooked other immunity doctrines, including high public official immunity and Tort Claims Act immunity. Mr. McCaffery filed a Response to our Application for Reargument on April 11<sup>th</sup> and we are currently waiting for the Commonwealth Court to rule on our Application.

Mr. Creamer thanked Dechert and specifically Cheryl Krause, Karen Daly, and Albert Suh for their continued excellent work and time spent representing us *pro bono* in this significant matter. Thanks also to Kelly Diffily of the City Solicitor's office who has served as co-counsel.

### C. Campaign Finance

**Training:** Mr. Creamer said that the primary election is in less than 3 weeks, and staff continues to take many calls for assistance from candidates, their treasurers, and the public. Since the last Board meeting, staff has conducted three more campaign finance training sessions that were attended by 32 people. This brings our total for the 2011 elections to 9 training sessions and 107 attendees. The training sessions were especially important this year because they include information on the recent significant changes to the law.

**Political Activity:** Mr. Creamer reported that the Board's new political activity regulation, Regulation No. 8, became effective on March 28<sup>th</sup>. As a result, staff moved quickly to design and conduct training about the regulation, especially since the City is in the midst of the primary election. City employees and officials need to know whether the new regulation affects their participation in election-related activity. Staff has therefore already conducted political activity training sessions for City Council staff, HR managers, and just this morning for the Managing Director's team. The Board will continue to offer these trainings whenever they are requested.

**Campaign Finance Website Search:** Mr. Creamer said that as you may know, all candidates for Philadelphia elective office are required to file electronic campaign finance reports. As a result, there is a database of information concerning contributions made to these candidates. Until recently, it was complicated to search the database for contribution information. Staff is pleased to announce that they have completed the upgrade to the search process and it is now much easier to locate information on contributions to City candidates. From the Board's website or from the Records Department website you can use two new "basic" searches for campaign

finance information. A member of the public can do a quick search of the campaign finance database for:

- All contributions made by a particular contributor in a given year, and
- All contributions to a particular candidate or committee in a given year.

The results are clearly displayed and can be downloaded with one click to a spreadsheet. Our staff worked with Records Department and Commissioner Joan Decker and Chief Integrity Officer Joan Markman to accomplish these improvements.

#### **D. Budget**

Mr. Creamer said that as he reported last month that our proposed operating budget for FY12 will continue at \$810,000. This appropriation includes \$681,100 for personnel; \$110,400 for services; and \$18,500 for materials, supplies, and equipment. Because the Board is very concerned about our ability to implement the new lobbying law with our current complement of 8 staff members, we requested that the \$681,100 appropriation for personnel be increased by \$18,900 to \$700,000. This will permit us to fill the vacant Information Specialist position for the year. The Board asked that the \$18,900 be moved from our other budget lines and they therefore did not ask for additional money.

Mr. Creamer reported that the change was not made. However, prior to our Budget Hearing on April 5<sup>th</sup>, Finance Director Rebecca Rhynhart advised the Board that she believes the internal transfer will be made prior to adoption of the FY12 budget.

Mr. Creamer thanked Bill Brown for delivering the Board's budget testimony at the April 5<sup>th</sup> hearing. At the hearing, Mr. Brown reported on our many accomplishments during the past year, including our focus on training. He reiterated our request for \$130,000 in additional funding to hire staff to support the demands of the new Lobbying Law. Mr. Brown also explained to Council that our existing staff is stretched to breaking with our current workload, and the Board doesn't want to shortchange their other responsibilities in order to implement the new Lobbying law.

Mr. Creamer reported that on April 9<sup>th</sup> an Inquirer editorial recognized our need for additional funding to implement the lobbying law, which is "a major step toward a more open government." The editorial complimented us by saying that "the Ethics Board runs a lean operation." Staff is cautiously optimistic that they may receive additional funding before the budget is approved.

#### **E. Legislative Update**

Mr. Creamer said that as he reported last month, two bills were introduced in City Council that would amend Sections 20-606 and 20-1000 of the Philadelphia Code. A hearing on the bills was held on March 22<sup>nd</sup> before the Committee of the Whole, where he presented testimony on behalf of the Board.

**Bill 110072** amends Section 20-606 of the Code to permit the Board to enforce potential violations of Charter Sections 10-102, 10-105, and 10-107 by administrative adjudications, as

well as through the courts. Council passed the bill by a vote of 17-0 on April 14<sup>th</sup> and it was signed by the Mayor the same day.

**Bill 110073** amends two sections of the Campaign Finance law. First, the amendment proposed to the contribution limits section of the Code (Section 20-1002) clarifies that the \$10,600 contribution limit applicable to a political committee includes contributions made to or through other political committees. The second amendment deletes the requirement to publish a “plain language” summary of the Campaign Finance Law twice a year in three newspapers. Instead, the amendment directs the Board to place the “plain language” summary on its website, which the Board already does. The result of this change would save approximately \$10,000 per year.

Mr. Creamer reported that on April 14, 2011, Mayor Nutter signed Bill 110073 which had passed that morning in City Council by a vote of 17-0. It became effective immediately. Staff is already working on an amendment to our campaign finance regulation to incorporate the new legislation. Staff expects to present a draft to the Board at the May 11<sup>th</sup> meeting and anticipate that the amended regulation will become effective in June.

#### **F. Preparation for May 2<sup>nd</sup> Financial Disclosure Filing**

Mr. Creamer said that staff is in the thick of the financial disclosure process. 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. The filing deadline is May 2<sup>nd</sup> this year because May 1<sup>st</sup> is on Sunday. 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).

Mr. Creamer explained that during the past four weeks staff issued thousands of email reminders to City employees and board and commission members who are financial disclosure filers. The reminders result in hundreds of phone calls from people who need assistance and guidance. Staff also just mailed more than 900 reminder letters to former employees are required to file in the year after they leave City employment.

Mr. Creamer reported that staff accomplished another electronic filing goal in the past two weeks. Staff worked with the Records Department and its vendor on an enhancement to the online financial disclosure filing system to create a new electronic signature process. Filers can now complete their financial disclosure obligation without any paper forms. In the past few weeks, they conducted heavy testing of the new e-signature process and reviewed and edited the instructions and software screens. Many of the Board’s staff members were involved in the work to make electronic filing a reality.

He also reported that staff conducted three training sessions for HR managers to provide background and training in the financial disclosure process and to review the new electronic signature feature. Financial disclosure consumes a tremendous amount of staff time during March and April each year.

## **G. Lobbying Update**

Mr. Creamer said that staff has made significant progress since the last Board meeting on implementation of the new lobbying law. Right now, this is the biggest project facing the Board and it has two major tasks. The first is a lobbying regulation, and later in this meeting staff will outline our approach to the lobbying regulation.

Mr. Creamer explained that staff is planning an outreach effort to begin in May. Staff has compiled a list of more than 450 lobbyists, firms, and principals who have Philadelphia addresses. Staff believes that this group reaches into many parts of the Philadelphia lobbying community, including corporations, educational institutions, and non-profit organizations. Staff will contact these interested individuals with information about our regulation process and plans for training.

Mr. Creamer said that registration under the new Lobbying Law begins July 1<sup>st</sup>. The law mandates electronic filing of lobbying registrations and expense reports. Staff has therefore prepared for months to work with the City's Division of Technology to design the Philadelphia Lobbying Information System (PLIS). This software performs two functions. First, lobbyists and principals will prepare and electronically file their reports on the system, and, second, members of the public will be able to search for information on lobbying activity in Philadelphia.

Mr. Creamer reported that on April 15<sup>th</sup>, staff finalized a 25-page Software Requirements Specification that outlines more than 200 separate processes to be included in the lobbying system. DOT has assembled a team of their staff members and vendors to develop the software. Staff has met regularly with the team and receives daily updates from them. Staff believes the software for lobbying registration will be tested and ready by July 1<sup>st</sup>.

Mr. Creamer said that all of this work will occur during the same few months that our 8 staff members are involved with the campaign finance law and the primary election, with the financial disclosure process for approximately 6,000 City officials and employees, and with ethics training for new employees and board and commission members.

## **H. 2010 Annual Report**

Mr. Creamer announced that the 2010 Annual Report was delivered to the Mayor and Council prior to our April 5th budget hearing. He also said that copies of the Annual Report were available for anyone who wants one.

## **I. Outreach**

Mr. Creamer reported that on March 30<sup>th</sup>, he spoke to a group of reporters and other media representatives at the Pen and Pencil Club. He spoke about the history of the Ethics Board, its accomplishments and the challenges it faces going forward.

He also reported that on April 15<sup>th</sup>, he spoke about the City's new lobbying law at a meeting of University Government Relations Officers at the Philadelphia Community College. Many area colleges and universities will be required to comply with that law once it becomes effective on July 1<sup>st</sup>.

Chair Glazer announced that Damone Jones is no longer a Board member. He read Mr. Jones' resignation letter that was sent to Mayor Nutter on February 28, 2011, as follows:

I am writing to inform you of my intention to resign from the Board of Ethics effective at the time your nomination of my successor is confirmed by City Council.

I have enjoyed my time on the Board of Ethics and am proud of what we have accomplished over the past two years. The men and women of the Board of Ethics are exemplary public servants and I deeply appreciate the opportunity to have served with them.

Thank you for giving me this opportunity to serve the City of Philadelphia.

Chair Glazer also read his response to Mr. Jones, as follows:

I knew this was coming but that does not lessen my disappointment in your leaving the Board. As you know, I valued your wisdom and good judgment and never felt that not being a lawyer in any way diminished your valuable service.

On the other hand, I am pleased that you are able to continue your public service by being on the Prison Board. I look forward to personally thanking you and congratulating you when we meet.

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

Mr. Meyer was not present at the Board meeting, so Ms. Nayak delivered a summary of his General Counsel report. Ms. Nayak noted that the full report will be included in the minutes.

1. Formal Opinions. There were no Formal Opinions since the March report.
2. Advices of Counsel. There were two Advices of Counsel since the March report.
  - a. Nonpublic Advice of Counsel GC-2011-503 (March 23, 2011). A City employee asked for advice concerning whether there are any issues under the Public Integrity Laws if he were to accept an invitation from a local company to become a member, for at least a two-year period, of an advisory board to the company, for which participation the requestor would receive a "stipend" of \$10,000 per year, plus travel and hotel expenses.

Based on the facts that the requestor provided, he was advised as follows:

- The \$10,000 annual stipend for service on the advisory board is compensation for services rendered and is not a gift. Thus, there are no issues under the ethics laws restricting gifts.
- Even though it is presumed that the company has contracts with the City, there will be no issue under Charter Section 10-102 if the requestor's compensation is derived out of company revenues other than from City contracts.

- Based on the employee’s duties, there is no issue under Code Section 20-607(a) for personal conflicts of interest.
- Under Code Section 20-607(b), there could be a conflict if the requestor acts to benefit a firm of which he is a member. However, participation in the advisory board would not make the requestor a “member” of the company. Accordingly, there is no conflict under Section 20-607(b).
- Based on the requestor’s job description, the requestor was advised that the State Ethics Commission would likely conclude that he is a “public employee” subject to the State Ethics Act. On this point, and on the below points, this advisory is not binding on the State Ethics Commission.
- Under the State Ethics Act, the requestor was advised that the State Ethics Commission might well conclude that the “conflict of interest” provision of the Act would prohibit him from taking official City action that affected the company, during any period in which he serves on the advisory board.
- It is unclear whether the State Ethics Commission would consider the \$10,000 annual stipend for serving on the advisory board to be an honorarium prohibited by the Act, and if so, whether the option of directing that stipend to a charitable nonprofit would avoid the prohibition. The requestor was advised that he may wish to obtain an advisory from the Commission.
- If the requestor serves on the advisory board, he may be required to disclose the \$10,000 annual stipend as income on his State financial disclosure form, filed by the following May 1.

b. Nonpublic Advice of Counsel GC-2011-504 (April 6, 2011). The treasurer of a political committee requested a nonpublic advisory regarding the procedure for the committee to change banks for the committee’s single checking account. Because the committee advised that it has several recurring bills that are set on automatic payment from its current account, the treasurer proposed to switch the bulk of the committee’s funds to a new bank on a set day, while leaving less than \$5,000 in their current account and transfer any remaining funds to the new account later.

We advised the treasurer that Code Section 20-1003(1) prohibits a candidate committee from having more than one checking account receiving contributions or making expenditures. If the committee wishes to switch banks, it must either close one account and open another, or, if two accounts are to be open simultaneously, ensure that only one of the accounts is receiving contributions and making expenditures, as defined in Code Section 20-1001 and Paragraph 1.1 of Regulation No. 1.

Advices GC-2011-503 and GC-2011-504 should be available on our website soon.

3. Informal e-mail guidance. Through Thursday, April 21, 2011, there were 27 of these since the March report. *Note that in every such email we state the following: “This informal general guidance is not a ruling on your particular situation and does not provide you protection from an enforcement action.” We add that if the requestor would like a definitive ruling that applies the Public Integrity Laws to his/her specific situation and that protects against a possible enforcement action, then they should ask us for an advisory opinion, providing, in writing, full*

*and specific facts on which the opinion is to rely, including their name and title, specific question, and whether they are requesting a public or nonpublic advisory.*

a. Received an inquiry regarding renting out the employee's home, under Mayor's Executive Order No. 2-11 on outside employment. Advised that interpretation of Mayor's Executive Orders is not in the jurisdiction of the Board of Ethics. Chief Integrity Officer Joan Markman generally answers questions as to Executive Orders related to ethical conduct. Noted that if the employee's outside income presents a conflict of interest, because his official duties affect that financial interest, then he should seek our advice as to how to avoid a conflict of interest. And he would be required to report applicable income on any financial disclosure form that he files. Provided a link to our website and the Advisory Alert on the 2011 Executive Orders.

b. Received an inquiry from a City lawyer who was planning to leave the City and inquiring about representing clients in matters involving the City. Provided a link to an Advice that represents our standard post-employment advice for attorneys. Advised that the most relevant section is that on "Rules of Professional Conduct." Note that we do not have jurisdiction over the Rules and that the requestor may wish to consult with Donna Mouzayck on Law Department policy.

c. Received an inquiry from a City board/commission regarding an invitation sent in a personal email to a member from a federal candidate and asking whether participation in this event would constitute political activity. The invitation said, in part, "I have asked my campaign team to get together with me and a small group of my key supporters to discuss the current lay of the land and how we expect this race to unfold over the coming months. I am hoping that you will join me on one of the following dates and times for a campaign update meeting. At this meeting my campaign team and I will update you on our political strategy and challenges." We noted that Regulation addresses this matter, and although the regulation was not in effect as of that time, it does represent the current interpretation of the Board of Ethics, as expressed in its vote of March 16 to approve the Regulation. Advised that Regulation 8 identifies certain boards and commissions as those that "exercise significant powers of government." Paragraph 8.21 of the Regulation. The board/commission involved here was on that list. Paragraph 8.21 provides that the bodies listed are fully subject to the restrictions of the Regulation. Paragraph 8.11 provides as follows, in relevant part:

**8.11** An appointed officer or employee shall not take any part in the management or affairs of any political party, political campaign or partisan political group, which includes any political activity that is performed in concert or coordination with a political party, candidate, or partisan political group, such as:

...

d. Participating in get-out-the-vote activities organized or sponsored by a political party, candidate, or partisan political group; or

e. Any political activity performed by an appointed officer or employee using resources or materials paid for or provided by a political party, candidate, or partisan political group.

Paragraph 8.14 makes it clear that an appointed officer may attend political rallies, fundraisers or other political events solely as a spectator, but only "so long as he or she does not do so in

concert or coordination with a political party, candidate, or partisan political group." This last quoted phrase did not appear in prior interpretations of Section 10-107(4) and is arguably a change. Whether invitees to this particular meeting could be considered to be attending "solely as a spectator" is questionable, considering that the invitation refers to "a small group of my key supporters" getting together with the candidate "and my campaign team" for this purpose: "to discuss the current lay of the land and how we expect this race to unfold over the coming months." Nevertheless, even if the member could be said to be attending "solely as a spectator," the fact of the email having been sent by the candidate and referring to "getting together with me and my campaign team" clearly makes the meeting an event that is coordinated by the campaign, and since the email was sent directly to the member, that member's participation in the meeting would clearly be "in concert or coordination with a political party, candidate, or partisan political group." Accordingly, participation in such an event by the member under these circumstances would be prohibited by Charter Section 10-107(4).

d. Received an inquiry from a City employee in Finance regarding whether the employee must sell City bonds held in the employee's personal investment portfolio. Advised that the issue is whether the employee has a conflict of interest, that is, a conflict between the employee's official duties and the employee's personal financial interest. Advised that we rarely would require the official to divest themselves of the outside financial interest. Instead, the usual remedy is for the official to publicly disclose the interest and disqualify themselves from taking official action that affects that interest.

e. A City employee inquired about receiving a speaking fee for a personal appearance, whether the fee could be donated to charity, and whether personal time must be taken. Advised that when and whether the employee would be required to use personal time for any activity is not a matter within the jurisdiction of the Ethics Board and is better addressed to the appointing authority or Chief Integrity Officer Joan Markman. As to the ethics laws, it seems that an appearance to speak on a matter of some expertise out of the office can fall into one of two general categories:

i. A speaking engagement as a City official, talking about your experience and expertise in your City job. This may or may not be on City time, depending on whether your appointing authority approves it. However, assuming that the State Ethics Act applies to the employee, the Act prohibits receipt of an honorarium for such an appearance; or

ii. A teaching engagement based on professional expertise that you have separate from your City position. Presumably, this would be done on your own time, and you would be paid the market rate for teachers on that subject in that type of venue. This would be outside employment, not an honorarium.

A more detailed discussion of the distinctions between these possibilities and the rules applicable to them can be found in Board of Ethics Advice of Counsel GC-2009-510, and we provided the requestor with a link to that Advice.

We especially noted the caution that the State Ethics Commission is the ultimate arbiter of interpretations of the Act, including on the question of whether the Act applies to a particular employee. Additionally, if the compensation is considered an honorarium, it may well be prohibited, even if redirected to a charity, under some rulings of the Commission.

f. A City employee inquired about assisting an elected State official in matters relating to the employee's work. The request did not name the elected official, state the reason for the assistance, how the request for assistance was communicated, or whether this was to be compensated outside employment, volunteer campaign activity, or part of the employee's duties. We advised that, if the activity would merely involve supplying the official with nonconfidential information that any member of the public could have for the asking, there would appear to be no issue, but otherwise we would need a lot more detail in the facts. No follow-up message has been received to date.

g. A City employee asked "What are the limitations if someone is running for a city union position?" Assuming that this query is about restrictions under the "political activities" rules in Charter Section 10-107 and Board of Ethics Regulation No. 8, advised that these rules apply only to elections for "public elective office" and the Regulation defines that phrase as public office where the candidate is representing a political party. Therefore, the rules do not apply to elections for officers of a union.

h. An HR manager for another department asked for an explanation for the exception for police employees to the general rule that City employees may make political contributions. Explained as follows: The exception is stated in Regulation 8, in Subparagraph 8.14(d), which is a direct restatement of explicit language in Charter Section 10-107 itself. The last sentence of subsection 10-107(3) states as follows:

No officer or member of the Philadelphia Police or of the Fire Department shall pay or give any money or valuable thing or make any subscription or contribution, whether voluntary or involuntary, for any political purpose whatever.

A footnote to the Charter notes that in 2002 a federal court ruled that this provision could not be applied to members of the Fire Department, so it only applies to employees of the Police Department. Therefore, under the clear language of the Charter itself, members of the Police Department are prohibited from making political contributions. A regulation may not change that, and therefore Regulation No. 8 merely restates the rule.

i. A department representative asked whether may they may pass on to an internal list of interested citizens information from the Committee of Seventy regarding Seventy's election volunteer program. Advised that the Committee of Seventy is a non-partisan organization, so any action taken by any Department employee to assist Seventy in promoting its volunteer program would not involve prohibited political activity by that City employee. No other ethics issues are suggested by this request.

j. Received request from a City board/commission concerning a gift to a board/commission member of free attendance of a lunch event. Provided the standard gift summary.

k. Another very similar request from a City board/commission concerning a gift to a board/commission member of free attendance of a dinner event. Provided the standard gift summary.

l. A City employee asked this question: "Can a city employee work for a political candidate on his own time, i.e travel with them to fundraising events or just accompany them to directly assist

in any way that could be associated with the political candidates campaign?" We provided Regulation No. 8, and advised as follows.

Fundraising is restricted under Charter subsection 10-107(3), which prohibits any City officer or employee to "be in any manner concerned in demanding, soliciting, collecting or receiving, any assessment, subscription or contribution, whether voluntary or involuntary, intended for any political purpose whatever." Subpart D of Regulation 8 would clearly prohibit you from participating in fundraising, whether it was working for a political candidate, traveling with the candidate or the campaign to fundraisers or directly assisting in fundraising or fundraising events in any way. Under previous interpretations, and also under the attached regulation, mere attendance by a City employee as a spectator (on your own, without coordination with the candidate or campaign) at a fundraising event is not a violation of Section 10-107(3). See Paragraph 8.14(e) of the Regulation. However, it doesn't sound like mere attendance as a spectator, independently of the campaign, is what you are asking about.

Even if your involvement with the campaign were in campaign activities other than fundraising, Subpart E of the Regulation prohibits "any political activity that is performed in concert or coordination with a political party, candidate, or partisan political group." As noted above, it appears that you contemplate coordinating with the campaign, as you refer to travelling with or accompanying the campaign or "directly assisting" the campaign. Such activities would be prohibited to a City employee.

In a follow-up email, the requestor advised that he had heard a rumor that a subordinate was engaging in the above activity and was asking for that reason.

m. A City employee inquired about participating in nonpartisan political activity in conjunction with a partisan political organization. Advised that, in Paragraph 8.1 of Regulation 8, it is stated that nonpartisan activity is permissible, "so long as it is not performed in concert or coordination with a political party, candidate, or partisan political group." Accordingly, we advised the employee not to participate in the proposed activity, in light of the participation of partisan political group.

n. A member of a City advisory board/commission asked: "Are there limits on what I can and should not in support of a candidate for elected office?"

We provided a link to Regulation No. 8 and advised that the requestor's body is considered to be an "advisory board or commission," so under Paragraph 8.22 of the Regulation the requestor would not be subject to Subparts D (prohibiting fundraising), E (prohibiting campaigning generally), or H (use of social media). However, the requestor is still subject to Subparts B (any political activity while on duty or using City resources) or C (using your City position in such activity). Subparts F and G describe activity that is permitted generally. This was followed-up by two more emails from the requestor, of increasing specificity, regarding proposed activity (or perhaps past activity), regarding posing in a photo with the candidate, possibly on City property. [It is really preferable for requestors to state their real question up front and provide all details.]

o. A City employee inquired about post-employment restrictions. There are three different post-employment rules (two in the City Code and one in the State Ethics Act) that restrict the activity of a former City employee for different periods of time.

p. In a follow-up email, the same employee inquired whether to get a written advisory. We responded with information on obtaining a Nonpublic or Public Advice of Counsel. In yet another follow-up email, provided the employee with more information, including on avoiding conflicts with his future employer, once he has an interview.

q. A departmental HR manager asked whether an employee may volunteer to work the "phone banks" for a City candidate, trying to get support but nothing financial. Advised that this would not be permissible if the phone bank is organized directly by the candidate's organization. Even if the phone bank is completely apart from any political party, candidate, or partisan political group, it is only permissible if the phone bank is not in any way soliciting contributions or financial support.

r. A City employee sent this inquiry: "I am a City of Philadelphia employee who has been asked to sit on the Advisory Board of a neighborhood community group. Under Reg No#4, am I allowed to perform my civic duty in this capacity?" We provided a link to Advice of Counsel GC-2010-508, which analyzes a similar situation. We noted that we presume that the requestor would not be paid for service on the Advisory Board. In that case, the only concerns, as noted in the Advice of Counsel, are the conflicts provision of the State Ethics Act and the representation section of the City Ethics Code. However, if the community group is a nonprofit and the employee is not on its ruling board of directors, but on a separate, wholly advisory body, then the State Act provision would not appear to apply. And if the employee does not represent the community group to the City, the representation provision would not be implicated.

s. A City employee asked about publicizing a charitable fund-raising event. The employee asked if it would be permissible to send an email with her work address to contacts and companies she worked with. The email would be an FYI type with the link that asks for a donation. We advised that the facts presented do not appear to raise any issues under the ethics laws that are in our jurisdiction. Whether this would be a problem under the City's email policy is not our call. Also, the City Solicitor has in the past advised that in some cases there is an appearance problem if a City official who has official dealings with outside vendors sends a solicitation only to those vendors, for a charity that the official is interested in. The concern is that there could be a perception that the official was "putting the arm on" those vendors, by making an implicit promise of favorable treatment (or threat of unfavorable treatment), depending on whether they give. But, again, this is an appearance issue only, and no specific statute explicitly forbids it. The appearance issue is lessened if the solicitation is sent to a broader population than only vendors the employee personally deals with, and if his title is not used.

t. A requestor advised that he was a recently retired City employee planning to serve on the board of directors of an agency that has at least one contract with the City and was requesting advice as to any restrictions that the ethics laws may place on this activity. The general rules on post-employment activity of a former City employee are detailed in Advice of Counsel GC-2011-502, the link to which we provided.

u. Received an inquiry about "the new lobbying law." Advised as follows: The Lobbying ordinance is Chapter 20-1200 of The Philadelphia Code, as added by Bill No. 100127, approved June 16, 2010. You can access the City Code at the City's website at [www.phila.gov](http://www.phila.gov), clicking on "Quick Hits," and selecting "City Code and Charter." The new Code Chapter is effective as of June 16, 2010, but the first filings of any kind (registrations) are not due until July 1, 2011, as

stated in Code Section 20-1202(1). The first expense reports then will apply to the 3rd Quarter reporting period and will not be due until October 30, 2011.

v. Received an inquiry from a City employee requesting a review of the employee's job classification and advice as to whether the employee is required to file a "Statement of Financial Interests." Advised as follows:

There are three different financial disclosure forms filed with the Department of Records, required by different provisions:

- 1) The Commonwealth Statement of Financial Interests (commonly called the "State Form"), required by the State Ethics Act, and enforced and interpreted by the State Ethics Commission;
- 2) The City of Philadelphia Statement of Financial Interests (commonly called the "City Form"), required by the City Ethics Code (Chapter 20-600 of The Philadelphia Code, and enforced and interpreted by the Philadelphia Board of Ethics; and
- 3) The Mayor's Executive Order Financial Disclosure Statement (commonly called the "Mayor's Form"), required by a 1984 Mayor's Executive Order (still in effect), and enforced and interpreted by the Mayor's Office (generally the Chief Integrity Officer).

Although the Board of Ethics generally administers the entire financial disclosure program, and oversees the process of providing instructions and managing the logistics of filing (as it would make no sense to have three different entities managing the process of filing their own form), we do not have jurisdiction over the State Form or the Mayor's Form. For this reason, we generally expect employees to refer to their departmental HR managers for advice as to which forms to file. Nevertheless, a check of the Oracle system reveals that [the employee's position] is coded to file the State Form, but not the Mayor's Form or the City Form.

This does not appear to be an error. The State Form must be filed by all public employees who meet the definition of the term "public employee" in the State Ethics Act. The Regulations of the Pennsylvania State Ethics Commission, 51 Pa. Code §11.1, et seq., defines "public employee" to include an individual who is responsible for taking or recommending official action of a nonministerial nature with regard to one or more of the following: (A) Contracting or procurement; (B) Administering or monitoring grants or subsidies; (C) Planning or zoning; (D) Inspecting, licensing, regulating or auditing a person; or (E) Other activities in which the official action has greater than a de minimis economic impact.

Generally, based on published rulings from the State Ethics Commission, it appears that the types of positions that have been ruled to be not "public employees" are clerical workers, laborers, and the like. In any case, any definitive ruling would have to come from the State Ethics Commission.

w. An appointed City employee advised: "I have been asked to write a letter on behalf of a judicial candidate to the Philadelphia Judicial Commission of the Philadelphia Bar Association." The employee asked whether writing such a letter would be prohibited. Advised that Regulation 8 represents the current interpretation by the Board of Section 10-107 and supersedes prior

interpretations, to the extent they are inconsistent. Under Para. 8.11 of the Regan appointed employee may not take part in a political campaign, including a campaign for an elected judge. Although she may, under Para. 8.14, engage in certain personal political expression, like writing letters, she may not do so if it is "in concert or coordination with a political party, candidate, or partisan political group." The fact that the employee's query stated that she "have been asked" to write a letter on behalf of a candidate leads me to assume that she had been asked by the candidate or someone associated with the campaign, and so writing a letter under those circumstances might well be "in concert or coordination with a political party, candidate, or partisan political group." Nevertheless, the question arises as to whether a letter to the Judicial Commission would be "activity directed toward the success of . . . a candidate," especially where the letter will not be made public. This is a novel question that has not been explicitly addressed in Regulation 8 or any prior interpretation. Board of Ethics [Formal Opinion No. 2009-002](#) did address issues related to the Judicial Commission and provides some guidance, although it antedates the promulgation of Regulation No. 8. Based on that Opinion, I am inclined to say that any private letter of support of a judicial candidate sent only to the Judicial Commission of the Bar Association would not be "activity directed toward the success of . . . a candidate," and thus would be activity permitted to an appointed City employee.

x. Upon an inquiry from a former candidate regarding campaign finance reports, provided a link to the Campaign Finance FAQs and highlighted two in particular. Also provided a link to the Department of State campaign finance filing dates document

y. Received an inquiry from a City official regarding "liking" and "recommending" a Facebook page. Advised that employees and board/commission members can "like" a political Facebook page, under Regulation No. 8, as Para. 8.19(c) states. Use of social networking websites to express support for political parties and candidates is subject to the restrictions outlined in Para. 8.19(b) -- basically it is prohibited on duty or while using City resources/ title, plus an employee's posts should not encourage contributions intended for a political purpose or include links to information created by a political party, candidate or partisan political group. However, "recommending" a Facebook page is a question not answered by the Regulation, so an official desiring advice on that question would have to request an Advice of Counsel.

## **VI. Discussion of Preliminary Draft of New Board Regulation No. 9, Lobbying**

Ms. Massar explained that she will provide an overview today of staff's approach to Regulation No. 9 to implement the City's new lobbying law and the timeline for adoption of the regulation.

Ms. Massar said that the major source for Regulation No. 9 is the City's new lobbying law itself, Chapter 20-1200 of the City Code. Because the City's law was based primarily on the Pennsylvania Lobbying law, staff has also looked to the State's lobbying regulations for further guidance and ideas to include in the regulation.

Ms. Massar also explained that a guiding principle for drafting this regulation is that it should provide one-stop shopping about lobbying requirements and act as a "how-to" guide for compliance with the law. Staff acknowledges that they can't possibly anticipate all questions in Regulation 9 and therefore expect to receive many requests for opinions and advice as a further way to clarify the new law until amendments can be made.

### Our Projected Timetable:

Ms. Massar stated that lobbying registration is to begin on July 1, 2011, so the Board's projected timetable works back from that date.

Ms. Massar said that staff provided the Board with a very preliminary draft of the regulation for today's meeting and will refer the draft to the Law Department for review after today's meeting. Staff believes that it's important to receive input from the Law Department in case there are any questions that should be resolved before we circulate the regulation further.

Ms. Massar reported that staff's target is to present a final draft for Board approval for publication at the May 11<sup>th</sup> Board meeting and to file the regulation at the Records Department as soon as possible after May 11<sup>th</sup>.

Ms. Massar explained that staff will then make the draft available on the Board's website and by circulating it to interested individuals. As Shane mentioned in his report, staff has compiled a list of more than 450 entities and individuals who might have an interest in the City's lobbying law and will direct our outreach to this list. Staff welcomes the names of other individuals and organizations to include in our outreach efforts.

Ms. Massar said that staff expects to hold a hearing on Regulation 9 at the Board's June 15<sup>th</sup> meeting and then to ask the Board to hold a special meeting in late June (June 23<sup>rd</sup> or 24<sup>th</sup>) to review a hearing report and vote to adopt the regulation. If staff can maintain that schedule, Regulation 9 will become effective on or about July 5<sup>th</sup>. This is only a few days after the July 1<sup>st</sup> start date for registration. Staff will always be available to help potential registrants with the process.

She also said that staff understands that people are concerned about mandatory lobbying training. As Shane noted earlier, lobbying training is included in Regulation 9. It provides a 120-day window after registration to attend lobbying training, and we expect to start training beginning in July. With the 120-day window, there will be a 4-month period after registration to attend training. This will also permit us to provide training on the lobbying software which is still being developed with DOT.

### STRUCTURE OF THE DRAFT REGULATION

8 Subparts represent the major requirements of the Lobbying Law. There are three types of filers under the law:

Lobbyists, lobbying firms, and principals all must file registration statements and, generally, principals file quarterly expense reports of lobbying activity.

### **SUBPART A. Scope; Definitions**

We incorporated the definitions in Chapter 20-1200 and supplemented those with other definitions that are applicable to the new law. For example, we included a definition of the term "electronic signature" because the law requires electronic signatures in the mandatory electronic

filing system, but nowhere defines the term. We therefore used information from the software design process to create a definition.

As another example, the new law includes lobbying of administrative action by City agencies. Chapter 20-1200 defines the term “agency,” but staff thought it was important to clarify that some entities, such as the School District and Parking Authority, are not part of City government as organized under the Charter.

### **SUBPART B. Registration; Annual Fee**

Provides detailed requirements for the contents of each registration statement by filer type (principal, lobbyist and lobbying firm), and we clarified that the annual \$500 registration fee will be \$250 for 2011.

### **SUBPART C. Quarterly Expense Report & contents**

Detailed requirements for the contents of each expense report, including information to be reported for lobbying communications.

The new lobbying law requires reporting of gifts, hospitality, transportation and lobbying from lobbyists and principals to City officials and employees. This gets very complicated because a City official or employee may be subject to gift requirements under both State law and the City Code which have different reporting thresholds. We’ve therefore tried to sort out the scenarios for each type of reporting.

We’ve also tried to provide guidance concerning routine, ministerial communications that occur but may not be lobbying activity.

### **SUBPART D. Exemptions from Registration and Reporting**

Reiterate the exemptions from registration and reporting in Chapter 20-1200 – For example, a person who does not receive economic consideration for lobbying or a person whose lobbying is less than 20 hours during a quarter does not have to register as a lobbyist.

### **SUBPART E. Requirement for disclosure of the person who financed an indirect communication**

The City law includes two types of lobbying, direct and indirect communications. Direct communication lobbying is the type of lobbying that most people recognize. A direct communication occurs when a lobbyist speaks to or writes to a City official or employee about a matter.

In an indirect communication, a letter or email or even a billboard is used to encourage others – including the public – to contact City officials or employees about a matter. This is often called “grassroots” lobbying because it’s frequently an attempt to mobilize grassroots support from citizens to get involved in a matter.

The new law requires that the person who made or financed an indirect communication must be identified on the communication.

#### **SUBPART F. Prohibited Activities and Unlawful Acts**

Reiterates prohibitions on certain activity by lobbyists. Lobbyist may not serve as a treasurer of a candidate's political committee if the candidate is seeking City office. There is also a prohibition on contingent fee lobbying. Conflicts of interest are prohibited under most circumstances. Basically, a registrant may not lobby for clients who are on both sides of the same issue.

#### **SUBPART G. Lobbying Records**

Regulation specifies the types of records to be maintained to support registration and expense reports and the retention period (4-years from the date of filing of a report).

#### **SUBPART H. Advice and Opinions; Enforcement; Penalties and Training**

The regulation clarifies that a request for lobbying advice must conform to the Board's existing Regulation No. 4 on how to seek advice from the Board.

Similarly, Regulation 9 confirms that investigations and hearings are governed by Board Regulation 2 which governs procedures for investigations and public hearings. The regulation incorporates the penalties in Chapter 20-1200.

Training is also covered in Subpart H.

Chair Glazer asked Ms. Massar for a timetable for the Board members, which she said she will provide.

Ms. González asked why the definition of "immediate family" does not include domestic partner or grandparent. Ms. Massar explained that the Draft of the Regulation was identical to the Ordinance, which did not include a reference to domestic partners.

Chair Glazer said that the real challenge will be training the lobbyists on the law. Ms. Massar said that she has already begun to think about training and thinks that the most effective way will be to create hypothetical situations.

Mr. Creamer said that the Board has promulgated eight sets of Regulations and that unlike the previous eight Regulations, the Board doesn't have any experience administering or enforcing this law before drafting a regulation interpreting its provisions, which is a disadvantage to the Board. Staff is attempting to interpret and provide guidance to a law that before drafting a regulation interpreting is dense and fact specific. He added that the lobbying law touches on everything the City does.

Chair Glazer said that the objective is transparency which will come about when the Board gets this Regulation right. Once everyone is following the lobbying law, the resulting transparency to

the public is going to be terrific. He acknowledged that it will be a challenge to communicate the complexities of the law.

#### **VI. New Business**

Chair Glazer asked the Board members to think about nominating either themselves or another Board member for the vacant position of Vice Chair at the next Board meeting.

#### **VII. Questions/Comments**

The public did not have any questions or comments.

The public session of the Board's meeting was adjourned after public questions and comments, so that the Board could meet in executive session to discuss enforcement matters and non-public opinions.