Philadelphia Board of Ethics
Meeting Minutes
July 21, 2010
Board of Ethics
Packard Building
1441 Sansom Street, 2nd Floor
1:00 pm

Present:

Board
Nolan N. Atkinson, Jr., Esq., Vice Chair
Richard Glazer, Esq., Chair
Pastor Damone Jones
Sister Mary Scullion

Staff
J. Shane Creamer, Jr., 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.

II. Approval of Minutes

The Board approved the meeting minutes, as printed and distributed, for the public meeting that was held on June 16, 2010.

III. Executive Director's Report

A. Litigation Update

1) McCaffery v. Creamer, et. al.

Mr. Creamer reported that on July 20th, the Board received a copy of the Brief filed with the Commonwealth Court on behalf of Mr. McCaffery in support of his appeal from the Court of Common Pleas Order dismissing his defamation complaint against him and the Board. The Board has thirty days to submit their brief.

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

Mr. Creamer reported that the Supreme Court has scheduled oral argument on Cozen O'Connor's appeal from the Commonwealth Court decision for September 14th at 9:00 am in room 456 in City Hall.

He noted that City Council Bill 100122, which was signed by the Mayor on June 16th, codifies the Board's interpretation of the law that holds that the contribution limits continue to apply after an election for the purpose of retiring campaign debt. Cozen's suit against the Board challenges this interpretation and the Board's ability to interpret the law.

B. Legislative Update

Mr. Creamer reported that on June 16th, Mayor Nutter signed four bills which will make significant changes to the laws administered by the Board. He then gave the following summary of each Bill:

Bill No. 100122 concerns transition and inauguration fundraising by requiring elected candidates to raise money for these activities through their single candidate committees, by applying contribution limits, and by requiring public disclosure for these fundraising activities.

Bill No. 100124 allows a candidate to have a litigation fund committee to solicit and receive contributions within the contribution limits to pay legal defense costs related to the candidate's participation in an election.

Bill No. 100125 establishes a "sliding scale" of penalties for campaign finance-related and ethics-related violations and provides for consideration of mitigating and aggravating circumstances.

Bill No. 100127 amends Title 20 of the City Code to create a completely new requirement that lobbyists and principals register with the Board and file quarterly lobbying expense reports.

Mr. Creamer advised the Board that one Bill; Number **100126** became law without the Mayor's signature. It exempts sample ballot printing and distribution expenditures by a political committee from being counted as a contribution to a candidate for the purpose of calculating the limits. The bill also establishes an exception to the single committee rule so that a candidate who is a ward leader can use his or her ward committee to make expenditures for sample ballot printing and distribution without violating the single committee rule.

He noted that the Bills will be discussed later in this meeting.

C. "Plain English" Campaign Finance Law

Mr. Creamer advised the Board that a "Plain English" explanation of the campaign finance law was published on June 29th in the Inquirer, Daily News, and Metro, as required every six months under Code Section 10-1007. The "Plain English" explanation of the law summarizes the three main features of the City's Campaign Finance Law: contribution limits, the Single Committee/Single Account Rule and the Electronic Filing Requirement.

Mr. Creamer noted that the Board and the Mayor's Task Force on Ethics and Campaign Finance Reform recommended eliminating the publishing of this document since it costs between $3,000 and $5,000 to publish it every six months.

D. Financial Disclosure

Mr. Creamer said that as the Board reported during the past few months, City officials and employees were required to file financial disclosure reports by May 3rd this year. There are three financial disclosure forms: the City, State, and Mayor's forms. The Board has jurisdiction over the City Form, and staff confirmed that all officeholders and City officials who were required to file the City Form have filed.

E. Budget Update

Mr. Creamer reported that staff has been advised that our budget for FY11, which began July 1st, will continue at $810,000, as it was in FY10. The next step in the budget process is to complete a Target Budget Plan which projects our spending during the entire fiscal year in the four budget classes: Personnel (Class 100), Purchase of Services (Class 200), Supplies (Class 300), and Equipment (Class 400). It is important to note that no additional funds are included for staff to implement the new lobbying law.

F. Lobbying Update

Mr. Creamer reported that staff met with the Division of Technology to discuss the basic features of mandatory electronic for lobbyists and principals. This will include registration and filing of quarterly expense reports. Since there is no appropriation in the Board's budget to pay for the electronic filing system, staff is hopeful that the Division of Technology will undertake this project. The new Lobbying Law mandates that lobbying registration begins on July 1, 2011, which seems a long way off. However, this is a complex project to design and test a completely new online filing application and searchable database of lobbying information for the public.

G. Annual Report

The 2009 Annual Report will be taken to the Department of Records after this Board meeting for duplication. It will be distributed to the Mayor and City Council by the end of the week. Staff will make the report available on the Board's website.

H. Newsletter

Mr. Creamer announced that staff published the Summer 2010 edition of the Board's newsletter on July 13th. One item described the impact of the new legislation. Another provided profiles of our two newest Board members, Nolan Atkinson and Sister Mary Scullion. The third item, by General Counsel Meyer, was entitled "**THE BOARD OF WHO? WHERE?"** It described the variety of information on the Board's website and also explained the various methods for contacting the Board for advice and assistance. The newsletter is available on our website. The Board would like to thank Paul Jablow for his assistance with the content of the newsletter and Tina Formica for her design and formatting expertise.

I. Hiring

Mr. Creamer informed the Board that following their approval last month, staff began the process to hire into one of the vacant Information Specialist positions. The position description has been posted on the Human Resources Department website and the Board's website. Staff will review resumes and begin to interview candidates in the next few weeks.

J. August Board Meeting

Mr. Creamer reminded the Board did not meet in August last year because of the members' conflicting schedules and the Board may similarly wish to cancel the August meeting this year. Staff can always contact the Board members and call a meeting if a need arises for the Board to meet in August.

The Board agreed to cancel the August Board meeting. Ms. Formica was asked to have a public notice published.

IV. General Counsel's Report

1. Formal Opinions. Mr. Meyer reported that there were no Formal Opinions since the June report.

2. Advices of Counsel. Mr. Meyer reported that there was one Advice of Counsel since the June report.

a. Nonpublic Advice of Counsel GC-2010-509 (June 21, 2010) A City employee requested nonpublic advice as to whether a prohibited conflict of interest would exist in certain circumstances, if he were to become the owner of a for-profit day care center that would be the recipient of State-subsidized payments on behalf of eligible parents. Advised as follows:

i. As the requestor has not identified any applicable City contract, there is no issue under Charter Section 10-102.

ii. Under Code Section 20-602(1), the requestor may not represent, as agent or attorney, the day care center or any of its clients in a transaction involving the City.

iii. Under Code Section 20-602(5), another member of the requestor's day care center may represent, as agent or attorney, the day care center or any of its clients in a transaction involving the City, provided that the requestor disclose the conflict and disqualify himself as provided in Code Section 20-608.

iv. If the City should consider any official action that could impact on either the requestor's personal financial interest in the day care center or the financial interests of the center itself, and if that official action might involve his work for the City, both the City Code and the State Ethics Act would require that the requestor publicly disclose the financial interest and disqualify himself from taking action for the City in the matter.

v. For any issues under the State Ethics Act, the guidance in this Advice does not bind the State Ethics Commission, and the requestor may wish to seek the advice of the Commission or a nonconfidential opinion from the Law Department.

The public version of Nonpublic Advice of Counsel No. GC-2010-509 is available on the Board's website.

3. Informal e-mail guidance. Mr. Meyer reported that through Thursday, July 15, 2010, there were three of these since the June report.

a. Received an inquiry from a City board/commission concerning a certain matter before the body, in which a party is represented by an attorney employed by an entity connected to one of the members of the board/commission. Advised that facts did not support the kind of representation prohibited by Code Section 20-602. Also advised that conflict of interest would only arise if the board/commission member or his attorney had a financial interest, which did not appear to be the case. Member proposed sending a letter asking parties to waive any objection to that member's participation. Advised that the letter was a good idea.

b. Received an inquiry from a recently separated City employee regarding post-employment restrictions. Provided the URLs to several relevant rulings on our website and the eLibrary of the State Ethics Commission.

c. Received an inquiry about "intimidation" and "misrepresentation" in the workplace by an employee about a manager. Advised that although this was more of a complaint than a request for advice, even as a complaint it did not raise any issues that were within the jurisdiction of the Board of Ethics. Referred the requestor to either the Inspector General or the Chief Integrity Officer.

V. Summary of Recent Changes to Campaign Finance Law

Mr. Cooke stated that in way of a public service announcement the Board is provided with a summary of recent changes to the Campaign Finance Law. It is not intended to provide guidance, but briefly highlight the changes to law. The summary will be posted on the Board's website.

Mr. Cooke stated the five significant changes to the Campaign Finance Law: 1) Limits on Post-Candidacy Contributions, 2) Notice of Formation of Candidate Political Committee, 3) Litigation Fund Committees, 4) Expenditures for Sample Ballots and 5) Penalties for Violations of the Campaign Finance Law.

Chair Glazer recommended adding hyperlinks to the Bills since it will be posted on the website. Mr. Atkinson recommended that stating prominently at the beginning of the summary exactly what amounts people could give. He also recommended changing the order of the first two paragraphs in the section Litigation Funds.

Mr. Cooke said he would make the changes to the summary and have it posted on the Board's website.

VI. Proposed Amendments to Board Regulation No. 1, Concerning Campaign Finance

Chair Glazer stated that staff will discuss the proposed amendments and issues raised by the amendments with the Board.

Mr. Creamer provided background information on the original Regulation No. 1, stating that in January 2007 one of the first things the new Board focused on was promulgating Regulation No. 1 to address the electronic filing requirement. The Board had only six weeks to put the Regulation in place.

Mr. Creamer explained that Staff realized it would be best to have all campaign finance regulation information in one place. As a result, Staff has expanded the original Regulation 1 to cover all the campaign finance regulatory material that had formerly been presented to the Board in March as Regulation No. 8 and to additionally cover the recent June amendments to the campaign finance law. Mr. Creamer stated that Staff has spent a great deal of time and thought on this regulation, and he noted that the version in the Board books is the 22nd draft and that distributed at the Board meeting is version number 24.

Mr. Creamer said that Michael Cooke and Maya Nayak did a great job and spent a lot of time working on this regulation. He said that City Council staff provided Staff helpful input on the draft.

Mr. Cooke explained the Charter-mandated Regulation process. He said, as usual, we submitted a draft of the Regulation to the Law Department in advance of the board meeting. We were informed that the Law Department was considering inserting a footnote in its approval memo that would state that the Law Department was not expressing an opinion on the new exception to the single committee rule.

Mr. Creamer explained that a change in the new version is an exception that allows a candidate to pay for ballot printing and distribution through a second committee in his or her ward.

The Board approved the Regulation for public comment by a vote of 4-0.

The Board also approved a Resolution by a vote of 4-0 to allow staff to conduct a hearing on the Regulation.

VII. New Business

There was no new business to discuss.

VIII. Questions/Comments

The public did not have any questions or comments.

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.