

Philadelphia Board of Ethics
Meeting Minutes
February 23, 2011
Board of Ethics
Packard Building
1441 Sansom Street, 2nd Floor
1:00 pm

Present:

Board

William H. Brown, III, Esq.
Richard Glazer, Esq., Chair
Sanjuanita Gonzalez, Esq.

Staff

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

A public hearing was held prior to the Board meeting regarding Regulation No. 8, Political Activity. A court reporter was present to record the hearing.

I. Call to Order

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

II. Approval of Minutes

The Board approved the meeting minutes, as amended, printed and distributed, for the public meeting that was held on January 19, 2011.

III. Executive Director's Report

A. Enforcement Update

Mr. Creamer announced that the Board entered into a settlement agreement with City Council Candidate Karen Brown for violations of Code section 20-1003, which is known as the single

committee rule. Brown is a candidate for two City elective offices: the 1st City Council District and City Council at-large. She set up two candidate committees, one for each office: Karen Brown for 1st District Council and Karen Brown for City Council at-Large. Brown also has an organization called the Friends of Karen Brown, which she set up the Friends of Karen Brown as means to participate in non-political, community activities. However, Brown has made expenditures from the Friends of Karen Brown to promote her candidacy for City Council. Brown admits that such expenditures violate the requirement of section 20-1003 that a candidate use only one checking account to make expenditures to influence a covered election.

Mr. Creamer explained that Ms. Brown brought her violations to the Board's attention before the filing date for the 2010 cycle 7 campaign finance report. She and the others associated with her campaign, cooperated fully with the Board's investigation. Brown has agreed to take remedial steps to ensure full disclosure of the expenditures by Friends of Karen Brown and to ensure that she does not violate section 20-1003 in the future. In light of Brown's voluntary disclosure of the violations, her full cooperation, and her agreement to remedial measures, the Board agreed to waive imposition of civil monetary penalty for the violations described in the agreement.

B. Compliance Update

Barbara Capozzi – Mr. Creamer reported that on January 25th, a newspaper article revealed that Barbara Capozzi was a declared candidate for the 2nd Council District. However, as a member of the BRT, Ms. Capozzi was subject to the resign to run requirement of section 10-107(5) of the Charter. On January 26, Mr. Creamer sent her a letter advising her that she had to resign from the BRT and gave her until February 2nd to do so. Ms. Capozzi complied by resigning from the BRT on February 1st. Since she resigned within the time provided, he considered her to have complied with section 10-107(5) and did not pursue any enforcement action.

UWUA Local 686 Committee on Public Education Fund – Mr. Creamer reported that in January, on their own initiative, UWUA Local 686 Committee on Public Education Fund informed us that they had not filed required campaign finance reports with the Ethics Board. Based on our review of bank records they had provided us, staff informed them that they needed to file a 2007 cycle 2 and a 2007 cycle 4 campaign finance report with the Ethics Board. Staff told them that if they filed by February 4th, they would not pursue enforcement. They filed both reports on January 31st. Because they complied with the additional filing deadline, the Board is not pursuing any enforcement action.

Candidate Campaign Information: Mr. Creamer explained that under the amended campaign finance law and Reg 1, candidates for City office must provide information about their campaign committees to the Board, including the name and address, the checking account information, the name and email address of the treasurer within three days of becoming a candidate. So far, staff received this information from 31 City candidates.

C. Litigation Update

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

Mr. Creamer said that the Board continues to wait for the Court to rule on our Motion to Dismiss in this case. As staff reported to the Board in the past, staff filed a Motion to Dismiss Cozen's

appeal to the Pennsylvania Supreme Court on September 29th – two days after Amended Regulation No. 1 on campaign finance took effect. Cozen filed a Response to our Motion to Dismiss on October 14th.

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

Mr. Creamer reported that on February 7th, a three-judge panel of the Commonwealth Court heard oral argument in the case of Daniel McCaffrey v. Shane Creamer and the Board of Ethics. Karen Daly, as associate at Dechert, very ably argued on our behalf.

Members of our staff and Chair Glazer attended the oral argument during which Mr. McCaffrey's attorney said he does not dispute any of the law cited by the Board regarding immunity. He seemed to argue that no immunity applies because the Board allegedly acted outside the scope of its duties when excerpts of our publicly-filed court enforcement action against Mr. McCaffrey were read during a public Board meeting, but conceded that the same conduct would not be outside the scope of our official duties after Reg 5 was subsequently approved by the Board. Under Reg 5, which interprets the confidentiality rule, Board staff are permitted to publicly announce pleadings filed in court and other information related to a judicial enforcement proceeding.

Mr. Creamer said that Ms. Daly emphasized that this case – unfounded and tied to the Board's campaign finance enforcement duties – illustrates the exact purpose for the various governmental immunities that apply. She closed by saying that if this lawsuit is allowed to go forward, it could cripple the Board which is a very small agency with large responsibilities.

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.

D. Campaign Finance

Training: Mr. Creamer reported that staff continues to focus on campaign finance training so that candidates, committees, and treasurers have complete information on the requirements of the City's campaign finance law for 2011 primary election.

He stated that five training sessions have been conducted and they were attended by almost 70 people. Four more sessions are scheduled between now and March 23rd. He invited all interested parties to register for training and can do so on the Board's website. These sessions are especially important because we provide training on the recent significant changes to the law.

Campaign Finance Website Search: Mr. Creamer explained that in the Board's effort to make campaign finance information more easily accessible to the public, staff has been working with the Department of Records and their vendor to improve the campaign finance search functions. The Board also has the support of Chief Integrity Officer Joan Markman on this project.

He also explained that staff is currently testing two "basic searches." Each will permit members of the public to do a quick search of the campaign finance database and to immediately download the results to a spreadsheet. The two searches are:

- A search for all contributions made by a particular contributor in a given year, and
- A search for all contributions to a particular candidate or committee in a given year.

Mr. Creamer informed the Board that staff found that these are the two most common searches used by the public.

Mr. Creamer stated that two staff members are testing the searches now and are working with the vendor to fix problems and make corrections. This project, which sounds so simple, is taking a considerable amount of staff time to get off the ground. Staff hopes to report next month that they are ready to make these basic searches available to the public.

E. Lobbying Update

Mr. Creamer explained that the time it is taking staff to perfect the campaign finance search project is especially relevant as they work on the new lobbying software. The new lobbying law mandates two key technology elements: electronic registration and expense reporting for lobbyists and their principals and public access to lobbying information via an online database. Staff is therefore developing a completely new software application with the City's Division of Technology that accomplishes both tasks. If the time already spent on the campaign finance search project is any indication, staff cannot be naïve and must acknowledge that they will be spending an inordinate amount of time between now and July 1st on the design and testing of the lobbying software.

Mr. Creamer informed the Board that staff has also begun to develop a plan for outreach to businesses and individuals who may be required to file under the new lobbying law and are planning for lobbying training sessions in late spring. Staff is also working on a lobbying regulation for review by the Board.

Mr. Creamer stated that these lobbying-related tasks will occur during the same time that our 8 staff members are involved with the campaign finance law and 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. It would be an understatement to say that they will be stretched very, very thin in the coming months.

F. Recent Executive Orders

Mr. Creamer reported that on Tuesday, January 25, 2011, Mayor Nutter issued four Executive Orders relating to the conduct of officers and employees in the Executive and Administrative Branch of City government. Three of the Executive Orders add to conflict of interest rules that already exist and are within the Board's jurisdiction. The fourth relates to sexual harassment, which is not a subject matter under the Board's jurisdiction. Staff will discuss these Executive Orders later in the meeting.

G. Recent Legislation

Mr. Creamer reported that on February 10th, two bills were introduced in City Council that would amend Sections 20-606 and 20-1000 of the Philadelphia Code. On February 8th, Chair Glazer

had submitted a request for these amendments to the Mayor for transmittal to Council. The amendments were approved by Chief Deputy City Solicitor Richie Feder. The Board has authority under Code Section 20-606(1)(i)(ii) to make recommendations for legislation to the Mayor and Council “whenever it deems necessary.”

Mr. Creamer explained that **Bill 110072** would amend Section 20-606 of the Code to permit the Board to enforce potential violations of Charter Sections 10-102, 10-105, and 10-107 not only through the courts, but also by administrative adjudications, which are not authorized in the existing text of Section 20-606.

He also explained that **Bill 110073** would amend 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.

Mr. Creamer further explained that the second amendment would amend Code Section 20-1007 that currently requires the Board to publish a “plain language” summary of the Campaign Finance Law twice a year in three newspapers. 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, or more than 1% of our budget.

Mr. Creamer said that both bills were referred to the Committee of the Whole and are expected to be listed on a meeting agenda in the near future.

I. Outreach

Mr. Creamer reported that Inspector General Amy Kurland and he were interviewed by Marty Moss-Coane on WHYY’s Radio Times on February 9th. WHYY’s senior correspondent, Dave Davies, was also on the program, which focused on ethics reform and battling corruption in Philadelphia. The program can be heard at the following link: <http://why.org/cms/radiotimes/2011/02/09/fighting-philadelphia-ethics-corruption-with-seth-creamer-amy-kurland/>.

He also reported that Chief Integrity Officer Joan Markman and he have been asked to speak at the March 9th meeting of the Greater Philadelphia Chamber of Commerce’s Local Legislation Committee. Mr. Creamer was asked to speak about the City’s campaign finance and lobbying laws.

J. Art in the Office

Mr. Creamer stated that the Board again has the pleasure to announce a new art exhibit in our office which will run until March 21st. This exhibit is entitled “Diverse Perspectives” and features works by five local artists: Ruth Feldman, Linda Garfield, Blythe Hoyle, Bob Makoid, and Ligia Richter. Their work includes photographs, pastels, oils, mixed media, and fractal images. Biographies and contact information are available for all of the artists and he invited the audience to enjoy their work all through the office.

Mr. Creamer thanked the 10 artists, all members of a local group called ARTsisters, whose work

was on display in our last exhibit.

IV. General Counsel's Report

1. Formal Opinions. Mr. Meyer reported that there were no Formal Opinions since the January report.

2. Advices of Counsel. Mr. Meyer reported that there was one Advice of Counsel since the January report.

a. Advice of Counsel GC-2011-501 (February 16, 2011). The City's Police Advisory Commission, through counsel, requested public advice on whether there is an impermissible conflict of interest for the Executive Director of the Police Advisory Commission (William Johnson), arising out of the fact that he is the brother of the official in the Police Department (Stephen Johnson) who is head of the Department's Internal Affairs Division and is responsible for the investigation of alleged police misconduct.

Based on the facts that were provided to us, the Commission was advised of the following main points:

1. An official who takes action affecting the financial interests of a brother has a conflict of interest under the City Code and State Ethics Act. Accordingly, should the Commission investigate a complaint concerning the personal conduct of Stephen Johnson, William Johnson must disclose the financial interest of his brother and disqualify himself from participating in that matter as Executive Director of the Commission.

2. An investigation or other matter not involving Stephen Johnson's personal conduct would not require disclosure and disqualification under either the Code or the State Ethics Act.

3. The Board of Ethics occasionally advises on "the appearance of impropriety." The ethics laws do not prohibit appearances of impropriety, and an enforcement action could not be brought based on an appearance of impropriety, but such appearances can be damaging to public confidence in government. There is not an appearance of impropriety that is inherent in the fact that the Executive Director of the Police Advisory Commission and the Deputy Police Commissioner who is the head of the Internal Affairs Division of the Police Department are brothers.

4. If a particular Police Advisory Commission matter should arise where a possible public perception could be that a Commission decision may be influenced by this family relationship, the advice of this Board may be sought, upon providing the particular details of the matter.

Advice of Counsel GC-2011-501 should be posted on our website soon.

3. Informal e-mail guidance. Mr. Meyer reported that through Friday, February 18, 2011, there were seven of these since the January report.

a. Received an inquiry from a Council employee asking about attending a community meeting in an official capacity, knowing that a candidate that this person is supporting will also be in

attendance. Advised that mere attendance as a spectator at a political meeting is not prohibited to any City employee.

b. Received an inquiry from a Council employee stating several general questions about permissible campaign activity. Given that the Board has distributed several drafts of the pending Regulation No. 8 on political activity, it is important to note that providing advice in this transitional period requires careful attention to which rules and interpretations are actually in effect. Accordingly, we advised based on current interpretations in effect, not any draft of the proposed Regulation. Under existing interpretations last month, Council employees are not subject to Charter subsection 10-107(4), restricting general campaign activity, but are subject to Charter subsection 10-107(3), restricting any involvement with campaign fundraising or the solicitation or receipt of contributions.

c. Received an inquiry from a City employee requesting general post-employment rules for leaving the City and continuing similar work in the private sector. Provided a link to Advice of Counsel GC-2008-505, which addresses the issues.

d. Received an inquiry from a local attorney asking about the financial disclosure requirements on City officials, with a complex question involving inheritances. The attorney declined to provide the name of the client, but noted that the client was not yet a City official or a candidate, but was considering running for office. Advised that our [Regulation No. 4](#) governs the advice-giving function of the Board of Ethics. We do not provide answers to hypothetical, general questions posed anonymously (even through counsel) by persons over whom we have no jurisdiction. Advised the attorney that, once the client becomes a candidate, if the client wishes advice, and can provide much greater detail on the applicable facts and if we are provided with specific information on the name of the client and the office being sought, then we can provide advice. As noted in Regulation No. 4, requestors may request "nonpublic" advice, which means that the published version of the advice will be redacted as to certain identifying information, but we do not consider anonymous requests where the requestor's name is concealed from us.

e. Received an inquiry from a departmental HR manager about the conduct of an employee in the department. The employee's spouse is an attorney who had asked the employee to testify as an expert witness in a personal injury action involving two private citizens. Advised that the employee may testify, not on City time and not as to City policies or practices, so long as no City resources are used. Advised that the employee should decline compensation for testifying, as acceptance may constitute a prohibited honorarium under the State Ethics Act.

f. An employee of City Council asked about also serving as a chairperson of a political committee. Advised that it is our understanding that the State Election Code mandates no particular duties for a chairperson, so the answer depends on just what this person would do. As an employee of Council, under current interpretations, Charter subsection 10-107(4) does not apply, so being on a political committee, in itself, would not be prohibited to a Council employee, so long as no fundraising is involved. However, Council employees are subject to Charter subsection 10-107(3), which prohibits being in any way involved in soliciting, collection or receiving any contribution intended for any political purpose whatever. Conflict of interest rules would prohibit the employee from using City property, employee time, phones, email, equipment or supplies for the benefit of the committee.

g. A City employee who wishes to support a candidate for City elective office asked whether he may attend and take photos for personal use at fundraising events, circulate nominating petitions, and attend victory or concession events. Advised generally that mere attendance at events is permissible, but the employee may not be involved in fundraising, may not circulate nominating petitions, and may not participate in any event in a way that would consist of active support for the candidate, other than mere attendance. Again, noted the possibility of some change in the applicable interpretations once Regulation 8 becomes effective, which cannot be determined, since final form of the Regulation could not be predicted at that point.

V. Discussion of Recent Executive Orders

Mr. Meyer reported that Mayor Nutter signed four Executive Orders on January 25, 2011. Three of the four Executive Orders add to existing conflict of interest rules in the Ethics Code and a prior Executive Order. These new rules will be overseen by the Administration. In general, executive orders are not laws and may not be enforced in court. Instead, they are in the nature of a directive from an executive officer to his or her subordinates and violations may be subject to employment disciplinary actions. Only employees in the Executive/Administrative branch of City government are subject to the Orders.

Mr. Meyer explained the following three Executive Orders:

Executive Order 3-11, entitled: “**Prohibition of Acceptance of Gifts by City Officers and Employees,**” replaces Executive Order 02-04, but continues the same absolute ban on employees receiving “anything of value” from prohibited sources. It maintains the same exceptions as the Executive Order it replaces and adds an additional exception for promotional offers of discounted items. It also enables the Mayor’s Chief Integrity Officer to grant “waivers.”

- The gift Order does not affect existing gift laws in section 20-604 of the Ethics Code, or section 10-105 of the Home Rule Charter.

Executive Order 1-11, entitled: “**Prohibition of Nepotism,**” explicitly prohibits City employees from having any role or participation in any hiring or other employment decisions that may benefit or disadvantage an immediate family member. The Order explicitly prohibits conduct that would generally violate Section 20-607 of the Ethics Code, which broadly prohibits city employees from taking any action in their official capacity that would affect the financial interests of close relatives (whether they work for the City or not). Section 20-608 of the Ethics Code requires public disclosure and disqualification of any conflicts of interest. The anti-nepotism Order also creates an internal (rather than a public) disclosure process, as well as a process to obtain an exemption from the Order, by the Administration.

- An exemption to the anti-nepotism Order would not exempt an employee from the conflict of interest rule in Section 20-607 of the Ethics Code or the public disclosure and disqualification requirement in Section 20-608 of the Ethics Code.

Executive Order 2-11, entitled: “**Regulation of Outside Employment and Self-Employment of City Officers and Employees,**” establishes an internal (rather than a public) disclosure process for outside employment that will be maintained by the Department of Human Resources, but does not prohibit employment with businesses that have or seek City contracts.

- Certain outside employment may be regulated by Home Rule Charter Section 10-102 (prohibition on having a financial interest in certain contracts with the City), Ethics Code Sections 20-602 (prohibition on representing others in transactions with the City), 20-607 & 20-608 (conflict of interest and disclosure & disqualification, respectively).

Mr. Meyer said that the Executive Orders can lead to confusion therefore staff recommends the Board approve an Advisory Alert. A motion was made to approve the Advisory Alert. The motion passed unanimously with a 3-0 vote.

Chair Glazer said that he would like the Board to take further steps to clear up any confusion with the waivers that the employees can request from the Chief Integrity Officer and asked staff to recommend steps at the next Board meeting.

VI. New Business

Chair Glazer asked the Board members to think about considering themselves or another Board member for the Vice-Chair position to be discussed at the next Board meeting.

Chair Glazer raised the issues of scheduling an extra public meeting before the March 16th Board meeting to approve the Hearing Report for Regulation No. 8. Scheduling an extra meeting would bring the regulation into effect at an earlier date. A motion was made to give the Executive Director authority to schedule a public session meeting to approve the Hearing Report. The motion passed unanimously with a 3-0 vote.

VII. Questions/Comments

The public did not have any questions or comments.