

Philadelphia Board of Ethics
Meeting Minutes
November 17, 2010
Board of Ethics
Packard Building
1441 Sansom Street, 2nd Floor
1:00 pm

Present:

Board

Richard Glazer, Esq., Chair
Sister Mary Scullion

Staff

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

I. Call to Order

Chair Glazer explained that the Board did not have a quorum, therefore the Board could not take any official action during the meeting.

II. Approval of Minutes

Mr. Glazer deferred the approval of the October 20, 2010 minutes until the December board meeting, since the Board did not have a quorum.

III. Executive Director's Report

A. Litigation Update

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

Mr. Creamer explained that as reported at last month's Board meeting, the Board filed a Motion to Dismiss Cozen's appeal to the Pennsylvania Supreme Court on September 29th – two days after Amended Regulation No. 1 took effect. Cozen filed a Response to our Motion to Dismiss on October 14th.

He said that before the Board filed the Motion to Dismiss when instructed by the Court, Cozen filed an Application for Post-Submission Communication By Appellant on September 20th, in which Cozen argues that neither the change in the law, nor the new debt forgiveness provision in Reg 1 have any affect on Cozen's Appeal or on its ability to forgive its debt. Cozen's unusual Application essentially enabled the firm to make their argument first.

Mr. Creamer also said that the Board is waiting for the Court to rule on our Motion to Dismiss.

2) McCaffery v. Creamer, et. al.

Mr. Creamer explained that as he reported last month, oral argument on Mr. McCaffery's appeal to the Commonwealth Court, which had been scheduled for October 12th, has been postponed until February at the request of Mr. McCaffery's attorney.

B. Political Activity Update

Mr. Creamer reported that at the September meeting, the Board began to discuss a new regulation to clarify the political activity restrictions in the City Charter. Staff presented a draft proposed Regulation at that meeting, and the Board deferred action on the draft because it wanted to hear from as many stakeholders as possible during the early drafting process. He reported last month that he sent more than 40 letters to individuals and groups to solicit input and to explain the steps in the Board's regulation process. The letters enclosed copies of the draft Regulation, explained the regulatory process and asked for input.

Mr. Creamer informed the Board that since the last meeting, staff has continued to hear from and meet with stakeholders. Staff intends to continue these meetings and will carefully consider their feedback in the next few weeks. Staff's goal is to present a draft regulation to the Board in the next few months and then to schedule a public hearing.

C. Lobbying Update

Mr. Creamer reported that staff continues to meet with the Division of Technology (DOT) to discuss the design and implementation of a mandatory electronic filing system for lobbyists and principals as required by the new Philadelphia Lobbying Law. The new law mandates that lobbying registration begins on July 1, 2011, and there is much work to do before that date. The law also requires the Board to provide a searchable database of lobbying information for the public. DOT is seriously considering an arrangement to use and adapt the State's lobbying software maintained by the Department of State. This is possible because the City's new law is largely based upon the provisions of the Pennsylvania Lobbying Law.

Mr. Creamer explained that if the City is permitted to use the State software, it will save both time and money in design and implementation. Staff has therefore reviewed the State online filing system and compared it to the provisions of the City law to identify areas where there are "gaps" between the requirements of the City law and the State law. For example, the new City law requires that additional detailed lobbying activity information be disclosed in the Quarterly Expense Reports filed by principals. This information is not required by the State Law. So, if we are permitted to use the State software, it will be necessary to fill this gap by modifying the

State software. It is the Board's understanding that DOT will make these modifications, where necessary.

Mr. Creamer said that staff expects to be able to report in December that a decision has been made about the lobbying software because the July registration date is fast approaching. The complex system will need to be tested well in advance of that date and want to begin lobbying training in April.

D. Art in the Office

Mr. Creamer thanked Stephanie Kirk, Sarah Barr, and Pam McLean-Parker, the three local artists whose beautiful works were on display in our office from last April through this month. Visitors to the Board's office thoroughly enjoyed their work which was based on various photographic techniques. He hoped the audience noticed the new exhibit which was just installed on November 8th. Sarah Barr was instrumental in arranging for this new exhibit which includes the work of 10 Philadelphia area artists. These artists are part of a group of 23 professional women visual artists called ARTsisters. The ARTsisters believe that that the collective energy of their members serves to motivate and inspire each other. Their mission is to "unite, support, share, encourage, critique and, sometimes, push our sisters when we cannot go it alone."

Mr. Creamer informed the Board that the members of ARTsisters have a schedule of shows that includes exhibits in Manayunk, Wayne, Wynnewood, the Wilmington Arts Commission, and the Widener University Art Gallery. They also collaborate with several non-profit community organizations. He encouraged the audience to enjoy the pieces on display all around our office and to read about each of the artists on their website, ARTsisters.org.

E. COGEL Conference

Mr. Creamer said that staff will report next month on their participation in the December 2010 Conference of the Council on Governmental Ethics Laws (COGEL). COGEL is a voluntary international organization comprised primarily of local, state, and national government officials who regulate ethics, campaign finance, lobbying, freedom of information, and election administration laws. This year's Conference will be held in Washington, D.C. from December 6th through 8th.

Ms. Massar said that as Shane just mentioned, Board staff participate in the international ethics organization, the Council of Governmental Ethics Laws (COGEL). Many of the Board's staff have attended COGEL conferences in the past and participated as presenters and panelists. Staff also frequently contacts COGEL member agencies for guidance and advice.

She reported that the Board is therefore very proud to announce that Shane will be recommended to the full COGEL Membership for election to the COGEL Steering Committee for a three-year term. This will happen at the conference in December. John Contino, Executive Director to the Pennsylvania Ethics Commission, submitted Shane's nomination.

Ms. Massar explained that it is really an accomplishment for our new agency to have our Executive Director as a member of the Steering Committee.

IV. General Counsel's Report

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

2. Advices of Counsel. Mr. Meyer reported that there were two Advices of Counsel since the October report.

a. Nonpublic Advice of Counsel GC-2010-517 (November 1, 2010) A City employee requested a nonpublic advisory on whether there are any issues under the Public Integrity Laws regarding his outside employment as a real estate investor, as a part owner of a company that recovers funds for clients through Sheriff's Sales, and in preparing deeds for friends and family. This request presented a fairly standard "conflict of interest" question. Advised that if the requestor or his company has been or will be paid in any transaction, and his department's action is required connected to that transaction, the requestor must disclose his financial interest and disqualify himself from working on that matter for the Department. Also, he may not represent any person as agent or attorney in any transaction involving the City, except that he may represent himself or a parent, spouse, child, brother, sister or person whom he serves as a personal fiduciary, if he similarly discloses and disqualifies.

b. Advice of Counsel GC-2010-518 (November 9, 2010) The HR Manager for the City's Office of Housing and Community Development requested a public advisory on whether there are any issues under the Public Integrity Laws regarding a proposed Employee Recognition Program. OHCD is currently exploring creation of an incentive program, with a possible option of rewarding highly-performing employees with gift certificates of modest value for such uses as restaurant meals, book stores, and department stores. Advised as follows:

1. Noted that the Law Department had advised that such gift certificates would be considered part of the employee's regular compensation, and thus would not be "extra compensation" prohibited under Charter Section 8-107.

2. Advised that, provided that the proposed incentive program is implemented as suggested in the Law Department opinion, approved in advance and involving clearly established guidelines for achieving the "recognition," which guidelines are announced in advance of any awards, no issues would be presented under Charter Section 10-105.

3. Similarly no such award would be a "gift" as defined in the City Code. Accordingly, there would be no issue under Code Section 20-604.

4. There is no issue under Section 1103(b), (c) of the State Ethics Act, under the facts as presented.

5. We did not address Mayor's Executive Order No. 002-04. OHCD may wish to refer to the Chief Integrity Officer for interpretation of the Executive Order.

The public versions of these two Advices should be available on the Board's website soon.

3. Informal e-mail guidance. Mr. Meyer reported that through Thursday, November 11, 2010, there were four of these since the October report.

a. Received an inquiry from a City employee saying that he and his mother resided in the same residence, and asking if he would violate the restrictions on political activity if his mother posted campaign posters in the window of their house on election day. Advised that since the mother resides there and it is she who would be displaying the posters, there was no political activity by the requestor described in his request, and hence no issue under Charter Section 10-107 for him.

b. Received an inquiry from a City employee, complaining about harassment in the workplace. Advised that there was no issue under the Public Integrity Laws, and referred the matter to the Chief Integrity Officer.

c. Received an inquiry from a City employee as follows:

We have a vendor that is coming in and we are doing a presentation. The vendor would like to send in box lunches, or a tray of lunch meat, is that acceptable for a city employee to eat the food?

Advised: Provision of free food by a City vendor raises issues under various ethics laws restricting receipt of gifts by City employees. I see no issue under the City Ethics Code, but we have no jurisdiction over the Mayor's Executive Order on Gifts, so you would need to check with Chief Integrity Officer Joan Markman on the effect of the Executive Order. (I believe a working lunch on your premises, provided by the vendor, is a permissible exception under the Executive Order, but you should check with Ms. Markman to be sure.)

d. Received another inquiry from a City employee about attending an on-site visit to a City vendor's business, which would include a free lunch. Provided standard gift analysis. No issue under Charter gratuities provision or State Ethics Act gift and honoraria provisions. Value of lunch likely raises no issue under City Ethics Code provision. Referred the requestor to the Chief Integrity Office for any issue under Mayor's Executive Order on gifts.

V. New Business

There was no new business to discuss.

VIII. Questions/Comments

Chair Glazer noted the members from Temple's Fox Business School that were in the audience. He apologized for the lack of a quorum.

The public session of the Board's meeting was adjourned after public questions and comments. Chair Glazer explained that since the Board did not have a quorum they were not going to meet in Executive Session, but they would schedule a conference call to discuss enforcement matters and non-public opinions.