

Philadelphia Board of Ethics
Meeting Minutes
September 18, 2013 - 1:00 pm
One Parkway Building
1515 Arch Street, 18th Floor

Board Present

Michael H. Reed, Esq., Chair
Judge Phyllis Beck (Ret.), Vice-Chair
Sanjuanita González, Esq.
Brian J. McCormick Jr., Esq.
Reverend C. Kevin Gillespie

Staff Present

J. Shane Creamer, Jr., Esq.
Nedda Massar, Esq.
Maya Nayak, Esq.
Michael Cooke, Esq.
Elizabeth Downey, Esq.
Elizabeth Baugh
Bryan McHale
Hortencia Vasquez

Chair Reed recognized the presence of a quorum and called the meeting to order at 1:05 pm.

I. Approval of Minutes

By a 5-0 vote, the Board approved the meeting minutes for the public meeting that was held on August 21, 2013.

II. Executive Director's Report

A. Litigation Update

i. Lodge No. 5 of the Fraternal Order of Police, *et al.* v. City of Philadelphia, *et al.*

Mr. Creamer explained that the FOP had brought suit against the City and the Board of Ethics seeking to strike down the Home Rule Charter's ban on members of the Police Department making political contributions. He reported that on February 21, 2013 Judge Sanchez of the Federal District Court granted the City's motion for summary judgment and dismissed the FOP's case, thereby upholding the ban. The FOP has appealed Judge Sanchez's ruling to the Third Circuit Court of Appeals. The FOP filed their brief in support of their appeal in late May and the Board's brief in response was filed on July 11, 2013. The case has been listed for oral argument on Tuesday, November 12, 2013. On behalf of the Board, Mr. Creamer thanked Eleanor Ewing and Mark Maguire of the Law Department for their representation in this matter.

ii. Cozen O'Connor v. Philadelphia Board of Ethics

As Mr. Creamer reported last month, a panel of the Commonwealth Court has affirmed the trial court's ruling in the Board's favor in the case *Cozen O'Connor v. Board of Ethics*. Mr. Creamer added that Cozen filed a Petition for Allowance of Appeal with the Pennsylvania Supreme Court on July 17, 2013 and the Board's attorneys at Dechert filed an Answer to Cozen's Petition on July 31, 2013. Whether Cozen's attempted appeal is allowed to go forward or not is up to the Supreme Court's discretion. On behalf of the Board, Mr. Creamer thanked the Board's counsel at Dechert for their excellent representation in this matter.

B. Lobbying Update

Mr. Creamer reported that since the August Board meeting, staff has made progress toward finalizing the Scope of Work and Service Level Agreement (SLA) for the lobbying software project, but does not yet have a finalized contract. In an effort to push the negotiation to a successful conclusion, Mr. Creamer said that staff is convening a meeting on Friday with the Project Manager from the Office of Innovation and Technology (OIT) for the express purpose of identifying any remaining issues that must be resolved with the vendor. Based upon the vendor's responses in the past, staff expects them to respond promptly to any open issues. The Law Department will then conduct a final review of the contract, and once the City and the vendor have signed, the project can begin. Board staff believes that online lobbying registration can be ready for January 2014.

C. Campaign Finance

Mr. Creamer noted that with the general election approaching in November, Board staff will again conduct Campaign Finance training sessions in conjunction with the City Commissioners. The training will cover the requirements for candidates and political committees under the Pennsylvania Election Code and Philadelphia's campaign finance law. The sessions, which take place at the Board of Ethics, are scheduled on September 25 and October 9, 2013 and will start at 5:30 p.m. Mr. Creamer said that last Friday Board staff sent email announcements about the sessions and registrations already have been received.

Mr. Creamer also noted that the second Friday pre-election reports (Cycle 5) for the general election are due on Friday, October 25, 2013. In advance of that date, Board staff will send email reminders of the reporting requirement to a distribution list which includes hundreds of individuals, candidates, treasurers, and political committees. Staff believes that these email reminders are an important method of encouraging compliance with the campaign finance law.

D. Ethics Training

Mr. Creamer reminded the Board that at the January 2013 Board meeting, staff described its ethics training plans for the year. He said that the hope at the time was to have an online ethics training pilot project ready for board and commission members beginning this month. However, because the Board has not had staff available to work on the pilot project, the online training is not expected to be ready for several months. Mr. Creamer said that because Board and commission members are required to have annual ethics training, as reported in January, staff

will therefore conduct in-person ethics training for board and commission members beginning in October. Mr. Creamer said that between now and the end of the year, staff will work with the Mayor's Office to schedule in-person ethics training for cabinet members and City department heads.

III. General Counsel's Report

A. Advisory Opinions

Ms. Nayak reported that on July 17, 2013, the Board issued Non-public Board Opinion 2013-006 to a high-level City Official who inquired about a proposed fundraising event to collect money from individuals that would be used to pay the Official's personal debts. She said that the requestor sought advice about whether she may accept gifts of money at the fundraising event from people including friends, City elected officials, acquaintances, and people with whom she has no relationship.

Ms. Nayak explained that the Board advised that due to the risks of the City Code gift restriction being violated and a public perception of impropriety, the Board believes the proposed fundraising event is inadvisable. The Opinion details the ethics restrictions that would apply if the Official chooses to pursue the personal fundraising event. The major relevant ethics provision under the Board's jurisdiction is the City Code gift restriction. Ms. Nayak said that the Opinion explains that the Board was in the process of formulating a regulation that interprets the gift restriction at Code Section 20-604 and that a preliminary draft of the regulation had been discussed but not yet approved for public comment. The Opinion provides guidance, including on the meaning of "substantial economic value" and prohibited sources, based on the preliminary draft of the gift regulation that was current at the time.

Ms. Nayak said that the Opinion also advises the Official on the application of the Charter's gratuity restriction, the City Code's financial disclosure provision, and the City's non-competitively bid contract reform law disclosure requirements. In addition, the Board outlined potentially relevant provisions of the State Ethics Act and encouraged the Official to seek guidance from the State Ethics Commission if she decides to pursue the personal fundraising event.

B. Regulations

Ms. Nayak said that staff has continued to work through issues in the draft gift regulation. Since the last meeting, the focus has been on improving the readability and accessibility of the language and presentation of the regulation. Staff has also begun planning and preliminary drafting of plain language documents, such as Top Ten Things to Know and a flow chart overview. These documents will stand separate from the regulation and will aim to explain its major provisions as simply as possible.

C. Informal Guidance

Ms. Nayak briefly reviewed the summary of informal guidance chart for Board members.

Summary of Informal Guidance Provided August 14 – September 10, 2013

General topic	Total #	phone	Email	phone & email	Subtopics
Lobbying	6	3	3		Q2 expense reports; prohibition on contingent fees for lobbying.
Campaign Finance	6	6			Filing requirements; declaration of candidacy; and fundraisers.
Gifts	2	1	1		City departments accepting free items or free services.
Conflicts	2	1		1	Outside employment; involvement with non-profit.
Political Activity	1			1	Application of 10-107(3) to appointed officers and to elected officials.
Representation	1			1	Civic association-related activity.
Other	3	2	1		Non-competitively bid contract reform law; Charter prohibition on dual governmental office holding.

This chart is a partial picture of informal guidance provided during the specified time period. Four Board Staff members tracked the assistance they gave and provided data: the General Counsel, Director of Enforcement, Deputy Executive Director, and Public Integrity Compliance Supervisor.

IV. Draft Annual Report

Ms. Massar reviewed with the Board a draft of the 2013 Annual Report. She noted that the 2013 report is different from prior years because the activities portion of the report covers 18 months rather than 12 months in order to align the report cycles moving forward with the annual fiscal report. In the 2014 report, the consolidated annual activity and fiscal reports will again represent a standard 12-month cycle. Ms. Massar noted that the entire staff contributed to drafting the report.

Ms. Massar explained that the Board did not spend its full FY2013 appropriation because it was unable to hire additional staff due to uncertainties caused by the transition of several staff members to Civil Service status and the retirement of a key staff member. She said that the Board expected to hire the additional staff in 2014 and therefore spend its full Class 100 appropriation.

Members of the Board asked questions about the format of the report. Ms. Massar explained that the 2013 annual report is a transitional document which covers an expanded period of time and reflects new procedures in tracking items such as informal guidance. She said that the 2014 Annual Report will allow for contextual analysis missing in the 2013 Report. She added that the final Report will be a completely electronic document the Board will distribute by e-mail and through the Board's website.

By a 5-0 vote, the Board approved the draft Annual Report and authorized the Chair to approve edits, including grammatical and substantive changes.

V. Draft of Regulation No. 10, Gifts

Mr. Cooke presented a new draft of Regulation No. 10 (Gifts and Gratuities) to the Board that incorporated changes made after input from Board members at the August Board meeting. He said that input from Board members and other individuals indicates that there is still a range of views as to what dollar amount constitutes substantial economic value. Mr. Cooke said that staff would review the regulation and conduct additional research to determine what impact a lower dollar amount would have on the structure of the regulation.

The Board generally approved changes to the regulation to enhance readability. Mr. Cooke explained that a regulation with a lower dollar amount might need to incorporate additional exceptions. The Board reviewed the regulation as drafted and suggested a number of textual changes.

Chair Reed asked for comments from the public about the latest draft of Regulation 10. The Board heard comments from Inspector General Amy Kurland, Chief Integrity Officer Joan Markman, and John Christmas, the Senior Legislative Counsel of City Council President Clarke. Further comment was heard from Ellen Kaplan of the Committee of Seventy and Adam Bonin, Esq.

VI. Salary Adjustment

Ms. Massar informed the Board that when the Board approved a salary increase for Executive Director Shane Creamer at the August Board meeting, she had made an error in calculating Mr. Creamer's base salary.

By a 5-0 vote, the Board approved a re-adjustment to increase Mr. Creamer's salary to \$137,920, retroactive to July 1, 2013 to correct the discrepancy.

VII. Questions/Comments

There were no questions or comments from the public beyond the discussion of Regulation 10.

VIII. New Business

No new business was discussed.

Chair Reed announced the Board would meet in executive session to address confidential enforcement matters and receive legal advice. The public session of the Board's meeting was adjourned at 2:40 pm.