

Philadelphia Board of Ethics
Meeting Minutes
November 19, 2008
Board of Ethics
Packard Building
1441 Sansom Street, 2nd Floor
1:00 pm

Present:

Board

Richard Glazer, Esq., Chair
Kenya Mann, Esq.

Staff

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

I. Call to Order

Mr. Glazer informed the public that the Board did not have a quorum, but they were going to continue with the meeting. Since there was not a quorum the Board will not be able to take any official action during this board meeting.

II. Approval of Minutes

Mr. Glazer stated that the minutes could not be approved at this meeting since the Board did not have a quorum. The minutes will be approved at the December meeting.

III. Board of Ethics

Mr. Glazer reported that Stella Tsai submitted her resignation from the Board of Ethics on October 16, 2008. He would like to extend the Board's gratitude toward Ms. Tsai for her exemplary services over the past two years of service. Ms. Tsai kept the Board and staff on their toes and she will be missed.

Mr. Glazer noted that the vacancy was due to be filled by November 17th, but was diverted due to the current budget crisis. He hopes there will be a nomination as soon as possible.

IV. Executive Director's Report

A. Litigation Update

1. Philadelphia Board of Ethics v. Local 98

Mr. Creamer stated that as reported at the last Board meeting, the Board entered into a Settlement Agreement with Local 98's Political Action Committee on October 15th. Since then, Local 98 COPE paid the \$10,000 civil penalty pursuant to the Agreement on October 28th. On that same day, the Board also discontinued our Petition to Compel Enforcement of the Administrative Subpoena served on Local 98 in July. The Settlement Agreement resolved all outstanding issues with Local 98 and has been posted on the Board's website.

2. Cozen & O'Connor

Mr. Creamer reported that he received a copy of Judge DiVito's order dismissing the Cozen & O'Connor complaint. An opinion was prepared in response to Cozen's appeal. Trial Court has an opportunity to write an opinion. The order was docketed on November 14th. Cozen has time to file an appeal. Greg Miller is working on the matter for the board, and he is handling the case pro-bono.

B. Ethics and Campaign Finance Task Force

Mr. Creamer informed the Board that staff provided assistance to the various subcommittees of the Mayor's Advisory Task Force on Ethics and Campaign Finance Reform. The Task Force was created by Executive Order 12-08 and is charged with providing a comprehensive review of the City's ethics and campaign financing laws. Staff provided an ethics training overview for the entire Task Force, and met with the various subcommittees established by the Task Force. Counsel Evan Meyer and Chair Richard Glazer have met with the Subcommittee on Conflicts of Interest and Ethics Laws, and Deputy Director Nedda Massar and I met separately with the Subcommittee on Campaign Finance.

The Board expects to have an opportunity to offer testimony on possible changes to the ethics and campaign finance laws when the Task Force conducts a public hearing that will most likely be held in January. The Executive Order established a February 1, 2009 deadline for the Task Force to submit a report to the Mayor.

Mr. Glazer said that having met with the Task Force he found out that they created an additional subcommittee on lobbying. He also said that there will be a public hearing held on Saturday, January 10, 2009 and would like Mr. Creamer, Mr. Meyer and some board members to attend.

C. Training

Mr. Creamer reported that training was again a major focus of our staff activity during the past month. Staff assisted the Philadelphia School District with planning for three ethics training sessions that were provided by the State Ethics Commission for Philadelphia School District administrators and principals. There were two ethics training sessions for District Central staff and one session for principals. Approximately 600 people attended the three sessions. State Ethics Commission Chief Counsel Robin Hittie and Assistant Counsel Brian Jacisin presented the excellent sessions.

Mr. Creamer said that since the last Board meeting, there have been eight training sessions: two for City Council, one for administration officials, and five for board and commission members. There are currently two ethics training sessions scheduled in December and may add others.

Mr. Creamer also said that ethics training involves the work of many staff members. Counsel Meyer and Associate Counsel Nayak not only present training sessions but also prepare specialized materials for the different types of training. Danielle Cheatam and Brandon West are now conducting board and commission training sessions as “trainers,” and we rely on Tina Formica and Hortencia Vasquez to register and track attendance for each session.

Later in today’s meeting, we’ll discuss more details concerning plans for ethics training. Plans are underway for campaign finance training sessions in December and January.

D. Budget

Mr. Creamer reported that staff received documents from Budget Director Stephen Agostini indicating that there has been a reduction in our FY09 appropriation and in the appropriations for Fiscal Years 2010 through 2013. We will discuss the budget issues later in this meeting.

V. FY2009 Budget Update

Mr. Glazer said that the Board had their \$1 million budget cut by 5% for the remaining FY09 and 10% for fiscal years 2010-2013. We are independent from the Administration, but accept the responsibility to share the burden in difficult times.

The Board did not have a chance to give input into the classes that were cut.

Mr. Glazer drafted a letter to the Mayor, but wanted to give the other Board members time to comment before the letter is transmitted to the Mayor.

VI. General Counsel’s Report

1. Advices of Counsel. Mr. Meyer reported that he issued the following Advices of Counsel issued since the last Board meeting:

a. Amended Advices of Counsel. We discovered that a mistake had been made in an Advice of Counsel issued in April 2008, which was then repeated, through an editing error, in three subsequent Advices on similar issues. Accordingly, we are in the process of issuing Amended Advices of Counsel in these matters. Here is the correction: Code Section 20-602(1) imposes certain restrictions on City officers or employees representing others. However, subsection (2) of this Section provides that subsection (1) applies in a less restrictive way to part-time officials, such as members of City boards/commissions. The Amended Advices state that Code Section 20-602(1), as modified by 20-602(2), restricts the requestor personally from representing his/her company in any matter involving the City while serving on the board/commission at issue, in two ways:

1. In matters in which the requestor acted on the board/commission at issue as a Board member, the requestor may not represent his/her company; and

2. So long as the requestor is serving on that board/commission, he/she may not represent his/her company in a matter that is before that board/commission.

The original language of #2 suggested that the member would be permitted personally to represent his/her employer before his/her board, if that member disclosed the conflict and arranged to be disqualified from acting on that matter as a member of the board. This was an incorrect statement of the law. The prohibition may not be avoided by disqualification. (It happens that this particular issue was not raised by the facts in any of the four Advices, but we want the published Advices to represent correct statements of the law.)

b. In contrast to the above matter, where a board/commission member seeks personally to represent a person (an employer or client) before his/her board, the question arises as to the process required when someone else representing such a person appears before the board or there is otherwise a conflict of interest for a board member. In those situations, disclosure and disqualification is generally permissible, although the Code requires it to occur “prior to any City action.” As discussed at the October board meeting, a number of board/commission members had asserted that such conflicts occasionally come to their attention too late to file the required letter “prior to any City action” and asked for advice. On October 21, 2008 I issued an Advice of Counsel advising such board/commission members as follows:

(1) to take whatever steps they can to ensure they are informed of who will be appearing before them in good time so the occurrence of such last-minute situations is minimized; and (2) if such a situation occurs, to request their body postpone official action until they can comply with the Code’s disclosure requirements; or (3) if postponement is not practicable, to announce their nonparticipation publicly at the meeting, leave the room during consideration of the matter, and bring themselves into compliance with the Code’s requirements as soon as possible. This includes writing and filing a letter that is in full compliance with the requirements of Code Section 20-608(1)(c) no later than 5 calendar days after the Board action.

2. Informal e-mail guidance. Mr. Meyer said that through Friday, November 14, 2008, there were fifteen of these since my October 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. Prior to the election, we received a request as to whether a City employee may “work the polls” on election day. Response follows:

There may be questions here under Section 10-107 of the Home Rule Charter, which forbids campaign activity by City employees, and which the Board of Ethics has jurisdiction to advise you. There may also be questions here under the State Election Law, which the Board of Ethics does not have jurisdiction to advise you. Which question applies and the answer depends to a degree on just what is meant by "work the polls." I assume this could mean any of several different things. I will discuss each:

1. Election officials include the judge of elections, a majority inspector, and a minority inspector. I believe these are elected by the voters. It is my understanding that under the State Election Law, City employees may not serve as "election officials," as that term is defined in the law. However, we do not have jurisdiction to interpret the Election Law, and I would refer you to the Law Department or the Penna. Department of State. However, such service would not violate the Charter provision.

2. I understand that clerks and machine inspectors may also work at the polls to assist the election officials. I have no view on whether the State Election Law permits City employees to serve in such positions. However, such service would not violate the Charter provision.

3. I understand that candidates and political parties may be represented at the polls by poll watchers and overseers. These are partisan political positions and would be prohibited to City employees by the Charter provision.

4. We have all seen people outside the polling place distributing sample ballots and other campaign materials on behalf of parties or candidates. These are partisan political activities and would be prohibited to City employees by the Charter provision.

b. Received a request from a person (apparently not a City employee) who had hired a private attorney in a case, and felt she was not represented fairly. Advised that as this did not involve the conduct under the ethics laws of any City official or employee, the question was outside our jurisdiction. Advised the requestor to contact the Pa. Disciplinary Board and provided link to that web site.

c. Received a message, through the “Ask for Advice” feature on our web site, complaining that political pictures were on multiple display in certain City work spaces. Responded as follows:

Thank you for your concern. Since any investigation of a potential violation is confidential by law, I cannot comment on any enforcement actions we may be pursuing. The fact that you observe what may appear to be violations does not necessarily mean

that no enforcement of the rule is occurring. Also, we cannot act until a potential violation is brought to our attention.

If you, or anyone else, wish to report an apparent violation of the ethics laws, there are a number of things you may do. If you go to our website at www.phila.gov/ethicsboard and click on "Report a Concern," you may report an allegation by providing the relevant facts, including names, places, and dates. Alternately, violations may be reported to your departmental integrity officer, the Inspector General (through their website at www.phila.gov/oig), or the Chief Integrity Officer, Joan Markman.

- d. Received, on very short notice, a request as to whether a City official may accept an invitation to attend a seminar as the guest of the sponsor. Advised that there was no issue under any of the ethics laws, but that questions under the Mayor's Executive Order on gifts should be referred to the Chief Integrity Officer, Joan Markman.
- e. Received a query as to whether a number of City employees may accept an invitation to attend an "Appreciation Breakfast." Advised, similar to above matter, that there appeared to be no issue under any of the ethics laws, but that questions under the Mayor's Executive Order on gifts should be referred to the Chief Integrity Officer, Joan Markman.
- f. Prior to the election, received a request as to allotting City employees time off to vote "as stipulated by federal law." Upon research it was determined that no such federal law exists. Several States do have State laws to such effect, but not Pennsylvania.
- g. Provided an HR manager with information on filing of financial disclosure forms. Where person had already filed for another City position in 2008, advised that it would be a good idea to file an amended form, so that form on file indicated both of person's City positions.
- h. Received a query regarding flowers and other small gifts given to receptionist and staffer. Advised, similar to above gift matters, that there appeared to be no issue under any of the ethics laws, but that questions under the Mayor's Executive Order on gifts should be referred to the Chief Integrity Officer, Joan Markman.
- i. Associate General Counsel Maya Nayak responded to several questions from members of purely advisory board/commission about how to fill out the City financial disclosure form.
- j. Received a query regarding free attendance at a seminar sponsored by a for-profit company, including door prizes and other complimentary items. Advised, similar to above gift matters, that there appeared to be no issue under any of the ethics laws, but that questions under the Mayor's Executive Order on gifts should be referred to the Chief Integrity Officer, Joan Markman.
- k. Received a inquiry from a City employee about how to contact the Administration with comments about the proposed budget cuts. Advised the employee that the inquiry raised no issues under the ethics laws, but suggested that any employee may write to his/her elected officials or express opinions about working conditions through a bargaining unit.

l. Received an inquiry from an employee of a quasi-public agency concerning political activity. Advised that Charter Section 10-107 does not apply directly to quasi-public agencies, and any application of restrictions would be by Administration policy. Suggested the requestor contact the Chief Integrity Officer, Joan Markman.

m. Received an inquiry from a City board/commission concerning seeking a larger space in which to hold a meeting where a crowd is anticipated. Advised that board/commission need not turn down offer of meeting space from for-profit entity that may be subject to action by that board/commission, since the gift of free space would be gift to the City, not a gift to any individual City official.

n. Received an inquiry from a City office concerning seeking “partnering” with various local entities to provide services to the public. Advised that any free service would be gift to the City, not a gift to any individual City official. Added that questions under the Mayor’s Executive Order on gifts should be referred to the Chief Integrity Officer, Joan Markman.

o. Advised a member of a certain board/commission that the board/commission was subject to the political activity restrictions of Section 10-107 of the Charter, and thus the member was prohibited from holding a fund-raiser for a political candidate.

VII. Discussion of Political Activity Restrictions

Ms. Massar stated that the Board has discussed the political activity restrictions of Section 10-107 of the City Charter at other meetings and has also indicated its desire to examine the reach of the restrictions imposed by the Charter on City officials and employees and on members of City boards and commissions. The Board issued two advisory opinions in 2007 concerning application of the political activity restrictions in Section 10-107 to members of City boards and commissions. Questions concerning permissible political activity are frequently raised during ethics training sessions, and the Board may recall that a recent Advice of Council recognized that the fundraising prohibition of Section 10-107(3) applies to activity by a City Council staff member. Further, a mandate of the Mayor's Task Force is to examine the restrictions in Section 10-107.

Staff therefore thought it would be helpful to the Board to review information concerning the political activity restrictions that have been enacted in other major cities. Staff reviewed information on restrictions in Chicago, Los Angeles, New York City, San Diego, San Francisco, and Seattle, believes it is accurate to say that Philadelphia’s restrictions on political activity by employees and officials are more stringent than those in other cities. The Board may wish to use this information as a basis for making possible legislative recommendations.

VIII. Ethics Training

Ms. Massar stated that many staff members are dedicating time to this task. Staff conducted 39 training sessions for 676 individuals such as elected officials, cabinet members, department heads and board and commission members.

She reported that there are two major training-related tasks in 2009. Once the Board determines which employees will not be required to have annual ethics training, staff will develop recommendations for appropriate “refresher” training intervals for those employees. An even more difficult task will be to develop new and different training materials for those City officials and employees who are subject to the annual training requirement and for those whose training is less frequent. Ms. Massar suggested web based training as a method to reach the 27,000 City employees.

Chair Glazer asked what percentage of City employees worked on computers. Mr. Creamer indicated that, as of three years ago, approximately 53% of the workforce had access to a computer.

IX. New Business

There was no new business to discuss.

X. Questions/Comments

Lauren Vidas from Councilman Green’s office thanked the Board for looking at the political activity restrictions. She then asked how much of the Board’s budget is spent on advertising requirements.

Chair Glazer responded that publication of the Plain English Explanation of the Campaign Finance Law every six months, as required by the Philadelphia Code, costs approximately \$20,000 per year. He stated that the Board is looking at other ways to accomplish this task. The \$20,000 represents five percent of our budget cut and two percent of our total budget amount.

Ms. Vidas said she will inform the Councilman and urge him to bring to Council’s attention.

Executive Director Creamer said that there are other means of communicating the Plain English Campaign Finance Law that are more effective.

Ms. Vidas asked that the Board raise this issue at the budget hearing.