Philadelphia Board of Ethics
Meeting Minutes
May 11, 2011
Board of Ethics
Packard Building
1441 Sansom Street, 2nd Floor
1:00 pm

Present:

Board
Judge Phyllis Beck (Ret.)
William H. Brown, III, Esq.
Richard Glazer, Esq., Chair
Michael H. Reed, Esq., Vice Chair

Staff
J. Shane Creamer, Jr., Esq.
Nedda Massar, Esq.
Evan Meyer, 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. Approval of Minutes

The Board approved the meeting minutes, as printed and distributed, for the public meeting that was held on April 14, 2011.

III. Executive Director's Report

A. Litigation Update

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

Mr. Creamer informed the Board that on April 27, 2011 Cozen filed a Motion to Remand, and that a Motion to Dismiss for Mootness was filed on behalf of the Board on April 27th. He also

reported that Cozen filed an Answer to our Motion on May 6th, and that the parties were waiting for the Commonwealth Court to rule on the two motions.

B. Compliance Update

Mr. Creamer reported that as of this morning 194 filers electronically filed 258 reports. Twenty-one candidates failed to file. Eleven of those candidates were on the ballot. Staff is in the process of sending letters to those non-filers today.

C. Campaign Finance

Mr. Creamer reported that staff has been very busy since the last Board meeting with administration of the campaign finance law for the May 17th primary election. On April 28th, staff sent 275 reminder emails to alert people to the May 6th deadline to file Cycle 2 campaign finance reports. The reminders included information about the filing support center that is available to candidates and committees.

Mr. Creamer said that staff sent a second email on May 3rd to candidates and committees reminding them about the 24-hour and independent expenditure reporting requirement. This requirement is triggered when a candidate or political committee receives a contribution of $500 or more after the May 2nd closing date for the Cycle 2 report. The law requires that a report of the contribution be electronically filed with the Board within 24-hours of receiving the contribution. Similarly, if a person makes an independent expenditure of $500 or more after May 2nd, that expenditure must also be reported electronically.

Mr. Creamer also reported that since the last Board meeting, staff responded to more than 100 campaign finance calls and emails.

D. May 2nd Financial Disclosure Filing

Mr. Creamer reported that Monday, May 2nd was the filing deadline for financial disclosure reports. Beginning in early April, staff sent thousands of reminders to City officials, employees, and board and commission members concerning their filing requirements. As a result of the reminders, staff responded to more than 450 calls and emails from filers. Mr. Creamer thanked Tina, Hortencia, and Elizabeth for handling the bulk of these calls. The Board could not have made it through the last few weeks without their patient and professional help to all callers.

Mr. Creamer said that as he reported in April, staff worked with the Records Department to implement an electronic signature process for financial disclosure reports. This was the first time filers could complete their financial disclosure obligation without any paper forms. As of Friday, 78% of the 5,700 reports filed used the electronic signature process. This streamlines the filing process at the Records Department and also reduces the amount of paper consumed.

E. Lobbying Update

Mr. Creamer informed the Board that staff is working on a daily basis on the two major tasks to implement the new lobbying law, the filing software and a lobbying regulation.

Mr. Creamer reminded the Board that, registration under the new Lobbying Law begins July 1st, and that the law mandates electronic filing of lobbying registrations and expense reports. He explained that staff are closely involved in the design of the electronic filing software and have been meeting almost daily with the City's Division of Technology and their vendors to design the Philadelphia Lobbying Information System (PLIS). Staff must also test the software and design instructions and training materials.

Mr. Creamer also noted that, later in this meeting, staff will discuss the second major lobbying task which is adoption of a lobbying regulation. Staff will ask the Board to review and approve a draft regulation for public comment and will discuss the timeline for adopting the regulation, including a public hearing.

Mr. Creamer informed the Board that staff is also planning to begin our outreach effort right after this meeting. Staff will send emails and letters to individuals and groups that might have an interest in lobbying in Philadelphia to announce the public hearing for the lobbying regulation and to invite public comment.

Staff expects to focus on all of these tasks between now and July 1st in order to be ready for the July 1st registration starting date.

F. COGEL

Mr. Creamer informed the Board that he is flying to Nashville on Sunday to attend the COGEL Steering Committee mid-year meeting. The meeting will take place on May 16th and 17th.

IV. General Counsel's Report

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

2. Advices of Counsel. Mr. Meyer reported that there were no Advices of Counsel since the April report.

3. Informal e-mail guidance. Mr. Meyer reported that through Thursday, May 5, 2011, there were eight of these since the April 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 from a City employee who wanted to know if a company that makes her a job offer wanted to fly her to their headquarters for further interviews and pay for the flight and hotel stay, would that be permissible. We advised that we are frequently asked whether City employees may accept a gift of travel and provided our standard summary of the gift rules in the State Ethics Act, City Charter, City Code, and Mayor's Executive Order, as well as a reference to

the disclosure requirement in the contract reform chapter of the Code (Code §17-1402(1)(b)(.4)). Also noted that receiving a job offer while still a City employee may raise conflict of interest issues, citing to Advice of Counsel GC-2010-515.

b. An official for an operating department inquired about the offer of a vendor that the department deals with to provide a group of employees with free passes to a trade show. Provided the standard gift advice.

c. Received a question from a campaign of a candidate for City elected office concerning what must be disclosed on the candidate's personal campaign finance report. As this was a matter under the State Election Code, which is not in our jurisdiction, we referred the requestor to Tim Dowling of the City Commissioners Office

d. A City official asked about endorsing, as part of a fund-raiser, the local university that the official attended. Advised that, so long as the official is not being compensated by the university, there were no ethics issues.

e. An official for a City office inquired about the conduct of a subordinate employee. The official advised that the employee had been "consulting with" a relative on a City board/commission that holds hearings. Advised that Code Section 20-605 prohibits *ex parte* communications with any member of any board or commission, unless the other parties are notified. Noted that we cannot advise on past conduct, but future such communications should be avoided.

f. Received an inquiry from a former employee, now working for a company with a City contract. The requestor noted that she only worked for the City for a short time, did not work with her current company, when she was with the City, and now is only providing technical support. We provided the standard post-employment advice, but noted that the State Ethics Act would prohibit the employee for one year from contacting the City or having her name appear in documents submitted to the City, and that this rule applies in spite of the employee's short tenure with the City, her not having worked with this vendor then, and her non-managerial status with her current company.

g. A City employee inquired about whether he could take leave time on Election Day to work at the polls as a machine operator and be paid for this service. Advised that, provided there is no conflict of interest, the ethics laws do not prohibit such employment. (The State Election Code does prohibit City employees from serving as "election officers" at the polls, but this does not appear to include machine operators.)

h. An operating department inquired about reference material sent to the department head by a publisher, for free. Provided standard gift analysis, including that publishers frequently provide free copies of materials for review, promotion, academic use, etc., and that is more of a marketing strategy than a gift.

4. Financial Disclosure. Mr. Meyer said that as is usual for the month of April, the entire staff of the office was involved in responding to a flood of inquiries, both substantive and procedural, regarding the system of financial disclosure filings. The vast bulk of these inquiries were handled quickly, extremely competently, and with great patience, tact, and helpfulness, by Tina

Formica and Hortencia Vasquez. It is impossible to overstate the value to this office of these two fine public servants.

V. Discussion of Draft New Board Regulation No. 9, Lobbying

Chair Glazer asked staff to summarize the general procedure for regulations.

Mr. Creamer explained that the Board will vote to approve a draft of the regulation for public comment and submit the draft to the Law Department. Once the Board receives the approval of the Law Department, the draft regulation will be filed with the Records Department. The regulation will be on file with Records for 30 days and notice of the draft for public comment will be published in 3 newspapers. If no hearing is requested the regulation becomes effective 30 days after posting with Records. The Board's practice often has been to schedule a hearing without waiting for a hearing request to be made. The Board holds a public hearing at which anyone may comment on the draft regulation. Staff then drafts a hearing report, which is a summary of testimony and suggested Board responses to the testimony including modifications to the draft regulation. The Board votes to approve a hearing report, which then must be approved by the Law Department and filed with Records. The regulation, including any modifications made through the hearing report, will be effective 10 days after the hearing report is filed with Records.

Ms. Massar said that it's time to talk about lobbying and proposed Regulation No. 9.

Ms. Massar explained that staff noted last month 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 heavily 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 draft. Staff expects, however, that there will be major differences between lobbying activity at the state level and municipal lobbying in Philadelphia.

Ms. Massar said that an overarching principle for drafting this regulation is that it should provide one-stop shopping about lobbying requirements. It therefore incorporates the entire Subchapter 20-1200 of the Code, and also puts flesh on the bones of the new law with ideas from the State's lobbying regulations and other sources.

She also said that staff has tried to make the regulation a "how-to" guide for compliance with the law. Having said that, staff knows that they've only scratched the surface of questions about the new law and that it will take time to learn about unique features of lobbying in Philadelphia. Staff hopes that people will use the advice process as a method to clarify the new law.

Ms. Massar explained that the provisions of draft Regulation No. 9 establish the rules for lobbyists, firms and principals to comply with the law. But it is essential to keep in mind the purpose of lobbying registration and reporting. It makes information available to the public about government decisions and therefore makes government more transparent.

Ms. Massar noted the process - After the April Board meeting, staff circulated the preliminary draft of Reg 9 to Martha Johnston in the Law Department for her comments. Ms. Johnston was

gracious and made time to review the draft. Her comments were extremely helpful and staff tried to address her feedback in this newer draft of the regulation.

STRUCTURE OF REGULATION No. 9

Ms. Massar explained that there are 8 Subparts which represent the major requirements of the Lobbying Law and describe the registration and reporting requirements that apply to the three types of filers under the law: lobbyists, lobbying firms, and principals. All three must register and, generally, principals file quarterly expense reports of lobbying activity.

Mr. Meyer and Ms. Massar took turns walking through the sections of the regulation, beginning with Ms. Massar.

SUBPART A. Scope; Definitions – Paragraphs 9.0 through 9.2

Paragraph **9.1 –** Staff incorporated the definitions in Chapter 20-1200 and supplemented them with definitions that staff thought were necessary for the new law. For example, staff included a definition of the term "electronic signature" because the law requires electronic signatures in the mandatory electronic filing system, but does not define the term. Staff therefore relied on the software design process to define an electronic signature as the unique combination of user name, password, and PLIS registration number assigned to a lobbyist, lobbying firm or principal.

Because the law covers lobbying on administrative action before City agencies, as well as legislative action, Chapter 20-1200 defines the term "agency." Staff thought that it was important to clarify in the definition that some entities, such as the School District and Parking Authority, are not part of City government as organized under the Charter. So staff expanded the definition of "agency" to clarify that distinction.

Among the new definitions are the terms:

City

City Code

Enrollment – which is the online process to gain access to the PLIS

Filed – In the paper filing world, it is easier to determine when a document is physically filed with the Board of Ethics. Because all filing under the new law is electronic, we felt that it was necessary to specify what constitutes a "filed" electronic report. For example, a lobbyist's registration statement is filed when several conditions have been met: the registration document has been received electronically and electronically time-stamped; it must contain the electronic signatures; it must include the lobbyist's photograph; and the registration fee must be paid.

Oath or Affirmation – The new law requires that a registration statement or expense report must be signed under "oath or affirmation" attesting to the correctness of the contents. We therefore drafted a definition of the term to mean that when a filer affixes his or her electronic signature to a registration statement or expense report, that signature has

the effect of a statement of the correctness of the contents of the document. A false statement in an electronic registration statement or expense report carries the same consequences as an old-fashioned paper affirmation.

Paragraph 9.2 explains the deadlines in Chapter 20-1200 for filing registration statements and expense reports. A lobbyist, firm, or principal must register within 10 days of acting in a lobbying capacity. Expense reports are filed no later than 30 days after the end of a quarter.

SUBPART B. Registration; Annual Fee

Paragraph 9.4 explains that except in 2011, the registration period is a calendar year. In Paragraph 9.5, we clarified that the annual registration fee is $500, but that for 2011, it will be $250.

Paragraphs 9.7, 9.8, and 9.9 describe in detail the identifying information and signatures that must be included in each electronic registration statement.

Paragraph 9.10 describes the requirement to file an amended registration statement within 14 days of a change to the information in the original statement. For example, if the principal moves to a new office, the new address and contact information must be reported in an amended registration statement.

Last in Subpart B is **Paragraph 9.11** which describes the conditions when a notice of termination must be filed. It is important for the public to know when a lobbyist, firm, or principal is no longer involved in lobbying and will no longer be filing reports.

Mr. Meyer then summarized the next portion of the Regulation.

SUBPART C. Quarterly Expense Report; Contents

Paragraph 9.12 is reserved.

Paragraph 9.13 defines the general rule of filing expense reports.

Paragraph 9.14 explains when a principal is required to file expense reports when the total amount of expenses for lobbying exceed the threshold of $2,500 in a reporting period and how to report the lobbing expenses that are below the threshold.

Paragraph 9.15 provides what the expense report should include.

Chair Glazer asked if the information that the lobbyists are required to report is enough, too much or onerous.

Ms. Massar said that other jurisdictions require the same information. It is important to know who lobbied who.

Mr. Brown said that this requires a massive amount of information and wondered if the Board has enough personnel to look at all of the information.

Ms. Massar said that this is tied to the software. The information will be gathered electronically. There is a tremendous amount of work to do with a small staff.

Mr. Creamer said that with a smaller staff it will take longer to do the work. He added that no staff member is designated to any one task and that added responsibilities mean less time for existing assignments.

Ms. Massar said that staff tried to build automatic reports in the software.

Mr. Glazer noted that once the information is collected reporters and good government groups can look at the information.

Paragraph 9.16 describes the total cost for all lobbying expenses for the reporting period that should be included in the expense report.

There was a discussion among the Board regarding the $10 threshold in Paragraph 9.16 B(1) for gifts, hospitality, transportation or lodging, and the Board unanimously voted to increase the threshold to $25.

Paragraph 9.16 B(2) allows for the possibility for an official who receives a gift that would have to be reported on a Financial Disclosure report to return the gift to the lobbyist.

Paragraph 9.17 was completely rewritten and the text from the preliminary draft has been deleted. It now describes the reporting expenses for gifts, hospitality, transportation and lodging.

The way the statue is written suggests that lobbyists would be responsible for determining what individual City officials would be required to report, and which of several thresholds would apply, and that would be an unfair burden on lobbyists. Staff recommended to the Board a single threshold of $200.

Paragraph 9.18 was taken directly from the statute and describes the reimbursement to a principal or lobbyist for gifts, hospitality, transportation or lodging.

Paragraph 9.19 explains the process for notifying a recipient who receives gifts, hospitality, transportation or lodging.

Ms. Massar noted that an official can return the gift but must report it.

There was a lengthy discussion about aspects of returning a gift versus reimbursement.

Paragraph 9.20 describes when a lobbying firm is required to file an expense reports.

Paragraph 9.21 describes when a principal is required to file an expense report.

Paragraph 9.22 explains when signatures are required on the expense report.

Paragraph 9.23 is not in the statute, but staff recommended a period of time to correct errors without penalty.

Mr. Creamer noted that once the report is filed it is public record. They will have to file an amended report.

SUBPART D. Exemption from Registration and Reporting

Paragraph 9.24 describes who and which activities are exempt from registration and reporting.

Ms. Massar then relieved Mr. Meyer in summarizing the regulation.

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

The City law requires reporting of two types of lobbying communications, direct and indirect communications.

Direct communication lobbying is the type of lobbying that we all recognize. Someone talks to a legislator or official to promote his or her goals and objectives. For example, a direct communication occurs when a lobbyist speaks to or writes to a City Councilperson to promote a principal's specific position on a bill.

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 source of an indirect communication is often obscure. The new lobbying law recognizes that the public has an interest in knowing the source of an indirect communication.

Paragraph 9.25 therefore restates the requirement in the new law that the name of the person who made or financed an indirect communication must be clearly and conspicuously identified on the communication.

SUBPART F. Prohibited Activities and Unlawful Acts (Paragraphs 9.26 & 9.27)

Paragraph 9.26 reiterates 6 major prohibitions on activity by lobbyists. These are the same as the State law.

A lobbyist may not serve as a treasurer of a candidate's political committee if the candidate is seeking City office, and a lobbyist may not charge a fee conditioned upon converting the fee into a campaign contribution.

A lobbyist may not engage in a communication that the lobbyist knows is false, forged, counterfeit or fictitious.

There is also a prohibition on contingent fee lobbying.

Conflicts of interest between or among the principals represented by a lobbyist are prohibited under most circumstances. Basically, a registrant may not lobby for clients who are on both sides of the same issue and must withdraw. But there is a provision for written waiver of a conflict.

A lobbyist can represent multiple principals during the budget process, as long as the interests are not adverse.

Paragraph 9.27 lists 11 behaviors that constitute unlawful acts by a lobbyist or principal. Among the 11 are:

> Instigate the introduction of legislation for the purpose of obtaining employment to lobby in opposition to that legislation.
>
> Knowingly counsel a person to violate this Chapter or any other provision of the City Code or of any Federal or State statute.
>
> Engage in or counsel a person to engage in fraudulent conduct.
>
> Use a loan to attempt to influence a City official or employee on legislative or administrative action.
>
> Generally refuse to disclose to a City official or employee, upon request, the identity of the principal.
>
> Commit a criminal offense arising from lobbying.
>
> Use coercion, bribery or the threat of economic sanction to influence a City official or employee.
>
> Extort or retaliate against a City official or employee based on the official's or employee's position on an administrative or legislative action.
>
> Use the promise of financial support to the candidacy in a future election of a City official to influence that official.
>
> Bring the practice of lobbying or the legislative or executive branches of City government into disrepute by his or her conduct.
>
> Finally, and most important to the Board's authority to enforce the law, a lobbyist or principal may not make a material misstatement or omission on a registration statement or expense report filed with the Board.

Mr. Meyer then completed the summary of the regulation.

SUBPART G. Lobbying Records

Paragraph 9.28 is similar to the State Regulation and it is related to the idea that we have the ability to audit the principal.

SUBPART H. Advice and Opinions; Enforcement; Training

Paragraph 9.30 describes how to request advice and advisory opinions from the Board.

Paragraph 9.31 describes how investigation and hearings will be governed.

Paragraph 9.32 describes the penalties for anyone who violates this Chapter.

Paragraph 9.33 describes the requirement for training for lobbyists and principals.

Ms. Massar noted that the law requires the Board to provide mandatory training.

Mr. Creamer said the law also requires lobbyists and principals to receive ethics training.

Chair Glazer called for a motion to approve the draft Regulation, for public comment subject to changes addressed at today's Board meeting, to be posted at Records for publication and setting a public hearing for Wednesday, June 15, 2011 at 1 pm. The motion passed with a 4-0 vote.

VI. Proposed Amendments to Board Regulation No. 1, Campaign Finance

Mr. Cooke informed the Board that the majority of the amendments to Regulation 1 are to clean up minor issues. The three major substantive changes that are proposed are related to: (1) interpretation of when a contribution is made through a political committee; (2) guidance on what is volunteer labor; and (3) changes to the information candidates are required to provide to the Board about their candidate political committees. Mr. Cooke and Ms. Nayak proceeded to walk the Board through the three major proposed changes to the Regulation in greater detail.

Chair Glazer asked for a motion to approve for public comment the draft amendments to Regulation No. 1 and to schedule a public hearing on June 15th at 1pm. The motion passed with a 4-0 vote.

VI. New Business

Chair Glazer asked the Board members to nominate a Vice Chair. Judge Beck and Mr. Brown nominated Michael Reed.

Chair Glazer made a motion to make Michael Reed Vice Chair, which passed unanimously with a 4-0 vote.

VII. Questions/Comments

Sophie Bryan from Councilman Green's office said that she appreciates staff's work on Regulation No. 9. She also noted that if the Board was concerned with the law to bring those concerns to City Council's attention.

Ms. Bryan stated a concern with Section 1.14(a)(2) of Regulation No. 1, which she said creates a strict liability standard.

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.