



## CITY OF PHILADELPHIA

BOARD OF ETHICS  
PACKARD BUILDING  
1441 SANSOM STREET  
2ND FLOOR  
PHILADELPHIA, PA 19102-3026  
(215) 686-9450  
FAX: 686-9453

### **Philadelphia Board of Ethics Opinion No. 2007-005**

December 5, 2007

Lawrence J. Beaser, Esq.  
Blank Rome LLP  
One Logan Square  
130 North 18<sup>th</sup> Street  
Philadelphia, PA 19103-6998

#### **Re: Request for Advice Regarding Activities of Inaugural and Transition Nonprofit Corporations**

Dear Mr. Beaser:

In letters dated November 28, 2007 and November 29, 2007, you have asked, on behalf of your client, Mayor-Elect Michael A. Nutter, for advice as to the applicability of Chapter 20-1000 (regarding campaign finance limitations) and Chapter 17-1400 (regarding non-competitively bid contracts) of The Philadelphia Code to contributions made to either of two newly-created nonprofit corporations formed to assist with inaugural and mayoral transition activities. The two nonprofit corporations to which you refer are as follows:

(1) Nutter Inaugural Committee, a 501(c)(4) corporation that will raise funds and expend them solely for the purpose of “commemorat[ing] and celebrat[ing] the inauguration of Mayor-Elect Nutter,” presumably by holding an inaugural ball shortly after the new Mayor is sworn in on Monday, January 7, 2008, and other celebratory events, and

(2) A New Day, A New Way, a 501(c)(3) corporation that will raise funds and expend them solely to provide transition support to the transition team and the Office of the Mayor.

We will refer to these nonprofit<sup>1</sup> corporations collectively as “the two nonprofits.” Because the two nonprofits are significantly different in scope and therefore raise different issues, we will address them separately, after statement of some principles and facts common to both nonprofits.

### **I. Summary of Conclusions**

You have asked not to address, at this time, any gift issues, but we view gift issues as being interrelated with the other issues, and this opinion is made with the understanding that we expect timely receipt of a request, providing all relevant facts as to the details of planned inaugural events, for an opinion on the gift issues. As to Code Ch. 17-1400, the conclusion is the same as to both nonprofit corporations: (1) we have limited authority to opine, and you may wish to consult with the Finance Director concerning unaddressed areas of the Chapter, but (2) as to disclosure requirements, relying on your advising that no City employees will be soliciting donations to the nonprofits, we advise you that no disclosures are required by Chapter 17-1400. As to Code Ch. 20-1000, the conclusion is the same as to both nonprofit corporations: relying on your advising that donations to the nonprofits will not be used for any political purpose, we advise you that no disclosures or other restrictions on the nonprofits are required by Chapter 20-1000. Finally, we urge the nonprofit corporations to consider appearance issues, and adopt certain specified measures to reduce reliance on, and publicity of, outside donors. Otherwise, it may not be possible to avoid a possible public perception that donors are purchasing influence.

### **II. Legal Authority**

The Board of Ethics has authority to issue advisory opinions in ethics matters, under Section 4-1100 of the Charter and Section 20-606(1)(d) of the Philadelphia Code. This includes matters relating to disclosure violations subject to the penalties in Section 17-1407(2) of the contract reform legislation (Chapter 17-1400 of the Code) and Section 20-1006(4) of the campaign finance legislation (Chapter 20-1000 of the Code). These provisions penalize prohibited material misstatements or omissions in required filings.

---

<sup>1</sup> You advise that both entities have been formed as Pennsylvania nonprofit corporations. You advise that the Nutter Inaugural Committee is seeking recognition from the Internal Revenue Service as being exempt from federal taxation as a social welfare organization pursuant to § 501(c)(4) of the Internal Revenue Code; and that A New Day, A New Way is seeking recognition from the Internal Revenue Service as being exempt from federal taxation pursuant to § 501(c)(3) of the Internal Revenue Code.

See Code §20-613. However, in assigning jurisdiction to the Board of Ethics, Code Section 20-613 limits that jurisdiction, as to the contract reform legislation, to material misstatements and omissions under that particular Code subsection, §§ 17-1407(2). Accordingly, this Board does not have jurisdiction to issue advice as to whether Chapter 17-1400, as a whole, applies to the fund-raising for the two nonprofits<sup>2</sup>. To the extent that you may desire advice on any broader application, you should seek the advice of the City Solicitor. We note, in particular, that subsection 17-1407(3) provides that the Finance Director may make a determination as to whether any City contractor is debarred, since such contracts are voidable at the option of the City, under Code §17-1402(1)(e)(i), which is not a provision reserved to the jurisdiction of the Ethics Board in Code Section 20-613. See Paragraphs V.B.1 and VI.B.1 below for analysis of this provision to the extent that the Board of Ethics has jurisdiction to provide advice.

### **III. Common Facts**

You have advised us of the following facts. The formation of the two nonprofits was authorized by Mayor-Elect Nutter to assist with inaugural and mayoral transition activities.

You assert that “No funds from either Nonprofit Corporation (1) will inure to the benefit of Mayor-Elect Nutter or other private individuals or (2) will be used in advocating or influencing the election of any candidate or for the benefit of any candidate for election.” To the extent that this statement represents legal conclusions, we have not relied on them. We may address such questions below or in a later opinion. Additionally, you advise that Mayor-Elect Nutter will not serve as an officer or director of either Nonprofit corporation. Neither Nonprofit corporation has members. Each will be operated by its officers and board of directors, none of whom are or will be City officers or employees during their terms of service as an officer or director of either corporation. Board members are not and will not be appointed by City officers or employees.

In addition, Mayor-Elect Nutter will not personally solicit funds for either nonprofit corporation. Donations will be solicited by the officers and board members of each nonprofit, none of whom are or will be City officers or employees at the time donations are solicited. At the request of Mayor-Elect Nutter, the names of all contributors to the two nonprofit corporations will be publicly disclosed, whether or not such disclosure is required by law.

---

<sup>2</sup> Code Section 20-613, on its face, appears also to limit the Board’s jurisdiction to §20-1006(4) of the campaign finance chapter, but a later ordinance superseded that limitation. Code Section 20-1008, as added by Bill No. 060629 (approved November 16, 2006), makes it clear that the Board of Ethics has jurisdiction over all provisions of Code Chapter 20-1000.

Donations will not be accepted from political committees. The Nutter Inaugural Committee will not solicit donations after Mayor-Elect Nutter becomes mayor. A New Day, A New Way expects to solicit and receive donations after Mayor-Elect Nutter becomes Mayor; however, as noted above, donations will not be solicited by City employees.

In accordance with the publicly announced wishes of Mayor-Elect Nutter, each nonprofit corporation will limit the amount it will accept from each individual and/or entity. Total donations may not exceed (in the aggregate for the two nonprofit corporation) \$5,000 per individual and \$20,000 per entity. For A New Day, A New Way, the limits will be annual limits. A New Day, A New Way may seek and accept grants from other entities in excess of these limits; provided that the entity making the grant is not a City contractor or an entity that has been established by a City contractor.

Finally, you advise that the Nutter Inaugural Committee intends to donate any funds remaining after expenses have been paid to one or more tax-exempt charities, as determined by the board of directors. Any funds remaining after the activities of A New Day, A New Way have been concluded similarly will be donated to one or more tax-exempt charities, as determined by the board of directors.

It must be emphasized that the Board of Ethics is relying on the facts you have provided. In issuing advices and opinions, the Board follows a similar procedure to that the Pennsylvania State Ethics Commission has had for years: advisories are issued to the requestor based upon the facts that the requestor has submitted. In issuing the advisory based upon those facts, this Board does not engage in an independent investigation of the facts, nor does it speculate as to the facts that have not been submitted. It is the burden of the requestor to truthfully disclose all of the material facts relevant to the inquiry. An advisory only affords a defense to the extent that the requestor has truthfully disclosed all of the material facts. At the same time, as discussed above, the Philadelphia Home Rule Charter and Philadelphia Code have provided the Board the authority to interpret the ethics laws and issue advisory opinions. While requestors may appropriately point to applicable sources of law, and even suggest conclusions that may be drawn, the conclusions of the requestor as to legal interpretation remain nothing more than suggestions to the Board.

#### **IV. Issue Not Addressed**

In our response to your first letter, we pointed out that one cannot consider the impact of a proposal whereby thousands of dollars will be solicited, arguably on behalf of a Mayor-elect, from local entities, many of which have likely already reached the maximum donation permitted to that same Mayor-elect's election campaign, for the purpose of providing a celebratory event or events, without considering whether the

Mayor-elect's attendance at such an event constitutes his receipt of a gift perhaps prohibited or restricted by the ethics laws. This is particularly so when the Mayor-elect in question was the principal architect of many ethics reform measures to address an asserted "pay-to-play" culture in the City and campaigned on that reputation.

The principal gift questions include the following: whether the receipt of free food, drink, and entertainment at any inaugural events by any City officials invited as guests of the organizers (presumably at least the new Mayor) would constitute a prohibited gift to those officials under various ethics laws; whether, even for any City officials who pay an admission charge that is less than the average cost of the event, the difference in value would constitute a prohibited gift to those officials; whether the offer of any such gifts would constitute a prohibited offer of gift by the nonprofit corporations; and whether, in such questions, even donors to the nonprofits could be considered to have offered or given such prohibited gifts.

However, in response to our inquiry requesting more facts that might help us to address the gift question, you have asked that we postpone that issue and address only your questions about Code Chapters 17-1400 and 20-1000. You have stressed the closeness in time of the inaugural and urged us to expedite our advice, so that fund-raising may begin as soon as possible, yet, at the same time, you claim that the inaugural is too far away to know any details of the celebratory events being planned. You state that you intend to submit a request for additional guidance with respect to gift issues later. The Board reluctantly agrees to this request, but the Board wishes to emphasize that we urge you to submit the request as to gift issues as soon as possible, in order that we can provide you with timely advice, and not be faced with the possibility of having to investigate arguably questionable gifts that have already been made, and determine whether enforcement actions, rather than prospective advice, are required.

With that said, we will address the issues as to the two nonprofit corporations.

## **V. Analysis--Nutter Inaugural Committee**

### **A. Introduction**

In addition to the facts cited in III. Common Facts, above, you advise as to the following. The Nutter Inaugural Committee is similar to the gubernatorial inaugural committee formed to commemorate the inauguration of former Pennsylvania Governor Ridge and the Rendell Inaugural Committee formed to commemorate the inauguration of Governor Rendell. (We note that this is in part a legal conclusion and that you have not provided any documentation of any legal determinations made of these prior committees.) We were not advised as to all of the details of the inaugural events, which are still in the planning stage. We were advised that, to fund the events, contributions

would be solicited for the Nutter Inaugural Committee, which will incur any expenses involved.

**B. Conclusions.**

**1. Philadelphia Code—Contract Reform Disclosures**

As you note in your request letter, Code Section 17-1402(1)(b)(i)(.4) requires that any Applicant for a City no-bid contract file disclosure forms disclosing:

The name and title of each City officer or employee who, within two years prior to the date the application must be filed, asked the Applicant, any officer, director or management employee of the Applicant, or any Person representing the Applicant, to give money, services, or any other thing of value (other than a Contribution as defined in § 17-1401) to any Person, and any payment of money, provision of services, or any other thing of value (other than a Contribution as defined in § 17-1401) given to any Person in response to any such request. The Applicant shall also disclose the date of any such request, the amount requested, and the date and amount of any payment made in response to such request.

Similar disclosures are required of persons seeking Financial Assistance (Code §17-1404(3)(a)) and Contractors who have been awarded contracts (Code §17-1402(1)(e)(iii)). However, you have advised that there is no contemplation that any of the individuals soliciting contributions for The Nutter Inaugural Committee will be City employees. Therefore, on the facts of which you have advised us, no disclosures will be required by Code Chapter 17-1400.<sup>3</sup>

You argue that Code Chapter 17-1400 does not apply to this matter because you do not interpret the definition of “contributions” in Code §17-1401(8) to apply to donations to Nutter Inaugural Committee, citing to language in the State Election Code, 25, P.S. §2341(b), referenced in Code §17-1401(8). As discussed in Section III of this letter, above, the Board of Ethics does not have jurisdiction to interpret sections of Code Chapter 17-1400 beyond Section 17-1407(2), and particularly not provisions of the State Election Code. Any such interpretation would have to come from the City Solicitor or,

---

<sup>3</sup> As with many other ethics provisions, the requirements of Ch. 17-1400 may not be avoided by indirection or stratagems employing fine semantic distinctions. Thus, a person may still be considered to have been "asked by a City employee" for a donation in circumstances where the request is obviously being made directly on behalf of a particular City employee. However, under the facts that you have provided, we do not find that the mere fact that Mayor-elect Nutter has authorized formation of the two nonprofit corporations for the purpose of receiving donations makes any solicitation that might occur after Mr. Nutter becomes Mayor a solicitation by a City employee (the then-Mayor).

for the State Election Code, appropriate Commonwealth authority. Accordingly, although we advise you that, as to Board of Ethics enforcement of Section 17-1407(2) we would not find any omission or material misstatement in any failure to file, based on our interpretation above, we have no authority to say that the Director of Finance cannot reach a conclusion adverse to any applicants or contractors, based on other parts of the Chapter.

## **2. Philadelphia Code—Campaign Finance Disclosures**

Code Section 20-1006 requires candidates and certain campaign organizations that file reports with the City Commissioners under the Election Code to file the same information with the Board of Ethics. Code §20-1006. However, based on your representation that the Nutter Inaugural Committee will not be raising and expending money in a way to identify it as a campaign organization or “political committee,” as defined by the State Election Code, no disclosures are required, nor would the nonprofit be subject to the other restrictions of Ch. 20-1000, including the single committee rule contained in §20-1003. Since we have jurisdiction to interpret all of Code Chapter 20-1000 (see footnote 2 above), you are so advised.

## **VI. Analysis--A New Day, A New Way**

### **A. Introduction**

We are advised that this nonprofit corporation initially will assist Mayor-Elect Nutter with his transition into the office of the Mayor.

### **B. Conclusions**

#### **1. Philadelphia Code—Contract Reform Disclosures**

As with the Nutter Inaugural Committee, you have advised that there is no contemplation that any of the individuals soliciting contributions for A New Day, A New Way will be City employees. Therefore, on the facts of which you have advised us, no disclosures will be required by Code Chapter 17-1400.

Otherwise, the same analysis as in Section V.B.1. above applies.

#### **2. Philadelphia Code—Campaign Finance Disclosures**

Code Section 20-1006 requires candidates and certain campaign organizations that file reports with the City Commissioners under the Election Code to file the same information with the Board of Ethics. Code §20-1006. However, based on your

representation that A New Day, A New Way will not be raising and expending money in a way to identify it as a campaign organization or “political committee,” as defined by the State Election Code, no disclosures are required, nor would the nonprofit be subject to the other restrictions of Ch. 20-1000, including the single committee rule contained in §20-1003. Since we have jurisdiction to interpret all of Code Chapter 20-1000 (see footnote 2 above), you are so advised.

## **VII. Common Issue—Appearance of Impropriety**

Even without considering any gift issues, we are concerned that solicitations of thousands of dollars, arguably on behalf of the man who is about to be Mayor (as you note), from donors, many of which have likely already reached the maximum donation permitted to that same Mayor-elect’s election campaign, would present a possible public perception that some donors were attempting to purchase influence with the new Mayor. Moreover, although the political contribution and nonprofit donations would be made to separate entities, it could reasonably appear to the public that Mayor-Elect Nutter is the ultimate beneficiary and that large political contributors are able to effectively donate far in excess of the doubled contribution limits. The appearance that the City’s contribution limits are somehow being avoided, albeit lawfully, may tend to weaken public confidence in City government by creating the appearance that large donors may have more influence with the new Administration. However, there are ways to mitigate these appearance issues.

First, as to the nonprofit Nutter Inaugural Committee, we recommend adherence to your statement that the Nutter Inaugural Committee will not solicit donations after Mayor-Elect Nutter becomes mayor. In addition, we recommend that the nonprofits cap the voluntary limit on donations to the original limits (prior to doubling) of \$2,500 per individual and \$10,000 per entity, in the aggregate for the two nonprofit corporations through 2008. We then recommend that solicitation of donations to A New Day, A New Way should not extend past December 31, 2008. When you submit your further request on the gift issues, we ask that you include more details as to what kind of expenditures, over what period, you anticipate the transition requiring. Additionally, your initial request letter referred to the fact that “A New Day, A New Way may seek and accept grants from § 501(c)(3) foundations in excess of these limits.” We are not sure what kind of organizations you are referring to, and this may create a potential issue on which we may need additional information. Although you have asked that we postpone advice as to the inaugural event, we recommend that you commit to taking a number of actions to reduce the appearance of influence. In particular, we recommend that the nonprofit corporations should commit to (and make donors aware of) limiting publicity about donations for the inaugural event(s) and the transition effort: invitations, program, flyers, and the like for the inaugural events and other publicity for the transition team should not involve prominent recognition of the names of individual donors. We agree with your

representation that the nonprofit corporations will disclose the names of all donors. Also, once planning for inaugural events commences, we urge that the Nutter Inaugural Committee reduce the impact of outside donations by charging ticket admission to as many events as is practicable. Finally, we urge you to promptly submit the promised request for an opinion on the gift issues, so that we may resolve any such questions well in advance of the “receipt” of any gifts, so that any restrictions that we may advise may be accounted for in the planning of events. Indeed, this advice is provided with the understanding that we expect to receive such a request sufficiently in advance of the subject events in order for us to provide timely advice.

Since you have explicitly stated that you are not requesting a confidential opinion, the Board has discussed this matter in public session and is making this Opinion public.

By the Board:

Richard Glazer, Esq., Chair  
Stella M. Tsai, Esq., Member  
Phoebe A. Haddon, Esq., Member

Richard Negrin, Esq., Vice-Chair, did not participate in consideration or discussion of this Opinion.

Issued December 5, 2007.