

Philadelphia Board of Ethics
Meeting Minutes
January 21, 2009
Board of Ethics
Packard Building
1441 Sansom Street, 2nd Floor
1:00 pm

Present:

Board

Richard Glazer, Esq., Chair
Phoebe Haddon, Esq. (via conference call)
Kenya Mann, Esq. (via conference call)

Staff

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

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 minutes for the public meeting that was held on December 17, 2008.

III. Executive Director's Report

A. Enforcement Update

Mr. Creamer announced that the Ethics Board entered into two related Settlement Agreements that resolve campaign finance law violations that occurred in 2007. The first Agreement is with Councilman Curtis Jones, Jr. and his candidate political committee. The second Agreement is with State Senator Vincent Hughes and his political committee.

1) Councilman Curtis Jones

Mr. Creamer reported that Councilman Jones admitted to 17 separate violations and has agreed to pay the Board \$16,500 in penalties for the 17 violations. Eight of the 17 violations relate to \$15,700 in cash that was given to the Jones Campaign by Senator Hughes' campaign on Primary Election Day 2007. Six of the 17 violations relate to several subsequent contributions from Senator Hughes' Committee to the Jones Campaign in 2007, while the remaining three violations relate to an undisclosed contribution from the Fattah for Mayor Committee (2 violations) and an undisclosed in-kind contribution of T-shirts from Local 98's PAC.

In addition, Mr. Creamer said he has agreed to pay an additional \$6,000 penalty for the late filing of his 2007 Cycle 3 report, which was filed on May 9, 2008. The \$6,000 civil penalty represents a penalty of \$1,000 for each business day between the extended deadline and the date the Jones Campaign filed its 2007 Cycle 3 campaign finance report with the Board of Ethics.

He also mentioned that in exchange for these admissions and the agreement to pay the Board \$22,500 in civil penalties, the Board has agreed to waive any further penalties and will withdraw the Petition currently pending in the Court of Common Pleas relating to the failure to file the Jones Committee's 2007 cycle 3 report.

2) Senator Vincent Hughes

Mr. Creamer reported that Senator Hughes has admitted to 7 violations of the City's campaign finance law and has agreed to pay the Board a \$7,500 civil penalty. Four of the violations relate to the \$15,700 cash contribution on Primary Election Day 2007 and 3 relate to the subsequent three contributions from the Hughes Committee to the Jones Campaign in 2007, each of which was an excess contribution. In exchange for these admissions and the agreement to pay the Board \$7,500 in civil penalties, the Board has agreed to waive any additional fines or penalties.

B. Litigation Update

1) Cozen O'Connor v. Philadelphia Board of Ethics

Mr. Creamer reported that Cozen O'Connor filed its Brief in support of its Appeal to the Commonwealth Court on December 29, 2008. The Board's Brief is due on January 28, 2009.

Mr. Creamer explained that Cozen filed a Notice of Appeal on July 21, 2008 from Judge DiVito's June 10, 2008 Order, which granted the Board's Preliminary Objections and dismissed Cozen's Complaint. The Court found that the law firm lacked standing to challenge the Board's Advisory Opinion issued to the firm's former client, Congressman Brady. The Advisory Opinion concluded that the contribution limits continue to apply to former City candidates to the extent that they are attempting to raise money to retire debt incurred while they were a candidate. Cozen is owed approximately \$450,000 by the Brady Mayoral Campaign.

He noted that the Board is being represented on a pro bono basis by Greg Miller and Gregg Mackuse at Drinker, Biddle.

C. Budget

Mr. Creamer informed the Board that staff has been instructed by the Finance Department to prepare budget projections for FY2010, which begins July 1, 2009, assuming budget cuts of 10%, 20%, and 30%. The Board had expected to be operating with a \$1 million appropriation, and was advised late last year that our budget for FY2010 would be \$900,000, and now the 10, 20, and 30 percent reductions are being applied to the already-reduced \$900,000 amount for FY10. This represents a dramatic cut. Staff has also been instructed to prepare scenarios discussing how we will operate at each level of reduced funding and to describe the potential policy and service impacts. These budget documents are due by January 30th.

Mr. Glazer stated that the Board advised the Mayor, with respect to the budget and furlough cuts, they agreed to cooperate with the Administration. It was made clear that we are an independent agency and at some point we may have to consider filing a mandamus.

D. Ethics and Campaign Finance Task Force

Mr. Creamer stated that he testified at the January 10th public hearing conducted by the Mayor's Advisory Task Force on Ethics and Campaign Finance Reform. Testimony was presented by a total of 18 individuals, some of whom represented good government groups and many of whom were interested members of the public.

His testimony included recommendations in the areas of campaign finance, ethics, and political activity. The following were among the recommendations Mr. Creamer suggested:

On campaign finance:

Change the contribution limits in the Code (§20-1002) to a "per election" basis from the current "per calendar year" limits which apply only in the year of an election for City elective office.

Require incumbent officeholders and committees who contribute to them to continue to file electronic reports with the Ethics Board in non-election years.

Clarify that each day that a required report is not filed electronically with the Ethics Board constitutes a separate and distinct violation subject to the statutory penalty.

Require each candidate to provide to the Ethics Board information identifying the candidate's single committee and account at the inception of his or her candidacy.

Establish contribution limits and reporting requirements for inaugural and transition committees.

Eliminate the costly twice-yearly requirement to publish a "plain English" version of the campaign finance law in three newspapers. In the alternative, require that the "plain English" text be published only in January of those years when there are candidates for City elective office on the ballot.

On ethics:

Reword and simplify the conflicts of interest, disclosure and disqualification, and representation sections of the Ethics Code (Sections 20-607, 608, and 602, respectively)

Amend the City's conflict of interest rule by prohibiting City officials and employees from taking any personnel action concerning a close relative.

Amend the City Code to create a single gift rule to apply to all City officials and employees that would prohibit them from accepting anything of value from a "prohibited source."

Prohibit "conflicted" outside employment.

Require that the City's ethics laws apply to all contract workers.

On political activity:

Mr. Creamer explained to the Task Force that Ethics Board members have expressed their belief that the City's political activity restrictions are considerably more stringent than those which exist in other jurisdictions and may be more restrictive than necessary. Therefore he suggested that review of the restrictions is warranted and explained that because the restrictions limit rights of expression, they must be narrowly tailored with clear, enforceable boundaries. We know that the Task Force has invested significant time considering this issue.

On lobbying and public financing:

Mr. Creamer also noted that lobbying registration and disclosure would add significantly to transparency in City government. It would also be another major step in campaign finance reform in Philadelphia to consider a public financing system for Mayoral and Council candidates. It was important to note that while now may not be the time to dedicate scarce City resources to provide public funds to political campaigns, now is the time to begin to plan for such a program in the future.

Later during today's meeting we will summarize other testimony that was presented to the Task Force.

E. Training

Mr. Creamer said that since the December Board meeting one ethics training session was conducted for remaining new administration staff and two campaign finance training sessions. Staff expects to present additional campaign finance sessions as more candidates enter the races for District Attorney and Controller. Records Commissioner Joan Decker and her staff presented information concerning electronic filing of campaign finance reports, and Michael, Nedda, and Mr. Creamer discussed the single committee and single account rule, excess pre-candidacy contributions, in-kind contributions, and filing requirements at the sessions.

F. "Plain English" Campaign Finance Law

Mr. Creamer informed the Board that arrangements have been made for publication of the “Plain English” Campaign Finance Law, as approved by the Board in December, in the Inquirer, Daily News, and Metro. The expected cost will be approximately \$4,850 for publication in January and we will save approximately \$6,500 over last year’s cost for this insertion. Based on these figures, we will save almost \$13,000 during FY2009 for publishing twice, as required by Section 20-1007 of the Code.

G. COGEL

Mr. Creamer informed the Board that he has been asked to serve on the 2009 Program Committee for COGEL’s annual meeting, which will be held in Scottsdale, Arizona. The Committee will have a working meeting in Scottsdale February 26-28, 2009. As with the 2008 annual conference in Chicago, he will pay the travel and hotel expenses.

E. Right to Know

Mr. Creamer reported that staff has taken steps necessary to implement the new Pennsylvania Right to Know law that became effective on January 1, 2009. There is now a link on our website to the City’s Right to Know policy and to forms and instructions for making a request for records.

Mr. Glazer, on behalf of the Board, acknowledged Michael and Shane on their effort in the Jones and Hughes settlements. The settlements show admissions especially by Jones of egregious violations. Staff worked hard over a significant period of time and it showed extraordinary results.

IV. General Counsel’s Report

1. Advices of Counsel. Mr. Meyer reported that there were no new Advices of Counsel issued since the last report.
2. Indexing and numbering of Advices. Mr. Meyer informed the Board that staff created and implemented a numbering system for Advices of Counsel that is distinct from the numbering system in place for Formal Board Opinions. For example, the first Advice of Counsel issued in 2009 will be number GC-2009-501. (Both the “GC” designation and beginning the numbering with 501, rather than 001, are intended to avoid confusion with the Formal Opinions.) All previously issued Advices have been numbered internally, and the copies with the Advice numbers will be posted on our website. Staff has also compiled an index of the 27 Advices of Counsel that were issued in 2008. The index, which will be available on our website shortly, provides a brief description, keywords and citations for each Advice. This time-consuming, but important project was accomplished by Maya and Tina, with help from Hortencia.
3. Informal e-mail guidance. Mr. Meyer reported that through Friday, January 16, 2009, there were six of these since my December report. Note that in every such e-mail, a link is provided to

Regulation No. 4 and explain that the requestor may obtain a written advisory opinion, if they wish.

a. Advised a City HR manager as to which financial disclosure forms a recently-hired exempt employee must file.

b. An outside entity that was considering hosting an event to which City officials would be invited inquired about the mechanism for being advised by the Board of Ethics on any “gift” issues or related issues. Provided a link to Regulation No. 4 and advised of the types of factual information that should be included in such a request. To date, no follow-up received.

c. An outside entity inquired about providing free or discounted slots for City employees in classes to be conducted by the entity, in exchange for the City providing space in which to have the classes. Advised that this appeared to be a legitimate business arrangement, with consideration on both sides, and thus no gift issues were presented.

d. Received an inquiry about simultaneous employment by the City and another political subdivision. Advised that this question raised an issue under Charter Section 8-301 (“Other Offices or Positions”), which is not within the jurisdiction of the Board of Ethics. Referred the requestor to the Law Department.

e. Received an inquiry from a City employee who attended a conference and received some expenses paid by the conference host. Requestor inquired whether there was any “conflict.” Advised that under Code Section 20-606(1)(d)(ii) and our Regulation No. 4, we can issue advisory opinions only as to future, not past, conduct.

f. Responded to several questions from one requestor concerning the application of the City’s campaign finance law to judicial candidates. Principally, we advised that Code Chapter 20-1000 does not apply to judicial candidates because this chapter applies only to candidates for City elective office, defined to exclude the judiciary.

V. Testimony Presented to the Mayor’s Advisory Task Force on Ethics and Campaign Finance Reform.

Ms. Massar reported that as directed in Executive Order 12-08, which established the Mayor’s Advisory Task Force on Ethics and Campaign Finance Reform, a public hearing was conducted on January 10, 2009 to receive “information and recommendations from the public” concerning possible changes to the City’s ethics and campaign finance laws. Mayor Michael Nutter opened the Task Force hearing by thanking the members of the Task Force for their work. He noted that while there has been progress toward making City government more ethical and accountable, there is still much work to be done. The Mayor, along with several of the individuals who testified at the hearing, stressed the importance of rules that are enforceable and up-to-date.

In addition to the Board’s testimony, presented by Executive Director Creamer, Mayor Nutter’s statements were echoed in the testimony presented to the Task Force by the following 17

individuals:

Chief Integrity Officer Joan Markman
Inspector General Amy Kurland
Councilman Bill Green
Controller Alan Butkovitz
Zack Stalberg, President of the Committee of 70
Albert D'Attilio, Commissioner of Human Relations
Catherine Scott, President D.C. 47
Kelly Green, President, League of Women Voters
Adam Lang
James Browning, Common Cause of Pennsylvania
State Representative Mark Cohen
Patricia Holt Abner
Adam Bonin
Kevin Scott
Stephanie Singer
Joe Manko
Jack Morley

Ms. Massar said that among the many ideas and suggestions that were offered by the witnesses, each of the topics listed below was mentioned by more than one of the individuals as an area of campaign finance or ethics law that should be addressed in further reform efforts in Philadelphia. This summary was prepared using staff notes and without a complete transcript from the hearing.

- The contribution limits to candidates should apply on a “per election” rather than a “per year” year basis and should also apply to post-election funds received.
- Incumbent officeholders should be treated as “candidates” and required to file electronic reports of receipts and expenditures with the Board of Ethics.
- Penalties for violation of the campaign finance law should be increased.
- Public financing of political campaigns should be implemented in elections for City-wide offices.
- On-line access to campaign finance information should be improved and made available in an easily searchable database.
- The existing political activity restrictions in the Charter are too restrictive, overbroad, and unenforceable, and therefore must be revised. They are especially problematic as applied to members of City boards and commissions.
- The attribution rules in the contracting reform law are overbroad and must be reviewed, simplified, and possibly eliminated.

- There is a need for anti-nepotism legislation applicable to employees and officials.
- There should be a single, clearly defined gift policy for employees and officials.
- There should be clear rules to determine whether or not City employees and officials may engage in specific outside employment.
- Those who lobby City agencies and quasi-governmental agencies on legislation, regulations, and other decision-making should be required to register and to report their activity.
- The Office of the Inspector General should be made permanent and independent of the Administration.

Staff will continue to report to the Board on further activity by the Task Force.

VI. Preparation for 2008 Annual Report

Ms. Massar explained that Section 20-606(1)(l) of the City Code requires that the Board must prepare an Annual Report to the Mayor and City Council for calendar year 2008. This report is in addition to the Annual Fiscal Report that was presented to the Mayor and Council on September 20, 2008, at the conclusion of Fiscal Year 2008. Section 20-606(1)(l) specifies that the Annual Report must include: a summary of enforcement activity, the rules of the Board, an index of opinions issued during the year, and legislative recommendations.

She informed the Board that staff expects to deliver the 2008 Report to the Mayor and Council on or before March 31st, a date in advance of City Council budget hearings, and will again work with Paul Jablow, our publications consultant, to produce the 2008 Annual Report. We will target a first draft to be circulated to the Board in late February and will present a final draft to the Board for approval at the March 25th Board meeting.

Ms. Massar also mentioned that among other topics, the Report will highlight the hiring of additional staff members and the significant litigation, including Local 98 COPE case, and enforcement efforts. There will be an index reflecting the advice issued during 2008. The report will also discuss specific legislative recommendations in the areas of campaign finance, ethics, and political activity that are based upon those presented recently to the Mayor's Advisory Task Force on Ethics and Campaign Finance Reform.

Ms. Haddon requested staff to submit an outline to the Board.

VII. New Business

There was no new business to discuss.

VIII. Questions/Comments

Lauren Vidas asked what happens to the penalty money?

Mr. Creamer explained that it goes into the City's general fund not the Ethics Board. The checks are made payable to the City of Philadelphia.

Marcia Gelbart asked how the Board would characterize Jones' actions: sloppiness, ineptitude or intentional?

Mr. Glazer said that failure to file is clearly not unintentional and is disdainful.

Mr. Creamer said the campaign finance law is a strict liability law. In this case there is a pattern of the same mistakes or violations being made. They didn't consider the consequences of cash on contribution limits. He suspects they didn't aggregate contributions.

Marcia Gelbart asked about the effect of using a check cashing service.

Mr. Creamer said he didn't think it was sinister. The Jones campaign's omissions go to record keeping practices, and he didn't think they were hiding anything. The overall message is to pay attention to the rules because we are looking at the reports carefully.

Bob Warner asked how the Board became aware of the violations.

Mr. Creamer said he received a referral from the Inspector General's office. He then looked for the Cycle 3 report, which was not filed. He noticed a facial violation of the contribution limits therefore he took depositions and received bank records.

Bob Warner asked if discussions started after receipt of the Cycle 3 report?

Mr. Creamer said yes. The report was received on May 9, 2008.

Bob Warner asked when Councilman Jones acknowledged the unreported contributions.

Mr. Creamer said during discussions after the filing of the petition.

Bob Warner asked if the Board still believed that this was not an attempt to hide money.

Mr. Creamer said yes. He also said part of the problem in dealing with cash is that it is harder to track for reporting purposes.

Bob Warner asked if he thought this affected the outcome of the election.

Mr. Creamer said that is beyond his expertise.

Bob Warner asked if there should be a procedure for seeking a new election.

Mr. Creamer said no.

Marcia Gelbart asked who the Board deposed in light of the agreements.

Mr. Glazer said he would like to take that question under advisement. He may not be able to disclose this information.

Marcia Gelbart asked if Vincent Hughes or Curtis Jones were deposed.

Mr. Creamer said he would also take the question under advisement.

Bob Warner asked if either Hughes or Jones provided an explanation for the way they handled the transactions.

Mr. Creamer said that it part of the investigation and is confidential.

Marcia Gelbart asked why they did not receive the maximum amount for the violations.

Mr. Creamer explained that this is a settlement and they received one maximum penalty in each category of violation with reduced fines for other related violations.