**Philadelphia Board of Ethics**
**Meeting Minutes**
December 17, 2008
Board of Ethics
Packard Building
1441 Sansom Street, 2nd Floor
1:00 pm

**Present**:

Board
Richard Glazer, Esq., Chair
Rich Negrin, Esq., Vice Chair
Phoebe Haddon, Esq.
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 recognized that a quorum was present and called the meeting to order. He stated that Ms. Haddon will arrive shortly.

## II. Approval of Minutes

The Board approved the minutes for the public meetings that were held on October 15, 2008 and November 19, 2008.

## III. Executive Director's Report

### A. Ethics and Campaign Finance Task Force

Mr. Creamer reported that staff continues to provide information and assistance to the various subcommittees of the Mayor's Advisory Task Force on Ethics and Campaign Finance Reform. We expect that the Board will offer testimony on possible changes to the ethics and campaign finance laws when the Task Force conducts a public hearing that will be held on January 10,

2009. The Executive Order established a February 1, 2009 deadline for the Task Force to submit a report to the Mayor.

**B. Training**

Mr. Creamer reported that staff continues to provide ethics training sessions. Since the last Board meeting, there have been three such training sessions for board and commission members and two for City Council and its staff. One session is scheduled in January for remaining new administration staff members.

Mr. Creamer informed the Board that letters announcing two campaign finance training sessions in December and January were mailed to individuals whose names were mentioned in news reports as possible candidates for the two offices on the 2009 ballot, District Attorney and Controller. Each training session will include a presentation by Records Commissioner Joan Decker, with information about the electronic filing system for campaign finance reports, and by Board staff about the specific requirements of the City's campaign finance law. The topics to be discussed include the single committee and single account rule, excess pre-candidacy contributions, and in-kind contributions.

**C. Plain English Explanation of the Campaign Finance Law**

**(Ms. Haddon arrived.)**

Executive Director Shane Creamer explained that, as we mentioned last month, we are currently examining ways to reduce our spending, including the cost of publishing the "plain English" campaign finance law twice a year that is required by Code Section 20-1007. The cost for just the June 2008 insertion in the three required newspapers was over $11,000. We have prepared a significantly shorter text of the "plain English" statement and believe that it will cost about $4,000 for a single insertion.

Chair Glazer asked whether or not anything in the law required specific content in the "plain English" text? Mr. Creamer said that there were no requirements and that the shorter text included all the points of the campaign finance law.

Mr. Glazer asked staff to determine whether circulation of the Metro newspaper made it one of the three newspapers with the greatest circulation in the City and therefore one of the newspapers in which to place the "plain English" campaign finance statement.

The Board unanimously approved use of the shorter version of the "plain English" explanation of the campaign finance law to be placed in the newspapers.

**D. Budget**

Mr. Creamer reported that the Board's budget has been cut by 5% to $950,000 for the remainder of this fiscal year, through June 30th, and by 10% to $900,000 for FY10.

Mr. Creamer explained that the Board submitted a request for an internal transfer for FY09 to Budget Director Stephen Agostini asking that $93,250 be moved from Class 100 (Personnel) to cover expected operating costs, including training and enforcement costs, to Classes 200, 300, and 400.

### E. COGEL Conference

Mr. Creamer said that Evan, Richard, Nedda, and he attended the annual conference of the Council on Governmental Ethics Laws, COGEL, in Chicago. Representatives of city and state agencies that administer ethics, campaign finance, lobbying, and freedom of information laws attend the conference. The conference proved to be a valuable source of information on many topics. For example, we spoke to staff members from several cities and states who have implemented web-based training programs. They described the costs and benefits of the software they are using and alerted us to problems they encountered. We will contact these sister agencies as a valuable resource as we look into using similar materials for future ethics training programs.

Mr. Creamer also said that they attended an Ethics Update session that highlighted topics, such as gift policies, that are being discussed in other jurisdictions. The Campaign Finance Update explored recent litigation in federal and state courts concerning electioneering communications by political groups, including 527 committees. Electioneering communications are advertisements by non-candidate committees, often corporations and unions, that are run close to the date of an election, but do not expressly advocate for a particular candidate.

Finally, Mr. Creamer said that they also attended sessions on training methods being used by other agencies and ways to communicate our message to the public. Mr. Creamer was a panelist in a session called "Getting Local Agencies Off the Ground," and he described the challenges and events that occurred in the Board's first year of existence. There was also a very helpful conference session on preparing an enforcement case where there was a discussion of the various issues to be weighed in imposing penalties. Nedda served on two panels and arranged two others on the program.

## IV. General Counsel's Report

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

1. Advices of Counsel. The following Advices of Counsel were issued since the last Board meeting:

a. Advices of Counsel Amended to Correct Error. We completed amending the five, referred to in last month's report (one additional incorrect Advice was discovered) that contained a word processing error. We are in the process of posting these Amended Nonpublic Advices on our web site.

b. Amended Nonpublic Advice of Counsel based on changed facts. I was contacted by Counsel on behalf of the subject of a post-employment Advice issued to a City employee in November 2007, in which the requestor had been advised that the State Ethics Act "one year rule" applied and prohibited representing a proposed new employer in any transaction involving the City. The Advice further suggested that, given the interaction of the new employer with the City, and the proposed new title of the employee, it appeared that it would not be possible to accept the position without violating the one year rule. Based on counsel's representations that the new employer had made arrangements to screen the employee from any interactions with the City, the Advice was amended to state the new facts, and to eliminate the suggestion that the rule could not be complied with. This Amended Nonpublic Advice should be posted on our web site soon.

c. Nonpublic Advice: Member of City Board/Commission—Proposal to that Body. A member of a City board/commission who was also an unpaid officer of a nonprofit advised that the board/commission was considering funding a program in which the member's nonprofit would provide services, in connection with another nonprofit. Advised that there was no conflict of interest. However, Section 20-602 of The Philadelphia Code prohibits the requestor from representing his/her private organization, or any of its clients, in any matter involving the City in which the requestor acted previously acted while on the City board/commission. Also, the same provision prohibits him/her from representing the nonprofit, or any of its clients, while serving on the City board/commission in any matter that comes before that body. Another officer or employee of the nonprofit may represent the organization before the board/commission. This Nonpublic Advice is posted on our web site.

d. Nonpublic Advice: Exploratory Committee for Potential Candidacy for Elective Office. A City employee on the payroll of City Council requested nonpublic advice on a number of questions related to the possibility of seeking elective office, and the possibility of others opening an exploratory committee, which would include a candidate's political action committee (PAC). Advised as follows: (1) We can address only laws in our jurisdiction, and thus State Election Code is not addressed; (2) under Charter and City Code, person becomes a "candidate" upon the earlier of public announcement of candidacy or filing of nomination papers; (3) under case law, mere inquiry as to whether others would consider lending financial support to a candidacy or statement indicating only willingness and availability to run do not constitute declaration of candidacy; (4) formation or activities of exploratory committee, including fundraising using the requestor's name, would not constitute a declaration of candidacy, so long as such activities and any communications make it clear that the subject individual is not yet a candidate; (5) Code Ch. 20-1000 would not apply to such an exploratory committee but application of the Chapter to any funds in a PAC after a declaration of candidacy is not addressed; (6) State Ethics Act definition of "candidate" is different and may require financial statement filing--requestor was referred to State Ethics Commission; (7) Charter subsection 10-107(3) applies to the requestor and prohibits being in any manner concerned in soliciting or receiving donations "for a political purpose" and in the absence of clear precedent, requestor was advised to assume participation in fund-raising for an exploratory committee might be considered to be "for a political purpose"; (8) formation and existence of exploratory committee would not require requestor to resign his/her City position under Charter subsection 10-107(5), so long as he/she has not "become a candidate" as discussed elsewhere in this Advice; and (9)

Charter subsection 10-107(4) did not apply to requestor. This Nonpublic Advice is posted on our web site.

Mr. Meyer stated that he issued the following information email guidance since the last Board meeting.

2. Informal e-mail guidance. Through Friday, December 12, 2008, there were six of these since my November 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. A local attorney who is also a member of a City board/commission requested advice about representing, pro bono, a client in a matter involving the City. Advised that as a City board/commission member, the requestor was an officer of the City, subject to the ethics laws. There is no issue under the "conflict of interest" provisions of either the City Code (Code §20-607) or the State Ethics Act (65 Pa.C.S.A. §1103(a)), since pro bono representation would give the requestor no financial interest in the matter. The "representation" provision of the City Code (Code §20-602) restricts the requestor only in matters before his/her own board/commission, which did not appear likely in this case. The requestor may wish to consider the Rules of Professional Conduct, but these are outside our jurisdiction.

b. Received a request from a staff member for a local member organization, who also serves on a City board/commission, concerning writing a letter on behalf of the organization's members to a different, but related City board/commission. There is no issue under the "conflict of interest" provisions of either the City Code (Code §20-607) or the State Ethics Act (65 Pa.C.S.A. §1103(a)), since those provisions prohibit taking official action in which the official or his/her business has a financial interest. Since the requestor would be seeking action from a different board/commission, there was no suggestion that the requestor would be taking official action (as a member of his/her own board/commission) in the matter. Similarly, the "representation" provision of the City Code (Code §20-602) restricts the requestor only in matters before his/her own board/commission. I did caution the requestor that, due to some possible interaction between the two boards/commissions, he/she may wish to exercise caution, lest a matter on which a letter is written become part of the record in a matter before his/her own board/commission.

c. Received a request as to whether City employees may accept an invitation to attend a "customer appreciation event" in the form of free training by a City vendor. 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.

d. We received a question, which was really more of a complaint, asking that an attorney address certain "tactics" being used by departmental solicitors for the City's Combined Campaign. Advised the requestor that there were no issues under the ethics laws; that the individual was free not to contribute to his/her favorite charities through the Combined Campaign; and that any complaints about solicitation that approaches the level of extortion should be reported to the Inspector General.

e. Received a query from a City employee who participates in fundraising for a program that indirectly benefits a certain nonprofit with which the employee is working as part of his/her official duties. Advised that since the employee has no private financial interest in the nonprofit and is not an officer or employee of it, there is no conflict of interest in any connection with the fundraising.

f. An employee of City Council asked about working for pay as a consultant to a political campaign (not City Council). Advised that Charter subsection 10-107(4) did not apply to this employee, so campaigning, *per se*, was not prohibited. Subsection 10-107(3) does apply, however, so employee may have no involvement in soliciting or receiving campaign donations. As "outside employment," the campaign work must not present a conflict of interest, so employee may not do Council work that affected the campaign employer. Also, the employee may not represent the campaign in any transaction with any City office (such as issues around filings with the Board of Elections).

## V. 2009 Board Meeting Schedule

Mr. Creamer stated that the Board is required to publish the board meeting schedule for 2009.

The Board approved a motion to publish the following schedule of meetings, which will be held in the Board's office at 1 pm:

January 21, 2009
February 18, 2009
March 25, 2009
April 15, 2009
May 20, 2009
June, 17, 2009
July 15, 2009
August 19, 2009
September 16, 2009
October 21, 2009
November 18, 2009
December 16, 2009

## VI. Right to Know

Ms. Nayak reported that the new state Right to Know Law, governing which City records must be made public and how, takes effect January 1, 2009. The new law is significantly different from the old law and adopts a broader concept for what constitutes a "public record." Notably, the old law placed the burden on a requestor to establish why a government record was a public record, but now government agencies will have the burden of establishing why a record should not be released.

Ms. Nayak informed the Board that Deputy City Solicitor Chris DiFusco provided staff with training on the new law. Mr. DiFusco advised that the Law Department is drafting a policy on

the new law for the City and each City agency should decide how much Law Department involvement it wants in handling Right to Know requests.

She also stated that the new Right to Know Law imposes some immediate obligations on the Board. We must appoint an open records officer who will be responsible for receiving, tracking and processing records requests as well as issuing interim and final responses. The open records officer should be a senior level employee who has a working knowledge of the records we possess. In addition, we must post in the Board's offices and on the Board's website:

- Contact information for the open-records officer
- Contact information for the state office of open records or other applicable appeals officer if the office of open records designates one
- A form which may be used to file a request
- Any regulations, policies and procedures we have relating to the new law (We could link to the City policy that the Law Department is creating.)

Mr. Creamer recommended Ms. Massar, who accepted the responsibility.

The Board unanimously approved a motion to appoint Ms. Massar as the open-records officer.

## VII. New Business

There was no new business to discuss.

## VIII. Questions/Comments

The public did not have any questions or comments.