

Philadelphia Board of Ethics
Meeting Minutes
July 18, 2012
Board of Ethics
Packard Building
1441 Sansom Street, 2nd Floor
1:00 pm

Present:

Board

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

Staff

Nedda Massar, Esq.
Evan Meyer, Esq.
Michael Cooke, Esq.
Maya Nayak, Esq.
Elizabeth Baugh
Tina Formica

I. Call to Order

Chair Glazer recognized that a quorum was present and called the meeting to order at 1:03 pm.

II. Approval of Minutes

By a 5-0 vote, the Board approved the meeting minutes, as printed and distributed, for the public meeting that was held on June 13, 2012.

III. Executive Director's Report

Chair Glazer asked Ms. Massar to deliver the Executive Director's report in his absence.

A. Litigation Update

i. McCaffery v. Creamer, et al.

Discovery in this matter closes on September 4th and the case is scheduled for the trial pool on March 4, 2013. We anticipate that litigation of this case will continue to consume significant amounts of staff time.

ii. Lodge No. 5 of the Fraternal Order of Police, et al. v. City of Philadelphia, et al.

On July 11th, Judge Sanchez heard oral argument on the parties' cross motions for summary judgment. We await Judge Sanchez's ruling. We thank Mark Maguire and Eleanor Ewing, our counsel at the Law Department, for their representation in this matter.

iii. Cozen O'Connor v. Philadelphia Board of Ethics

On June 26th, Judge Tucker heard argument on the parties' cross motions for judgment on the pleadings. We await Judge Tucker's ruling.

B. Office Move

All of our staff members worked hard on the move from Sansom Street to our new office. However, there were three staff members without whom the move could not have happened: Tina Formica, Hortencia Vasquez and Elizabeth Baugh. They packed and labeled boxes and managed to answer phones at the same time. They worked with the movers to move the furniture from our old office and to put everything in the right place here in the new office. We were able to resume almost normal operations in two days because of their constant work.

We are working with the City's Public Property Department and building management staff to resolve several issues here in the new space.

C. Lobbying Update

Lobbying Information on our Website: Elizabeth Baugh worked with the Office of Innovation Technology (OIT) to make images of the first quarter lobbying expense reports received through June 5th, available on our website. We continue to update the lists of lobbying registrations on the website on a monthly basis. Therefore, even though the online searchable lobbying database doesn't yet exist, citizens can review information about lobbying activity in the City.

Second quarter expense reports are due by July 30th. Yesterday we sent an email reminder to our lobbying distribution list to explain that we will continue to use the interim paper filing process for those reports.

Lobbying Software Project: Since the Board's June meeting, members of our staff and OIT staff continued to review lobbying websites in other jurisdictions to identify systems for which OIT has in-house expertise. Our goal was to decide among the following three alternatives for developing the online lobbying system mandated by the Lobbying Code: borrow and build on a system from another jurisdiction; issue a Request for Proposals (RFP) to select another vendor; or complete the project "in-house" with OIT resources.

In a meeting with Adel Ebeid, the City's Chief Innovation and Technology Officer, on June 26th, a decision was made to issue an RFP to select another vendor. Our staff is therefore working with OIT staff to prepare the RFP. OIT projects that we can issue the RFP in early August.

Chair Glazer asked if not having a searchable database was there anything that is not being done that should be done.

Ms. Massar said no, that it is just was a matter of being able to easily access the information. The press has reported on stories and haven't seemed to have a problem getting the information.

D. Training

On July 9th we conducted an ethics training session for 31 new employees at the BRT. We are working now to arrange training rooms in this building and times here at 1515 Arch Street and to establish a fall schedule for ethics training for new employees and board and commission members.

E. Outreach

I was invited by Judge Ida Chen to speak to the United Way Ethics Task Force on July 11, 2012. The mission of the Task Force is to initiate a process to enable the people of Philadelphia to strengthen their faith and confidence in the School District of Philadelphia. The goal of the Task Force is to produce a written report and recommendations with respect to standards of ethics and behavior for the operation of the School District of Philadelphia.

The Task Force is conducting research and developing policy recommendations for the School District concerning standards of ethics and behavior, and procedures, policies and protocols in areas such as personnel, human resources, and contracting and procurement. The members are also reviewing methods for reporting, monitoring, enforcement and training.

I discussed the history and jurisdiction of the Board of Ethics, the roles of the Board Members and Executive Director, our enforcement process, and training methods. I also emphasized the essential components of an ethics program: clear rules; education and training about those clear rules; and enforcement for violations. Finally, I stressed the critical importance of the political, financial, legal, and operational independence of an ethics agency.

F. Summary

We want to welcome Andy Zask who is our summer intern. Andy is a third year student at the Earle Mack School of Law at Drexel University. He is interested in Administrative Law and working with us will give him a taste of work in a small, but very busy, agency in City government.

G. CLE Program

Each year the City's Law Department presents a two-day continuing legal education program that is attended by several hundred government and private sector attorneys. We are very proud that Maya Nayak and Michael Cooke will be presenters at the kick-off session tomorrow morning. The session is entitled **Election Law and Ethics for City Employees**, and Maya and Michael will present on the Home Rule Charter's political activity restrictions that apply to City employees. They will explain the history of the restrictions and will focus on Board Regulation 8, which became effective in March 2011 and represents a comprehensive approach to political activity by City employees.

IV. General Counsel's Report

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

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

Nonpublic Advice of Counsel GC-2012-506 (July 16, 2012). A City employee requested a nonpublic advisory opinion as to the effect of the ethics laws on her proposed service as a board member of a nonprofit charter school while also working for the City, in an office that may contract with the school. The employee also asked about remedying the conflict if the contracting process had already begun. Based on the facts that were provided, we concluded that the ethics laws do not prohibit the requestor's service with the nonprofit, but there are certain limitations on her activities of which she should be aware. In particular:

(1) The Charter's restriction on benefitting from City contracts contained in Charter Section 10-102 does not restrict the requestor.

(2) The Code's conflict of interest provisions, Code subsections 20-607(a) and 20-607(b), do not restrict the requestor.

(3) However, the State Ethics Act's conflict of interest provision likely applies to the requestor and to the financial interests of a nonprofit on whose board she serves. As a result, the requestor should not, in her position with the City, take any official action which causes the nonprofit to receive a "private pecuniary benefit." Furthermore, should the requestor's official duties intersect with the financial interests of the nonprofit, she should disclose this interest and disqualify herself from acting for the City, in the manner required by Code Section 20-608(1)(c).

(4) However, this Advice is not binding on the State Ethics Commission, which has authority to interpret the State Ethics Act. The requestor has the option to seek an opinion from the Commission, or a nonconfidential opinion from the City Solicitor, which may shelter her from certain penalties for violating the State Ethics Act's conflict of interest provision.

(5) Under Code Section 20-609, the requestor must not disclose confidential City information that she acquired in her service with the City to the nonprofit for the purpose of advancing financial interest of the nonprofit.

(6) Under Code Section 20-602, the requestor may not represent others, including the nonprofit, as "agent or attorney" in transactions involving the City.

(7) Any financial disclosure form that the requestor files in April 2013 will require that she disclose the directorship with the nonprofit, if she joins the board in calendar year 2012.

(8) Although advice going forward does not preclude a possible enforcement action concerning past conduct, as to remedial action the employee is advised to cease immediately any representation of the School in any City matter, and take no further City action in any such matter. It is strongly recommended that the employee consult with the Chief Integrity Officer on how best to proceed going forward.

Nonpublic Advice of Counsel GC-2012-506 should be available soon on the website of the Board of Ethics.

3. Informal e-mail guidance. Mr. Meyer reported that through Friday, July 13, 2012, there were seven of these since the June report, issued either by myself or Associate General Counsel Maya Nayak. *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. A City employee who supervises independent contractors in his City work asked about referring some of those contractors to a friend for outside work. We advised that, if there is no financial benefit to the requestor, the City Code would not restrict such referrals. We added, however: "You should make it absolutely clear to all involved that you can accept no compensation, gift, or other benefit in return for any referral."

b. A City employee who had just conducted Ethics Training for her department related some questions that came up in the training. The questions concerned vendors giving employees free samples or flyers inviting them to a grand opening. We provided our standard general summary of the gift rules.

c. We received a query regarding conflicts from an employee who sits on the board of a public charter school. We provided the standard advice about serving on the board of a nonprofit organization, which included links to several Advices on our website.

d. We received a query on post-employment restrictions from an employee who is about to retire. We provided the standard post-employment summary, which includes links to several summaries and Advices on our website.

e. We received an inquiry from a City employee regarding participating in advocacy for a nonprofit organization. We advised as to the following general concepts:

1. Personal conflict of interest. If you are not compensated by the nonprofit, this should not be an issue.

2. Conflict through the organization. This could only be an issue if you are an officer or director of the nonprofit.

3. Representation. Certain representation in transactions involving the City might be prohibited, but only if such representation is "as agent or attorney." Representation "as agent" means you have authority to bind the organization.

4. Solicitation of charitable contributions. If your volunteering for the nonprofit were to include soliciting donations, you may wish to be aware of certain provisions of the contract reform provisions for no-bid contracts in Title 17 of the Code. These contract reform provisions do not impose any requirement on your activities, but you should be aware of them because if you plan to solicit funds on behalf of the nonprofit, you should know that if anyone you solicit has, or later applies for, a City contract, they may have to disclose your solicitation

5. Political activity. As a City employee, you are prohibited from engaging in partisan political activity that promotes the success of a political party, candidate, or partisan

political group. If the organization should engage in advocacy that targets a particular political party or party-identified candidate or official, you may wish to avoid participation in such efforts.

6. Confidential Information. City Code Section 20-609 prohibits disclosing confidential City information "for the purpose of advancing the financial interest of ... others." Thus, you should not pass on confidential City information to the nonprofit if it would benefit the nonprofit.

7. Appearances. Since it appears that the requestor's City office might be involved in that matter on which the nonprofit would be advocating, we advised that there could be an appearance issue if the employee personally were to work on any City matter involving this question, while also advocating for the nonprofit on a related issue.

f. We provided another general guidance to a City employee about serving a nonprofit that has dealings with the City.

g. We received the following inquiry: "Is it against City policy to celebrate a fellow employee's birthday by pooling together to buy a cake and give them a gift card or money in a card. This would be done for all in the office. All employee's would participate in the giving and all employee's birthday would be recognized." We advised that this question raises only a question (if that) under the Mayor's Gift Executive Order, and referred the requestor to the Chief Integrity Officer.

V. New Business

A. August Board Meeting

Chair Glazer said that since the Board's existence the August Board meeting has always been canceled. He proposed that the Board cancel the meeting that is scheduled on August 15, 2012.

A motion was made to cancel the August 15th Board meeting and delegate authority to the Board Chair to schedule an August Board meeting, if necessary. The motion was approved by a 5-0 vote.

B. Executive Session Meetings

Chair Glazer announced that the Board held an Executive Session meeting in person, via conference call and email on July 3, 2012 in connection with litigation.

VI. Questions and Comments

The public did not have any questions or comments.

The public session of the Board's meeting was adjourned at 1:36 pm.