

**Philadelphia Board of Ethics**  
**Meeting Minutes**  
October 15, 2008  
Board of Ethics  
Packard Building  
1441 Sansom Street, 2<sup>nd</sup> Floor  
1:00 pm

**Present:**

Board

Richard Glazer, Esq., Chair  
Richard Negrin, Esq., Vice Chair  
Phoebe Haddon, Esq. (via Conference Call)  
Kenya Mann, Esq.  
Stella Tsai, Esq.

Staff

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

**I. Call to Order**

Mr. Glazer recognized that a quorum was present and called the meeting to order. He noted that Ms. Haddon will call in for a conference call and Ms. Mann will be late.

**II. Approval of Minutes**

The Board approved the meeting minutes for the public meeting that was held on September 17, 2008.

**III. Executive Director's Report**

**A. Litigation Update**

Mr. Creamer announced that the Board of Ethics reached a settlement agreement with the Committee on Public Education of Local 98 of the International Brotherhood of Electrical Workers. Mr. Creamer read the agreement and a copy is attached to these minutes.

(Ms. Mann arrived at this time)

On behalf of the Board, Mr. Glazer commended the staff, particularly Shane and Michael on reaching a settlement.

Mr. Glazer asked if there are any other litigation updates. Mr. Creamer responded that there has not been any progress with the Appreciation Fund matter, the Jones matter is pending before the Court of Common Pleas, and staff is waiting for a briefing schedule from the Court of Common Pleas in the Cozen appeal.

Mr. Glazer thanked Dechert, particularly Cheryl Krause and her colleagues, for their work in the Local 98 matter. The Board is grateful for all of their hard work.

### **B. Legislative Update**

Mr. Creamer reported that on September 25<sup>th</sup>, City Council passed Resolution 080726. The Resolution authorized Council's Legislative Oversight Committee to hold hearings on the use of computerized online training as a flexible method for providing mandatory ethics training to City officers and employees. The Resolution noted that online training is an effective means of providing training that is "designed specifically for each City Department, agency and board" and "to ensure that all officers and employees are up-to-date on their ethics training." There is no mention in the Resolution about funding for implementation of an online training system. We will advise the Board when a hearing is announced.

Mr. Creamer explained that prior to the Resolution, our staff had already begun looking at different software options to provide online ethics training. Specially designed software is very expensive, but there are some other less expensive options that may be available. Staff will continue to work on this initiative.

### **C. Ethics Task Force**

Mr. Creamer reported that on September 24<sup>th</sup>, Mayor Nutter signed Executive Order 12-08 which created the Mayor's Advisory Task Force on Ethics and Campaign Finance Reform. Mr. Creamer was asked to attend the first meeting of the Task Force on October 10<sup>th</sup>.

Mr. Creamer explained that the Task Force is charged with providing a comprehensive review of the City's campaign financing ordinance (Chapter 20-1000 of the Philadelphia Code) and the disclosure and eligibility requirements of the contracting law (Chapter 17-1400 of the Philadelphia Code). In addition, the Task Force is to examine public campaign financing laws in other jurisdictions and to focus on topics such as nepotism, outside employment, gifts, lobbying, and political activity restrictions for City officers, employees, and board and commission members.

Mr. Creamer said that staff has already supplied the Task Force with information on political activity restrictions in other cities and are ready to provide support, when requested, on many other topics. The Executive Order established a February 1, 2009 deadline for the Task Force to submit a report to the Mayor.

## **D. Training**

Mr. Creamer stated that training remains a major focus of our current staff activity. In September, we conducted four board and commission ethics training sessions, one session for City Council, and five “train the trainer” sessions for departmental trainers. In October, staff conducted two “train the trainer” sessions and will conduct two more sessions for City Council, one session for new staff in the Managing Director’s Office and Finance Department, and two sessions for advisory boards and commissions. Five more board and commission classes are scheduled in November and one in December.

Mr. Creamer explained that staff is working on making arrangements so that we can present ethics training to individuals with disabilities. This will involve providing each visually impaired individual with training materials on a CD in advance of a training session so that he or she can convert the materials to an appropriate medium. The Board will provide sign language interpreters for at least one ethics training session for those with hearing impairments.

Mr. Creamer also explained that staff has also assisted the Philadelphia School District with arrangements for ethics training to be provided by the State Ethics Commission. There will be two ethics training sessions for District Central staff and one session for principals in October and November.

## **E. Budget**

Mr. Creamer reported that staff prepared and submitted our FY09 Target Budget, which remains at \$1M and reflects our request for a \$100,000 internal transfer from Class 100 (personnel) to Class 200 (purchase of services) to ensure that there are funds available for possible FY09 litigation costs.

## **IV. General Counsel’s Report**

Mr. Glazer stated that Mr. Meyer was out of the office and requested to have the General Counsel report incorporated in the minutes. Mr. Glazer asked Ms. Nayak, Associate General Counsel, to give a summary of the report.

1. Advices of Counsel. There was one Advice of Counsel issued since the last Board meeting:

a. Nonpublic Advice of Counsel of October 9, 2008. Advised an employee on the payroll of City Council concerning the application of Charter Section 10-107(3) to this employee’s involvement in political fund-raising. Advised that, under subsection 10-107(3), this individual is prohibited from being “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.” Noted that many in City government are aware of an Opinion issued by City Solicitor Abraham Freedman in 1952, Opinion No. 50, on page 111 of the volume, *1952 City Solicitor’s Opinions*, regarding campaign activity by certain employees of Councilmembers. Advised that Opinion No. 50 explicitly addresses only subsection 10-107(4),

and thus has no application to this request. The Advice did not address, and expressed no opinion on, the viability, scope, or meaning of Opinion No. 50, other than to note that, by its own terms, it clearly does not address the application of subsection 10-107(3).

2. Informal e-mail guidance. Through Thursday, October 9, 2008, there were thirteen of these since my September report. Note that in every such e-mail, we provide a link to Regulation No. 4 and explain that the requestor may obtain a written advisory opinion, if they wish.

a. Advised an employee on the staff of a Councilmember regarding a financial interest in an outside employment. Advised that whether this person does now, or could ever, have a conflict of interest under the City Code and State Ethics Act depends on particular facts. Under the "conflict of interest" rules, he/she may not, as a Council employee, take official action that financially benefits the outside employer. For example, if a matter is before Council which could affect the business prospects of that entity, and if, say, fact-gathering, drafting, and policy recommending is assigned to this Council employee, that could be a prohibited conflict. Advised that if any matter comes before Council that could affect the financial interests of the outside employer, the person would be well advised to formally disclose the financial interest and disqualify him/herself from working on that bill, applying the procedure in Code Section 20-608(1)(b).

b. A query raised at a "train the trainers" session concerned application of the ethics laws to contract employees. In a follow-up e-mail the employee was advised as follows:

Generally, the ethics laws say something like "No City officer or employee shall . . ." so those laws apply only to City officers and employees. A person working as a consultant under a personal services contract or a person who is an employee of a for profit or nonprofit entity that has a contract with the City is not a "City officer or employee," and thus such ethics laws do not apply to them.

Contract agencies sometimes provide (pursuant to the contract) employees to work in City offices, sitting at City desks next to City employees and doing much the same work--looking for all appearances like City employees, but just not on the City payroll. If such contractors engage in political activity or representation or take action affecting their own financial interests, it presents a tremendous morale problem for City employees, but it doesn't violate the ethics laws. I always tell people who ask about this that, if the City is concerned about it as a policy matter, the City should negotiate a term into the City's contract with the vendor whereby the vendor agrees to be bound by such restrictions.

Of course, some ethics laws do apply to more than "City officers and employees." The contract reform rules apply to contractors (Chapter 17-1400 of the City Code). Subsections 10-107(1) and (2) of the Charter list political activities that "no person" shall engage in. And Code subsection 20-604(2) provides that "no person . . ." shall offer certain gifts.

c. Received a query from a City employee who referred to having consulted the Political Activity Guide on our website and noted that the Guide states that speaking at a political rally is a prohibited activity. The employee asked if merely attending a political rally was permitted. The employee was advised as follows:

On page 10 of the Political Activity Guide that you referred to, the 3rd and 4th bullet points under "Permissible Activities" are:

- *You may attend as a spectator any political meeting or convention.*
- *You may attend dinners or social functions of a political character.*

This would include any gathering of a political nature, including a rally, so long as your involvement is only as a spectator, and you are not involved in organizing the gathering or engaging in any way in soliciting or receiving political donations, or publicly endorsing a candidate.

d. In response to a number of questions that Maya advised were raised at a training, we generated an e-mail to the entire list of attendees, advising as follows:

We have been agreeing in general with the principles laid out in the 1995 Law Department Political Activity Guide, which is posted on our web site. The Guide includes a list of bullet points of "Permissible Activities" and "Prohibited Activities." Under "Prohibited Activities," on Page 11 of that Guide, the 3rd and 4th bullet points are these:

- *You may not distribute printed matter, badges or buttons in support of any candidate for public or party office or political party or body.*
- *You may not wear on your person or display badges, emblems, signs, posters and the like which are in favor of or against a political party, body or candidate.*

Although no written advisory on lawn signs exists, we have given informal advice on this question previously. Since the second bullet point above states it is a violation for a City employee to "display . . . posters and the like" supporting a candidate, that clearly includes lawn signs. Accordingly, as City employees, you may not display a lawn sign on your property.

A few years ago, there were a rash of questions from City employees in the nature of the question you raised, "If I jointly own my house with my spouse (who is not a City employee), and my spouse wants to put a candidate lawn sign on our lawn, is that a violation of this Charter provision?" Since this seemed to be a recurring question, we started addressing it in training sessions. Our position on the law has been consistent: The Charter provision prohibits only action by City employees themselves, not action by any relatives who are not City employees. So no non-City employee can violate the Charter. Moreover, City employees are not responsible for actions of a spouse. If a non-

City employee spouse wishes to place a campaign lawn sign on a property jointly owned with a City employee, that would not be a violation by the City employee.

We advised in general that with all ethics matters, the facts are important. Obviously, a City employee may not avoid application of the rule by arranging for someone else, or giving them permission, to put a lawn sign on the City employee's property. However, one must be practical and realistic. Given the limited resources of the Ethics Board, not all technical violations of this rule merit intense scrutiny. A single lawn sign appearing on property owned or controlled by a City employee, particularly if placed there by someone else without permission, may be such a case. If any City employee has a unique situation that they are concerned about, they are welcome to ask us for advice, by providing full facts and stating the question to be answered, via the "Ask for Advice" feature on the Board's web site at [www.phila.gov/ethicsboard](http://www.phila.gov/ethicsboard).

e. Received a query from a City employee that advised that 7-Eleven convenience stores provide coffee in a choice of a blue "Obama" cup or a red "McCain" cup. The employee asked whether it would be an impermissible campaign activity if a City employee brought such a cup into their City workplace. The employee was advised as follows:

We have been agreeing in general with the principles laid out in the 1995 Law Department Political Activity Guide, which is posted on our web site, and has been distributed widely to City employees at least once a year since 1995. The Guide includes a list of bullet points of "Permissible Activities" and "Prohibited Activities." These bullet points are based on Civil Service Regulation 29, which includes the same restriction. Under "Prohibited Activities," on Page 11 of that Guide, the 3<sup>rd</sup> and 4<sup>th</sup> bullet points are these:

- You may not distribute printed matter, badges or buttons in support of any candidate for public or party office or political party or body.
- You may not wear on your person or display badges, emblems, signs, posters and the like which are in favor of or against a political party, body or candidate.

Although a paper coffee cup that endorses a candidate may technically constitute a "display of a sign, poster or the like," I would think that if we are talking about a coffee cup that is only "displayed" so long as the individual is drinking the coffee and then is discarded, this is not going to be an enforcement issue for the Board of Ethics. On the other hand, if significant numbers of City employees started buying such coffee cups and leaving them prominently displayed for hours or if one person did it repeatedly, as an apparent sign of political support, we might well be forced to take notice, particularly if we received a complaint. As noted in the footnote below, this message (as well as our trainings) is only general guidance. If you have a particular situation that you are concerned about, please write us with full facts, including the name, title, and responsibilities of any persons involved, and we can provide a written ruling on which you may rely.

f. In response to a bulkmailer “blast e-mail” that went out from the City to all employees on September 26, which provided a hot link to the General Counsel’s e-mail, we received a very brief query regarding the wearing of campaign T-shirts in a polling place, apparently prompted by an item on a radio talk show, regarding a person ejected from a polling place. Given that, even after a follow-up message, the employee still was unclear about the question he/she was asking, the employee was advised that questions related to electioneering within a polling place are matters of State Election Law, and not within the jurisdiction of the Board of Ethics.

g. A City employee asked whether it would be impermissible to participate in the “Women’s Coffee Hour Get-Out-The-Vote” Campaign. The employee advised that the campaign involves writing post cards to union women to get out and vote. The employee was advised as follows:

Section 10-107(4) of the Home Rule Charter prohibits partisan political activity by City employees. "Partisan" means "geared toward the success of a particular political party or candidate." In general, truly non-partisan "get out the vote" drives are permissible. In other words, an effort merely to get citizens to vote, without any reference to political party or candidate, should be okay. However, if the postcards that will be sent suggest in any way a particular party or candidate, or if the list of recipients is generated from a list of people who have previously indicated some political preference or affiliation, that would probably make the effort "partisan," and you should not participate.

h. Received a query asking whether a group of City staffers could accept an invitation to attend, either free or at discounted cost, a fund-raiser hosted by a local organization with which the staffers worked, “in recognition of their work.” The employee was advised as follows:

The general issue is whether free attendance, or even attendance at a discounted admission, at this event represents a prohibited gift from the [host organization] to the City employees whom they are inviting. There are a number of ethics provisions that relate to gifts to City employees that may apply.

The gifts provision of the State Ethics Act, 65 Pa.C.S.A. Sect. 1103(b) and (c) basically prohibits bribes. That is, there must be an understanding that the official receiving the gift would be influenced by the gift. This does not appear to be an issue from the facts you provide.

The State Act also prohibits honoraria, in Section 1103(d). I do not believe the facts you present constitute an honorarium to any City employee.

The Home Rule Charter, in Section 10-105 prohibits gratuities, "in the form of money or otherwise for any act or omission in the course of [the employee's] public work." In other words, a reward or tip in gratitude for something that employee did as part of his/her City job, for which their salary should have been the only compensation. This could be an issue in this case, since you specifically note that these employees did work with the [host organization] and the invitation is "in recognition of their work." There is little precedent interpreting Section 10-105, however, and we would probably have to have fuller facts, and issue a formal advisory opinion, to rule on that question definitively.

The Philadelphia Code, in Section 20-604, prohibits gifts "of substantial economic value" from certain sources to employees who are in a position to be influenced by the gift. Valuation in this matter is difficult. You do not say whether this event involves any food or entertainment. In any case, we have generally valued events at the cost of admission, even if the event is a fund-raiser and it is presumed that some of that cost is a donation to the host agency. Nevertheless, I believe that we would conclude that [the suggested donation] is not "substantial economic value." Therefore, there should be no issue under the Code.

Lastly, Mayor's Executive Order No. 002-04 restricts gifts of any amount to City employees from certain sources. I am certain that [the host organization] would be a "source" under the Executive Order. Whether any of the exceptions in the Executive Order might apply, or whether the gift could be accepted by the [office employing the invited staffers] as a "gift to the City," is a matter for the Mayor's Office, and is out of our jurisdiction. I suggest you contact the Chief Integrity Officer, Joan Markman, for a ruling on the Executive Order.

i. Received, via the "Ask for Advice" feature on our website, a question from a City employee (with regulatory authority) regarding obtaining an investment in a business in a neighboring county. The employee was advised as follows:

There are a few ethics laws that are generally involved when a City employee has an ownership interest in a business, in addition to his City job. Just to provide a quick summary:

1. Conflict of interest. You may not take official action in your City job that has a financial impact on your business. I presume that [the employee's City office] has no authority over [a business in a neighboring county], so there should be no issue here, unless there are facts that I am not aware of.

2. Representation. You may not represent your business in any transaction involving the City, such as seeking City business or representing the business in some City regulatory action. Again, I would think that the City would not often have any kind of transaction with [a business in a neighboring county], although if it did, this rule would apply.

3. Interest in a City contract. You may not have a financial interest in any City contract, so the City may not enter into a contract with [the entity in which the employee will invest]. I don't know if the City ever contracts with [such businesses], but one would think they would use [businesses] in the City, not [the neighboring county], if they did.

4. General "outside employment" rules. The Civil Service Regulations are not in our jurisdiction, but you should be aware that Regulation No. 33 governs outside employment. In particular, Regulations 33.025 and 33.026 provide that a department may develop more detailed policies, which may include requiring employees to obtain advance approval of outside employment, but these must be consistent with Regulation

33. You may wish to check to see whether your department has any policies on outside employment.

j. Received a query from a City employee asking whether he/she may run for elective office while a City employee. The employee was advised that Charter Section 10-107(5) prohibits City employees from becoming a candidate for elective office.

k. Received a query from a City employee who is also an officer for a local nonprofit organization, regarding certain contacts with City officials. The employee was provided essentially the same advice as in (i) above.

l. Received another query from a City employee who is also an officer for a local nonprofit organization, seeking clarification of the conflicts rules, as a result of a recent training the employee attended. The employee was provided essentially the same advice as in (i) above.

m. A query raised at a "train the trainers" session by two attendees was summarized as follows:

If I have a pension through a firm I used to work at, would it be a conflict of interest for me to take official action (like award a contract) to that firm? Or would there be a conflict if I had a 401(K) plan through the firm?

The employees were advised as follows:

1. Does the pension/investment make the firm a "business with which you are associated: (State Act) or a business of which you are a "member" (City Code), so that you may not take official action affecting the business itself? The answer is no.

2. Does the pension/investment give you a financial interest in the firm's fortunes, so that a City decision (in which you participate) that is good financially for the firm could be considered to benefit your personal financial interest? Again, no. Unless it is a very odd pension or 401(k). But I never heard of one where your benefit increased if the firm does well.

Remember the basic idea is that you can't use your City job to put money in your own pocket. If there is no connection between any City action you might take and an identifiable financial benefit to you, there's no conflict. The closest thing would be that under the State Act, a company can be a "business with which you are associated" if you hold 5% of the equity in the business. But I don't see that in these scenarios, unless it was a wacky 401K that continued to give you stock in the company after you left.

## **V. Disclosure and Disqualification for Board and Commission Members**

Mr. Glazer stated that staff has received numerous questions in the board and commission training regarding what a board or commission member should do when an unanticipated conflict of interest arises at a meeting. Mr. Meyer prepared a response to the questions, which is

in the form of an Advice of Counsel. He also stated that is no requirement for Board approval, but he would like to get a sense from the Board on this issue.

Ms. Nayak informed the Board that during the board and commission training sessions members informed her that they are finding out for the first time at a board meeting that an item to be discussed creates a conflict of interest. The members would like to know what action to take if this situation arises.

There was a short discussion among the Board and none of the Board members had any objections to the Advice of Counsel. The Advice of Counsel will be posted on the Board's website and it will be emailed to the members that have already attended training.

(Ms. Haddon called in at this time. Chair Glazer briefed Ms. Haddon on what has been discussed in the Board meeting)

## **VI. New Business**

There was no new business to discuss.

## **VII. Questions/Comments**

Zack Stalberg from the Committee of Seventy thanked Mr. Glazer for his prompt response to his letter regarding the reports in the media concerning the Goode/Bryant matter.

Mr. Stalberg stated that he understood that the Board cannot act because there are no City laws governing the behavior. He wanted to know whether the Board intended to study the issue of the relationships that City Council employees may have with their superiors. The Board informed Mr. Stalberg that the appropriate office to take disciplinary action would be City Council.

Chair Glazer stated that there is a perception that the Board of Ethics can act upon moral issues, but that the Board's jurisdiction is proscribed by the Charter and Code. Therefore there is much behavior in City government over which the Board has no authority.

Executive Director Creamer explained further that there are many things that officials can say and do that undermines public confidence, but that the Board could not address because there are no rules. He added that the Board is not prepared to answer whether the City should have a rule prohibiting relationships such as those reported in the news and that the Board must be careful not to be reactive by issuing a proclamation on conduct that is not covered by the conflict of interest rules that it administers.

Mr. Stalberg again asked if the Board would lead the discussion about this matter. Mr. Creamer responded by stating that the Board might consider the issue separately from the circumstances currently in the media. He reiterated that relationship issues are terribly complex and that there is a need to look at all existing models, including corporate, military, and university policies.

Mr. Stalberg asked whether the Board has jurisdiction to look at the financial questions related to the relationship between the Council member and his staff person. Chair Glazer answered that if the Board did have jurisdiction, the matter would be an investigative one which could not be discussed in public.

Mr. Stalberg said that he hoped that the Board sees a responsibility to suggest the right thing to do.

Bob Warner from the Daily News asked if the Board has an estimate amount or value of the legal work done by Dechert in the Local 98 matter. Mr. Creamer said he requested the information from Dechert, and his recollection was that they logged about 1,200 hours at blended rates which cost over \$100,000.

Mr. Warner asked if Local 98 was going to pay for the cost of the legal fees. Mr. Creamer responded that they were not included in the settlement agreement and that the Board served the public interest by finding the violations and addressing them. It was important for future candidates to know that the Board examines these issues.

Mr. Warner asked if the three candidates that received excess contributions have to repay the contributions. Mr. Creamer responded that he can not comment. The Board will address the issues as appropriate.

Marcia Gelbert from the Philadelphia Inquirer asked for the expenses the Board incurred due to the Local 98 matter. Mr. Creamer responded that the Board incurred costs for staff time, subpoenas and transcripts.

Ms. Gelbart asked the Board to shed some light on the turnaround that occurred in the last month. Mr. Creamer responded that it has been a trust building experience and things are not always what you assume. Local 98 provided full cooperation in the last month after they reached out to the Board through an intermediary. We took small steps from that initial contact to build trust.

Mr. Warner asked if the Board could have demanded a more significant fine. Mr. Creamer explained that there are statutory maximum penalty amounts and stated that the Board did discount fines on two violations because they were new laws and it was reasonable to reduce some of the fines. The Board did not have any reason to seek a higher fine.

Mr. Stalberg congratulated the Board on the settlement and then asked why the leader of the union was not asked to sign the settlement agreement as opposed to Bobby Henon. Mr. Creamer responded that Mr. Henon signed the Agreement because he is the current Treasurer.

Marcia Gelbart asked if Mr. Dougherty was the treasurer when the violations occurred. Mr. Creamer responded that retired treasurers would have no authority to sign an agreement. He added that Mr. Dougherty was aware of the discussions but did not participate in them.

Mr. Glazer noted that the important message in all this is that a well-financed PAC was up against the Board of Ethics with a small staff and the Board was successful.