

Philadelphia Board of Ethics
Meeting Minutes
June 18, 2008
Board of Ethics
Packard Building
1441 Sansom Street, 2nd Floor
1:00 pm

Present:

Board

Richard Glazer, Esq., Chair
Richard Negrin, Esq., Vice Chair
Phoebe Haddon, Esq. (via telephone)
Kenya Mann, Esq.

Staff

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

I. Call to Order

Mr. Glazer recognized that a quorum was present and called the meeting to order.

II. Approval of Minutes

The Board approved the meeting minutes for the public meeting that was held on May 21, 2008.

III. Executive Director's Report

A. Ethics Board Jurisdiction

Mr. Creamer said that in April, we requested a non-confidential opinion from the City Solicitor on the authority of the Ethics Board and the Law Department to

issue ethics opinions. Solicitor Shelley Smith issued an Opinion in response to our request on May 30, 2008.

The Solicitor has concluded that: (1) the Board has exclusive jurisdiction to issue ethics opinions under the Charter; (2) the Law Department is divested of authority to issue ethics opinions except under state law; and (3) the Board is not bound by past ethics opinions issued by the Law Department, although it must defer to the Law Department for non-ethics matters, such as our jurisdiction under the Charter.

In a separate non-confidential Opinion issued at our request, the Solicitor concluded that the Ethics Board has the authority to investigate and enforce potential violations of the Ethics Code or Campaign Finance Law that occurred prior to the establishment of the Ethics Board. The Board was installed on November 27, 2006.

B. Litigation Update

1. Local 98 IBEW COPE's Federal Lawsuit Against the Board

Mr. Creamer reported that Chief Judge Harvey Bartle heard oral argument on the Defendants' Motions to Dismiss Local 98 COPE's Amended Complaint on May 30, 2008. At this point, the Court may rule on the Motions to Dismiss at any time.

2. Cozen O'Connor Suit Against the Board in the Court of Common Pleas

Mr. Creamer also reported that the Board's attorneys filed a reply to Cozen's Response to the Board's Preliminary Objections to the Complaint on June 3, 2008.

The case has been assigned to Judge Gary DiVito. It is unclear whether the judge will schedule oral argument -- he may. According to standard procedure in the Court of Common Pleas, the case has been scheduled for a settlement conference on January 9, 2009 and a February 2009 trial, assuming that the case is not dismissed before then.

1. Philadelphia Board of Ethics v. The Friends of Curtis Jones, Jr.

Mr. Creamer stated that on May 8, 2008, the Board filed a Petition in the Court of Common Pleas against the Friends of Curtis Jones, Karen Lewis (as treasurer) and the Honorable Curtis Jones Jr., for failing to electronically file a required 2007

cycle 3 report with the Ethics Board, via the Records Department. The Petition seeks both an order compelling the Defendants to electronically file their 2007 cycle 3 report and penalties for their failure to file. The original deadline was June 14, 2007. Michael Cooke and I filed the Petition on behalf of the Board.

The Committee electronically filed its 2007 Cycle 3 report on May 9, 2008 and subsequently filed an Answer to the Board's Petition on May 28, 2008.

Mr. Creamer said that the Board will be seeking a penalty in this case, which has also been assigned to Judge DiVito.

C. Compliance Update

1. Nonfiler: New Direction Philly.org

Mr. Creamer informed the Board that on May 2, 2008, we sent a letter to the treasurer of New Direction Philly.org, a Philadelphia based PAC, advising him that his PAC failed to file required Cycle 3 and 5 reports in 2007 with the Ethics Board. Our letter set an extended deadline of May 21st. Both reports were electronically filed by that deadline. Because the extended deadline was not exceeded, we will not seek to impose a penalty.

Mr. Creamer said that staff continues to identify non-filers for 2007 and is treating them all the same. Non-filers are sent a letter giving them an extended deadline and as long as they file by the extended deadline we are not seeking a penalty.

D. Personnel

1. Mr. Creamer reported offers were made to and accepted by Danielle Cheatam and Brandon West who will start on July 1st as Research and Information Specialists. We are eager for them to come on board. We will provide training for them on the many areas of the Board's jurisdiction, and we have several projects already waiting for them.

2. Mr. Creamer said we have received and reviewed more than 200 resumes for the Clerical Assistant position and have already conducted interviews with 10 candidates. We expect to make an offer by the end of June.

3. Mr. Creamer said we are looking forward to having a summer high school intern starting July 1st. Ms. Massar attended an orientation session for

mentors who will work with students in the City's summer internship program. Our intern will assist primarily with clerical tasks and work for 16 hours per week from July 1st through August 8th. The City pays the intern's wages.

E. Budget

Mr. Creamer stated the Board's FY09 budget will continue at \$1 million, and, at this point in time, the additional \$100,000 we requested has not been included in our budget. We are pursuing this request with the administration. We have been advised that we will be able to renew the request for the additional \$100,000 during the "target budget" process that occurs in the new fiscal year. We will closely monitor this process because we believe that the additional funds are necessary to support litigation costs during the next fiscal year.

IV. General Counsel's Report

Mr. Glazer noted that Mr. Meyer was not present and that his report had been submitted to the Board. No Board members had questions or comments about the report, which is fully reflected below.

1. Informal e-mail guidance. Through Friday, June 13, there were six of these since last month's meeting:

a. Advised a City official on the propriety of writing a letter of support to an agency seeking funds from another City department. Advised that there was no issue under the ethics laws. We (or the Law Department) have sometimes advised officials to avoid an appearance of an "abuse of power" in a situation where an official uses his/her official position to solicit charitable contributions on behalf of a nonprofit with which they are associated. But even viewing this situation in the strictest light, there is no suggestion that the requesting official can exert any power over the funding entity, to whom the official would make this recommendation. Nor is it likely that a "recommendation" could be seen as an "arm-twisting" to fund the agency seeking funds. Secondly, we have occasionally advised officials that making an endorsement of a product or service can be seen as an "unfair contracting practice" in that -- in a future circumstance where the endorsed entity happens to be competing against others in applying for a City contract--the prior endorsement might be seen as the City having already made up its mind or otherwise unfairly giving the endorsed entity a "leg up" in the contracting opportunity. I advised that I didn't see that scenario applying to the situation at hand, where the question is one of funding, not awarding a contract.

b. Advised a City official that City employees would violate no law by accepting free attendance at a conference to accept an award on behalf of their office, where conference fee is free as part of the vendor's contract with the City, and no other benefits were being provided. Noted that, in general, to apply "gift to the City" exceptions under the gift executive order, questions should be addressed to Joan Markman, Chief Integrity Officer.

c. Advised a departmental HR officer regarding an employee who requested leave to do unpaid student teaching. Advised that no ethics law would prohibit such an assignment, assuming no conflict of interest. Charter Section 8-301 prohibits dual government employment, but this would likely not be implicated, since the teaching assignment would be unpaid. Advised, however, that interpretation of Section 8-301 is for the Law Department.

d. Received the following question from a City office, regarding an RFQ process that apparently included involvement by a recently-separated former City employee:

Is there a documented policy within the City of Philadelphia regarding when a former City employee (exempt or non-exempt) can bid on a City contract or return to work for the City as an independent contractor or as a vendor?

Provided a copy of the Law Department newsletter on post-employment restrictions, and advised as follows:

Section 1103(g) of the State Ethics Act prohibits a former City employee who qualifies as a "public employee" under the Act from representing anyone, including himself, before the City for one-year after the date he leaves the City's payroll. The provision states: "No former public official or public employee shall represent a person, with promised or actual compensation, on any matter before the governmental body with which he has been associated for one year after he leaves that body." The Act defines "represent" as "act[ing] on behalf of any other person in any activity which includes, but is not limited to, the following: personal appearances, negotiations, lobbying and submitting bid or contract proposals which are signed by or contain the name of a former public official or public employee."

Therefore, if the former City employee qualifies as a “public employee” under the State Ethics Act, he was not allowed within one year of leaving City employment to make a personal appearance before the City or reveal to City officials reviewing contract bids that he is associated with a firm that is competing for a City contract. Assuming there was a violation of the State Ethics Act, it is our understanding that it is the City’s policy not to award contracts to those who are in violation of the Act. You may wish to confirm this with Joan Markman, the City’s Chief Integrity Officer.

In addition, two separate provisions of the City’s Code limit a former employee’s post-employment business activities. Section 20-607(c) of the City Code prohibits a former City employee for two years from acquiring a financial interest in an official action taken by him while a City employee. Section 20-603 is a permanent restriction, prohibiting a former City employee from ever assisting someone in a City transaction in which he participated at any time during his employment. These City Code restrictions would only apply if the former City employee had taken official action somehow related to the instant contract when he was a City employee.

e. Received a request from a City office regarding a potential conflict of interest by a City officer. Immediate informal guidance was requested, due to pending official action. Advised that, normally, in order to provide an advisory opinion on specific facts and provide explicit advice upon which the requestor may rely, we would require at the very least a week to ten days to research, discuss, draft, and approve a final advisory (either an Advice of Counsel or a Formal Opinion, under our pending Regulation No. 4, which is posted on our website at www.phila.gov/ethicsboard). As informal guidance, provided the disclosure and disqualification process required in Code §20-608, as outlined in several prior advisories.

f. Received the following request via the “Ask for Advice” button on our web site: “Am I permitted to be an unpaid board member of a not for profit corporation?”

Advised as follows: “Without having more facts on the particular nonprofit corporation or on how your duties with the City may impact on that organization, I cannot advise you conclusively (and we would not do so in an e-mail in any case). However, I attach a 2002 Law Department newsletter that outlines the principles that may apply. [attached Vol. 2, No. 2 of The Philly Solicitor] I suggest you read the attached newsletter, determine whether you need a formal advisory,

and if so, use the newsletter and Regulation No. 4 to guide you in providing additional facts, and include them in a written request for an advisory.”

V. Ethics Training Planning

Ms. Massar informed the Board that we are pursuing three major initiatives for ethics training in 2008. The first, which is virtually complete, was to offer training to members of the new administration, City Council and staff, Departmental Integrity Officers, and the staff of the Inspector General’s Office. Mr. Meyer has already conducted 15 training sessions in 2008 to reach these individuals. She reported that two major training tasks remain for this year: providing annual ethics training for the many board and commission members and for thousands of City employees. To prepare for these sessions, we are updating and revising the ethics training PowerPoint materials.

First, as preparation for ethics training for board and commission members, we must first identify the members of the more than 80 City boards and commissions. Chief Integrity Officer Joan Markman and her assistant Lauren Wilson-Fontana are working to compile a current list of board and commission members. Next, we will contact the boards and commissions to advise them of the ethics training requirement and to provide ethics training dates. Training sessions will be offered beginning in August here in our offices, and board and commission members will be able to register for training on our website as they did last year.

Second, to train the thousands of City employees who must also have annual ethics training, we will contact the Personnel Department this month to request the services of their professional training consortium. As they did last year, we expect that the trainers will in turn present ethics training sessions to the City employees in their departments.

Once these tasks are underway, we will focus on ethics training for entities doing business with the City and the business community and on education and outreach to the public.

After Ms. Massar’s presentation, Mr. Glazer commented that he views it as problematic that we are five to six months into the present administration and are still not able to identify all board and commission members. He said that hopefully the Board will get cooperation from everyone and will be able to identify the all the members of boards and commissions soon.

VI. New Business

No new business was discussed.

VII. Old Business

Mr. Glazer stated that the Board's report on the public hearing on Regulation No. 4 is being prepared. He said that once the report is prepared it will be filed with the Department of Records and posted on the Board's website. Mr. Creamer noted that the Board's staff is working with the Law Department on the report. Mr. Glazer added that if people let the Board know they are interested in receiving the report, then the Board will send them a copy.

VIII. Questions/Comments

No questions were posed or comments made.