

Philadelphia Board of Ethics
Meeting Minutes
January 20, 2010
Board of Ethics
Packard Building
1441 Sansom Street, 2nd Floor
1:00 pm

Present:

Board

Richard Glazer, Esq., Chair
Kenya Mann Faulkner, Esq. (via conference call)
Pastor Damone Jones

Staff

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

I. Public Hearing on Regulation No. 2

A public hearing concerning proposed amendments to Regulation No. 2, Investigations and Enforcement Proceedings, was conducted before the Board meeting. A court reporter was present to record the hearing.

II. Call to Order

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

III. Approval of Minutes

The Board approved the meeting minutes, as printed and distributed, for the public meeting that was held on December 16, 2009.

IV. Executive Director's Report

A. Litigation Update

1) Cozen O'Connor

Mr. Creamer reported that on December 29, 2009, the Pennsylvania Supreme Court granted the Petition for Allowance of Appeal, in part, filed by Cozen O'Connor in its lawsuit against the Board. The Cozen suit challenges Board Opinion 2007-003 which advised that the contribution limits of Section 20-1002 of the Code apply to contributions received after an election for the purpose of retiring campaign debt.

Mr. Creamer explained that the Court limited the appeal to whether Cozen had standing to obtain a declaratory judgment “in its complaint that it intended to forgive the outstanding debt of the Friends of Bob Brady Campaign Committee at one time and *in toto*, thereby exposing itself to potential civil penalties and other sanctions . . . ” under the Campaign Finance Law. The Cozen brief is due February 8th.

He stated that on March 12, 2009, a three-judge panel of the Commonwealth Court of Pennsylvania issued an Opinion by Judge Dan Pellegrini that affirmed the trial court’s ruling dismissing the Cozen Complaint against the Ethics Board and concluding that Cozen lacked standing to challenge the Board’s Advisory Opinion issued to Cozen’s former client, the Friends of Bob Brady.

Mr. Creamer, on behalf of the Board, expressed its great appreciation to Gregg Mackuse at Drinker, Biddle who has continued to provide *pro bono* representation to the Board throughout this matter.

2) McCaffery v. Creamer, et. al.

Mr. Creamer announced that the Board filed Preliminary Objections to the McCaffery defamation Complaint on December 23rd. The Preliminary Objections raise numerous legal deficiencies in McCaffery’s Complaint and asks to Court to dismiss the Complaint for several reasons.

He said, for example, under Pennsylvania law, “high government officials” have absolute immunity from suits seeking damages for actions taken or statements made in the course of their official duties. The primary purpose of “high official” immunity is to benefit the public by ensuring responsible officials will not hesitate to uphold the law and will uphold the public’s right to receive full disclosure of facts and conduct of government business. Our Objections to the Complaint explain why this immunity should properly apply to the Board and its staff because there is an established public interest in vigorous enforcement of the ethics and campaign finance laws and because we must be encouraged to enforce the law and inform the electorate of publicly-filed Petitions in the Court of Common Pleas and other steps the Board may take to enforce the law.

Mr. Creamer reported that on January 13th, McCaffery filed Preliminary Objections to our Preliminary Objections, in which he argues that the Court should not dismiss his Complaint, but instead should overlook the immunity issues, dismiss our Preliminary Objections and compel us to file an Answer to his Complaint.

He explained that McCaffery sued the Board and he after his Campaign admitted violations of the City's campaign finance law and agreed to enter into a settlement agreement in October with the Board.

Mr. Creamer further explained that in the agreement, the McCaffery Campaign admitted that it violated §20-1006(4) of the City's campaign finance law (concerning material misstatements and omissions in campaign finance reports), and has paid a \$1,500 penalty for the two admitted violations. The Campaign further agreed to file amended campaign finance reports to correct the two material misstatements.

He said the Board will vigorously defend our actions in this matter and we are confident that this complaint will be found baseless.

B. Ethics and Campaign Finance Task Force

Mr. Creamer announced that the Mayor's Advisory Task Force on Ethics and Campaign Finance Reform issued its Final Report to the Mayor on December 10th. The Report includes recommendations in the areas of: lobbying registration and reporting, campaign finance reform, ethics and conflicts of interest, and restrictions on political activity. We will discuss the Final Report later at this meeting.

C. Regulations

1) Amendments to Regulation No. 2 (Investigations and Enforcement Proceedings)

Mr. Creamer reported that the Board conducted the public hearing on proposed amendments to this regulation at the start of today's meeting. The hearing was continued until February 17, 2010.

2) Amendments to Regulation No. 3 (Referrals to and Cooperation with Other Governmental Enforcement Agencies).

Mr. Creamer reported that the Board approved these amendments at the December meeting, and the amendments were filed with the Records Department on December 21, 2009. As far as we know, to date no one has requested a hearing, and if there are no requests, the amended regulation will become effective as of midnight, tonight, January 20, 2010.

D. "Plain English" Campaign Finance Law

Mr. Creamer explained that as required by Section 20-1007 of the City Code, the Board is required to publish a "Plain English" statement of the Campaign Finance Law, including contribution limits, twice each year. Staff therefore arranged for publication in the Inquirer, Daily News, and Metro. The statement appeared in the Inquirer and Daily News on January 4, 2010 and in the Metro on January 6th.

He added that it costs thousands of dollars to publish this document, which isn't necessary since it is posted on the Board's website.

V. General Counsel's Report

1. Formal Opinions and Advices of Counsel. Mr. Meyer reported that no new advisory opinions have been issued since the December report.

2. Informal e-mail guidance. Mr. Meyer reported that through Friday, January 15, 2010, there were two of these since the December report.

a. Received an inquiry from counsel for a City board/commission concerning a possible conflict of interest by a member of the board/commission who had an outside interest in a nonprofit. Advised that specific advice on which the member could rely would have to be provided through a written Advice of Counsel, but gave this general informal guidance:

Generally, members of City boards and commissions may not:

- act on matters in which they have a personal financial interest;
- act on matters in which their for-profit employer has a financial interest (would not include a nonprofit);
- act on matters in which a member of their for-profit entity is appearing before their Board (again, not applicable to a nonprofit);
- personally represent any person before their own board; and
- have a financial interest in a City contract if the member is one of the few board/commission members listed in Board of Ethics Regulation No. 6.

b. Mr. Meyer reported that he received an inquiry from staffer for a City official who intended to decline an honorarium for a speaking engagement and requested the "ethics rule" to cite. Provided a copy of a 2009 ruling from the State Ethics Commission, citing Section 1103(d) of the State Ethics Act.

VI. Discussion of Final Report Issued by the Mayor's Advisory Task Force on Ethics and Campaign Finance Reform

Ms. Massar explained that the Mayor's Advisory Task Force on Ethics and Campaign Finance Reform, created by Executive Order 12-08, was charged with undertaking a comprehensive review of the City's existing campaign finance and ethics laws and with identifying "[a]dditional ethics reforms for City government..." After receiving testimony at public hearings on January 10 and May 5, 2009 and meeting regularly, the Task Force presented its Final Report on December 10, 2009. She explained that report contained extensive recommendations covering four main topics: Lobbying, Campaign Finance Reform, Ethics and Conflicts of Interest, and Political Activity Restrictions.

Ms. Massar stated that many of the Task Force recommendations have implications for the Board of Ethics, and several suggest that the Board take specific action. Ms. Massar noted that the Task Force expressed support for the work of the Board and was aware that many of its recommendations "suggested [that] significant additional responsibility and further duties be delegated to the City's Board of Ethics." The Task Force recognized that, if enacted, these tasks

will require additional funding and called “upon City Council and the Mayor to provide sufficient funding and staff for the Board of Ethics.”

Ms. Massar explained that it would be overwhelming for the Board to address all of the relevant Task Force suggestions in the immediate future. Staff therefore assigned each of the more than 40 recommendation to one of the following categories: recommendations applicable to the 2011 election, recommendations that require legislation and have been included in prior annual reports and recommendations requiring new legislation. Ms. Massar said that staff suggests that the Board discuss the recommendations in the first group today and reserve discussion of the other two categories for a future meeting or meetings.

She explained that the first group of Task Force recommendations included the following eight topics which concerned the Campaign Finance law and political activity restrictions:

- Clarify definition of candidate
- Simplify public access to campaign finance information
- Require candidate to identify single committee and account information to Board
- Establish “range” (“sliding scale”) of penalties for campaign finance law violations
- Conform “millionaire’s amendment” text to case law
- Board should reinterpret Charter §10-107(4) to clarify permissible off-the-job expressions of political opinion
- Uniform application of Charter §10-107(4) to all City employees
- Amend the Charter to allow elected officials to solicit political contributions for themselves and for others.

Ms. Massar noted that several staff members began working this past summer as a Regulation Working Group and have already been examining possible regulations to address several of the Task Force’s campaign finance recommendations. Ms. Massar suggested to the Board that the Working Group focus its attention on these topics and attempt to have regulations available for Board review in advance of the 2011 election cycle. She noted that the threshold issue for the Working Group will be to examine whether any of the eight topics must be the subject of legislation rather than new regulations.

It was the consensus of the Board that the Regulation Working Group should proceed in this manner to address the first group of Task Force recommendations.

VII. New Business

There was no new business to discuss.

VIII. Questions/Comments

Lauren Vidas suggested that the Board keep the “resign to run” provision in mind when looking at the definition of “candidate.” She indicated that under state law there is no “resign to run” provision and there are no contribution limits.

Mr. Glazer responded that the Board is sensitive to these issues.

Mr. Creamer, speaking for himself and not the Board, said he doesn't think it is possible for the Campaign Finance law to adopt the State law, because individuals can begin raise money through political committees before they know which office they may be running for, so a "raising money" threshold would be too broad.

Bob Warner suggested that when staff refers to documents, it would be helpful to have copies available to share with the public.

Mr. Creamer explained that some documents cannot be shared until after the Board has approved them, but that the Board would make an effort to provide documents to the extent possible.

The public session of the Board's meeting was adjourned after public questions and comments, so that the Board could meet in executive session to discuss enforcement matters and non-public opinions.