City of Philadelphia Board of Ethics

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Annual Report ~ September 2013

Honesty | Integrity | Transparency

City of Philadelphia
Board of Ethics

Honesty, Integrity, Transparency

Michael H. Reed, Esq.
Chair

Judge Phyllis W. Beck (Ret.)
Sanjuanita González, Esq.
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Father C. Kevin Gillespie
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Message from the Chair

On behalf of the members of the Board of Ethics, I am pleased to provide this Annual Report to the Mayor, City Council and the citizens of Philadelphia. The Board of Ethics has a broad mandate to administer and enforce the City's Public Integrity Laws, which include standards of conduct for City officials and employees, financial disclosure requirements, campaign finance matters, restrictions on political activities, lobbying registration and reporting, and non-competitively bid contracts. The Board understands that the policies underlying these laws are to ensure that City officials and employees act with the best interests of the public in mind and provide for honesty, transparency and integrity in City government. These policies inform every Board and staff decision.

I joined the Board in April 2011 and all but one of the other members of the Board were appointed at the time of or subsequent to my appointment. After serving as Vice-Chair of the Board, I was honored to be elected to serve as Chair of the Board in December 2012. Board members serve without compensation and devote significant amounts of their time and energies to carrying out their duties. All members of the Board are committed to assuring that the Board fulfills its mandate to administer and enforce the City's Public Integrity Laws for the benefit of Philadelphia and its citizens.

Michael H. Reed, Esq., Chair
Philadelphia Board of Ethics

Current Board Members

Michael H. Reed, Esq., a partner with Pepper Hamilton LLP. Mr. Reed is a 1969 graduate of Temple University (B.A. Pol. Sci) and received his J.D. from Yale Law School in 1972. He has been associated with the firm of Pepper Hamilton LLP since 1972 and became a partner in 1980. He concentrates his practice in corporate restructuring and bankruptcy law. Mr. Reed is a past President of the Pennsylvania Bar Association and is the State Delegate for Pennsylvania in the ABA House of Delegates, having previously served on the ABA's Board of Governors. Mr. Reed was previously a member of the Pennsylvania Judicial Inquiry and Review Board and chaired the Professional Guidance (Ethics) Committee of the Philadelphia Bar Association. Prior to being selected as Chair, Mr. Reed served as Vice-Chair of the Board of Ethics. His term runs until November 2015.

Judge Phyllis W. Beck (Ret.), retired judge and chairman and chief financial officer of the Independence Foundation. Judge Beck served as vice dean of the University of Pennsylvania Law School from 1976 to 1981, when she was appointed as the first woman to serve on the Superior Court. She has also served as general counsel to the Barnes Foundation. As chair of the Governor's Commission on Judicial Reform, Judge Beck authored a 260-page report recommending major structural reform in Pennsylvania's Judicial System. The American Judicature Society awarded her the Herbert Harley Award for her leadership role in the field, especially her work with Pennsylvanians for Modern Courts. Judge Beck was a founding member and president of Philadelphia Futures, an organization devoted to mentoring children. Judge Beck's term on the Board runs until November 2017.

Sanjuanita González, Esq., Managing Partner at Cohen, Fluhr & González, P.C., a Center City Philadelphia law firm with practices in the areas of Immigration and Social Security Disability law. Ms. González is a former President of the Council of Spanish Speaking Organizations (Concilio), the oldest Latino community based organization in Pennsylvania. She previously served on the Board of Governors of the Philadelphia Bar Association. Ms. González is a member of the American Immigration Lawyers Association; the Philadelphia Bar Association; the Hispanic Bar Association; and the National Organization of Social Security Claimants' Representatives. She is the Co-Chair of the Social Security Disability Committee of the Philadelphia Bar Association. Ms. González 's term runs until November 2013.

Brian J. McCormick, Jr., a partner at Sheller, P.C. in Center City Philadelphia. He concentrates his practice on pharmaceutical injury, consumer protection, and products liability litigation, and represents whistleblowers in both private industry and the government. Mr. McCormick received his J.D. from Rutgers University School of Law and is a 1991 graduate of the University of Richmond. Before being appointed to the Board of Ethics, Mr. McCormick was selected by Philadelphia Mayor Michael Nutter to serve on the Mayor's Task Force for Campaign Finance and Ethics Reform, which produced a final report in late 2009. A number of the recommendations in that report have been enacted in Philadelphia. Mr. McCormick formerly served as a member of the Board of Directors of the Philadelphia nonpartisan watchdog group, The Committee of Seventy. Before attending law school, Mr. McCormick served as an analyst with FBI in its Philadelphia office,

and also worked as a newspaper reporter in the Philadelphia area. Mr. McCormick's term on the Board runs until November 2016.

Father C. Kevin Gillespie, President of Saint Joseph's University. He earned his bachelor's degree in psychology from what was then Saint Joseph's College in 1972, and went on to earn master's degrees in psychology from Duquesne University and in divinity from the Jesuit School of Theology Berkeley. He holds a Ph.D. in pastoral psychology from Boston University. Most recently, Fr. Gillespie was associate provost for University Centers of Excellence at Loyola University Chicago, overseeing five academic centers. He has served on the Saint Joseph's University Board of Trustees since 2006. Fr. Gillespie's term on the Board runs until November 2014.

Message from the Executive Director

In the eighteen months from January 2012 to June 2013 that is covered in this Report, the Ethics Board continued to operate in what seems like perpetual start-up mode, with limited staff, reduced funding and new mandates. At the same time, as the Board completed its sixth year of operation and entered its seventh, we are showing signs of maturing as an agency by maintaining continuity through significant transitions for the Board and staff, including: the departure of the last remaining original Board member; selecting a new Chair and Vice Chair of the Board; adding two new Board members; moving our office across Center City; converting non-legal staff to Civil Service; and hiring a new General Counsel after the Board's first General Counsel retired. Several external changes also give rise to hope that the City's ethics program is settling into a steadier course.

First, with funding restored to 2007 levels for FY 14, we will be able to hire more support staff. Second, in the past year, we have also won two court challenges on the merits and saw a third case end before trial. Each of these cases, but particularly the third case that ended before trial, consumed a significant amount of staff time as we worked with our attorneys to defend the Board. Third, the City is close to approval of a contract with a vendor to build the mandated online lobbying disclosure system. The new online disclosure system will enable us to move away from the current paper registration and reporting system, which has been a time-consuming venture for staff. With additional staff, reduced distractions for existing staff and the eventual elimination of time-consuming paperwork, we look forward to a productive year in FY 14.

J. Shane Creamer, Jr.
Executive Director

Current Board of Ethics Staff Members

J. Shane Creamer, Jr., has been Executive Director to the Philadelphia Board of Ethics since it was reconstituted in November 2006. Previously, he served as the Executive Director of the advisory Board of Ethics, and was Assistant Secretary of Education and Assistant Managing Director for the City of Philadelphia. Before joining City government, he was a partner with Duane, Morris & Heckscher. Mr. Creamer currently serves as a member of the Steering Committee of the Council on Governmental Ethics Laws (COGEL). A Philadelphia native, Mr. Creamer is a graduate of Gettysburg College and Villanova University School of Law.

Tina Formica has been a member of the Board's staff since March 2007. She serves as the Legal Support Services Coordinator. A Philadelphia native, she graduated from St. Hubert's High School and has worked in City government since 1997 with the Law Department, Mayor's Office, and City Council.

Nedda Gold Massar is Deputy Executive Director of the Board of Ethics. Prior to her appointment to that position in November 2007, for more than 21 years she was a staff member of the New Jersey Election Law Enforcement Commission (ELEC) where she served ELEC as a staff attorney, the Director of the Gubernatorial Public Financing Program, Deputy Legal Director, and Legal Director. Ms. Massar is a past president of the Council on Governmental Ethics Laws (COGEL). She is a graduate of the University of Pennsylvania and Rutgers Camden School of Law.

Maya Nayak was appointed as the Board's General Counsel in May 2013. She had served as the Board's Associate General Counsel since May 2008. Previously, Ms. Nayak was a litigation associate with Hangley Aronchick Segal & Pudlin and was a law clerk to the Honorable Berle M. Schiller in the U.S. District Court for the Eastern District of Pennsylvania. She holds undergraduate and law degrees from Yale University.

Michael J. Cooke, Director of Enforcement, joined the Board in April 2008. Mr. Cooke was formerly an associate with the firm of Burke O'Neil in Philadelphia. After receiving his undergraduate degree from the University of the South in Sewanee, Tenn. and his law degree from Northeastern University in his native Boston, he came to Philadelphia to work with the Pennsylvania Prison Society.

Elizabeth Baugh, the Public Integrity Compliance Services Supervisor, became a member of the Board's staff in December 2010. A career librarian, Ms. Baugh was previously director of

the Northampton Township Free Library in Bucks County and manager of the Learning Resource Center of the Center City Campus of Strayer University. She is a native of Suffolk, Va., and holds a bachelor's degree in English from Christopher Newport University in Newport News, Va.; a master's degree in education from Old Dominion University in Norfolk, Va.; and a master's degree in library and information science from the University of South Carolina.

Hortencia Vasquez joined the Board in 2008 and is the Board's Legal Services Clerk. A native of the Virgin Islands, she came to Philadelphia seven years ago and attended Cite Business School, taking computer-related courses. Before joining the Board, she was an intern with the Police Advisory Commission. She is bilingual in Spanish and English.

Bryan McHale joined the Board in September 2012 as a Public Integrity Compliance Specialist. A Philadelphia native, he holds a bachelor's degree in Political Science from Temple University. He has worked for the U.S. Census Bureau and the Internal Revenue Service and prior to joining the Board was a facilitator at public meetings for the Penn Project for Civic Engagement.

Elizabeth Downey joined the Board in August 2013 as the Associate General Counsel. She works with General Counsel Maya Nayak to provide legal advice to the Board and its Staff and to advise the regulated community about compliance with the public integrity laws over which the Board has jurisdiction. Ms. Downey formerly served as Associate Legislative Counsel in the New Jersey Legislature's Office of Legislative Services in Trenton, New Jersey. She is a graduate of the University of Pennsylvania and Boston University School of Law.

2012—Change and Continuity—An Overview

During the period of time covered by this Annual Report there were several significant changes at the Board of Ethics, and the Board is proud that it has continued to provide all of its services to the City and has maintained the quality of those services while adapting to the changes. Among the changes were installation of new Board members and new Board leadership, the move of the Board's office in June 2012 from 1441 Sansom Street to 1515 Arch Street, the still on-going transition process from exempt employee status to Civil Service status for several Board staff positions, the retirement of the Board's long-serving General Counsel, and the hiring of a new General Counsel.

This Annual Report also reflects a change. It departs from prior Board reports because it covers

18 months of Board activity from January 2012 through June 2013, instead of a 12-month period, and also includes fiscal information for July 1, 2012 through June 30, 2013 (FY13). In the past, the Board has filed two separate annual reports, each covering 12 months: an annual activity report, required by City Code Section 20-606(1)(l), in April, and a fiscal report, mandated by Home Rule Charter Section 3-806(k), in September. At its meeting in October 2012 the Board determined that it was appropriate and necessary to conserve staff resources to consolidate the fiscal and activity information into a single report and to file that report by September 30th, the deadline in Charter Section 3-806(k).

Therefore this report includes the Board's fiscal and activity information for the period of time from July 1, 2012 through June 30, 2013 (FY13) and also includes "catch up" information on the Board's activity for January through June 2012 which would have been included in an April Annual Report. Future Annual Reports will include Board activity and fiscal information for a 12-month period of time.

New Board Members and Leadership

Since January 2012, two new members have been appointed to the Board of Ethics. Brian J. McCormick, Jr., Esq., took the oath of office in December 2012, and Father C. Kevin Gillespie, S.J., Ph.D., took the oath of office in May 2013.

In addition to new members, the Board's leadership also changed during the past 18 months. At its December 2012 meeting, the Board elected Michael H. Reed, Esq., a Board member since April 2011, as its new Chair. Chair Reed replaced Richard Glazer, Esq., who had served as Chair since the Board's inception in 2006. Judge Phyllis W. Beck (ret.), also a Board member since April 2011 became the Board's Vice Chair in December 2012. For the first time, the Board's membership no longer includes any of the five original members who were installed on November 27, 2006. With the strength of its new leadership, the work of the Board continues with dedication and vision to implement and strengthen the City's Public Integrity Laws.

Retirement of the Board's First General Counsel

The Board's General Counsel, Evan Meyer, Esq., retired in March 2013. Mr. Meyer had become the first General Counsel of the new, independent Board of Ethics in August 2007. He came to the Board after serving for more than 20 years in the City Law Department where he provided advice on the ethics laws to City officials and employees. When announcing Mr. Meyer's retirement, Board Chair Michael Reed said "that the Board will greatly miss its dedicated General Counsel and that his shoes would be difficult to fill."

The Board therefore instructed its staff to immediately begin the search for a new General Counsel and received applications from many highly qualified candidates. The Board was proud to select Maya Nayak, Esq., as its new General Counsel. Ms. Nayak had served as the Board's Associate General Counsel since May 2008 and brought her extensive knowledge of the City's Public Integrity Laws and her experience advising the Board to the position. Ms.

Nayak's transition to the General Counsel position was smooth, but the resulting vacancy for several months in the Associate General Counsel position slowed certain projects, including the online ethics training program, and therefore had a significant impact on the Board's work. A new Associate General Counsel, Elizabeth Downey, Esq., joined the Board's staff in August 2013 and has begun to work on important projects.

Office Move

All staff members were involved in the move in late June 2012 from Sansom Street to our new office, and they continued to answer phones and conduct business while they packed and labeled boxes. The office was closed for only two days during the actual moving process. As a result, there was minimal disruption to the Board's operations and services. There has been one major impact on the Board's work as a result of the office move; the Board no longer has its own dedicated space for conducting training sessions. Because we now share a large training room with many other City agencies and users, we have lost the flexibility to schedule training classes on an ad hoc basis to meet the needs of City officials and employees.

Board Staffing and Civil Service

Since its inception, each of the Board's current staff members was hired as an exempt City employee and was approved and added to the City payroll. When the Board started the process to fill three exempt positions during FY12, it was advised by the Law Department and Office of Human Resources that there was no "blanket exemption" from Civil Service for its positions and that the three positions would have to be filled according to Civil Service requirements.

The Board appeared before the Civil Service Commission in February 2012, and the three Commission members approved a waiver from Civil Service for the Board's staff subject to Law Department confirmation that the Civil Service Commission had the authority to grant the waiver. In an April 2012 opinion from the City Solicitor, the Civil Service Commission was advised that it could not grant a "blanket exemption" for all Board positions, and positions other than Board attorneys and an executive assistant must be filled as Civil Service positions.

We have therefore worked in 2012 and 2013 with the Office of Human Resources to establish four new titles which were presented to and approved by the Civil Service Commission in April 2013. Examinations for the four new titles were advertised in May 2013, and the incumbent Board employees have applied for and will have to qualify in order to retain their current positions with the Board. This transition has caused uncertainty for valued existing Board staff and has delayed filling staff vacancies by more than a year.

Training and Outreach Efforts

Board staff continues to emphasize education, training and outreach efforts while at the same time engaging in important and often complex regulatory activity. We believe that if City officials, employees, candidates, and those engaged in lobbying know how and why the public

integrity laws apply to them, they can avoid making mistakes and avoid violations of the law. To that end, since January 2012, our staff conducted in-person training and outreach sessions that covered ethics, campaign finance, political activity, and financial disclosure.

Campaign Finance Training: We began in December 2012 to prepare for the 2013 municipal elections and have conducted four training sessions on the Campaign Finance Law that were attended by more than 100 people. Each session was presented jointly with the City Commissioners and covered the requirements for candidates and political committees under the Pennsylvania Election Code and Philadelphia's Campaign Finance Law. Each session provided ample time for questions and discussion. Two more sessions will be held before the November election.

In a further effort to promote compliance with the Campaign Finance Law and to avoid non-filing violations, our staff issued reminders about due dates for campaign finance reports in advance of each reporting cycle deadline and to alert campaign entities of the 24-hour and independent expenditure reporting requirements.

Enhanced Campaign Finance Disclosure: We are very pleased to note that the availability of campaign finance information, filed electronically by candidates and committees to comply with the Campaign Finance Law, has again been improved through the efforts of the Department of Records. A single comprehensive searchable text file of campaign finance data is now available on the Records Department website that makes it much easier for the public to search for campaign finance information. Our staff frequently educates members of the public and the media about different ways to use this data and how to search for campaign finance information. The Board and its staff are therefore uniquely positioned to help advance the City's focus on open data and government transparency.

Ethics Training: The Board is responsible for providing mandatory ethics training to City officials and employees and board and commission members. As with campaign finance training, the goal of ethics training is to prevent potential violations. As many as half of our staff members are continually involved in scheduling, designing, and presenting in-person ethics training sessions. Since January 2012, Board staff members have conducted 22 ethics training classes that were attended by more than 450 City officials and employees.

In an effort to expand the reach of ethics training, Board staff began development of an online ethics training project several years ago, but its implementation was delayed by technical issues and continues to be delayed by a lack of staff resources to complete project tasks. The Board views this project as critical to its ethics training mandate because it will maximize staff resources while allowing the Board to reach a larger number of individuals with ethics training. The online ethics training project is especially important for the members of all City boards and commissions who are subject to an annual ethics training requirement. Most of these individuals are not City employees and many find it difficult to attend training during the work day. Therefore, an online training program is especially appropriate for these individuals.

Many tasks must still be completed before the online project can "go live." Board staff must complete the training content, test the software from non-City computers, verify that the system sends confirmation emails to users and to the Board, and create internal office procedures for tracking the individuals who have completed the training requirement. Making online ethics training available is a Board priority in the coming months.

Financial Disclosure Training: Board staff again offered training sessions in 2012 and 2013 for more than 30 City departmental Human Resources (HR) managers in preparation for the May 1st annual financial disclosure process for City employees. HR managers assist the employees in their departments to file the correct financial disclosure forms. Management of the online financial disclosure system is complicated, and the Board's "refresher" courses are important for HR managers.

Regulations

Regulation No. 1, Campaign Finance: The Board proposed amendments to Regulation No. 1, Campaign Finance, in December 2012 that were intended to clarify important campaign finance concepts in advance of the 2013 elections for District Attorney and City Controller. The amendments became effective on March 8, 2013.

The most notable change was to provide greater guidance on the distinction between independent and coordinated expenditures. An independent expenditure is an expenditure to influence an election that is not made in coordination with a candidate or candidate political committee. Independent expenditures are not subject to the contribution limits of the City's Campaign Finance Law. In contrast, when a person or political committee makes an expenditure that has been coordinated with a candidate's campaign, that expenditure becomes an in-kind contribution from the person or committee and is subject to the contribution limits of the Campaign Finance Law. These amendments to Regulation No. 1 were a timely effort to educate candidates, committees, and contributors about the rules applicable to City elections.

Regulation No. 4, Advisory Opinions: One of the Board's primary functions is to provide advice on compliance with the City's Public Integrity Laws to persons affected by those laws. The purpose of Board Regulation No. 4, originally adopted in April 2008, is to describe the various processes by which a person can obtain advice from the Board. In October 2012, the Board approved for public comment amendments to Regulation No. 4 that were intended to accomplish three goals: to update the Regulation to use the Board's current drafting style; to improve the nomenclature; and to provide a process for reconsideration or appeal of opinions. These amendments became effective on November 20, 2012.

The newly-amended regulation imposed a14-day waiting period between Board approval of an opinion and publication of that approved opinion on the Board's website. Upon the recommendation of staff, the Board reconsidered the waiting period and on February 20, 2013, approved for public comment a further amendment to Regulation No. 4 that removed the14-day

waiting period. This amendment, which became effective on March 27, 2013, was prompted by the belief that it is in the public interest to make advice available to the public as quickly as possible on the Board's website and not to delay publication of an opinion.

A New Gift Regulation: Based upon the frequency of requests for advice and guidance, the Board and staff are uniquely positioned to identify those ethics-related questions most often posed by City officials and employees. The conclusion was that it would be beneficial to have a gift regulation with real-world examples of gift situations encountered by City employees and officials. Staff therefore began in 2013 to develop a completely new gift regulation by reviewing the gift provisions of Section 20-604 of the City Code and Section 10-105 of the Home Rule Charter on gratuities, and prior advice given to City officials and employees. Staff also surveyed gift restrictions in other municipalities and states across the United States. The Board expects to approve for public comment a comprehensive regulation concerning gifts and gratuities in the near future.

By reviewing and improving its existing regulations and by proposing new regulations, such as the gift and gratuities regulation, the Board continues to clarify the City's often complex Public Integrity Laws and to make those laws accessible to the regulated community.

Advice

The Board of Ethics provides three kinds of advice:

1. Board Opinions are advisory opinions that are approved and issued directly by the Board. Board Opinions generally address novel questions that have not been previously interpreted by the Board or by a court.

2. General Counsel Opinions are advisory opinions issued by the Board's General Counsel Staff. These opinions address issues that have been determined by a Board Opinion, a court opinion, or the relevant law.

3. Informal general guidance is information provided by Board Staff to educate and inform people about the laws under the Board's jurisdiction. Such guidance can be given by telephone, email, or through trainings. Unlike advisory opinions, informal guidance may not be relied upon to provide protection against penalties for a violation.

Upon request, advisory opinions may be non-public. This means that before the opinion is made public it is redacted to conceal facts that are reasonably likely to identify the requestor or other City employees who are involved.

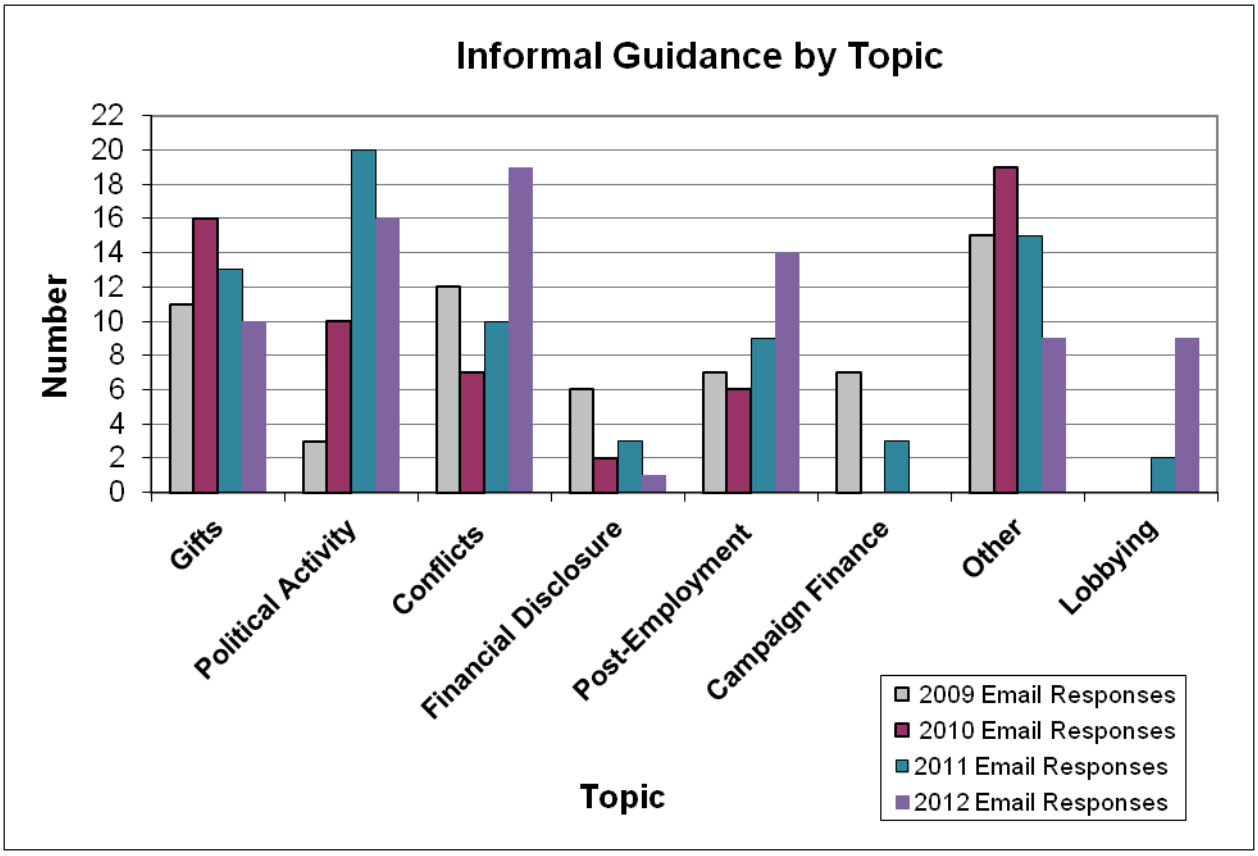
In the fall of 2012, the Board significantly revised its Regulation 4 on advisory opinions, which had originally been adopted in 2008. The amendments to Regulation 4 made it conform to the Board's newer regulation format, aimed to provide clearer guidance on how to seek an advisory opinion, and added a reconsideration and appeal process.

In 2012 and the first half of 2013, we issued 12 Board Opinions and 16 General Counsel Opinions. The most common topic for a Board Opinion was the new City Lobbying Law, which became effective in 2011. Five Board Opinions addressed aspects of the Lobbying Law that included the reception and hearing testimony exceptions, the contingent fee prohibition, and the application of the official capacity exemption to a public entity whose own employees lobby the City and not to such an entity that hires outside lobbyists.

Board Opinions also addressed requests regarding gifts, political activity, conflicts of interest, and the representation restriction. The representation Board Opinion, No. 2013-005, was noteworthy because it relied on a Solicitor's Opinion to address a threshold question of whether it is within the scope of a Council staff member's permissible job duties to provide legal representation to a constituent.

Three General Counsel Opinions also provided guidance on the City Lobbying Law, addressing the prohibition on lobbyists being political committee officers, the scope of the term "indirect communication," and the exemption for services pursuant to a City contract. The most common topic for General Counsel Opinions, however, was conflicts of interest, which was the subject of almost half of such opinions. The remaining General Counsel Opinions were devoted to the post-employment and political activity restrictions.

Board staff provided informal general guidance almost daily to those affected by the Public Integrity Laws. Almost 200 informal contacts between January 2012 and June 2013 covered the topics indicated in the chart below:



Staff also regularly receives questions from members of the public about the ethics laws and frequently refers callers to the Board's website for relevant information.

Lobbying

The Board's efforts to implement the City's new lobbying law, Chapter 20-1200 of the City Code, continued as a major focus of our work in 2012 and 2013. Several staff members were at all times involved in various aspects of this project, including the project to design an online electronic filing system and the receipt of interim paper registrations and expense reports. The mandatory online filing component of the Lobbying Code remains unfinished. The Code requires that lobbyists, lobbying firms and principals electronically file their registrations and expense reports and that lobbying information be made available to the public in a searchable online database and directory of lobbyists. A major purpose of the lobbying law is to make information publicly available about individuals and entities seeking to affect legislative and administrative decisions in City government, and the searchable online database is the most important tool to effectuate that purpose.

The Board's FY11, FY12 and FY13 budgets contained no additional funding to support development and maintenance of an electronic filing system. Further, no additional funding was included in the FY14 budget. The Board has therefore worked with the City's Office of Innovation and Technology (OIT) to provide the mandatory electronic filing system for lobbying. Work on the electronic filing system and searchable database by the original vendor, selected by OIT, was suspended when the Board and OIT determined in April 2012 that the vendor's site design was incomplete and that essential features were often nonfunctional.

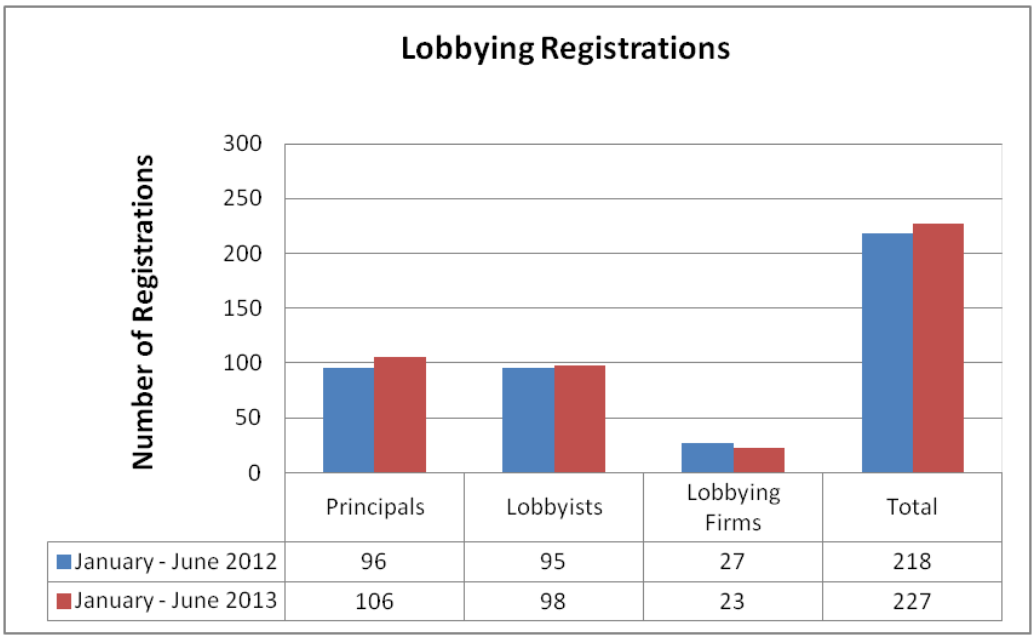
Therefore, the Board and OIT drafted a request for proposals that was posted on eContractPhilly on September 26, 2012. OIT and Board staff evaluated the bids that were received to design the online system, and on March 19, 2013, a "Notice of Intent to Contract" was posted on eContractPhilly indicating that the City intends to contract with Acclaim Systems, Inc. to develop the online lobbying filing project. Law Department review of the proposal continues. The next step in the contracting process will be issuance of an "Intent to Award" the contract. OIT has estimated that implementation of the online lobbying system should take four months from the project start date.

While implementation of the online system has been delayed, the Board understood the importance of the lobbying registration and expense reporting in achieving the public policy goal of the Lobbying Code to bring more transparency to City government. Therefore, pending implementation of the online system, Board staff has devoted significant efforts to creating and maintaining an interim paper registration and expense reporting system for lobbyists, lobbying firms, and principals. The interim paper system was available beginning on January 3, 2012, and since that date, each month Board staff has posted updated lists of registered lobbyists, lobbying firms, and principals on the Board's website. Images of lobbying quarterly expense

reports are also posted on a quarterly basis. While not the same as a searchable database of lobbying information, the public has had access to useful information about who was lobbying City government and what legislative and administrative issues were the subject of lobbying efforts.

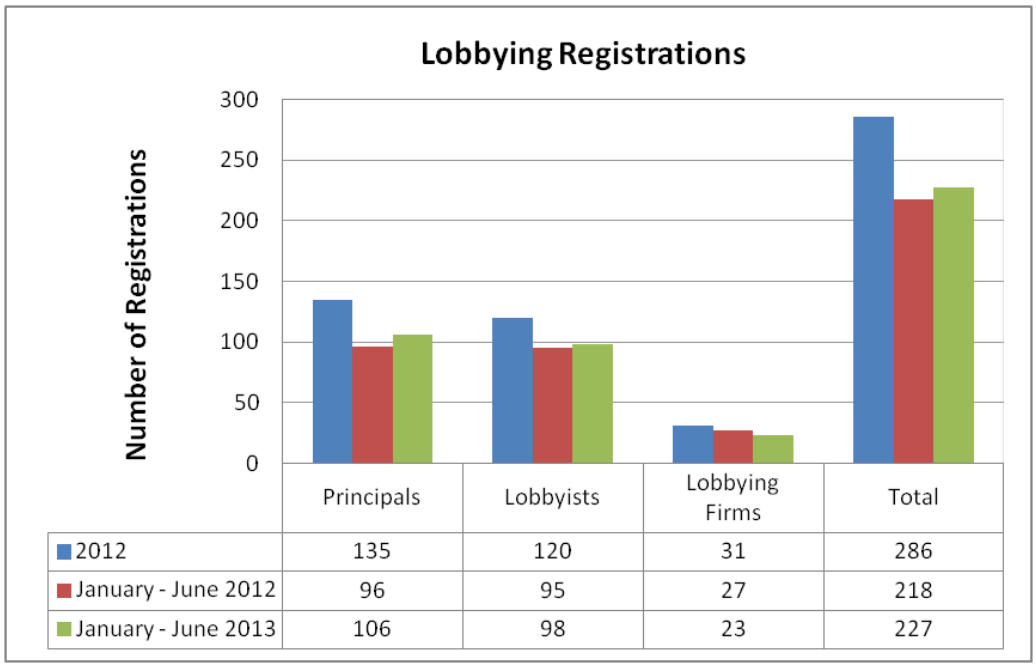
The summary information, below, indicates the number of entities that have registered to conduct lobbying in the City in 2012 and the first half of 2013. A total of 286 registrations were received in 2012, and 227 have been received through June 30, 2013. For the first six months of 2012 and 2013, the numbers of registered lobbyists, lobbying firms and principals were similar. When the online lobbying system is available, the Board expects to provide more detailed analysis of lobbying information.

Comparison of January – June Registrations in 2012 & 2013



	Principals	Lobbyists	Lobbying Firms	Total
January - June 2012	96	95	27	218
January - June 2013	106	98	23	227

All Lobbying Registrations Received Beginning January 1, 2012



	Principals	Lobbyists	Lobbying Firms	Total
2012	135	120	31	286
January - June 2012	96	95	27	218
January - June 2013	106	98	23	227

Financial Disclosure

The Board's responsibility for financial disclosure by City officials, employees, and board and commission members occupies a significant amount of staff time each year, especially in March through May. City officials, employees and boards and commission members file one or more of three annual financial disclosure forms. The filing deadline is May 1st and the three forms are the City Form (required by the City Ethics Code), the Mayor's Form (required by an executive order), and the State Form (required by the State Ethics Act).

In order to promote compliance with these requirements, staff makes every effort to reach as many of the filers as possible with email reminders which describe the various forms and the availability of an online electronic filing system. As a result of reminder emails that are sent to City employees and board and commission members, the Board receives hundreds of calls for filing assistance during April. Callers request assistance with the online financial disclosure system, administered through the Records Department, and the contents of the financial disclosure forms.

The online system now accepts electronic signatures, and the disclosure reports, which now can be filed completely electronically, save paper and reduce the time necessary to process the information. Of the more than 5,100 financial disclosure forms filed in 2012, 84 percent were filed electronically. Similarly, 83 percent of the forms filed in 2013 were electronically filed.

The Board was very fortunate in April 2013 to have help from the Office of Human Resources which issued email reminders about financial disclosure filing to more than 6,000 City employees. Board staff issued email reminders to hundreds of members of City boards and commissions, and also mailed letters to 575 City employees who left City government during the past year, but still have to file a financial disclosure statement.

In our reminders and phone contacts with filers, we explain that an in-person Filing Support Center is available for several days before the May 1st filing deadline. Computer workstations are available for those filers who wish to complete their Financial Disclosure forms onsite, and Support Center staff assist filers one-on-one with the online process. The Support Center is provided by the Records Department and is staffed by representatives of the vendor who manages the financial disclosure software.

Financial disclosure is another key component of transparency in City government and is accomplished through a cooperative effort of the Records and Human Resources Departments and the Board of Ethics.

Enforcement and Litigation

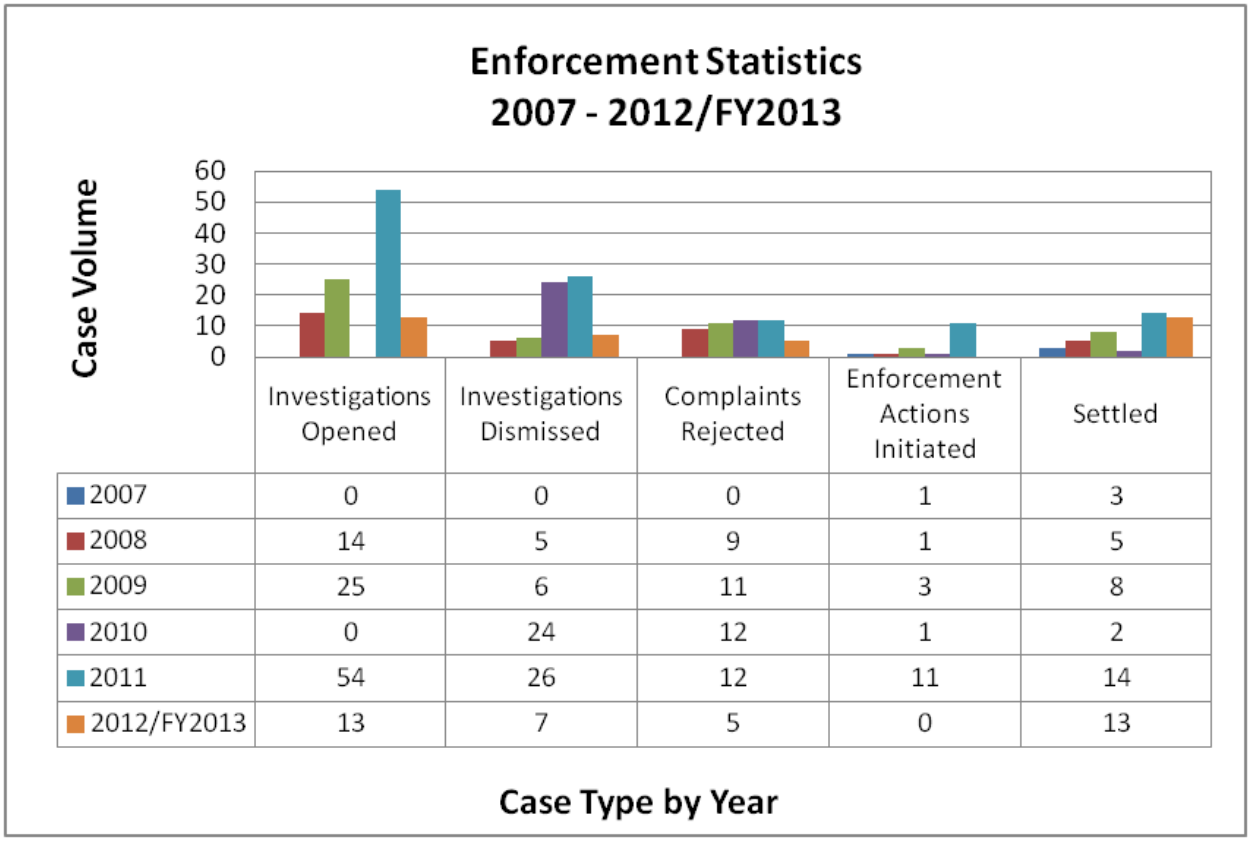
2007-FY2013 Enforcement Overview

The Board of Ethics is responsible for enforcing the City's public integrity laws and is required to include information concerning its enforcement activities in its annual report.

The Board's Executive Director can initiate an investigation either upon receipt of a complaint or if he determines that a potential violation of a law within the Board's jurisdiction has occurred. Upon completion of the investigation, if the Executive Director finds probable cause to believe a violation has occurred, he can initiate an enforcement action. If, after conducting an investigation, the Executive Director does not find probable cause, he will terminate the investigation. Similarly, the Executive Director will reject a complaint that does not state potential violation of a law within the Board's jurisdiction.

At any point, the Executive Director can seek to resolve a matter through a settlement agreement. In a settlement agreement, subjects of enforcement admit to violations and, in most cases, agree to pay a civil monetary penalty.

The below chart summarizes the Board's investigation and enforcement activity since 2007.



	Investigations Opened	Investigations Dismissed	Complaints Rejected	Enforcement Actions Initiated	Settled
2007	0	0	0	1	3
2008	14	5	9	1	5
2009	25	6	11	3	8
2010	0	24	12	1	2
2011	54	26	12	11	14
2012/FY2013	13	7	5	0	13

Of the 45 settlement agreements concluded since 2007, 37 involved violations of the City's campaign finance law, four involved political activity prohibited by the City's Home Rule Charter, one involved a violation of the Ethics Code's confidentiality provision, one involved violations of the campaign finance law and the Ethics Code, one involved violations of the campaign finance law, the Ethics Code, and the political activity restrictions, and one involved violations of the Ethics Code and the political activity restrictions.

2012 & FY2013 Enforcement Activity

In 2012 and FY2013, Board staff initiated 13 investigations of potential violations of the public integrity laws. In 2012 and FY2013, the Executive Director dismissed 20 investigations because he did not find probable cause to believe a violation had occurred. Thirteen matters resulted in settlement agreements, as described below. During the course of one of the investigations, the Executive Director filed a petition in the Court of Common Pleas to compel compliance with an Administrative Subpoena Board enforcement staff had served on a bank.

Settlement Agreements

In 2012 and FY 2013, the Board concluded 13 settlement agreements. In those settlement agreements, individuals and political committees admitted to violations and, in all but one case, agreed to pay a civil monetary penalty. Ten of the settlement agreements involved violations of the campaign finance law; one involved violations of the Home Rule Charter's prohibitions on employee political activity, one involved violations of the campaign finance law and the Ethics Code, and one involved violations of the campaign finance law, violations of the Ethics Code, and violations of the political activity restrictions. In 2012 and FY 2013, subjects of enforcement agreed to pay a total of $78,409 in civil monetary penalties. All of the Board's settlement agreements are available on the Board's website.

Litigation Involving the Board

Litigation concerning the Board's authority continued in 2012 and 2013 in several important matters. The first matter began in 2008, the second in 2009, and the third in 2011. In each case, an inordinate amount of staff time has been required over several years to draft pleadings, respond to discovery, and prepare for trial. Two of the three cases are still active. The Board has had exceptional *pro bono* representation by the Dechert firm in two of the cases.

Cozen O'Connor v. City of Philadelphia Board of Ethics, et al.

In the 2007 primary election, the Cozen O'Connor law firm provided almost $450,000 in legal services to Mayoral candidate Bob Brady. In Advisory Opinion 2007-003, the Board advised the Brady Campaign that contributions received by a candidate after an election are subject to the contribution limits imposed by Section 20-1002 of the City Campaign Finance Law if those contributions are used to retire campaign debt incurred before the election. Cozen challenged

the Board's Opinion and sought a declaratory judgment in the Court of Common Pleas in March 2008 that the legal expenses incurred by the Brady Campaign were not "expenditures" as defined under Philadelphia Code § 20-1001(10) and that post-election contributions or debt forgiveness are not "contributions" as defined under Philadelphia Code § 20-1001(6). (In June 2010, City Council amended the campaign finance law to codify the Board's interpretation that contributions received by a candidate after an election are subject to the contribution limits imposed by Section 20-1002 if those contributions are used to retire debt that was incurred for use in influencing the election of the candidate.)

After the Board prevailed on its preliminary objections in the Court of Common Pleas, affirmed by the Commonwealth Court, the case was litigated up to the Pennsylvania Supreme Court, which reversed on narrow grounds and remanded for further proceedings in February 2011. On remand, the parties filed cross-motions for judgment on the pleadings, and on July 18, 2012, the Honorable Leon Tucker of the Philadelphia Court of Common Pleas ruled in the Board's favor and held that post-election forgiveness by Cozen O'Connor of the debt owed to it by the Brady Campaign at one time and *in toto* would be subject to the City's contribution limits.

Cozen appealed Judge Tucker's ruling to the Pennsylvania Commonwealth Court, which affirmed the trial court's ruling on June 18, 2013, crediting nearly all of the Board's arguments. Cozen then filed a Petition for Allowance of Appeal with the Pennsylvania Supreme Court on July 18, 2013. As of the preparation of this Annual Report, the Supreme Court had not yet ruled on Cozen's Petition.

The Board expresses its great appreciation to Dechert and specifically Cheryl Krause, Karen Daly and Elisa Wiygul for their continued excellent work and time spent representing us *pro bono* in this significant matter.

McCaffery v. Creamer, et al.

In December 2009, Dan McCaffery sued the Board and its Executive Director, J. Shane Creamer, Jr., alleging that they had defamed him in statements related to an Enforcement Petition the Board filed against Mr. McCaffery in May 2009 while he was a candidate for District Attorney.

After years of litigation on a number of legal issues, including a trip to the Pennsylvania Commonwealth Court, the case was scheduled for trial in March 2013.

On the eve of trial, Mr. McCaffery withdrew his lawsuit with prejudice and entered into a settlement with the Board involving no admission of liability by the Board or its Executive Director. The parties published a joint statement in the Legal Intelligencer, paid for by the City, that was consistent with the underlying 2009 Settlement Agreement between the Board and the McCaffery Campaign that had resolved the original Enforcement Petition.

We would like to thank Dechert and specifically Cheryl Krause, Karen Daly, Stephen Brown, Elisa Wiygul and Galia Porat for their excellent work and time spent representing us *pro bono* in this significant matter. Thanks also to Kelly Diffily, Craig Straw, and Mark Maguire of the Law Department who served as co-counsel.

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

On May 18, 2011, Lodge No. 5 of the Fraternal Order of Police filed a lawsuit in federal court challenging the City's ban on political contributions by members of the police department. Named defendants include the City, Mayor Nutter (official and individual capacity), the Ethics Board, each individual Board Member (official capacity only) and the Board's Executive Director, J. Shane Creamer, Jr., (official and individual capacity). Plaintiffs include Lodge No. 5 of the FOP, John McNesby (President of the FOP), COPPAC (the FOP's PAC), and four individual police officers.

The case was assigned to the Honorable Juan R. Sanchez of the Eastern District of Pennsylvania and the parties filed cross motions for summary judgment on May 16, 2012. Judge Sanchez heard oral argument on July 11, 2012 and subsequently, on February 21, 2013, he granted the Board's motion for summary judgment and dismissed the FOP's case, thereby upholding the ban. The FOP appealed Judge Sanchez's ruling to the Third Circuit Court of Appeals and filed its brief in support of its appeal in May 2013. Our reply brief was filed on July 11, 2013. The case has been listed for oral argument on Tuesday, November 12, 2013.

We would like to thank Mark Maguire and Eleanor Ewing of the Law Department for their representation of the Board in this matter.

Board of Ethics FY13 Information

In FY13, the Board spent $712,935, as follows, which was less than its $908,942 appropriation:

Class	FY13 Appropriation	FY13 Total Spent
100 – Salaries	$798,942	$686,300
200 – Purchase of Services	$96,000	$15,370
300/400 – Materials, Supplies & Equipment	$14,000	$11,265
Total:	$908,942	$712,935

Two major factors contributed to spending below the Board's FY13 appropriation. First, the Board had anticipated hiring additional staff in FY13 to reach a staffing level of 11, but was unable to hire new staff because of the uncertainty created by the pending transition of several exempt staff members to Civil Service status and because there were vacancies created by the retirement of a key staff member. As a result, FY13 spending in Class 100 was below the appropriated amount. However, the Board expects to hire the much-needed additional staff in FY14 and therefore to spend its FY14 Class 100 appropriation.

Second, a significant portion of the Board's Class 200 appropriation also remained unspent in FY13. This situation arises each year because the Board must anticipate that it will need funds to pay for legal representation in the event of an outside legal challenge to its authority. The City Law Department has not provided representation for the Board or paid outside counsel in certain major cases. The Board must therefore allocate Class 200 funds for legal services in anticipation of such challenges, although the total funds available in Class 200 would not begin to cover the cost of outside attorneys to represent the Board in such legal actions. This is not speculative; it is reality for the Board which currently faces and will most likely again face such legal challenges.

The Board has had the good fortune to receive *pro bono* representation in several major cases and has therefore, to date, not had to rely on its inadequate Class 200 funds to pay for outside counsel. In the past three years, the *pro bono* legal services provided to the Board by the Dechert law firm are valued at well in excess of $1 million. The Board is acutely aware that these generous volunteer legal services may not be available for future litigation and that the funds available in Class 200 will be inadequate to cover the Board's legal costs. Therefore the Board operates with a razor-thin legal safety net.

Between July 1, 2012 and June 30, 2013, the Board spent $712,935, as follows:

Class 100 – Personal Services

Class	Name	Title	Amount Paid
101	Baugh, Elizabeth	Compliance Services Director	47,552
101	Cooke, Michael	Director of Enforcement	96,780
101	Creamer, Jr., J. Shane	Executive Director	127,140
101	Formica, Tina	Administrative Assistant	50,256
101	McHale, Bryan	Compliance Specialist	27,076
101	Massar, Nedda	Deputy Executive Director	120,209
101	Meyer, Evan	General Counsel	89,570
101	Nayak, Maya	Associate General Counsel	100,222
101	Vasquez, Hortencia	Clerical Assistant	27,495
	Total Class 100		**$686,300**

Class 200 – Purchase of Services

Class	Class Description	Description of Services	Amount Paid
210	Postal Services	Delivery Service & Postage	1,050
211	Transportation	Travel & Transportation	1,899
240	Advertising	Job Postings	1,000
250	Professional Services	Background Check	127
255	Dues	Professional Membership Dues	890
256	Seminar & Training Sessions	Seminars, Training & Continuing Legal Education	2,662
258	Court Reporting	Court Reporting Services	1,676
260	Repairs & Maintenance	Copier	2,600
266	Maintenance & Support – Computer Hardware & Software	Software Maintenance	1,173
299	Other Expenses	Subpoena Copy Charges	2,293
	Total Class 200		**$15,370**

Class 300 & 400 – Materials, Supplies & Equipment

Class	Class Description	Description of Purchase	Amount Paid
304	Books & Other Publications	Books	1,738
320	Office Materials & Supplies	Office Materials, Supplies & Paper	3,074
325	Printing	Stationery, Cards & Nameplates	492
427	Computer Equipment & Peripherals	Computers, Printers, & Projectors	5,961
	Total Class 300/400		**$11,265**

Total FY13 Expenses = $712,935

Looking Ahead

The Board of Ethics continues to face major challenges. These include the unfinished online lobbying registration and reporting system (and managing a paper system in the interim), having to devote scarce resources to litigation against the Board, the unfinished online ethics training project, and the need to hire additional staff. In spite of these challenges, the Board and its staff will continue to devote our energy and best efforts to providing education and outreach to the public and the City government on the Public Integrity Laws, responding to requests for advice, and enforcing the law when necessary.

We are proud to be the agency charged with the important role of administering the City's Public Integrity Laws and with responsibility for enhancing public confidence in Philadelphia government. We hope that our actions continue to promote honesty, integrity and transparency in City government. The Board and its staff look forward to continuing to serve the citizens of Philadelphia in this positive and constructive role.

Appendices

Appendix I: Regulations 1 & 4 (amended)

PHILADELPHIA BOARD OF ETHICS

REGULATION NO. 1

CAMPAIGN FINANCE

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SUBPART A. SCOPE; DEFINITIONS

1.0 Scope. The requirements and prohibitions of Philadelphia's campaign finance law supplement the requirements and prohibitions imposed by the Pennsylvania Election Code (25 P.S. §3241, *et seq*.). This Regulation, promulgated by the Board pursuant to its authority under Sections 4-1100 and 8-407 of the Philadelphia Home Rule Charter and Chapter 20-600 of the Philadelphia Code, interprets Philadelphia's campaign finance law found at Code Chapter 20-1000.

1.1 Definitions. As used herein, the following words and phrases shall have the meanings indicated.

a. Agent. An individual who acts at the direction of or is authorized to act on behalf of a candidate, a chair or treasurer of a political committee, or a political committee.

b. Board. The body of members of the Board of Ethics appointed pursuant to Section 3-806 of the Home Rule Charter.

c. Candidate. An individual who (i) files nomination papers or petitions for City elective office, or (ii) publicly announces his or her candidacy for City elective office, including a former candidate who receives post-candidacy contributions or makes post-candidacy expenditures.

d. City elective office. The offices of Mayor, District Attorney, City Controller, Sheriff, City Commissioner, or City Council.

e. Candidate political committee. The one political committee used by a candidate to receive all contributions and make all expenditures as required by Section 20-1003 of the Philadelphia Code.

f. Contribution.

i. Any money, gifts, forgiveness of debts, or loans incurred or received by a candidate or his or her agent for use in advocating or influencing the election of the candidate;

ii. Any thing having a monetary value incurred or received by a candidate or his or her agent for use in advocating or influencing the election of the candidate, which includes (1) any payment by a person or a political committee provided for the benefit of the candidate, including any payment for the services of a person serving as an agent of the candidate, candidate political committee, or litigation fund committee, and (2) any in-kind contributions, as defined at Subparagraph 1.1(m); or

iii. Any post-candidacy contribution, as defined at Subparagraph 1.1(q).

g. Contributor. A person or political committee who makes a contribution to a candidate, litigation fund committee, or political committee.

h. Covered election. Any primary, general or special election for City elective office.

i. Excess post-candidacy contribution. The portion of a post-candidacy contribution that, had it been contributed for the purpose of retiring debt that was incurred to influence the outcome of a covered election, or for the purpose of defraying the cost of transition or inauguration of a candidate elected to City elective office, would have been in excess of the contribution limitations set forth in Sections 20 -1002(4) or 20-1002(5) of the Philadelphia Code.

j. Excess pre-candidacy contribution. The portion of a pre-candidacy contribution to a political committee that, had it been made to a candidate for City elective office, would have been in excess of the contribution limitations set forth in Sections 20-1002(1) or 20-1002(2) of the Philadelphia Code.

k. Expenditure. The payment, distribution, loan, or advancement of money or things having a monetary value by a candidate, political committee, or other person for the purpose of influencing the outcome of a covered election, including, but not limited to, any expenditure to obtain, defend, or challenge a candidate's place on the ballot, including payments to workers to circulate nominating petitions.

l. Independent expenditure. An expenditure that is not made in coordination with any candidate, candidate political committee, or agent thereof. For guidance on what constitutes coordination, see Subpart J.

m. In-kind contribution. The provision of or payment for goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services where such provision

or payment is made for the benefit of the candidate, but not including volunteer labor as described in Subparagraph 1.11(e).

n. **Litigation fund committee.** The committee established by a candidate to receive contributions and make expenditures solely to pay professional fees and related costs incurred in defense of a civil, criminal, or administrative proceeding arising directly out of the conduct of a candidate's election campaign or participation in an election, as described in Subpart H.

o. **Person.** An individual, or a partnership, sole proprietorship, or other form of business organization.

p. **Political committee.** Any committee, club, association, political party, or other group of persons, including the candidate political committee of a candidate for office in a covered election, which receives contributions or makes expenditures for the purpose of influencing the outcome of a covered election.

q. **Post-candidacy contribution.** Money, gifts, forgiveness of debts, loans, or things having a monetary value, received by a former candidate or his/her agent for use in retiring debt that was incurred to influence the outcome of a covered election, or for the purpose of defraying the cost of transition or inauguration of a candidate elected to City elective office.

r. **Post-candidacy expenditure.** An expenditure made by a candidate, former candidate, or candidate political committee to defray the candidate's cost of transition or inauguration to City elective office or to retire debt that the candidate incurred to (i) influence the outcome of a covered election; or (ii) cover transition or inauguration expenses.

s. **Pre-candidacy contribution.** A contribution made to a political committee that: (i) has been transferred to, or otherwise becomes available for expenditure by, a candidate for City elective office; and (ii) was made before such candidate became a candidate.

t. **SPEC account.** A segregated pre/post-candidacy excess contribution account, as described in Subpart C.

u. **Sample ballot.** A ballot distributed by a political committee that lists more than one candidate in a specific covered election and recommends that voters vote for the listed candidates.

SUBPART B. CONTRIBUTION LIMITS

1.2 Limits on contributions from individuals.

a. An individual shall not make total contributions per calendar year of more than $2,900 to a candidate for City elective office, including contributions made through one or more political committees.

b. An individual shall not make total contributions per calendar year of more than $2,900, including contributions made through one or more political committees, to a litigation fund committee established as described in Subpart H by a candidate for City elective office.

c. An individual shall not make total post-candidacy contributions to a former candidate, including contributions made through one or more political committees, of more than $2,900 between the general election and the end of that calendar year (or, in the case of candidates who do not win nomination, between the primary election and the end of that calendar year), and in each calendar year that follows the year of the general election.

1.3 Limits on contributions from political committees, partnerships, sole proprietorships, or other forms of business organization.

a. A political committee, partnership, sole proprietorship, or other form of business organization shall not make total contributions per calendar year of more than $11,500 to a candidate for City elective office, including contributions made through one or more political committees.

b. A political committee, partnership, sole proprietorship, or other form of business organization shall not make total contributions per calendar year of more than $11,500, including contributions made through one or more political committees, to a candidate's litigation fund committee.

c. A political committee, partnership, sole proprietorship, or other form of business organization shall not make total post-candidacy contributions to a former candidate, including contributions made through one or more political committees, of more than $11,500 between the general election and the end of that calendar year (or, in the case of candidates who do not win nomination, between the primary election and the end of that calendar year), and in each calendar year that follows the year of the general election.

d. In order to qualify for the $11,500 contribution limit described in Paragraph 1.3, the finances of a sole proprietorship or partnership must be distinct and segregated from the personal finances of its proprietor or partners.

1.4 Contributions made through one or more political committees.

a. For the purposes of this Subpart, a contribution is made through a political committee when:

i. A person or political committee makes a contribution to a political committee and directs, suggests, or requests, whether in a direct, indirect, express, or implied manner, that the recipient political committee use all or part of the contributed money to make an expenditure to a specific candidate. A determination that such a direction, suggestion, or request was made shall be based upon all the relevant facts and circumstances; or

ii. The contributing person or political committee has provided the majority of the contributions received by the recipient political committee, whether directly or indirectly, in the twelve months prior to the recipient political committee's expenditure to the candidate, unless the recipient political committee can demonstrate, based on a reasonable accounting method, that money from the contributing person or political committee was not used to make the expenditure to the candidate.

b. For the purpose of the contribution limits, a contribution made through a political committee is from both the original contributing person or political committee and the recipient political committee through which the contribution is made. The entire amount of the contribution made through a political committee shall count toward the contribution limits of the original contributing person or political committee, and the entire amount shall also count toward the recipient political committee's contribution limits.

1.5 During a non-election year:

a. Candidates for Mayor shall receive no more than $250,000 in total contributions from political committees;

b. Candidates for District Attorney and Controller shall receive no more than $100,000 in total contributions from political committees; and

c. Candidates for City Council, Sheriff, and City Commissioner shall receive no more than $75,000 in total contributions from political committees.

1.6 Doubling of Contribution Limits.

a. If a candidate for City elective office contributes more than $250,000 of his or her personal resources to his or her candidate political committee, the contribution limits for all candidates for that office shall be doubled for that year and each subsequent year up to and including the year in which the covered election occurs, except as provided in Subparagraph 1.6(b).

b. The limits for post-candidacy contributions (Subparagraphs 1.2(c) and 1.3(c)) and the limits for contributions to litigation fund committees (Subparagraphs 1.2(b) and 1.3(b)) do not double if a candidate contributes more than $250,000 to his or her candidate political committee.

c. A contribution that exceeds the contribution limits at the time it is accepted by a candidate exceeds the contribution limits described in this Subpart even if the contribution limits subsequently double and the contribution is less than the doubled limits.

d. If a candidate political committee returns, repays, or refunds to a candidate any money the candidate had contributed from his or her personal resources, the returned amount shall not count toward the $250,000 contribution amount required to trigger doubling of the limits.

e. Once the contribution limits double, they remain doubled even if:

i. The candidate whose contributions from his or her personal resources triggered the doubling ceases to be a candidate; or

ii. After the limits have doubled, a candidate political committee returns, repays, or refunds to the candidate a portion of the money contributed from the candidate's personal resources.

f. If a candidate contributes more than $250,000 of his or her personal resources to his or her candidate political committee, as set forth in Paragraph 1.6, within two business days he or she shall notify the Board of this fact by postal mail or email sent to the attention of the Board's Executive Director.

1.7 Candidates, candidate political committees, and litigation fund committees shall not accept any contribution that exceeds the limits set forth in this Subpart.

1.8 A pre-candidacy contribution made in the same calendar year that an individual becomes a candidate shall count toward the contribution limits set forth in this Subpart.

1.9 Candidates and contributors shall include the value of in-kind contributions when determining the total amount of contributions made or accepted in a calendar year.

1.10 If a person or political committee makes an expenditure to a political committee in order that a candidate's name be placed on a sample ballot, the amount of the expenditure from that person or political committee is a contribution to the candidate and shall count toward the contribution limits set forth in this Subpart, so long as the expenditure is not an independent expenditure.

1.11 Transactions that do not count toward the contribution limits. The following are not subject to the contribution limits set forth in this Subpart:

a. Contributions from a candidate's personal resources to the candidate's candidate political committee or to the candidate's litigation fund committee;

b. Contributions from a candidate's candidate political committee to the candidate's litigation fund committee;

c. A political committee's costs to print or distribute a sample ballot where a candidate, person, or another political committee has paid the usual and normal charge to that political committee to have the candidate placed on a sample ballot distributed by that political committee;

d. A political committee's costs to print or distribute sample ballots that are distributed in a candidate's ward pursuant to Paragraph 1.36; and

e. Volunteer labor provided to a candidate or political committee.

i. Volunteer labor is work an individual provides without compensation from any entity or person for the benefit of a candidate. It may, among other things, include:

(1) Legal or accounting work;

(2) Entertainment such as a performance by a musical group or DJ; and

(3) Campaign work such as canvassing, working at a phone bank, or election-day get-out-the-vote activities.

ii. Volunteer labor does not include the donation to a candidate of:

(1) Equipment, such as computers, copiers, or printers;

(2) Resources, such as postage; or

(3) Materials, such as stationery or campaign literature.

iii. An individual engaged in volunteer labor may make incidental use of resources without such use being a contribution from the owner of the resource to the candidate for the purposes of the contribution limits. Incidental use does not include the use of resources to reproduce campaign material for public distribution.

SUBPART C. EXCESS PRE-CANDIDACY CONTRIBUTIONS; EXCESS POST-CANDIDACY CONTRIBUTIONS

1.12 A candidate or candidate political committee shall not spend any excess pre-candidacy contributions for the purpose of influencing the outcome of a covered election in which he or she is a candidate.

1.13 A candidate shall not transfer excess pre-candidacy contributions to the candidate's litigation fund committee established as described in Subpart H.

1.14 A candidate shall not spend any excess pre-candidacy contributions or excess post-candidacy contributions for the purposes of:

a. Transition or inauguration expenses; or

b. Retiring debt that was incurred to (i) influence the outcome of an already completed covered election; or (ii) cover transition or inauguration expenses related to an already completed covered election.

1.15 A candidate shall exclude all excess pre-candidacy contributions from his or her candidate political committee checking account by one of the following methods:

a. Transferring excess pre-candidacy contributions to a segregated pre/post-candidacy excess contribution account ("SPEC" account) within ten days after the individual becomes a candidate; or

b. Returning excess pre-candidacy contributions to the contributors who made those contributions within ten days after the individual becomes a candidate.

1.16 A candidate shall exclude all excess post-candidacy contributions from his or her candidate political committee checking account by one of the following methods:

a. Transferring excess post-candidacy contributions to a SPEC account within ten days of receiving the contributions; or

b. Returning excess post-candidacy contributions to the contributors who made those contributions within ten days of receiving the contributions.

1.17 A candidate or a candidate political committee shall not use money held in a SPEC account to influence the outcome of a covered election in which the candidate participates or to make post-candidacy expenditures.

1.18 Within seven days of establishing a SPEC account, a candidate shall notify the Board of the name of the bank at which the account was established by postal mail or email sent to the attention of the Board's Executive Director.

SUBPART D. DATE OF ACCEPTANCE OF CONTRIBUTIONS WITH RESPECT TO THE CONTRIBUTION LIMITS

1.19 Except as provided in Paragraphs 1.20, 1.21, and 1.22 the date of acceptance of a contribution is the date that the contribution comes into the possession of the recipient candidate, treasurer, litigation fund committee, political committee, or agent thereof.

1.20 If a contribution is delivered to a mailbox, the date that the contribution is accepted is the date on which the recipient candidate, treasurer, litigation fund committee, political committee, or agent thereof finds the contribution in the mailbox.

1.21 If a contribution is made by credit card through a website, the date that the contribution is accepted is the date on which the contributor submits his or her credit card information on the website.

1.22 The date of acceptance of an in-kind contribution is the date that the contributor provides the goods or services, or makes payment to a third party for the provision of goods or services, to the recipient candidate, litigation fund committee, or political committee, or agent thereof.

1.23 A candidate, litigation fund committee, or political committee shall not designate as the date a contribution is accepted any date other than the date of acceptance as identified in this Subpart.

SUBPART E. ATTRIBUTING CONTRIBUTIONS MADE BY CHECK FOR THE PURPOSE OF THE CONTRIBUTION LIMITS

1.24 A contribution made by a check that reflects a joint checking account of two or more individuals shall be attributed to the joint account holder who signs the check. If more than one account holder signs a contribution check, the contribution shall be apportioned evenly between the signers. If an individual other than an account holder signs a contribution check, the contribution shall be attributed evenly among the joint account holders.

1.25 A contribution made by a check drawn on the account of a political committee is a contribution from that political committee.

1.26 A contribution made by check drawn on the account of a partnership, sole proprietorship, or other form of business organization is a contribution from the partnership, sole proprietorship, or other form of business organization, unless other facts demonstrate that the contribution is from the signer of the check.

SUBPART F. RETIRING DEBT

1.27 Except as provided in Paragraph 1.28, forgiveness of debt incurred to influence the outcome of a covered election or to cover transition or inauguration expenses is a contribution from the creditor to the candidate or former candidate and is subject to the contribution limits set forth in Subpart B.

1.28 If a debt owed by a former candidate is not collectible as defined below, a creditor may forgive the debt without such forgiveness being subject to the contribution limits set forth in Subpart B. A debt is not collectible if all of the following are true:

a. The creditor billed the candidate for its services in the ordinary course of its business and the terms of the transaction were commercially reasonable;

b. The debt has been outstanding for at least 24 months;

c. The candidate political committee does not have sufficient cash on hand to pay the creditor;

d. Forgiveness of the debt is not prohibited by any other relevant law; and

e. The creditor notifies the Board by postal mail or email sent to the attention of the Board's Executive Director of its intent to forgive the debt and demonstrates that all the conditions set forth in this Paragraph have been satisfied.

If the creditor has provided all the necessary information, the Executive Director shall present the request to the Board at a public meeting. The Board shall either approve or disapprove the proposed debt forgiveness. The Executive Director shall inform the creditor in writing whether or not the Board has approved the forgiveness of debt.

The forgiveness of debt is subject to the post-candidacy reporting requirements set forth in Subpart I.

SUBPART G. USE OF POLITICAL COMMITTEES AND CHECKING ACCOUNTS BY CANDIDATES

1.29 A candidate for City elective office shall have no more than one political committee and one checking account for the City office being sought, into which all contributions and post-candidacy contributions for such office shall be made, and out of which all expenditures for that office shall be made, including post-candidacy expenditures.

1.30 If a candidate maintains other political or non-political accounts for which contributions are solicited, such funds collected in those accounts shall not be used for the purpose of influencing the outcome of a covered election or to make post-candidacy expenditures.

1.31 A candidate may transfer funds between his or her candidate political committee checking account and a single savings account so long as:

a. The candidate establishes the savings account at the same bank that has his or her checking account;

b. The candidate deposits all contributions into his or her checking account before transferring such funds to the savings account;

c. The candidate does not make any expenditures or withdrawals directly from the savings account, but first transfers funds to the checking account in order to make expenditures or withdrawals; and

d. Within three business days of the establishment of the savings account, the candidate shall notify the Board by postal mail or email sent to the attention of the Board's Executive Director that he or she has established a savings account.

1.32 Requirement to provide information to the Board about a candidate political committee.

a. A candidate who has a candidate political committee when he or she becomes a candidate shall, within three business days of becoming a candidate, notify the Board of the following information:

i. The committee's name and street address (other than a P.O. box);

ii. The name of the bank where the committee's checking account is established; and

iii. The name, telephone number, email address, and street address (other than a P.O. box) of the treasurer of the committee.

b. If a candidate does not have a candidate political committee when he or she becomes a candidate, he or she shall notify the Board of this fact within three business days of becoming a candidate and shall provide the Board with his or her street address (other than a P.O. box), telephone number, and email address.

c. If a candidate establishes a candidate political committee after he or she has become a candidate, he or she shall notify the Board of the information set forth in Subparagraph 1.32(a) within three business days of the formation of the committee.

d. A candidate may satisfy the requirements of Paragraph 1.32 by providing the Board with a copy of the Political Committee Registration Statement he or she filed with the City Commissioners as long as the information described in Subparagraph 1.32(a)(i)-(iii) is included.

e. If the information required by Paragraph 1.32 changes, the candidate shall notify the Board of the updated information within three business days of the change occurring.

f. Information required by Paragraph 1.32 shall be sent to the attention of the Board's Executive Director by postal mail or email.

1.33 Exercising control over another political committee. A candidate has a political committee, for the purposes of this Subpart, if he or she exercises control over the political committee. The following are factors relevant to determining whether a candidate exercises control over a political committee other than his or her candidate political committee:

a. The candidate is the treasurer or chair of the other political committee;

b. The candidate established or registered the other political committee;

c. The candidate is an authorized user or signer on the other political committee's bank account;

d. The treasurer or chair of the other political committee is an employee of the candidate;

e. The other political committee has the same treasurer or chair as the candidate political committee; or

f. The political committee's registered address is the same as the registered address of the candidate political committee or the residence or business of the candidate or the candidate political committee's treasurer or chair.

The presence of one or more of the factors enumerated above does not mandate a finding that a candidate exercises control over a given committee if the candidate does not in fact exercise control over that committee. Likewise, the absence of most or all of the factors enumerated above does not mandate a finding that a candidate does not exercise control over a given committee if the candidate does in fact exercise control over that committee.

1.34 Exercising control over another political committee's expenditures. A candidate also has a political committee, for the purposes of this Subpart, if the candidate or the candidate's agent exercises control over a specific expenditure made by that political committee. The following are factors relevant to determining whether a candidate or the candidate's agent exercises control over a specific expenditure made by a political committee:

a. The candidate, candidate political committee, or the candidate's agent provides the money to cover the specific expenditure;

b. The candidate, candidate political committee, or the candidate's agent selects the recipient of the expenditure; or

c. The candidate, candidate political committee, or the candidate's agent decides or directs that the expenditure be made.

1.35 This Subpart does not prohibit a candidate from maintaining a litigation fund committee as described in Subpart H.

1.36 This Subpart does not prohibit a candidate from making expenditures through up to one political committee in addition to his or her candidate political committee for the printing and distribution of sample ballots that are distributed in the candidate's ward. However, all contributions to the candidate for the City elective office being sought shall be made into the candidate's candidate political committee.

1.37 This Subpart does not prohibit a candidate from paying a political committee to conduct or organize get-out-the-vote activities (such as canvassing and the distribution of campaign literature or sample ballots) as long as:

a. The recipient political committee offers similar services to other candidates; and

b. The candidate does not exercise control over the political committee as defined in Paragraph 1.33.

1.38 This Subpart does not prohibit a candidate from making a contribution within the contribution limits to his or her candidate political committee from any other political committee controlled by the candidate, as defined in Paragraph 1.33, other than the candidate's litigation fund committee.

SUBPART H. LITIGATION FUND COMMITTEES

1.39 Litigation fund committee requirements.

a. In addition to a candidate political committee, a candidate for City elective office may establish a litigation fund committee with a single separate checking account to solicit and receive contributions and make expenditures for the purposes described in Subparagraph 1.39(d).

b. The name of a litigation fund committee shall include the term "Litigation Fund."

c. A litigation fund committee shall have a treasurer who shall be responsible for keeping records of contributions and expenditures as described in Paragraph 1.44.

d. A candidate shall make expenditures from a litigation fund committee solely to pay professional fees and related costs incurred in defense of a civil, criminal, or administrative proceeding arising directly out of the conduct of the candidate's election campaign or participation in a covered election, such as a nomination petition challenge, a recount proceeding, or a Board investigation.

e. A candidate shall not make expenditures from a litigation fund committee to pay any judgment, settlement, fine, sanction, or other type of penalty arising out of any civil, criminal, or administrative proceeding.

f. A candidate may make expenditures from his or her candidate political committee for the purposes described in Subparagraph 1.39(d).

1.40 Requirement to provide information to the Board about a litigation fund committee.

a. Within three business days of the formation of a litigation fund committee, a candidate shall notify the Board of the following information:

i. The litigation fund committee's name and street address (other than a P.O. box);

ii. The name of the bank where the litigation fund committee's checking account is established; and

iii. The name, telephone number, email address, and street address (other than a P.O. box) of the treasurer of the litigation fund committee.

If the litigation fund committee has been registered as a political committee, a candidate may satisfy the requirements of this Subparagraph by providing the Board with a copy of the Political Committee Registration Statement he or she filed with the City Commissioners or Secretary of State as long as the information described in (i)-(iii) above is included.

b. If the information required by Paragraph 1.40 changes, the candidate shall notify the Board of the updated information within three business days of the change occurring.

c. Information required by Paragraph 1.40 shall be sent to the attention of the Board's Executive Director by postal mail or email.

1.41 Termination of a litigation fund committee.

a. A litigation fund committee shall be terminated no later than six months after the date of the general election for the office which the candidate sought, except as provided in Subparagraph 1.41(b).

b. If six months after the date of the general election any matters are pending for which litigation fund committee funds may be expended, then a litigation fund committee shall be terminated within six months after the conclusion of all such matters, including any appeals.

c. Before a litigation fund committee is terminated, the litigation fund committee's checking account shall be closed, and any remaining funds shall be returned to contributors according to one of the methods below:

i. On a "last in, first out" accounting basis;

ii. On a "first in, first out" accounting basis;

iii. On a pro-rata accounting basis; or

iv. On such other equitable basis as may be approved by a majority vote of the Board upon application in writing by a candidate or treasurer of a litigation fund committee by postal mail or email sent to the attention of the Board's Executive Director at least 40 days prior to the termination deadline.

d. The Board may grant an extension for terminating a litigation fund committee upon application at least 40 days prior to the termination deadline to the Board's Executive Director in writing that demonstrates good cause for an extension.

SUBPART I. CAMPAIGN FINANCE DISCLOSURES

1.42 Disclosures required of candidates and candidate political committees.

a. Any time a candidate for City elective office is required to file a campaign finance report or statement with the City Commissioners as required by the Pennsylvania Election Code, the candidate shall file electronically with the Board a copy of that report or statement.

b. Any time the candidate political committee of a candidate for City elective office is required to file a campaign finance report or statement with the City Commissioners as required by the Pennsylvania Election Code, the committee shall file electronically with the Board a copy of that report or statement.

Example: Candidate A is running for City office and has authorized Friends of A as her candidate political committee. Friends of A files a cycle 2 (pre-primary) campaign finance report with the City Commissioners. In addition, Candidate A personally files a campaign finance statement with the City Commissioners.

Friends of A must electronically file with the Board a copy of the cycle 2 campaign finance report it filed with the City Commissioners.

Candidate A must electronically file with the Board a copy of the cycle 2 campaign finance statement she personally filed with the City Commissioners.

1.43 Post-candidacy disclosures

a. Former candidates and candidate political committees shall file electronically with the Board reports of post-candidacy contributions and expenditures.

i. Such reports shall be identical in form and content to, and filed on the same schedule as, campaign finance reports required to be filed by municipal candidates and candidate political committees with the City Commissioners pursuant to the Pennsylvania Election Code.

ii. A former candidate or a candidate political committee may satisfy the requirements of this Paragraph by filing electronically with the Board copies of campaign finance reports the former candidate or candidate political committee files with the City Commissioners, so long as such reports disclose all post-candidacy contributions received and expenditures made by the former candidate or candidate political committee.

Example: Candidate A is successful in the November general election, but her candidate political committee, Friends of A, incurred $20,000 in debt in the course of the campaign. In December, former Candidate A raises $10,000 in post-candidacy contributions which her committee uses to pay off some of the campaign debt. In January of the year following the general election, Friends of A files a cycle 7 campaign finance report with the City Commissioners. The cycle 7

report discloses the post-candidacy contributions and the expenditure to pay down the campaign debt.

Friends of A can satisfy the post-candidacy disclosure requirements of Paragraph 1.43 by electronically filing with the Board a copy of the cycle 7 campaign finance report it filed with the City Commissioners.

1.44 Disclosures required of political committees and persons.

a. Any time a political committee or person is required to file a campaign finance report with the City Commissioners or the Secretary of State, as required by the Pennsylvania Election Code, the committee or person shall file electronically a copy of that report with the Board if the report filed with the City Commissioners or Secretary of State discloses, or should disclose, any expenditures made to influence the outcome of a covered election, including expenditures to a candidate for City elective office.

Example: Pennsylvanians for a Better Pennsylvania is a political committee registered with the Department of State. The committee files a cycle 2 (pre-primary) campaign finance report with the Department of State disclosing numerous expenditures to candidates for state office and one expenditure to a candidate for City office.

Pennsylvanians for a Better Pennsylvania must electronically file with the Board a copy of the cycle 2 campaign finance report it filed with the Department of State.

b. Political committees shall file electronically with the Board reports of all post-candidacy contributions made by the political committee to any former candidate.

i. Such reports shall be identical in form and content to, and filed on the same schedule as, campaign finance disclosure reports required to be filed by political committees with the City Commissioners or Secretary of State pursuant to the Pennsylvania Election Code.

ii. A political committee may satisfy the requirements of this Paragraph by filing electronically with the Board copies of campaign finance reports the political committee files with the Secretary of State or the City Commissioners, so long as such reports disclose all post-candidacy contributions made by the political committee.

1.45 Disclosures required of litigation fund committees.

a. A litigation fund committee established as described in Subpart H shall file electronically with the Board reports of contributions and expenditures.

b. Such disclosure reports shall be identical in form and content to, and filed on the same schedule as, campaign finance reports required to be filed by municipal candidate political committees with the City Commissioners or Secretary of State pursuant to the Pennsylvania Election Code.

c. If a litigation fund committee is established as a political committee pursuant to the Pennsylvania Election Code, the litigation fund committee may satisfy the requirements of this Paragraph by filing electronically with the Board copies of campaign finance reports it files with the Secretary of State or the City Commissioners, so long as such reports disclose all contributions received and expenditures made by the litigation fund committee.

1.46 Method of filing campaign finance reports and statements. Any campaign finance report or statement required by this Subpart shall be electronically filed with the Board through the Department of Records and must be submitted in a format approved by the Department of Records. Information on how to electronically file a report or statement is available at the office of the Department of Records in City Hall Room 156 and at:

http://www.phila.gov/records/CampaignFinance/CampaignFinance.html

1.47 Sworn statement required for campaign finance disclosures.

a. Any time a candidate political committee, political committee, or litigation fund committee electronically files a campaign finance report or statement with the Board, the individual who files the report or statement on behalf of the committee shall submit a signed statement in which he or she swears or affirms that the information set forth in the report or statement is true, correct, and complete to the best of his or her knowledge. The individual who signs the statement and the committee shall be jointly and severally subject to civil penalties if the report or statement contains any material misstatements or omissions.
b. Any time a candidate electronically files a campaign finance report or statement with the Board, the candidate shall submit a signed statement in which he or she swears or affirms that the information set forth in the report or statement is true, correct, and complete to the best of his or her knowledge. The candidate shall be subject to civil penalties if the report or statement contains any material misstatements or omissions.
c. Any sworn statement required by this Paragraph shall be submitted on a form available from the Department of Records. The form may be submitted in person at the office of the Department of Records in City Hall Room 156 or via email or fax as indicated on the form.

SUBPART J. COORDINATED EXPENDITURES

1.48 When a person or political committee makes an expenditure that is coordinated with a candidate's campaign and is made for the benefit of the candidate, the expenditure is an in-kind contribution from the person or committee to the candidate and is subject to the contribution limits set forth in Subpart B.

1.49. For the purposes of this Subpart, the term "candidate's campaign" includes the candidate, the candidate's candidate political committee, and an agent of either of the foregoing.

1.50 An expenditure is coordinated with a candidate's campaign if:

a. The expenditure is made in cooperation, consultation or concert with the candidate's campaign;
b. The expenditure is made at the request or suggestion of the candidate's campaign;
c. A person suggests making an expenditure and the candidate's campaign assents to the suggestion;
d. The person making the expenditure communicates with the candidate's campaign concerning the expenditure before making the expenditure; or
e. The person making the expenditure uses information obtained from the candidate's campaign to design, prepare, or pay for the specific expenditure at issue, unless the person has obtained that information from a public source or from a communication the candidate made to the general public.

1.51. An expenditure made to reproduce, republish, or disseminate a campaign communication or campaign

material (such as flyers, signs, or brochures) obtained from a candidate's campaign, or obtained from another source with the campaign's consent, is an in-kind contribution to the candidate.

1.52 An expenditure will not be considered a coordinated expenditure merely because:

a. The person making the expenditure interviews the candidate;
b. The person making the expenditure has endorsed the candidate;
c. The person making the expenditure and the candidate's campaign have an agent in common;
d. The person making the expenditure uses information obtained from a public source or from a communication the candidate's campaign made to the general public in order to design, prepare, or pay for the specific expenditure.
e. The person making the expenditure has obtained from the candidate a photograph or biography of the candidate or a position paper, press release, or similar material about the candidate; or
f. The person making the expenditure has invited the candidate to make an appearance before the person's members, employees, or shareholders.

SUBPART K. PENALTIES

1.53 Acceptance of an excess contribution. A candidate, candidate political committee, or litigation fund committee that accepts a contribution in excess of the limits described in Subpart B shall be subject to a civil penalty of three times the amount by which the accepted contribution exceeded the limit, or $2,000, whichever is less.

1.54 Making an excess contribution. A contributor who makes a contribution in excess of the limits described in Subpart B shall be subject to a civil penalty of three times the amount by which the contribution exceeded the limit, or $2,000, whichever is less.

1.55 Safe harbor if an excess contribution is returned within 15 days. No civil penalty shall be imposed on a contributor or recipient of an excess contribution if the candidate who accepted the excess contribution within fifteen days after receiving the contribution:

a. Returns the excess amount to the contributor; and

b. Notifies the Board of the following information by postal mail or email sent to the attention of the Board's Executive Director: the amount of the excess, the identities of the contributor and the candidate, the date of receipt, and the date of return.

1.56 Failure to file campaign finance disclosures.

a. A civil penalty of $250 shall be imposed for failure to file a campaign finance or litigation fund committee report as described in Subpart I.

b. Each day the report is not filed shall be considered a separate offense for which an additional separate civil penalty of $250 may be imposed. The total civil penalties that may be imposed for failure to file a particular report shall not exceed $2,000 for the first thirty days the report is not filed, plus $1,000 for each additional thirty-day period or part thereof the report is not filed.

1.57 Other violations of the campaign finance law. All other violations of the campaign finance law, including the making of material misstatements or omissions in a campaign finance report filed with the Board, are subject to a civil penalty of $1,000, which may be increased or decreased depending on the presence of mitigating and aggravating factors as described in this Paragraph:

a. Mitigating factors. The civil penalty of $1,000 shall be reduced by $500 if one of the following mitigating factors is present and shall be reduced by $750 if more than one of the following mitigating factors is present:

   i. Good faith effort to comply. The violator is found to have made a good faith effort to comply with the law.

   ii. Prompt corrective action. The violator is found to have taken prompt corrective action where corrective action was possible to remedy the violation.

   iii. Prompt self-reporting. The violator is found to have reported promptly the violation to the Board of Ethics.

b. Aggravating factors. The civil penalty of $1,000 shall be increased by $1,000 for each of the following aggravating factors that is present, provided that the total civil penalty that may be imposed for one violation shall not exceed $2,000:

   i. Intent. The violator is found to have acted knowingly. An act is done knowingly if done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

   ii. Repeat violation. The violator previously has been found by the Board of Ethics in an administrative adjudication or by a court of competent jurisdiction to have violated the same provision.

   iii. Obstruction of investigation. The violator is found to have obstructed the investigation of the Board of Ethics into the same violation.

Approved for public comment by the Board December 18, 2006
Effective January 17, 2007
Amendment approved by Board August 21, 2007
Effective September 21, 2007

Proposed amendments approved for public comment by Board on July 21, 2010 to expand the Regulation to address the requirements, other than electronic filing, of the City's campaign finance law, Philadelphia Code Chapter 20-1000, as that law was amended in June 2010. The amendments to Regulation No. 1 completely strike and replace the original text of the regulation and delete the original exhibit.

Public hearing held September 8, 2010
Adopted by Board with modifications September 15, 2010
Effective September 27, 2010

Proposed amendments approved for public comment by Board May 11, 2011 to, among other things, reflect the April 2011 amendment to Philadelphia Code § 20-1002(2).
Public hearing held June 15, 2011
Adopted by Board July 20, 2011
Effective August 11, 2011

Proposed amendments approved for public comment by Board on January 18, 2012 to reflect the City Finance Director's certification of January 2012 adjustments to the maximum annual contribution limits.
Effective March 2, 2012

Proposed amendments approved for public comment by Board on December 19, 2012
Public hearing held January 23, 2013
Adopted by Board with modifications February 20, 2013
Effective March 8, 2013

PHILADELPHIA BOARD OF ETHICS

REGULATION NO. 4

ADVISORY OPINIONS

SUBPART A. SCOPE; DEFINITIONS.

4.0 Scope. This Regulation, promulgated by the Board pursuant to its authority under Sections 4-1100 and 8-407 of the Philadelphia Home Rule Charter and Chapter 20-600 of the Philadelphia Code, sets forth the procedure for seeking an Advisory Opinion from the Board of Ethics.

4.1 Definitions. As used herein, the following words and phrases shall have the meanings indicated.

a. **Advisory Opinion.** A writing in which the Board provides guidance to a requestor explaining how the laws under the Board's jurisdiction apply to proposed future conduct based on facts provided by the requestor.

b. **Board.** The Board of Ethics.

c. **City.** City of Philadelphia.

d. **Employee.** An employee of the City, including those serving full-time, part-time, or seasonally, and those on leaves of absence with or without pay.

e. **General Counsel.** The General Counsel of the Board and his or her designee.

f. **Officer.** An individual who is appointed or elected to any position in a City department, agency, office, board, or commission, whether paid or unpaid.

g. **Person.** A business, individual, political committee, government body, corporation, union, association, firm, partnership, committee, club, or other organization or group of persons.

h. **Requestor.** A person who requests an Advisory Opinion from the Board.

SUBPART B. WHAT AN ADVISORY OPINION CAN ADDRESS

4.2 Subject Matter. An Advisory Opinion provides guidance on how the laws within the jurisdiction of the Board apply to specific proposed future conduct. The laws within the jurisdiction of the Board are:

a. Philadelphia Home Rule Charter Sections 10-100 (prohibiting City Council Members from having an interest in a City contract) 10-102 (prohibiting City officers and employees from having an interest in a City contract), 10-105 (prohibiting gratuities) and 10-107 (prohibiting City officers and employees from engaging in certain political activities);

b. Philadelphia Code Chapter 20-600, which includes provisions for City officers and employees regarding conflicts of interest, gifts, representation of third parties in a City transaction, financial disclosure by certain City officers, and post-employment restrictions;

c. Philadelphia Code Chapter 20-1000, which sets forth the City's campaign finance law;

d. Philadelphia Code Chapter 20-1200, which sets forth the City's lobbying law;

e. Philadelphia Code Section 17-1407(2), which prohibits persons from making material misstatements or omissions in disclosures filed pursuant to the non-competitively bid contract law (Code Chapter 17-1400); and

f. Any other law which a City ordinance assigns to the Board.

4.3 Future conduct only. A requestor may only seek an Advisory Opinion for proposed future conduct or action, not for conduct or action that has already occurred. The Board, however, may address past conduct in order to provide guidance in an Advisory Opinion as to corrective action or future action that represents part of a continuing course of conduct that began prior to the request.

4.4 State Ethics Act. In an Advisory Opinion, the Board may provide guidance regarding the State Ethics Act. Unlike an opinion issued by the State Ethics Commission or a non-confidential opinion issued by the City Solicitor, guidance by the Board regarding the State Ethics Act is not binding on any person and does not provide any protection from penalties or sanctions imposed for a violation of the State Ethics Act.

SUBPART C. WHO MAY REQUEST AN ADVISORY OPINION

4.5 Any person who is subject to, or reasonably could be subject to, a law within the Board's jurisdiction may request an Advisory Opinion regarding his or her proposed future conduct.

4.6 Requests about subordinates. A supervisor or appointing authority may request an Advisory Opinion concerning the conduct of a subordinate officer or employee. When a request is submitted by a supervisor or appointing authority of a City officer or employee, the supervisor or appointing authority is the requestor.

4.7 Requests from representatives. An authorized representative of a person, such as a deputy or attorney, may submit a request for an Advisory Opinion on behalf of the person. When a request is submitted by a representative, the represented person is the requestor, but the Board shall direct all correspondence to the representative.

SUBPART D. HOW TO REQUEST AN ADVISORY OPINION

4.8 To make a request for an Advisory Opinion, the requestor shall send the following information to the General Counsel by postal mail, fax, or email:

a) The requestor's name, address, telephone number, and email address;

b) A detailed description of the conduct contemplated by the requestor;

c) The specific question or questions the requestor wants the Board to answer;

d) A detailed description of all relevant facts and circumstances surrounding the request, including any documents related to or supporting the request;

e) Whether the requestor wants a public or non-public Advisory Opinion. The difference between a public and non-public Advisory Opinion is explained in Subpart F;

f) If the subject of the request is a candidate for City elective office, the request shall provide the name of the candidate's authorized political committee.

4.9 Requests by or concerning City officers or employees. In addition to the information required by Paragraph 4.8, if the request concerns a City officer or employee, the requestor shall provide:

a) The name of the officer or employee;

b) The name of the City department or agency the officer or employee serves; and

c) A description of the officer or employee's job, including his or her title or position.

4.10 Requests from representatives. In addition to the information required by Paragraphs 4.8 and 4.9, if the request is submitted by a representative, he or she shall identify the represented requestor by name and shall state that the requestor has authorized him or her to make the request.

4.11 Signature. A request for an Advisory Opinion must be signed by either the requestor or the requestor's authorized representative. An email request that is sent from the requestor or a representative will be considered signed by the sender.

SUBPART E. EFFECT OF RELIANCE ON ADVISORY OPINION

4.12 A requestor whose conduct or action is the subject of an Advisory Opinion shall not be subject to penalties or sanctions under the laws within the jurisdiction of the Board if the requestor reasonably relies on the Advisory Opinion, unless he or she omitted or misstated material facts in his or her request.

4.13 State Ethics Act. Guidance by the Board regarding the State Ethics Act is not binding on any person and does not provide any protection from penalties or sanctions imposed for a violation of the State Ethics Act.

SUBPART F. PUBLIC AND NON-PUBLIC ADVISORY OPINIONS

4.14 A requestor shall choose whether he or she wants a public or non-public Advisory Opinion. When a requestor has requested a non-public Advisory Opinion, the Board shall redact the Opinion before making it public in order to conceal facts that are reasonably likely to identify the requestor or any involved City officer or employee.

4.15 A requestor may make a non-public Advisory Opinion public at any time. If a requestor decides to make a non-public Advisory Opinion public, the Board may make public the un-redacted version of the Opinion if the requestor so authorizes.

4.16 The Board and Board Staff will keep confidential all communications and documents related to a request for a non-public Advisory Opinion.

SUBPART G. REVIEW BY GENERAL COUNSEL OF REQUEST FOR ADVISORY OPINION

4.17 Initial review. Upon receipt of a request for an Advisory Opinion, the General Counsel shall determine whether the requestor has provided all the information necessary for the Board to issue an Opinion. If necessary, the General Counsel shall ask the requestor to provide any missing information. Until the requestor has provided all necessary information, the request is not complete and the Board will not issue an Advisory Opinion.

4.18 Advisory Opinion by General Counsel. The General Counsel may respond to the requestor on behalf of the Board by issuing an Advisory Opinion if the request concerns an issue that has been determined by a) an Advisory Opinion issued by the Board, b) the Home Rule Charter, Philadelphia Code, or a Board Regulation, or c) a court opinion interpreting the Home Rule Charter, Philadelphia Code, or a Board Regulation. If the issue has not been determined by one of the foregoing, the Board shall issue the Advisory Opinion. The General Counsel shall copy the Board Chair on any Advisory Opinion he or she issues.

4.19 Advisory Opinion by Board. An Advisory Opinion issued by the Board shall be approved by a majority vote of Board members present and voting. The Board may issue an Advisory Opinion that supersedes a previous Opinion issued by the Board or City Solicitor.

4.20 Withdrawal of request for Advisory Opinion. A requestor may withdraw a request for an Advisory Opinion prior to the Opinion being sent to the requestor.

4.21 Time of response. If an Advisory Opinion or response to a request for reconsideration or an appeal is likely to be issued more than 35 days after a request is complete, the General Counsel shall contact the requestor and tell him or her approximately when the Opinion will be issued.

4.22 Publication. The Board shall make all Advisory Opinions public and shall post them on its website. When a requestor has requested a non-public Advisory Opinion, the Board shall redact the Opinion before making it public in order to conceal facts that are reasonably likely to identify the requestor or any involved City officer or employee. If a requestor decides to make a non-public Advisory Opinion public, the Board may disclose the non-redacted version of the Opinion if the requestor so authorizes.

SUBPART H. RECONSIDERATION; APPEAL

4.23 Standard for Reconsideration or Appeal. A requestor may seek reconsideration or appeal of an Advisory Opinion if the requestor can demonstrate that 1) a material error of law has been made; 2) a material error of fact has been made; or 3) a change in materially relevant facts or law has occurred since the requestor made his or her request for an Advisory Opinion.

4.24 Reconsideration of an Advisory Opinion issued by the General Counsel. A requestor may ask the General Counsel to reconsider an Advisory Opinion issued by the General Counsel to the requestor. A request for reconsideration shall be submitted via postal mail, fax, or email to the General Counsel, with a copy to the Board Chair. The General Counsel, after consultation with the Board Chair or Vice Chair, shall respond by either denying the request for reconsideration or by issuing an amended Advisory Opinion that modifies the original Opinion. An amended Advisory Opinion shall supersede and replace the original Opinion issued by the General Counsel.

4.25 Appeal of an Advisory Opinion issued by the General Counsel. A requestor may appeal the General Counsel's response to a request for reconsideration. A requestor may not submit an appeal to the Board unless he or she has first sought reconsideration by the General Counsel. An appeal shall be submitted via postal mail, fax, or email to the General Counsel, with a copy to the Board Chair. The Board shall respond to the appeal by issuing an Advisory Opinion. An Advisory Opinion issued by the Board in response to an appeal shall supersede and replace the Opinion issued by the General Counsel.

4.26 Reconsideration of an Advisory Opinion issued by the Board. A requestor may ask the Board to reconsider an Advisory Opinion issued by the Board to the requestor. A request for reconsideration shall be submitted via postal mail, fax, or email to the General Counsel, with a copy to the Board Chair. The Board shall respond by either denying the request for reconsideration or by issuing an amended Advisory Opinion that modifies the original Opinion. An amended Advisory Opinion shall supersede and replace the original Opinion issued by the Board. An amended Advisory Opinion issued by the Board shall be final and the requestor may not seek further reconsideration or review.

4.27 Effect of Request for Reconsideration or Appeal. A request for reconsideration or appeal does not suspend an Opinion.

4.28 The Board and the General Counsel may, on their own initiative, amend a previously issued Advisory Opinion after giving reasonable notice to the requestor that they are reconsidering the Advisory Opinion. An

amended Advisory Opinion shall apply only to future conduct or action of the requestor. An amended Advisory Opinion shall supersede and replace the original Opinion.

SUBPART I. INFORMAL GENERAL GUIDANCE

4.29 The Board and its staff may provide informal general guidance as a way to educate and inform persons who are subject to the laws within the jurisdiction of the Board. Such general guidance may be provided in the form of trainings, newsletters, advisory alerts, telephone calls, conversations, e-mails, or correspondence. Such informal general guidance is not an Advisory Opinion and may not be relied upon by any person as protection against any penalties or sanctions for a violation of a law within the jurisdiction of the Board.

Initially adopted by Board April 16, 2008
Public Hearing held May 30, 2008
Finally adopted by Board, with modifications July 23, 2008
Effective August 4, 2008

Proposed amendments throughout approved for public comment by the Board on October 17, 2012
Effective November 20, 2012

Proposed amendments approved for public comment by the Board on February 20, 2013
Effective March 27, 2013

Appendix II: Index to 2012-13 Board Opinions

2012 Index of Board Formal Opinions

Board Formal Opinion No.	Date Issued	Brief Description	Key Words / Citations
Board Formal Opinion 2012-001 Non-public Advice	9/19/12	Advised a City official about ethics restrictions relevant to his outside employment as an independent contractor for a firm. The official is prohibited from having an interest in City contracts and from representing any person as an agent or attorney in a transaction with the City. If a client of the firm is represented by a firm employee in a matter in which the official is responsible for making a determination, the representation restriction would not apply because the official is not a "member" and he would not be required to disqualify himself. The official would have a conflict of interest if he takes official action in a matter that could affect his outside income, and he would then be required to disqualify himself.	OUTSIDE EMPLOYMENT; INDEPENDENT CONTRACTOR; CONFLICT OF INTEREST; PROHIBITED REPRESENTATION; INTEREST IN A CITY CONTRACT Charter §§10-100, 10-102; Code §§20-602, 20-607, 20-608
Board Formal Opinion 2012-002 Non-public Advice	9/19/12	Advised an employee of the Office of the City Commissioners about whether the Charter's political activity restrictions allow employees of the Office to engage in a series of proposed activities while on duty. Political activity restrictions require that City employees carry out their City duties in a strictly non-partisan manner and maintain neutrality among political parties, among candidates, and among partisan political groups. For example, a Commissioners' employee may give a potential or current candidate the same information or advice about the electoral process the employee would give any candidate or member of the public.	POLITICAL ACTIVITY RESTRICTIONS; CITY COMMISSIONERS OFFICE; NON-PARTISAN ACTIVITY; CANDIDATES FORUM; VOTER REGISTRATION DRIVE; RALLY; ADVOCACY MATERIAL Charter §10-107(4); Regulation 8
Board Formal Opinion 2012-003 Non-public Advice, subsequently made public by agreement of requestor	7/18/12	Advised that the City administration and PGW were principals not exempt from lobbying reporting and registration requirements when they had hired an outside lobbying firm to lobby City agencies. The exemption for a City official acting in an official capacity did not apply when a City government entity hires an outside lobbyist or lobbying firm. An exemption for agents that may communicate principals' interests, rights, or privileges did not include lobbyists.	LOBBYING; CITY ENTITY AS PRINCIPAL; OFFICIAL CAPACITY EXEMPTION; OUTSIDE LOBBYING FIRM; REGISTRATION AND REPORTING REQUIREMENTS Code §§20-1201, 20-1204 (7), 20-1204(13); Regulation 9, ¶ 9.24(G)

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Board Formal Opinion No.	Date Issued	Brief Description	Key Words / Citations
Board Formal Opinion 2012-004	10/17/12	Advised City Commissioner that she could accept travel reimbursement from Pew Foundation for travel to its Washington, DC office for a meeting of Election Directors of major U.S. jurisdictions. The facts did not present an issue under the City gift or gratuity restrictions.	GIFT; GRATUITY; TRAVEL REIMBURSEMENT; PRIVATE FOUNDATION Charter §10-105; Code §§20-604, 20-601(8)
Board Formal Opinion 2012-005 Non-public Advice, subsequently made public by agreement of requestor	11/20/12	Advised a representative of the Community College of Philadelphia that to the extent that lobbying activities for the College are performed by that public entity itself or by its employees in an official capacity, the College is a public entity that is exempt from the Lobbying Code's reporting and registration requirements.	LOBBYING; PUBLIC ENTITY/INSTITUTION AS PRINCIPAL; OFFICIAL CAPACITY EXEMPTION; REGISTRATION AND REPORTING REQUIREMENTS; COMMUNITY COLLEGE OF PHILADELPHIA Code §§20-1203(5), 20-1204(7); 65 Pa. C.S. §13A06(7)-(10)
Board Formal Opinion 2012-006 Non-public Advice	1/23/13	Advised a City official that the official was permitted to solicit a City vendor to financially support a nonprofit professional association's conference. The official was a board member and officer of the nonprofit, and the official and staff would attend the conference as part of their City work. The official would not have a prohibited personal financial interest in a vendor making a contribution to the nonprofit to support the conference. The proposed solicitation would not be a prohibited under the Code's gift provision because the official was not seeking a personal financial benefit. The official and staff could attend conference meals and social events that are sponsored and funded by vendors with City contracts or contracts with the official's City office. Recommended that the official seek advice on the State Ethics Act because there may be an issue under the Act with the official using his office for the benefit of a nonprofit with which he was associated.	GIFTS; SOLICITING CITY VENDOR; PROFESSIONAL ASSOCIATION AND CONFERENCE; CONFLICT OF INTEREST; NONPROFIT ORGANIZATION; FINANCIAL DISCLOSURE; NON-COMPETITIVELY BID CONTRACT REFORM LAW; STATE ETHICS ACT Code §§20-607, 20-604, 20-610, 17-1402; 65 Pa.C.S. §§1102, 1103

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Board Formal Opinion No.	Date Issued	Brief Description	Key Words / Citations
Board Formal Opinion 2012-007 Non-public Advice	1/23/2013	Advised an attorney on the staff of a nonprofit that his activity on behalf of the nonprofit limited to testifying in an administrative hearing in which the nonprofit is a party, preparing testimony, and related work would be exempt activity under the Lobbying Code. If not exempt, the attorney's testimony at a City hearing would have constituted direct communication. The nonprofit could not withdraw its already-filed forms, but could file amended forms. The requirement to detail sources that contributed more than 10% of the total resources received by the principal on a lobbying expense report does not contain an exception for funding received that cannot be used for lobbying.	LOBBYING; PARTICIPATION IN AN ADMINISTRATIVE HEARING; TESTIMONY; DIRECT AND INDIRECT COMMUNICATION; REGISTRATION AND REPORTING REQUIREMENTS Code §§20-1204(1), (6), (10); Regulation 9

2013 Index of Board Opinions
(issued January through June)

Board Opinion No.	Date Issued	Brief Description	Key Words / Citations
Board Opinion 2013-001	1/23/13	Advised a City Council employee that proposed circulation of nominating petitions on her behalf would not constitute a public announcement of candidacy and would not require her to resign her City office under the Charter's resign to run provision.	POLITICAL ACTIVITY; RESIGN TO RUN; PUBLIC ANNOUNCEMENT OF CANDIDACY; CIRCULATING NOMINATING PETITIONS; COUNCIL EMPLOYEE Charter §10-107(5); *see related* Board Opinion 2010-001
Board Opinion 2013-002 Non-public Advice, subsequently made public by agreement of requestor	2/11/13	Advised representative of the Pennsylvania Horticultural Society that providing free tickets or free admissions to various events at the 2013 Flower Show to certain City officials and employees would not constitute prohibited gifts under the City Code's gift provision. Officials' attendance at the Flower Show, a major international event, is a proper function of government and may be provided free of charge without raising issues of improper gifts.	GIFTS; FLOWER SHOW; FREE TICKETS FOR CITY OFFICIALS Code §20-604
Board Opinion 2013-003	2/20/13	Advised representative of the Pennsylvania Horticultural Society that free tickets or free admissions to 2013 Flower Show events qualifying as a reception may be provided to certain City officials without the value of such expenses being considered "lobbying" or counting toward the $2,500 quarterly expense threshold that exists for required registration as a principal and reporting of lobbying expenses. General admission tickets do not meet the reception exception and would count towards lobbying registration and reporting requirements.	LOBBYING; RECEPTION EXCEPTION; FLOWER SHOW; FREE TICKETS FOR CITY OFFICIALS; REGISTRATION; REPORTING Code §§20-1201(12), 20-1201 (18), 20-1202(1), 20-1203(1); 20-1203(2)(e), 20-1203(2)(i); Regulation 9

2013 Index of Board Opinions
(issued January through June)

Board Opinion No.	Date Issued	Brief Description	Key Words / Citations
Board Opinion 2013-004	3/20/13	Advised an attorney that the City Lobbying Code prohibits him and his client from entering into a continent fee agreement for his lobbying for the City to issue an RFP and contacting City employees other than those officials normally responsible for receiving inquiries about the issuance of an RFP. No applicable exception arises out of the fact that the requestor is an attorney. The Lobbying Chapter recognizes the primacy of the Rules of Professional Conduct, but the Rules make clear that they do not provide attorneys a blanket exemption from a municipal lobbying statute and the Rules require attorneys to comply with laws restricting contingent fees.	LOBBYING; CONTINGENT FEES PROHIBITED; ATTORNEY; RULES OF PROFESSIONAL CONDUCT Code §§20-1201(20), 20-1205(7)(a), 20-1205 (7)(b); Pennsylvania Rules of Professional Conduct, Rule 1.19, Rule 1.5(c)
Board Opinion 2013-005 Non-public Advice	3/20/13	Advised that the City Code's representation restriction prohibits a City Council employee who is a lawyer from undertaking legal representation of a constituent in transactions involving the City. The official duty exception to the representation restriction would not apply to legal representation of a constituent, which, according to a Solicitor's Opinion issued on March 7, 2013, falls outside the official duties of a Council staff member. A Council employee is permitted to refer a constituent to an attorney if no referral fee will be given, and a financial interest in the referral is not held by the staff member, the Councilmember, or certain of their business colleagues or relatives.	REPRESENTATION RESTRICTION; CONSTITUENT SERVICE; LEGAL REPRESENTATION; COUNCIL EMPLOYEE; ATTORNEY REFERRALS; CONFLICT OF INTEREST Code §§20-602(1)(a), 20-602(1)(b), 20-607; Solicitor's Opinion issued March 7, 2013

Appendix III: Index to 2012-13 General Counsel Opinions

2012 Index of General Counsel Opinions

Advice No.	Date Issued	Brief Description	Key Words / Citations
GC-2012-501 Non-public Advice	3/7/12	Advised the chairman of a candidate's political committee for a City elected official that the Lobbying Code's prohibition on a lobbyist serving as an officer of a political committee if the candidate is seeking City elected office would not prohibit him from registering as a lobbyist because the elected official in his case was not a candidate. He is able to be a registered lobbyist and serve as the chair of the political committee until such time as the City elected official takes action that meets the criteria for being a candidate who is seeking City elected office.	LOBBYING; OFFICER OF POLITICAL COMMITTEE; CANDIDATE SEEKING CITY ELECTED OFFICE Code §§20-1205(2); 20-1001(2); Regulation 9, ¶ 9.26(A)
GC-2012-502 Non-public Advice	3/9/12	Advised a City employee on the application of the ethics laws to her proposed service as an unpaid board member of a nonprofit organization.	UNPAID BOARD MEMBER OF NONPROFIT; CONFLICT OF INTEREST; PROHIBITED REPRESENTATION; CONFIDENTIAL INFORMATION Code §§20-602, 20-607, 20-609; 65 Pa. C.S. §1103
GC-2012-503 Non-public Advice	4/18/12	Advised a City employee regarding restrictions on employment that apply after separation from the City. A City employee may not become financially interested in a decision made by him as a City employee for two years after leaving the City. A City employee may never assist another person in a transaction involving the City in which he participated during his City service. Under the State Ethics Act, a former employee may not represent a person before his former governmental body for one year after he leaves that body.	POST-EMPLOYMENT RESTRICTIONS Code §§20-601(4), 20-603 (1), 20-607(c); 65 Pa. C.S. §1103(g)
GC-2012-504 Non-public Advice	4/23/12	Advised the attorney of a lobbying firm regarding application of the Lobbying Code to a lobbyist's comments that appeared in a news article. The comments did not constitute an indirect communication because they were not an effort to encourage others to take action, particularly not with a foreseeable effect to directly influence legislative or administrative action. A principal of the lobbyist would not need to provide indirect communication information in a quarterly expense report as a result of the comments and news article.	LOBBYING; INDIRECT COMMUNICATION; COMMENTS TO THE MEDIA; NEWS ARTICLE Code §20-1201(15); Regulation 9, ¶ 9.15(C)

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Advice No.	Date Issued	Brief Description	Key Words / Citations
GC-2012-505	5/7/12	Advised a Councilmember that the City ethics laws would not prohibit him from sending a letter to certain businesses soliciting sponsors for a race benefitting youth sports organizations. The Councilmember was not an officer or director of any of the organizations that would receive funds.	CONFLICT OF INTEREST; SOLICITATION FOR CHARITIES; CITY COUNCILMEMBER Charter §10-100; Code §§20-602(1)(a), 20-607
GC-2012-506 Non-public Advice	7/16/12	Advised a City employee on the application of the ethics laws to her serving as a board member of a nonprofit charter school while also working for a City agency that regularly does business with various nonprofits. The employee may not represent the charter school as its agent or attorney in any transaction involving the City. If the employee has personally represented the charter school in seeking a City contract or any other City action, those efforts must cease. While the City's conflict of interest provisions do not raise issues, the State Ethics Act's conflict of interest provision may prohibit the employee from taking actions that financially benefit the charter school.	PROHIBITED REPRESENTATION; CONFLICT OF INTEREST; PAST CONDUCT; CHARTER SCHOOLS AS POLITICAL SUBDIVISIONS Code §§ 20-602(1)(a), 20-607; 65 Pa. C.S. §1102
GC-2012-507 Non-public Advice	7/24/12	Advised an appointed City employee about how the political activity restrictions would affect his participation in a partisan political group in which he was member. The employee is permitted to be a member of the group, to attend meetings as a spectator, and may testify on the group's behalf in court, including in a lawsuit in which political organizations and political party officials would be parties, if he does so without participating in the management or affairs of the group.	POLITICAL ACTIVITY; MEMBERSHIP IN PARTISAN POLITICAL GROUP; PARTICIPATION IN LAWSUIT; TESTIMONY Charter §10-107(4); Regulation 8

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Advice No.	Date Issued	Brief Description	Key Words / Citations
GC-2012-508 Non-public Advice	7/24/12	Advised a City official about the application of the ethics laws to her creating a nonprofit and serving as an uncompensated board member. She may select board members of the nonprofit, solicit charitable donations from businesses, and be listed as a board member on the nonprofit's stationery so long as the general prohibitions against conflicts of interest or representing another person in a transaction involving the City are observed. An appearance issue can arise with solicitation of contributions if the public perceives a *quid pro quo*. While the City's conflict of interest provisions raise no issues, the State Ethics Act's conflict of interest provision may prohibit the City official from taking actions which financially affect the nonprofit, if she is on its board of directors.	NONPROFIT BOARD MEMBER; CONFLICT OF INTEREST; PROHIBITED REPRESENTATION; SOLICITATION FOR CHARITIES; APPEARANCE OF IMPROPRIETY; FINANCIAL DISCLOSURE; NO-BID CONTRACT DISCLOSURE REQUIREMENTS Code §§17-1402(1), 20-602(1)(a), 20-602(5), 20-607; 65 Pa. C.S. §1102
GC-2012-509 Non-public Advice	7/25/12	Advised a City employee about application of the ethics laws to his volunteer service as a member and soon to be president of the PTA of a local charter school, in light of his official position as a City employee in a unit that interacts with such schools. Explained relevant restrictions concerning conflicts of interest, interest in City contracts, and confidential information. The requestor may not represent others, including the school or its PTA, as an agent or attorney in a transaction involving the City. It is assumed that, as president of the PTA or as a trustee of the School, the requestor would be an agent of those respective organizations. The exception for representation in the course of or incident to official duties does not contemplate dual representation in his City position and in his position as the PTA President.	PROHIBITED REPRESENTATION ; AGENT; NON-PROFIT ORGANIZATION; CHARTER SCHOOL; PTA; CONFLICT OF INTEREST; DISCLOSURE OF CONFIDENTIAL INFORMATION Charter §10-102; Code §§ 20-602(1)(a), 20-602(5), 20-607, 20-609
GC-2012-510 Non-public Advice	8/3/12	Advised a City employee who is an attorney regarding her uncompensated volunteer service while not on duty on election day as a voter protection volunteer with the Committee of Seventy. Provided that she avoids representing any person, including Seventy or a voter, in a transaction involving the City, such as a voting challenge to the City Commissioners, the representation restriction would not prohibit her proposed service. The Charter's political activity restrictions would not prohibit the employee's participation because the voter protection program is a non-partisan program and volunteer participation answering questions, providing information, and reporting problems to Seventy would not involve political activity.	VOTER PROTECTION; ELECTION DAY VOLUNTEER; COMMITTEE OF SEVENTY;POLITICAL ACTIVITY; PROHIBITED REPRESENTATION Charter §§10-102, 10-107(4); Code §§20-602(1)(a), 20-607(b), 20-609; Regulation 8

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Advice No.	Date Issued	Brief Description	Key Words / Citations
GC-2012-511 Non-public Advice	8/16/12	Advised an employee of the Office of City Commissioners about the application of the political activity restrictions if he were to participate, as part of his duties and representing his City office, in a rally addressing the Pennsylvania Voter ID law. If the employee is reasonably assured that the rally is intended to be non-partisan and his participation would not involve coordination with political parties, candidates, or partisan political groups, he would not be prohibited from participating in the rally. However, he should avoid making, or being associated with, partisan political statements or activity and should it become apparent that the rally is veering into partisan waters, he should limit his participation as much as possible from that point forward.	POLITICAL ACTIVITY RESTRICTIONS; ACTIVITIES IN OFFICIAL CAPACITY; ON DUTY; RALLY Charter §10-107(4); Regulation 8
GC-2012-512 Non-public Advice	9/20/12	Advised a City employee who was a candidate for non-City office prior to her City employment that the restrictions on political activity would prohibit her from being in any manner concerned in soliciting, collecting, or receiving a political contribution. The continuing authorization of her campaign committee, which has ceased raising funds but had debt and still existed as a registered political committee, raises issues concerning fundraising for a political purpose. To avoid any suggestion the requestor has authorized the committee to continue soliciting or receiving contributions on her behalf, it was recommended that she de-authorize the committee.	POLITICAL FUNDRAISING RESTRICTIONS; FORMER CANDIDATE; DE-AUTHORIZATION OF POLITICAL COMMITTEE Charter §10-107(3); Regulation 8, ¶¶8.6, 8.7
GC-2012-513	10/17/12	Advised a City employee regarding her unpaid service on the Board of a nonprofit charter school. She may not represent anyone, including the charter school, as its agent or attorney in a transaction involving the City. She may not make confidential City information available to the nonprofit to advance its financial interest. While the City's conflict of interest provisions do not raise issues, the State Ethics Act's conflict of interest provision may prohibit the employee from taking actions that financially benefit the charter school.	UNPAID BOARD MEMBER OF NONPROFIT; CONFLICT OF INTEREST; PROHIBITED REPRESENTATION; CONFIDENTIAL INFORMATION Charter §10-102; Code §§20-602(1)(a); 20-607; 65 Pa. C.S. §§1102, 1103 (a)

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Advice No.	Date Issued	Brief Description	Key Words / Citations
GC-2012-514 Non-public Advice	12/27/2012	Advised a former City employee, who is an attorney, regarding restrictions on employment that apply after separation from the City. The City Code post-employment representation restriction would prohibit t the requestor from representing persons in transactions involving the City in which she had participated as a City employee only to the extent she is not practicing law. Lobbying by an attorney on behalf of a principal/client is generally considered to be the practice of law. For two years after leaving City service, she may not acquire a financial interest in action she took in her official capacity during her City service. The Lobbying Code does not contain specific restrictions for a lobbyist who is a former City employee.	POST-EMPLOYMENT RESTRICTIONS; ATTORNEY; LOBBYING; PRACTICE OF LAW; OFFICIAL ACTION Code §§20-603(1); 20-607(c); Regulation 9; *Shaulis v. Pa. State Ethics Comm.*, 574 Pa. 680 (2003).
GC-2012-515 Non-public Advice	12/28/2012	Advised a City official who serves on a City board that is seeking to contract with a professional firm that employs the official's child as an associate employee. The City Code's conflict of interest provision would require the official's disclosure and disqualification from any City decision that would have a financial impact on the professional firm only where the financial impact specifically extends to the official's child. The fact that the board may contract with a firm that already has a contract with another City office in which the official has authority does not create a conflict of interest for the official. The official's assistant, who routinely attends meetings of the board as the official's designee, may participate in a board matter in which the official is disqualified, provided that the designee acts independently and not on the official's instructions.	CONFLICT OF INTEREST; IMMEDIATE FAMILY MEMBER; FINANCIAL INTEREST; CITY BOARD/COMMISSION; DISCLOSURE & DISQUALIFICATION; KNOWLEDGE REQUIREMENT Code §§20-607(b); 20-608(1)(c); Board Opinion 2009-003
GC-2012-516 Non-public Advice	12/31/2012	Provided clarifying advice to a former City employee, who had received a prior advisory opinion, about post-employment restrictions as applied to his proposed work with a nonprofit that contracts with his former City department. For two years after leaving his City job, the requestor may not acquire a financial interest in any official decision he made while working for the City. While a City employee, the requestor met with the nonprofit but was not involved in awarding, renewing, amending, or administering its City contract. Employment with the nonprofit would not be prohibited as it would not constitute a financial interest in an award, decision or judgment made by him in his official capacity when he was a City employee.	POST-EMPLOYMENT RESTRICTIONS; CITY CONTRACTOR; FINANCIAL INTEREST; TRANSACTION INVOLVING THE CITY Code §§20-603(1); 20-607(c); 65 Pa. C.S. §1103(g); General Counsel Opinion 2012-503

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Advice No.	Date Issued	Brief Description	Key Words / Citations
GC-2013-501 Non-public Advice	3/11/13	Advised an employee of a City-established 501(c)(3) who was considering employment with the City about post-employment restrictions. A former City employee may never assist anyone, including a future employer, in a transaction involving the City in which he participated during his City service. In addition, the employee may not become financially interested in a decision made by him as a City employee for a period of two years following the end of his employment.	POST-EMPLOYMENT RESTRICTIONS; CITY-ESTABLISHED NONPROFIT Code §§20-603(1), 20-60 (4), 20-607(c)
GC-2013-502	2/25/13	Advised a City employee considering employment with a City contractor about post-employment restrictions. Under the Ethics Code, she would be unable to assist her future employer or any of its clients with any transaction involving the City on the particular issues or decisions made with her involvement as a City employee. The employee may not become financial interested in a decision made by her as a City employee for a period of two years following the end of her employment.	POST-EMPLOYMENT RESTRICTIONS Code §§20-603(1), 20-607(c)
GC-2013-503 Non-public Advice, subsequently made public by agreement of requestor	4/11/13	Advised a law firm working with multiple City units that firm would not be subject to the registration and reporting requirements of the Lobbying Code under the exemption for performing services pursuant to an existing contract. The firm specializes in municipal collections and is compensated based on its collections. The firm's various activities advising and collaborating with the City are pursuant to the firm's representation of the City and a contract with the Law Department.	LOBBYING; EXEMPTION FOR SERVICES PURSUANT TO CITY CONTRACT; LAW FIRM; POLICY ADVICE Code §20-1204(14)(g); Reg. 9, ¶9.24(M)(7)