

Philadelphia Board of Ethics
Meeting Minutes
December 11, 2006
Philadelphia Community College,
Center for Business & Industry,
18th & Callowhill Streets, Philadelphia PA
12:00 pm

Present:

Board

Pauline Abernathy
Richard Glazer, Esq., Chair
Richard Negrin, Esq., Vice Chair
Stella M. Tsai, Esq.

Staff

J. Shane Creamer, Jr., Esq.

Guests

Evan Meyer, Esq.

Agenda:

I. Approval of Minutes

The Board approved the meeting minutes for the public meeting on the December 11, 2006.

II. Proposed Advisory Opinion 2006-002

The Chair asked Mr. Creamer to present proposed “Advisory Opinion 2006-002: Response to Candidate Inquiry Regarding ‘Excess Pre-Candidacy Contributions;’ the Single Political Committee and Account Rule; and Training for Candidates and Treasurers” to the Board.

Mr. Creamer reminded the Board that former City Councilman and current candidate for Mayor Michael Nutter delivered a two-page letter to the Board with seven questions regarding the City’s campaign finance law. There were

three categories of questions: (1) excess pre-candidacy contributions; (2) the single political committee and account rule; and (3) training for candidates and treasurers. Mr. Creamer said that he labeled the response an advisory opinion even though none of the questions related specifically to Mr. Nutter himself. Instead, all of the questions were general questions of interpretation. Nevertheless, Mr. Creamer explained that he recommended labeling the response an advisory opinion because the Board's response to all of the questions would provide guidance to all candidates for City elective offices.

The Chair asked whether "advisory opinion" is defined anywhere. Mr. Creamer said that he did not think so, but would defer to the Law Department. Mr. Meyer indicated that it was not defined.

Mr. Creamer then summarized the proposed responses to the questions.

The first three questions raise a range of issues about how "excess pre-candidacy contributions" should be treated. Mr. Creamer said that the proposed responses explain that the City's campaign finance law does not indicate how candidates are supposed to comply with the spending restriction on excess pre-candidacy contributions, but that burden to comply with the restriction.

Mr. Creamer said that the responses then indicate that the Board may issue regulations in the future that will specify how excess pre-candidacy contributions are to be treated, but until it does so, the Board recommends that candidates with excess pre-candidacy contributions place an amount equal to the amount of the contribution limit in excess of the limits into an escrow account.

Mr. Glazer asked what he characterized as a philosophical question of whether the Board should require a summary or more of the escrow account.

Mr. Negrin asked whether the escrow account would potentially violate the single account rule under the campaign finance law.

The fourth question asked how the Board will ensure that candidates will comply with the single committee and account rule. Mr. Creamer said that the response explains that the burden to comply with the rule is on the candidates. He also reported that it then suggests that the Board may issue regulations on this in the future, but that in the meantime, the Board would

issue written requests to candidates to identify their single committee and account. Ms. Tsai noted that such a letter would help the Board to monitor the campaigns to make sure that they are complying with the single committee and account rule. Mr. Negrin added that requiring campaigns to certify the information by regulation would be a good idea in the future.

Mr. Creamer said that the fifth question raised the issue of the potential to avoid the spending limits on excess pre-candidacy contributions by transferring the funds into different accounts. He said that the response notes that efforts to evade the spending restrictions that result in the rule being violated risk an enforcement action by the Board. He said that the answer also explains that the Board will routinely review and analyze the campaign finance reports to make certain that candidates are complying with the law.

Mr. Creamer said that the sixth and seventh questions ask whether the Board will offer training to candidates and their treasurers, and if so, whether it will be mandatory. He said that the response indicated that training will be offered, but that it could only be made mandatory through regulations, which would take time to become effective.

Mr. Creamer then said that he had received significant comment from the Law Department on the proposed Advisory Opinion less than two hours before the meeting, and that there was not enough time to review them in time for the meeting. The Chair then proposed that the Board hold another meeting in a week to approve the Advisory Opinion.

III. Campaign Finance Task Force Update

Ms. Tsai provided the Board with an update on the Campaign Finance Task Force. She said that Records Commissioner Decker, Lewis Rosman, Mr. Creamer, Mr. Glazer and she met on December 7, 2006 to address several issues relating to campaign finance, including: the “plain English” explanation of the campaign finance law that the Board must draft and publish by January 15, 2007; the Advisory Opinion responding to Mr. Nutter’s questions; and the annual financial reports that must be filed with the City Commissioners by January 31, 2007.

On the latter, Ms. Tsai said that Commissioner Decker said that her Department should be ready to receive the reports electronically before the deadline. The next filing cycle after the annual reports is the sixth Tuesday

before the May 15, 2007 primary. She explained that the Records Department now accepts the reports in any format, but that electronic is the best.

Ms. Tsai also related that Commissioner Decker had said that many reports contain incomplete information, which will present a challenge for enforcing the limits, to the extent that the Board is unable to determine whether the limits are being complied with due to the incomplete data. Ms. Abernathy suggested that the Board could check to see how other cities handle incomplete information on reports and added that the Board could be informed by their approach.

Commissioner Decker also suggested that the Board consider an exemption from the electronic filing requirement that the Board was considering for small campaigns that raise very little money, Ms. Tsai said.

Ms. Tsai also reported that the Task Force discussed ways in which the Board could reach out to the City Commissioners.

Finally, Ms. Tsai said that the Task Force would meet again on December 13, 2006.

IV. Proposed Regulations: Electronic Filing of Campaign Finance Reports

The Chair then asked Mr. Creamer to present proposed regulations requiring the electronic filing of campaign finance reports with the Ethics Board.

Mr. Creamer then presented the proposed regulations to the Board, which were prepared by Mr. Rosman. Ms. Tsai noted that the proposed regulations did not include an exemption for small campaigns. The Chair then raised a question of the wording in the first regulation. He also suggested that the Board could be practical, and encourage campaigns at the training the Board will offer to submit their annual reports electronically, to the extent that the regulations are not in effect by then.

It was then agreed that the Board would defer approval of the regulations until the next meeting, to clarify the language in the first regulation and to give the Board the opportunity to determine whether it would waive the requirement for smaller campaigns.

V. Outreach Plan Update

Ms. Abernathy then provided the Board with an update on the Outreach Plan. She mentioned that she met with Mr. Glazer and Mr. Creamer on December 8, 2006 to discuss a preliminary outreach strategy.

Ms. Abernathy began her report to the Board with an explanation of why the Board would need an outreach plan. She added that there were many reasons to support the outreach initiative, including the fact that the Board is a citizen's board, and therefore has an obligation to hear from the public. In addition, she said that education is a fundamental responsibility of the Board and that to make a difference, the Board needs to change both the perception and the reality of government integrity. She added that it was not sufficient to simply change the rules.

Ms. Abernathy then explained the goals of the Board's Outreach Plan, which include: (1) getting public input; (2) educating stakeholders on our responsibilities and plans; and (3) modeling transparency, accountability and accessibility. She then suggested that the Board could divide the responsibility for reaching out to different constituencies, depending on who would be best suited for particular groups.

Ms. Abernathy then presented a suggested timeline for the Board's Outreach Plan. Over the months of December and January, she said that the Board could: (1) reach out to those constituencies that the Board needed to contact as soon as possible; adopt a process for permitting public input at the Board's meetings; and add content to the web site, including an auto-reply for comments and concerns, redirecting non-ethics complaints and building a mailing list.

Over the months of February and March, Ms. Abernathy said that the Board could focus on "briefing outreach," where the Board could brief different groups on particular issues, such as the doubling provision (Advisory Opinion 2006-001). She emphasized that the Board cannot assume that people have knowledge and understanding about the various rules or about the Board. She also suggested that the Board could send an e-newsletter during this time period.

The Chair thanked Ms. Abernathy for her thoughtful presentation and suggested sending a list of constituent groups to Board members so that

members could sign-up for outreach to the various groups. It was suggested that the Chair and Mr. Creamer could prepare talking points for the Board. Ms. Abernathy asked Mr. Creamer to send a list of groups to the Board members.

VI. New Business

(1) Education & Training

The Chair suggested that the Board form an Education & Training Committee. He said that he would serve on the Committee and suggested that Mr. Creamer and one other member serve.

Mr. Creamer said that he thought such a Committee was a good idea, since the Board must provide mandatory training to elected officials, department heads, board and commission members and their staff by the anniversary date of the effective date of the law, which is June 5, 2007. Mr. Creamer also said that the current Citywide Ethics Training Program needed to be modified to reflect recent changes, including the establishment of the new Board.

(2) City Financial Disclosure Forms

The Chair reminded Board members that they were required to file the City's Financial Disclosure Forms within 30 days of their confirmation. Mr. Meyer confirmed that the forms should be filed with the Records Department, located in Room 156 of City Hall.

(3) Board Meeting Schedule for 2007

The Chair noted that the Sunshine Law requires the Board to publish a meeting schedule for the year. He said that he would check with Rev. Waller to see what days he would be available, and would circulate an email proposing a set day of each month to hold meetings.

VII. Public Comment

(1) Tim Dowling

Tim Dowling, an Election Finance & Document Specialist in the Office of the City Commissioners, attended the meeting and requested an opportunity to address the Board. The Chair then recognized Mr. Dowling and gave him the floor.

Mr. Dowling said that Cycle 1 (sixth Tuesday pre-primary), is a State filing only. He also mentioned that the Commissioners will offer training on the State election law in January.

The Chair told Mr. Dowling that the Board was required to work with the Commissioners. Ms. Tsai invited Mr. Dowling to attend the Campaign Finance Task Force at its meeting on December 13, 2006. Mr. Dowling said that he was willing to attend, but that the request should go to the Commissioners.

(2) Zack Stalberg

Zack Stalberg, President & CEO of the Committee of Seventy, also attended the meeting and asked to address the Board. The Chair recognized Mr. Stalberg and gave him the floor.

Mr. Stalberg said that the Board had a great deal to do in a short period of time. He then said that, although the law governs the pace of regulations that the Board can adopt, the Board could use its moral authority to encourage compliance with the law. He suggested that the Board could put a “stake in the ground” to show how candidates should conduct their campaigns.

He then raised a general concern with excess pre-candidacy contributions and the potential for mischief. He did not have a particular example to offer, but added that the Board should consider way to short circuit the regulatory process in any way that it could to make certain that committees did not transfer funds in ways that would potentially violate the restrictions on spending. Mr. Negrin said that the Board would look very carefully at the excess pre-candidacy contribution issue. Mr. Stalberg concluded his remarks by noting that the Board was “lawyer-heavy.” Mr. Creamer responded by saying that the Board was already using its moral authority by issuing

recommendations to candidates in the form of the advisory opinions and that it would continue to issue recommendations as it considers regulations.