

Philadelphia Board of Ethics
Meeting Minutes
December 18, 2006
Philadelphia Bar Association
ARAMARK Building, 11th Floor
1101 Market Street, Philadelphia PA
12:00 pm

Present:

Board

Pauline Abernathy
Richard Negrin, Esq., Vice Chair
Stella M. Tsai, Esq.
Rev. Dr. Alyn E. Waller¹

Staff

J. Shane Creamer, Jr., Esq.

Guest

Evan Meyer, Esq.

After recognizing that a quorum was present, Vice Chair Richard Negrin convened the meeting.

I. Approval of Minutes

The Board approved the meeting minutes for the public meeting on the December 11, 2006.

¹ Rev. Waller arrived after the meeting began and was not present during the approval of the minutes for the December 11, 2006 meeting or during the vote on Advisory Opinion 2006-002.

II. Proposed Advisory Opinion 2006-002²

The Vice Chair asked Mr. Creamer to present proposed “Advisory Opinion 2006-002: The Status of the City’s Campaign Finance law” to the Board.

Mr. Creamer explained that an Advisory Opinion was needed to clarify the status of the City’s campaign finance law in light of Judge Tereshko’s December 13, 2006 ruling, where he found the law to be invalid because it was preempted by state law. However, a prior ruling by a different trial court judge in a related case found that the law was valid and not preempted by state law. Mr. Creamer further explained that an appeal by the City from the December 13th ruling would automatically stay the ruling. Although the City hadn’t filed an appeal yet, it was expected to do so before the 30-day appeal deadline expired.

Mr. Creamer said that Advisory Opinion 2006-002 assumes an appeal by the City from the December 13th ruling, and then explains that the campaign finance law remains in full force and effect. He recommended that the Board conditionally approve the Advisory Opinion, subject to an appeal by the City.

Ms. Abernathy asked what would happen if the City did not appeal. Mr. Negrin said that the campaign finance law would most likely still be in effect because there is a presumption that a law remains valid when, as in this case, there are conflicting opinions by courts of equal jurisdiction. Ms. Tsai suggested that the Board further evaluate the enforceability of the law in the event that the City does not file an appeal from Judge Tereshko’s ruling, particularly in light of Judge Glazer’s earlier, conflicting ruling.

The Board then conditionally approved Advisory Opinion 2006-002, subject to a City appeal from the December 13th ruling.

² At the Board’s meeting on December 11, 2006, another Advisory Opinion was numbered “2006-002,” however, that Opinion was not approved at that time. The previous Opinion numbered “2006-002” was drafted in response to candidate for Mayor Michael Nutter’s questions on the campaign finance law, but had been renumbered from “2006-002” to “2006-003.” (See discussion on page 3 below.)

III. Proposed Regulations: Electronic Filing of Campaign Finance Reports

The Vice chair then asked Mr. Creamer to present proposed Regulation 1, which would require the filing of campaign finance reports electronically.

Mr. Creamer explained that the Regulations were revised after questions were raised about them at the Board's December 4th meeting. Specifically, language about the manner in which the reports could be filed electronically was clarified. In addition, the Regulations were put into a more standard form, with a preamble of "whereas" clauses.

Finally, Mr. Creamer added that the Campaign Finance Task Force considered the issue of having an exemption for smaller campaigns, but recommended that the Board not include an exemption in the Regulations.

The Board then voted to approve Regulation 1.

IV. Proposed Advisory Opinion 2006-003

The Vice Chair then asked Mr. Creamer to present Advisory Opinion 2006-003, which was drafted in response to candidate for Mayor Michael Nutter's questions on the campaign finance law, but had been renumbered from "2006-002" to "2006-003."

Mr. Creamer explained that an earlier draft of the proposed Advisory Opinion was presented to the Board at the Board's December 11th meeting, but that the Board deferred voting on it at that meeting to consider comments from the Law Department that were received shortly before that meeting.

Mr. Creamer said that the revised Opinion incorporates the Law Department's comments. He added that the new draft also included a new recommendation to candidates with "excess pre-candidacy contributions" to put the excess amount into a segregated pre-candidacy excess contribution account, or "SPEC Account."

Mr. Creamer explained that SPEC Accounts would be no different than the "other" political and non-political accounts that the City's campaign finance law allows candidates to maintain in addition to their single account for their campaign. As with the other accounts, candidates may not use them to

influence their election. Mr. Creamer added that the SPEC Accounts would make it easier for the Board to track the excess pre-candidacy contributions and that candidates could use them to demonstrate their compliance with the restrictions on such contributions under the law.

Mr. Creamer then recommended that the Board approve Advisory Opinion 2006-003. The Board then voted to approve Advisory Opinion 2006-003. Mr. Creamer said that he would have it posted on the City's web site and issue a press release about it that he and Ms. Abernathy had prepared.

V. Proposed "Plain English" Explanation of the Campaign Finance Law

The Vice Chair then asked Mr. Creamer to present the draft "Plain English" Explanation of the Campaign Finance Law.

Mr. Creamer reminded the Board that it is required to draft and publish a "plain English" explanation of the City's campaign finance law in the three newspapers with the largest circulation within 30 days of the effective date of the new law – or, by January 15, 2007. Mr. Creamer then said that he and Lewis Rosman in the Law Department drafted an explanation for the Board's consideration.

Ms. Tsai said that the explanation captured the law well. Rev. Waller agreed and added that he thought that it read very clearly.

Mr. Negrin asked whether the penalty discussion in the explanation should be expanded to cover potential non-monetary penalties. He then asked Mr. Meyer to explain the penalty explanation. After briefly reviewing the penalty provisions of the law, Mr. Meyer said that the explanation was not legal advice and that a failure to mention a potential non-monetary penalty would not preclude the Board from applying such non-monetary penalties in the future.

Ms. Abernathy noted that the Board is required to republish the explanation at least every six months, which would give the Board the opportunity to revise it as necessary. Mr. Negrin said that he thought it was important to inform the public of all potential penalties for violations in the explanation.

Mr. Creamer suggested that the Board could approve the proposed explanation of the law, subject to a possible additional line on the non-

monetary penalties. The Board then voted to approve the “Plain English” explanation of the Campaign Finance Law, with the understanding that an additional sentence would be added to explain the potential non-monetary penalties for violations of the law.

VI. Proposed Meeting Schedule for 2007

The Board then unanimously approved the following meeting schedule for 2007:

January 16, 2007, at 1:00 pm

February 20, 2007, at 1:00 pm

March 20, 2007, at 1:00 pm

April 17, 2007, at 1:00 pm

May 15, 2007, at 1:00 pm

June 19, 2007, at 1:00 pm

July 17, 2007, at 1:00 pm

August 21, 2007, at 1:00 pm

September 18, 2007, at 1:00 pm

October 16, 2007, at 1:00 pm

November 20, 2007, at 1:00 pm

December 18, 2007, at 1:00 pm

During the meeting, Mr. Negin reserved a conference room at the Philadelphia Bar Association headquarters for the January 16, 2007 meeting. It was agreed that the Board would advertise the 2007 meeting schedule and advertise the location for the rest of the meetings at a later time.