

City of Philadelphia Board of Ethics

2007 Annual Report



March 2008

**City of Philadelphia
Board of Ethics**

Honesty, Integrity, Transparency

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Chair

Richard Negrin
Vice Chair

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Message from the Chair

It has been quite a remarkable 15 months - from the Board's swearing-in by Judge Ida Chen at the National Constitution Center on November 27, 2006 to the submission of this Annual Report mandated by the Philadelphia Code in Section 20-606(1)(l).

Clear perspectives, insights on priorities, recognition of objectives not yet attained - all are the dividends of stepping back and taking stock as the Ethics Board staff has done in the preparation of this comprehensive and informative report.

Those of us there at the beginning, five Board Members and an interim executive director, would not have dared to predict how far we have come in such a short time with such limited resources.

Of the original five Board Members appointed by former Mayor, John F. Street on October 19, 2006, three remain: Stella Tsai, Richard Negrin and I. The Rev. Alyn E. Waller resigned in March, 2007 and was replaced by Prof. Phoebe A. Haddon. Pauline Abernathy resigned in September, 2007 and her term will be filled by Kenya Mann, who has been sworn in on February 20, 2008. Our sincere gratitude is extended to both for their service.

To survive, yet alone to move forward toward our goal of creating an ethical culture in Philadelphia, required the efforts of many who deserve acknowledgement and thanks:

- Councilman, now Mayor Michael A. Nutter, who was responsible for the Charter change and accompanying Ethics Code amendment creating the present independent Board of Ethics
- Commissioner Joan Decker and employees of the Department of Records

- Former Solicitor, Romulo Diaz, and members of the Law Department particularly, Evan Meyer (who became our general counsel), Richie Feder and Lewis Rosman

- Commissioner Joan Schlotterbeck and members of the Department of Public Property

- Tanya Smith, Director of Human Resources

- Pro bono outside legal counsel, Cheryl Krause and colleagues at Dechert LLP and Bill Kane and other attorneys at Cafferty Faucher LLP

- Summer intern, Penn law student, Tim Porter

- Investigative outside consultants, Paul Jablow and Tony Lame

- Consultants Tara Malloy of The Campaign Legal Center and Larry White for assistance in the preparation of Regulation 2, Investigation and Enforcement Proceedings

- Publications outside consultant, Paul Jablow

- The attentive and vigilant Press

On a personal note, it has been an extraordinary honor and privilege to serve as the first Chair of this groundbreaking, independent City board. On behalf of the entire Board, we believe this year we have played a meaningful role in fostering positive changes in the ethical climate of the City, but we are convinced much needs to be done toward reaching the goal of a City where honesty, integrity and transparency are the expected norms.

RICHARD GLAZER, Chair
Philadelphia Board of Ethics

Members of the Board of Ethics

Richard Glazer, Esq., a founder of Cozen O'Connor, one of the 100 largest law firms in the United States. Mr. Glazer serves as Chair of the Board of Ethics. He has served on the boards of a number of local non-profit organizations, including the Committee of Seventy and also the Public Interest Law Center. Mr. Glazer's term on the Board will run for five years.



Richard Negrin, Esq., Vice President and Associate General Counsel for ARAMARK. Mr. Negrin serves as Vice Chair of the Board of Ethics. He served previously as an attorney at Morgan Lewis and as a prosecutor in the Major Trials Unit of the Philadelphia District Attorney's Office. Mr. Negrin's term on the Board will run for four years.



Phoebe A. Haddon, Esq., Professor of Law, Temple University Beasley School of Law. Professor Haddon has served on the boards of numerous non-profit organizations related to equal access to education and social justice and is presently on the ABA Council of the Section of Legal Education and Admissions to the Bar, the Board of Trustees of Smith College, and Pennsylvanians for Modern Courts. Professor Haddon's term on the Board will run for three years.



Stella Tsai, Esq., an attorney with the law firm of Christie, Pabarue, Mortensen and Young. Previously Ms. Tsai served as Chair of Administrative Law for the City of Philadelphia Law Department, and also as counsel to the City Civil Service Commission. Ms. Tsai's term on the Board will run for one year.



Kenya Mann, Esq., a partner in the Litigation Department and a member of the White Collar Litigation Group at Ballard Spahr Andrews & Ingersoll, LLP. Prior to joining the law firm, Ms. Mann served as Assistant U.S. Attorney, Criminal Division, in the Eastern District of Pennsylvania. She is serving in a two-year term.



Message from the Executive Director



It has been my honor to serve the new independent Board of Ethics during its formative first year and to assist the Board as it was recognized as an integral component in City government. Few cities have made the commitment that Philadelphia has to strengthen public confidence in government. We

now have clear contract reform and campaign finance rules to limit the influence of large political contributors on decision-makers, an independent Board of Ethics that oversees those new rules and sufficient resources for the Board to enforce the rules. It was no small effort to get the City's ethics reform measures to where they are today. It required the active participation and support by voters, City Council, the Mayor and many independent organizations over four years to accomplish.

The transition from an Ethics Board with advisory responsibility only to one with significant authority to enforce the ethics and campaign finance laws has been a complex process. This report describes that transition and the new Ethics Board's efforts in its first year to establish a robust ethics program for Philadelphia.

To start, this report will describe how the Board provided in-person ethics training to more than 25,000 City officials and employees. To my knowledge, it is a training program unprecedented in the country. No other major city has provided

live ethics training to its entire workforce. Its positive reception has confirmed my belief that the overwhelming majority of city workers want to do the right thing. It's also fair to them to show them where the boundaries are. If we are going to hold city officials and employees to high standards, it's only fair that we first make it clear what those standards are.

Our experience with the implementation of the City's new campaign finance law demonstrates that ensuring compliance with that law requires constant vigilance. As discussed in this report, with limited staff, the new Board actively and effectively exercised its oversight responsibility in a major election year. It did so by providing guidance to candidates and committees, scrutinizing hundreds of campaign finance disclosure reports and holding those who violated the law accountable for their actions. Although the new law constitutes a sea change in terms of how city campaigns are run, the vast majority of candidates and political committees made every effort to follow the new rules.

Rarely does one have an opportunity to create something from the ground up that can change the political culture of an entire city. The new Ethics Board has such an opportunity and will continue to fulfill its mandate with diligence and fidelity.

J. SHANE CREAMER, JR.
EXECUTIVE DIRECTOR
Philadelphia Board of Ethics

Board of Ethics Staff

J. Shane Creamer, Jr., is the Executive Director to the Philadelphia Board of Ethics. He was first appointed interim Executive Director by the members of the new independent Board of Ethics, when the new Board was installed on November 27, 2006. He later became the Executive Director of the new Board in July 2007. Previously, Mr. Creamer served as the Executive Director of the advisory Board of Ethics, the predecessor of the new independent City Board of Ethics, beginning in May of 2005. Prior to that, he served as Assistant Secretary of Education and Assistant Managing Director for the City of Philadelphia. Before joining City government, he was a partner in the litigation department at Duane, Morris & Heckscher. A Philadelphia native, Mr. Creamer is a graduate of Gettysburg College and Villanova University School of Law.

Evan Meyer became General Counsel to the Board of Ethics in August 2007. He holds a B.A. from Kent State University and an M.A. in English from Temple University. After receiving his J.D. in 1985 from Temple, where he was an editor of the law review, Mr. Meyer served for two years as the administrative law clerk for the Honorable Phyllis W. Beck of the Superior Court and then joined the Law Department in September 1987 where he worked closely with the Solicitor and wrote legal opinions interpreting federal, state, and local law on a wide variety of topics. Mr. Meyer is an acknowledged expert in City government on the law of pensions, ethics, restrictions on political activity, the residency requirement, access to public records and open meetings, dual employment, and structural issues relating to boards and commissions. From 1987 to 2005 he served as counsel to the \$5 billion Municipal Retirement System. Prior to his appointment as the Board's General Counsel, Mr. Meyer served as counsel to the

City's Mayoral advisory Board of Ethics from 1989 to 2006, and has issued numerous legal opinions and conducted numerous trainings on ethics, public records, and political activity.

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. She was involved in many reform efforts in New Jersey law, including recent implementation of New Jersey's comprehensive "pay-to-play" laws and its Fair and Clean Elections Pilot Project. Ms. Massar is a graduate of the University of Pennsylvania and Rutgers-Camden School of Law. She is an active member of the Council on Governmental Ethics Laws (COGEL), an international organization of government agencies, organizations, and individuals working in the areas of governmental ethics, elections, campaign finance, lobbying, and freedom of information. She was COGEL president in 2007 and was a member of the COGEL Steering Committee in 2005 and 2006.

Tina Formica has played a key role in the organization and operation of the Board as its Administrative Assistant since March of 2007. Ms. Formica, a Philadelphia native, graduated from St. Hubert's High School and has worked in City government since 1997. She brings her administrative skills and experience in the City's financial and budget processes to her tasks at the Board. Before joining the Board of Ethics, Ms. Formica worked in the Law Department, Mayor's Office, and City Council.

Executive Summary

The Board of Ethics is honored to present this 2007 Annual Report to the Mayor and City Council. It documents the many accomplishments of the new, independent Board in its first 13 months of existence. The Board made significant steps toward its goal of fostering honesty, integrity, and transparency in Philadelphia government and toward the overall goal of reform of the City's political culture. This Report will describe the Board's activity in the following areas:

- Administration of the first-ever contribution limits for candidates for City elective office;
- Implementation of electronic filing for candidates;
- Education of candidates about the new campaign finance requirements;
- Education in ethics requirements for more than 25,000 City officers and employees;
- Issuance of advice and guidance on campaign finance and ethics matters; and
- Enforcement of campaign finance contribution limits and filing and disclosure requirements.

The Board is empowered by Section 20-606 of the Code to make recommendations to the Mayor and Council for legislative changes that would "improve the administration and enforcement" of the ethics laws and "strengthen or clarify the standards of conduct and ethics." The experiences of the Board in its first year have also highlighted areas of the law which might benefit from such changes. This Report will therefore offer recommendations for study by the Mayor and Council to:

- Clarify the Conflict of Interest and Public Disclosure and Disqualification Sections of the Code (Sections 20-607 and 20-608, respectively);
- Simplify the multiple financial disclosure requirements applicable to City officers and employees;
- Consider implementation of "per election" contribution limits; and
- Examine possible new requirements for inaugural events and transition activities.

The members and staff of the Board of Ethics look forward to continuing this record of service and accomplishment in 2008.

For the Philadelphia Board of Ethics, 2007 started early – November 16, 2006 to be exact. That was the day that Mayor John Street signed the ordinance giving the newly constituted Board the responsibility for enforcing the city's first-ever campaign contribution limits. And it was also the day City Council confirmed his Board nominees.

The city had had a Board of Ethics since 1962, but that was an advisory board only that had limited jurisdiction and lacked enforcement and investigative authority. In addition, the new Board of Ethics was the first newly-created City Charter entity with a budget and staff since the Charter was enacted in 1951. And it had to hit the ground running: candidates were already preparing for a hotly contested primary election for Mayor, City Council and other elected offices.

The Board had no official headquarters and only a skeleton staff that would spend their first few months operating largely from their homes. But by the primary election in May 2007, the Board had already established itself as a fully functioning part of city government. It had:

- Coordinated with the Department of Records to oversee the successful transition to electronic reporting of campaign contributions and expenses;
- Monitored compliance with the new campaign contribution limits by using the electronic system;
- Taken enforcement action against candidates and campaign committees that appeared to be out of compliance with the new ordinance; and
- Trained more than 25,000 city employees on the ethics laws.

The Board had also assumed oversight responsibility for financial disclosure statements required to be filed by elected and top appointed officials. By the end of summer it had moved into its new headquarters in the Packard Building and named an executive director and general counsel. It is the role of the general counsel to handle inquiries and requests for advice concerning conflicts of interest, financial disclosure, standards of governmental conduct, and prohibited political activities.

The Board's advice would eventually range during this first year from guidance for city workers about accepting free meals to direction on accepting contributions for the incoming Mayor's inauguration and transition team. Two key opinions set out for the first time what constituted acceptable political activity for a member of a board or commission with wide governmental powers.

By late November, a deputy executive director had been named and preparations to hire additional staff were underway. And one of the Board's most significant milestones came on the last day of the year, when the state Supreme Court upheld Philadelphia's campaign contribution laws.

The pre-2007 history of the new, independent Board of Ethics is described in an appendix to this report.

The 2007 Primary Election

On the surface, the 1999 and 2007 Democratic mayoral primaries were much alike. In each case, a two-term incumbent was ineligible to succeed himself. Both were hard-fought primary election races with no overwhelming favorite at the outset. But the atmosphere of the two races was very different. And much of that difference was due to new Council ordinances restricting campaign contributions and taking other steps to change Philadelphia's traditional "pay-to-play" culture.

Notably absent in 2007 were the charges and counter-charges about six-figure contributions since these were now banned. There were also few large contributions from executives with firms seeking no-bid city contracts, as new city regulations restricted campaign contributions from those seeking this work. Amendments to the City Code, enacted in late 2003 and amended in 2005, for the first time placed limits on contributions to candidates for Mayor and City Council.

In fact, if one omits the \$10 million one candidate spent on his 2007 campaign – no candidate in 1999 was in a position to do this – total spending in the 2007 Democratic primary would be lower than the approximately \$16 million tab for the 1999 election. And the winner's campaign cost less than \$7 million, the lowest in 20 years.

Certainly, there was no decline in citizen interest. The top Democratic candidates this year drew more than 290,000 votes, some 7,000 votes more than the leading Democratic candidates in 1999, when the city's population was larger.

The reconstituted Board of Ethics played a key role in this change, starting with an education campaign for candidates and campaign treasurers and continuing with enforcement actions that led to thousands of dollars in improper campaign expenditures being returned to donors or dedicated to non-campaign purposes.

Other enforcement actions were designed to ensure that the public was aware of exactly who is finan-

cially supporting each candidate and how these contributions are being spent. The Board considers "transparency" to be just as important as the contribution limits themselves.

"The city's new campaign law," the Inquirer wrote in May, "stanch[ed] the flow of money from seeker[s] of city contracts – donors with 'CEO' or 'president' by their names. More cash rolled in from ordinary citizens making modest donations."

Contribution Limits Survived a Legal Challenge

The contribution limits that distinguished the 2007 elections from all prior City elections did not go unchallenged. Litigation that began in April of 2006 would ultimately result in a challenge to contribution limits in the 2007 primary election. Then a candidate for Mayor, Michael Nutter brought an action on April 12, 2006 in the Court of Common Pleas against John Dougherty, Chaka Fattah, Dwight Evans, and Jonathan Sidel seeking a declaratory judgment that all four were candidates and therefore subject to contribution limits under the City's new campaign finance law. This action was voluntarily dismissed because Council amended the law in late 2006 and answered the question by including a more precise definition of the term "candidate."

However, a portion of the original action survived to resolve the defense raised by Defendants Dougherty, Fattah, and Evans that the City's contribution limits were invalid because they were preempted by the State campaign finance law. They argued that the absence of contribution limits under State law precluded the City from enacting contribution limits. The City was permitted to intervene in the case in June, 2006 to defend its campaign finance ordinance.

The City argued that State law was not intended to preempt the City's regulation of campaign contributions by imposing contribution limits. Rather, the General Assembly intended to permit local regulation of contributions, and Philadelphia, as a Home Rule Charter municipality, had the authority

to enact such limits. On December 13, 2006, the trial court found that the City's Campaign Finance Law was unconstitutional and unenforceable. Judge Allan L. Tereshko held that the City did not have authority to enact the contribution limit ordinance because State law preempted such local regulation in an election-related matter.

With the 2007 election fast approaching, the Board of Ethics knew that it was necessary to clarify the status of the contribution limit ordinance. Anticipating that the City would appeal Judge Tereshko's decision, which would impose a stay and permit the ordinance and contribution limits to remain effective, the Board prepared to issue an opinion advising the candidates and the public that contribution limits were still applicable.

On December 26, 2006, the date the appeal was filed, the Board issued Advisory Opinion 2006-002, which clearly stated that:

[A]s of December 26, 2006, the City's Campaign Finance Law remains in full force and effect. The Ethics Board will continue to enforce that law, including by rendering advisory opinions, approving regulations and developing systems to monitor the political campaign finance reports filed by candidates for City elective offices to determine whether they are complying with the requirements of the Law, pursuant to the Board's jurisdiction.

In April, 2007, the Commonwealth Court reversed the trial court on appeal and upheld the City ordinance finding no clear preemption in State election law of the regulation of contribution limits. The matter was finally resolved on December 28, 2007, when the Pennsylvania Supreme Court affirmed the decision of the Commonwealth Court, thus upholding the City's campaign finance ordinance and contribution limits.

In prior elections, unregulated contributions had given rise to cynicism that City government was

only responsive to those who made large contributions. By upholding the contribution limits, the courts supported the key element of reform which would reverse the negative appearance of City government. As the Inquirer wrote in May, 2007, "All in all, Philadelphia's new campaign-money rules weathered their first big test."

Electronic Reporting in Cooperation with the Records Department

The City's new campaign finance law requires that campaign finance reports containing contribution information about a candidate for City elective office must be filed electronically with the Board of Ethics. The new law requires that the Board specify the electronic format for these reports and must, no later than five business days after filing, make contribution and expenditure information available to the public on the City's website in a searchable format.

Were it not for the support and work of the City Records Department and Commissioner Joan Decker, meeting the electronic filing mandates of the new law would have been an impossible task for the Board, which for much of 2007 had only two staff members.

Commissioner Decker reported to the Board of Ethics on December 4, 2006 that the Records Department had developed file specifications for completing the numerous schedules that were part of each campaign finance report and that the specifications were compatible with State-approved software requirements. Candidates and committees would therefore be able to file all required reports using the City software. Commissioner Decker also reported that a searchable database had been developed that would make the contribution and expenditure information available to the public. These accomplishments required countless hours of work by the Records Department.

Regulation 1

Based upon the efforts of the Records Department,

on December 18, 2006, the Board approved Regulation 1, which became effective on January 17, 2007. The regulation mandated electronic filing and included the technical specifications for filing each of the schedules in the reports. The January 31, 2007 filing deadline for the first electronic reports was, due to technical problems, extended for candidates and committees to February 15, 2007. In September, Regulation 1 was amended to clarify that only campaign finance reports with financial information about a candidate for a City elective office must be filed electronically with the Board. Regulation 1 is included in the appendices to this report.

Three Ways to File

The Records Department designed three ways to comply with the requirement to electronically file contribution and expenditure information. The three methods suited the different needs of filers who had large and small amounts of contribution and expenditure information to report:

- **CD Filing:** A filer could enter data into files using his or her own computer, copy the data to a CD, and mail or deliver the CD to the Department of Records.
- **Import Data Using the Internet:** A filer could create his or her own contribution and expenditure data files on a computer, establish an account with the Records Department, and email the data to the Records Department in a zip file.
- **Online Filing:** A filer could submit data directly online by registering an account with the Records Department and creating a campaign finance report via the Internet on the Records Department website.

Electronic reporting was new for many candidates, committees, and treasurers. Recognizing that filers had different levels of computer expertise, the Records Department offered training in many formats which contributed to successful implementation of the new and complex electronic filing pro-

gram. There were 544 people who took advantage of electronic filing training offered in the daytime and evening in eight seminars, 26 “webX” training sessions, and 307 in-person training sessions. In addition to training in the details of the electronic filing software, several of the “in-person” classes provided instruction in basic computer skills for inexperienced candidates and treasurers. A “webX” demonstration permitted a filer to sit at home with his or her own computer and follow the training session “live” on-screen and on the telephone, as though he or she were sitting with a Records Department trainer at his or her side.

For those filers who either did not have access to a computer or who wished to have technical support as they were preparing to file, the Records Department operated a filing center that was open for more than 450 hours. A candidate or treasurer could come to the filing center where there were computers and staff to assist with the process of electronic filing. The filing center was even open until 11:00 at night as the filing deadlines approached providing more than 300 hours of such support. Technical support was also provided to filers through campaignfinance@phila.gov, and there were 318 “help desk” contacts with Records Department staff.

Development of electronic filing was a dynamic process in the 2007 election cycle. The Records Department solicited feedback from users of the electronic filing system, and many suggestions offered by filers were incorporated into the new SmartClient filing software. With SmartClient a treasurer can: enter and store contribution and expenditure data on a local computer and file electronically with the City with “one-click” of the mouse; file and print reports to satisfy filing requirements with the State and City Commissioners; and receive warnings of possible omissions or errors. With the assistance of the Records Department, the Board of Ethics expects continued improvements to the SmartClient software and the electronic filing process.

Compliance with Electronic Filing

The Board notes that compliance with campaign filing requirements during 2007 improved, as demonstrated in data provided by the Records Department. The percentage of delinquent reports (Table 1) tended to decrease during 2007, and the percent-

age of incomplete transactions (Table 2), which was always below three percent, also tended to decrease during the year. As candidates and treasurers become familiar with the electronic filing process, the Board anticipates that compliance will continue to improve as filers become more experienced and the three filing methods are upgraded.

Table 1
Delinquent Reports

2007 Report Cycle	Total # of Filers	# of Delinquent Reports*	Delinquent Reports	# of Reports Filed 5 or Fewer Days After Due Date	Reports Filed 5 or Fewer Days Late	# of Reports Filed More than 5 Days After Due Date	Reports Filed More than 5 Days Late
1	30	12	40%	3	10%	9	30%
2	185	87	47%	47	25%	40	22%
3	209	46	22%	18	9%	28	13%
4	42	17	40%	6	14%	11	26%
5	124	12	10%	9	7%	3	2%
6	157	20	13%	16	10%	4	3%

*Report filed one or more days late

Source: City of Philadelphia, Department of Records

Table 2
Incomplete Transactions Reported

2007 Report Cycle	Total # of Transactions Reported	# of Transactions with Incomplete Data	Rate of Transactions with Incomplete Data
1	5,248	116	2.21%
2	55,415	846	1.53%
3	22,093	451	2.04%
4	5,733	65	1.13%
5	31,583	518	1.64%
6	19,086	113	.59%

Source: City of Philadelphia, Department of Records

Education and Training Activity

While the primary election campaign drew the headlines in early 2007, the Board was also mounting a campaign of a very different sort – perhaps the most comprehensive ethics training effort by any major American city. Such training is at the core of the Board’s mission to bring honesty and integrity to City government. When City officials and employees know and observe the rules for their activities, the public can trust the actions of government.

The Board of Ethics is responsible for providing ethics training and education to all City officers and employees. This wide-ranging mandate includes more than 25,000 individuals who are employees of the City or who are elected or appointed to positions in City government. The campaign finance provisions of the Code charge the Board with educating and training hundreds, if not thousands, of candidates, treasurers, and political committees concerning compliance with the City’s campaign finance laws. In its first year, the Board is proud to have met these training mandates and looks forward to expanding its training activities in the future.

In addition to formal training sessions, many methods were used by the Board to reach the thousands of City officers and employees affected by the ethics and campaign finance laws. The Board emphasizes the accessibility of its staff by telephone to City officers and employees, candidates, treasurers, and the public as an extremely valuable educational and training tool. On a day-to-day basis, an employee with an ethics issue, a treasurer with a contribution limit question, or a member of the public can reach the Board to discuss concerns and receive assistance. By providing information in this manner, the Board hopes to encourage compliance with the ethics, campaign finance, financial disclosure, and vendor disclosure laws.

The Board’s Web site is another extremely important educational tool. The ethics, campaign finance, financial disclosure, and contracting laws are available on the web site, as well as Board ad-

visory opinions. A City employee or official may use the site to seek advice from the Board, and a citizen may anonymously report a concern about a possible ethics or campaign finance violation. There is also a description on the website about the City’s Whistleblower Policy which permits employees and citizens to report instances of improper behavior without fear of reprisal or abuse.

Ethics Education for 25,000 Employees and Officials

To reach the thousands of City officials and employees who must receive ethics training, the Board partnered with Central Personnel and coordinated its training efforts through the City’s Human Resources Training Consortium.

The Board supervised preparation of ethics curriculum training materials which were presented to City officials and employees in all departments and agencies through the Consortium by its more than 300 professional trainers, who were trained to deliver the ethics curriculum in nine “train the trainers” sessions. The State Ethics Act, the City Charter and Code, and Mayoral Executive Orders are sources of ethics requirements in Philadelphia. The training materials therefore drew from all of these sources and discussed topics including conflicts of interest, interests in contracts, revolving door employment, gifts, and financial disclosure.

As of August, 2007, the Board determined that 25,079 City officials and employees had received ethics training through the Consortium and its trainers. The Board fully appreciates the professional support received from the Consortium and would not have been able to complete live in-person training of so many City officials and employees in such a tight time frame without the Consortium and its trainers. The Board looks forward to working with the Consortium again next year to achieve its mandate to deliver annual ethics training to all employees and officials.

Three ethics training sessions were conducted by

the Board specifically for City Council members and their staffs, with a participation rate of 93 percent - 179 of 192 individuals. Beginning on September 27th, five ethics training sessions were also offered by the Board in its new office for the members of 81 City boards and commissions.

Education About the New Campaign Finance Law

Because the City was entering the first election in which contribution limits and other new requirements would apply to candidates for elective office, the Board not only offered training sessions for candidates, committees, and treasurers, but also delivered information on the new law in other ways to candidates and the public in the relatively short period of time after its inception.

“Plain English” Text

The Board published a “Plain English” explanation of the campaign finance laws in The Inquirer, Daily News, and Tribune newspapers which appeared on January 12, 2007. In this publication, the Board highlighted the following major components of the new campaign reform law in an easy-to-understand text:

- The new limits on political contributions;
- The special provision doubling contribution limits for 2007 mayoral candidates;
- The requirement to use only one political committee and one checking account for receiving contributions and making expenditures in 2007;
- The requirements for segregating excess pre-candidacy contributions;
- The contribution limits in non-election years; and
- The requirement to file campaign finance information with the City in an electronic format.

The Board is required to publish a “Plain English” explanation of the campaign finance laws every six months. The Board therefore published the explanation again in June, 2007.

Seminars

Beginning on February 8, 2007, the Board offered its first training seminar for candidates for City elective office and political committee treasurers. The program offered an overview of the campaign finance law, an introduction to the Board’s Web site as a source of current information, and a presentation on the methods for electronic filing of campaign finance reports. A second campaign finance seminar was conducted on April 18th.

In addition to the training offered by the Board, the Records Department offered its many electronic filing training sessions and provided constant support to the Board.

Financial Disclosure

In the interest of promoting transparency in City government and to ensure that no conflict exists between an individual’s City responsibilities and his or her personal financial interests, certain City officials and employees are required to file annual reports disclosing their income and other financial interests. Not every employee is required to file. In addition to City officials and employees, members of 81 boards and commissions must file disclosure statements.

Education and training about the financial disclosure requirements are important because an official or employee may be required to file one or more of the three financial disclosure reports:

- The City of Philadelphia Statement of Financial Interest (the City Form) is filed by all city officers and elected officials who are paid a salary and by all members of boards and commissions, whether compensated or not;

- The Mayor’s Executive Order Financial Disclosure Statement (the Mayor’s Form) is filed by the Mayor, Members of Mayor’s Office, Cabinet Members and Commissioners and their deputies, and Board and Commission members who receive more than \$40 per meeting or are paid on an annual basis; and

- The Commonwealth of Pennsylvania Statement of Financial Interest (the State Form) is filed by candidates for elective office and, based upon an analysis of the level of responsibility of his or her City officials and employees.

The reports are due for filing on May 1st and all are required to be filed at the City Records Department. The City Ethics Code gives the Board jurisdiction over the City Statement of Financial Interest (the City Form).

In 2007, the Board aggressively sought to provide information to all individuals required to file one

or more of the three disclosure statements. Executive Director J. Shane Creamer Jr. and General Counsel Evan Meyer joined Records Commissioner Joan Decker at an April meeting of City Human Resources managers, who are responsible for distributing and collecting forms, to emphasize the importance of the financial disclosure filing requirements. The Board also sent an email to City employees containing a “Frequently Asked Questions” sheet about the financial disclosure process.

The Records Department received the following financial disclosure filings:

City Forms:	333
Mayoral Forms:	194
State Forms:	3,006
TOTAL:	3,533

Advice from the Board

One of the Board's mantras, according to Executive Director J. Shane Creamer, Jr., is "if you don't know, ask." The Board seeks to prevent conflicts of interest by providing guidance before a problem occurs. Advisory opinions are given as quickly as possible, and the opinions are published on the Board's website which also contains links to opinions from the previous advisory Board of Ethics, state and local ethics laws, and mayoral executive orders on ethics. Providing advice on the City's ethics and campaign finance laws is a primary responsibility of the Board of Ethics and is available from the Board in three forms:

- **Advisory Opinions:** The Board is authorized by the Home Rule Charter and the City Code to issue advisory opinions to those affected by the ethics and campaign finance laws. Advisory opinions are issued only concerning proposed or future conduct of a City officer or employee, and an individual who requests an opinion and relies on the Board's advice is protected from Board penalties for the conduct described in the opinion. So that the Board's advice may educate other City officials and employees, advisory opinions are made public. A requester may ask for a confidential opinion which is released to the public after editing to remove identifying information.

- **Advice of Counsel:** The Board authorized its General Counsel to issue an Advice of Counsel opinion based on the ethics laws and on prior opinions in matters where referral to the full Board for a formal Advisory Opinion is deemed to be unnecessary due to time constraints, clear prior precedent, or other considerations. An Advice of Counsel is made public, but identifying information will be redacted if confidentiality was requested upon submission of the request for advice.

- **Informal Advice:** The General Counsel will also issue informal advice by email in response to an email request where, in the opinion of the General Counsel, the matter is appropriate for informal advice because it can be answered by reference to statute or prior rulings. A request for this informal

advice may be made directly to the General Counsel or via a link on the Board's website.

Campaign Finance Advisory Opinions

The Board used its authority to issue advisory opinions as a way to deliver information on the new campaign finance law, including its contribution limits. Not only did the new campaign finance law now contain contribution limits for candidates for City elective offices, but a key provision that had become effective on December 16, 2006 included what has been called a "millionaire's amendment." If a candidate contributed more than \$250,000 of his or her own personal resources to his or her candidacy, the \$2,500 contribution limit for individuals and the \$10,000 contribution limit for political committees and other non-individuals would be doubled.

The Board therefore issued **Advisory Opinion 2006-001** on December 4, 2006, to explain that it had determined that Tom Knox, a mayoral candidate, had contributed more than \$250,000 of his own funds to his campaign, and that the doubling provision in the new law was triggered. Contribution limits to mayoral candidates were therefore doubled to \$5,000 for individuals and \$20,000 for political committees and other non-individuals.

The Board issued **Advisory Opinion 2006-002**, entitled "The Status of the City's Campaign Finance Law," to advise all candidates and the public that the campaign finance law remained in effect, even though it had been held invalid in a lower court ruling. The City filed an appeal of the lower court decision which resulted in an automatic stay of that ruling, thus leaving the campaign finance law in full force and effect. The Board wanted to avoid any confusion about the status of the law. Therefore, on December 26, 2006, the date the appeal was filed, the Board issued Advisory Opinion 2006-002 which stated not only that the City's Campaign Finance Law remained in effect, but also that the Ethics Board would continue to enforce that law.

The City's new campaign finance law also prohibited a candidate from spending any "pre-candidacy" contributions in excess of the contribution limits to influence the outcome of the election.

In response to a request from then-candidate Michael Nutter, the Board issued **Advisory Opinion 2006-003** to provide guidance to candidates concerning treatment of such "pre-candidacy" contributions. The Board explained that the restriction on spending excess pre-candidacy contributions attaches as soon as a person becomes a candidate for a City elective office. However, because the new laws did not explain what a candidate or candidate political committee must do with excess "pre-candidacy" contributions, the Board recommended that a candidate place an amount equal to the excess over the contribution limit for each such contribution into a separate "segregated pre-candidacy excess contribution account" ("SPEC Account") that is not used for the election campaign. The Board further recommended that a candidate notify the Board regarding the SPEC Account as soon as it is established. The opinion stressed that the burden to comply with the spending restriction is on the candidate and his or her candidate political committee and indicated that the Board would consider a regulation in the future to address the issue of excess pre-candidacy contributions.

In an opinion issued after the 2007 primary election, the Board was asked to consider whether contributions received after the date of the election by a candidate's committee for the purpose of paying campaign debt could be in amounts greater than the contribution limits. In the public version of confidential **Advisory Opinion 2007-003** the Ethics Board interpreted the contribution limit sections of the Code to prohibit post-election contributions in excess of the contribution limits to retire debt. The Board reasoned that it would defeat the salutary purpose of contribution limits if a candidate were able to defer payment of expenses and collect unlimited contributions after an election to pay his or her campaign debt.

The Board was pleased to respond to a request from a representative of Mayor-Elect Michael Nutter who asked whether contribution limits and vendor disclosure requirements would apply to funds that would be raised to support transition and inaugural events. In **Advisory Opinion 2007-005** the Board examined the effect of the campaign finance laws on donations made to two nonprofit entities, the "Nutter Inaugural Committee" and "A New Day. A New Way," that were created to fund Mayor-Elect Nutter's inaugural events and transition activity. The new campaign finance laws do not specifically address funds received by a mayor-elect for transition and inaugural activities.

According to the request, no funds raised by either nonprofit entity would be used for any election-related purpose, the Mayor would not serve as an officer or director of either nonprofit, and no City officers or employees would solicit or raise contributions. The request also indicated the intent of the two committees was to disclose the names of all contributors to the public. Further, any funds remaining in the "Nutter Inaugural Committee" or "A New Day, A New Way" would be donated to a charitable entity.

The Board determined that contribution limits and vendor disclosure requirements did not apply to contributions to the "Nutter Inaugural Committee" and "A New Day. A New Way" because neither entity would use funds for a political purpose and no City employees would solicit the funds. At the Board's suggestion, the two nonprofit inaugural event and transition committees agreed to limit donations to the campaign contribution limits set for mayoral candidates even though there is no such requirement under any City ordinance.

The Board suggested in **Advisory Opinion 2007-005** that the facts of the Mayor's attendance at the inaugural event also raised a possible gift issue under the ethics laws. The Board therefore suggested that a separate opinion be sought on this subject. That advice is discussed below.

Ethics Advisory Opinions

Advisory Opinion 2007-001 provided advice on what a City employee may do when pursuing future employment opportunities while still on the City payroll. The Board considered the official's position and the organizations that might be affected by the official's actions, and applied the City Charter, Code, and the State Ethics Act. In a complex response, the Board concluded that "the ethics laws do not disable the requesting official from inquiring from others as to potential interest in employing him/her, and responding to others who inquire as to his/her interest," as long as matters are assigned to another official when a conflict might exist and the conflict is publicly disclosed. Identifying information was redacted in this opinion because confidentiality was requested.

In the public version of confidential **Advisory Opinion 2007-002** the Board provided guidance on whether it would violate the conflict of interest rule if a City official appointed a close relative to an unpaid City position. The answer required analysis of the Ethics Code to determine whether the official made a decision in his or her official capacity that would affect the financial interest of a close relative. The Board found that there would be no ethics violation because in an uncompensated position, the relative would derive no direct financial benefit from the appointment. Since this was a confidential opinion, a redacted version was posted on the Board's website.

In **Advisory Opinions 2007-004 and 006** the Board examined application of the political activity restrictions of Sections 10-107(3) and (4) of the Philadelphia Home Rule Charter to members of the City's 81 boards and commissions. All members of City boards and commissions are "appointed officers of the City," and are therefore subject to the restrictions which, among other activities, prohibit a member of a board or commission from circulating candidate nominating petitions, soliciting or receiving political contributions, serving as a ward leader, distributing posters

supporting a candidate, writing a letter to the editor of a newspaper supporting a candidate, and speaking at a campaign rally for a party or candidate.

The Ethics Board considered whether some boards and commissions and their members should, for some reason, be excluded from the restrictions. The Board noted that opinions from the Law Department over the past six decades applying Charter §10-107 to the City's boards and commissions were often inconsistent. Because the new Ethics Board has jurisdiction to interpret and enforce Charter §10-107, it believed that it was imperative to clarify the applicability of the restrictions to the City's many boards and commissions.

Advisory Opinion 2007-004, which was approved by the Ethics Board at its public meeting on October 12, 2007, addressed the question as to four boards and commissions connected to the Department of Licenses and Inspections. The second opinion, **Advisory Opinion 2007-006**, approved on December 18, 2007, addressed the question as to the rest of the City's 81 boards and commissions.

The Board concluded that whether a particular board or commission should be excluded from the political activity restrictions of Charter §10-107 depends on a combination of the amount of compensation paid to the member and whether that board or commission exercises significant powers of government. If a board or commission exercises significant powers of government or its members receive significant compensation for their service, the Ethics Board concluded that there is no reason to exempt its members from the Charter provision. The Ethics Board analyzed the powers and responsibilities of all 81 boards and commissions in the two Advisory Opinions and found that the political activity restrictions of Charter §10-107 apply to 25 of the City's 81 boards and commissions.

It is important to note that the Ethics Board said in **Advisory Opinion 2007-006** that any affected

board or commission could request reconsideration if the information relied upon in the Board's analysis has changed. To date, no board or commission has requested reconsideration of the Ethics Board's conclusion.

Advice of Counsel

The public version of an Advice of Counsel was issued on **September 12, 2007** concerning the City's Combined Charitable Campaign. Advice was provided to City employees who were involved in soliciting donations of goods and services to serve as incentives to encourage City employee participation in the charitable Campaign. City employees must be careful to avoid an appearance of impropriety in soliciting gifts to be used as incentives and must therefore not use the power of their offices in order to receive donations. The Campaign must also avoid a situation where an item might become an impermissible gift because it is donated to a particular employee. The advice letter also concluded that food and beverages donated for a "kick-off" event would be a permissible gift to the City rather than an impermissible gift to an individual City employee.

The public version of an Advice of Counsel, issued on **December 18, 2007**, discussed a proposed recognition event for City officials and employees, to be funded by a nonprofit organization, where free food and drink, as well as token awards, would acknowledge the positive contributions to the City of members of the outgoing administration and its community partners. The event would be an official City event hosted by the Mayor. Local businesses would solicit contributions to the nonprofit Fund for Philadelphia, which would pay any event expenses. The advice concluded there would be no violation of ethics prohibitions on gifts to City officials and employees arising from the proposed event as long as donations were made to the nonprofit organization which would either incur all expenses or make a single payment to the City for the costs of the event.

On **December 21, 2007**, the Board released the public version of an Advice of Counsel which demonstrated the complexity of the ethics requirements for City officials and employees. The advice letter applied the various ethics laws to a director of a departmental unit who might take a position with a nonprofit corporation that had contracts with the City department where the requester worked. Three separate ethics provisions were analyzed in this confidential advice letter. The employee was advised that, under the State Ethics Act, for one year after leaving City employment, he or she might not represent anyone, including the nonprofit corporation, before the City. Under the City Code, the requester was permanently prohibited from assisting anyone at any time in a transaction involving the City on a matter in which he or she had been involved as a City employee. Lastly, the requester was advised that the City Code prohibited him or her for a period of two years from acquiring a financial interest in any official decision that he or she made as a City employee.

An Advice of Counsel was issued on **January 2, 2008** to the organizers of the nonprofit "Nutter Inaugural Committee," described above in Advisory Opinion 2007-005, concerning possible gift issues raised by fund-raising activities and attendance at the inaugural events. The Advice of Counsel analyzed application of Executive Order No. 002-04, prohibiting gifts to any officer or employee in the Administrative or Executive Branch of City government, and the gifts sections of the City Code. The Advice concluded that there would be no violation of ethics provisions prohibiting gifts to City officials and employees, including Mayor Nutter, provided that all donations were made to the "Nutter Inaugural Committee." Further, the possibility of any ethics appearance issue was minimized by the Committee's voluntary adherence to limits on contributions. The letter also suggested that to avoid appearance issues, donations to the Committee should be solicited by private individuals and the "names of individual donors . . . should not be given prominent publicity." Under the cir-

cumstances, outlined in detail in the Advice, “to the extent that attendance at each inaugural event, whether complimentary or at a discounted ticket price, constitute gifts, they are gifts to the City and thus not gifts at all to the individual recipients.”

Informal Email Advice

General Counsel Evan Meyer, who joined the Board staff in September, answered more than 50 emails from individuals seeking informal advice on subjects such as acceptance of gifts, conflicts of interest, and outside employment.

Topic	# of Informal Email Responses
Gifts (including meals & travel)	21
Conflict of Interest	6
Post-Employment Restrictions	8
Outside Employment	4
Disqualification	1
Political Activity	5
Prohibited Contract with the City	1
Miscellaneous	7
TOTAL:	53

Advisory Alerts

As yet another method for providing advice, Executive Director Shane Creamer also issued two “Advisory Alerts.” The first was intended to alert businesses and vendors that their political fundraising activity for candidates in the coming general election might affect their eligibility for City contracts or certain types of financial assistance from the city. The alert was released on September 26, 2007, and informed people engaged in fundraising activity for City office candidates that their activities might disqualify them or their business from receiving certain contracts or “financial assistance” from the City.

The second alert was issued on November 15, 2007, just before the winter holiday season, and mailed to more than 1,900 vendors with City contracts to remind them that they may not offer gifts or “anything of value” to City officials and employees.

In 2007, the Board of Ethics sought to enhance ethics in City government by responding quickly to requests for advice and by using multiple methods to deliver and disseminate its advice. The Board anticipates that there will be an increased demand for advice of all forms as City officials and employees and candidates and treasurers become aware of the Board as a source for guidance.

2007 Enforcement Efforts

City elections in 2007 were the first to be conducted under new reporting and contribution limit requirements. These were designed to make campaign financing transparent and to reduce the influence associated with unlimited large campaign contributions.

Perhaps the most significant amendments to the campaign finance laws, signed November 16, 2006 by then-Mayor John Street, granted enforcement authority over the campaign finance provisions to the Board of Ethics. The new amendments gave the Board responsibility not only for education, training, and issuance of advisory opinions about the new campaign law, but also for receiving complaints, conducting investigations, bringing enforcement actions, and imposing civil penalties for violations of the law.

First Steps

The new Board of Ethics undertook its enforcement role with extremely limited staff and thus focused on campaign finance issues starting with the campaign contribution limits. The Board was keenly aware that candidates were now operating in a totally new environment and concentrated on educational efforts and on seeking compliance. Where possible, these efforts were intended to promote corrective action and voluntary compliance, but the Board did not hesitate to use the legal system when a candidate or committee failed to respond.

The Board provided training sessions to educate candidates and treasurers about the new law. It wrote directly to declared candidates to advise them of the requirement that a candidate for City office must maintain only one political committee and one checking account for the office he or she is seeking. The Board also used press advisories and its Web site to promote greater understanding of the new rules and compliance. For example, after issuing Advisory Opinion 2006-003, which instructed candidates what they must do with contributions received in excess of the new campaign

law's contribution limits, the Board quickly posted the opinion on its Web site and issued a press release.

Seeking Voluntary Compliance

Believing that it should act to prevent violations, the Board in several instances asked a candidate to answer questions or explain apparent discrepancies in a campaign finance report.

For example, the law permits a prospective candidate to accept a contribution in excess of the contribution limits before declaring that he or she is a candidate. But upon becoming a "candidate," he or she may not use this "excess pre-candidacy contribution" in any way to influence the outcome of the election. Candidates were instructed in Advisory Opinion 2006-003 to segregate the excess amounts by placing them in a "segregated pre-candidacy excess contribution account ("SPEC Account").

The Board therefore reviewed contribution data from candidates' reports filed electronically with the Records Department and identified those reports that contained possible excess pre-candidacy contributions. Candidates were contacted and asked to confirm the contribution information and, where necessary, to take steps to segregate the excess contribution amounts. The campaigns of Dwight Evans for Mayor, John D. Green and Michael Untermeyer for Sheriff, and James F. Kenney and Donna Reed Miller for Council either returned or segregated excess pre-candidacy contribution amounts.

The mayoral campaigns of Bob Brady and Michael Nutter supplied corrected information to establish that there were no contribution limit violations. The Friends of Juan Ramos, the political committee supporting his candidacy for Council, placed more than \$13,000 into a SPEC account to comply with the excess pre-candidacy contribution requirements.

Accurate and complete reporting of contribution information is essential to the transparency sought by campaign finance reporting laws. Therefore, after reviewing “exception reports” which identified information missing from candidates’ 2006 annual reports (filed January 31, 2007), the Board contacted those committees whose reports omitted a significant amount of contributor information. Letters were delivered to several committees identified as having 20 or more omitted entries, and they were asked to file amended annual reports. Each letter enclosed a copy of the “exception report” for that committee that identified the data that was omitted from the annual report. All committees filed amended reports to correct omissions identified by the Board.

The Board believes that it is important for the voting public to know that a candidate has cooperated with the Board by amending and correcting reports and therefore publicly discussed a Compliance Report on April 17th that described the process used to identify and correct possible reporting errors.

The purpose of campaign disclosure - transparency - is compromised if a candidate or committee fails to file a report or files the report late. The Board determined that 91 percent of Cycle 3 reports, due on June 14, 2007, were filed on time, and 99 percent of all reports were filed within five days of the due date. This was a notable improvement over Cycle 2 reports, due on May 4, 2007, where only 60 percent were filed on time and 80 percent were filed within five days of the due date. To promote even greater compliance with reporting deadlines in future elections, the Board will implement a series of enforcement letters to candidates and committees immediately after a missed reporting deadline.

Enforcement of the “Single Committee Rule”

The “Single Committee Rule” in the city’s campaign finance law requires Philadelphia candidates to use only one political committee as they run for office. Candidates may not use funds in any other

political committee to influence the outcome of any election for city office under that rule. The Board entered into two settlement agreements, prior to the May 15th primary election to enforce the “Single Committee Rule.” These settlements were another method used by the Board to bring attention to and to enforce the campaign finance laws.

- On April 17th, the Board announced a settlement with Mayoral candidate Chaka Fattah concerning allegations of contributions to and spending by two committees, the “Fattah for Mayor Exploratory Committee” and the “Fattah for Mayor Committee.” The Fattah mayoral committee agreed to reimburse his exploratory committee for expenses that should have been made by his mayoral committee, and the exploratory committee agreed to return a \$20,000 contribution received after he declared his candidacy and to return all remaining funds to contributors on a *pro rata* basis. The Board acknowledged candidate Fattah’s full and complete cooperation in the agreement, and as part of the agreement, agreed to waive any penalties.

- On May 11, 2007, the Board announced a second settlement applying the “Single Committee Rule.” The Board determined that declared City Council candidate Carol Ann Campbell directed campaign contributions and expenditures by two Democratic PACs that make expenditures to influence all City elections, as well as the financial activity of her own single candidate committee. In the settlement agreement, candidate Campbell agreed not to participate in the financial decisions of the two PACs until after the primary election, and the treasurers of the PACs agreed that the PACs would not take any direction or instructions from the candidate. The Board reserved the right to pursue penalties and fines for any specific PAC expenditures.

Emergency Petitions to Enforce Subpoenas

To fulfill its mandate to investigate and enforce the campaign finance laws, the Board issued more than 20 administrative subpoenas during the time before the May 15th primary election to compel treasurers to produce records or to respond to questions. Most treasurers complied with the subpoenas, but four failed to respond:

- Edgar Campbell, Treasurer, Genesis IV PAC;
- Anthony Cacciavillano, Treasurer, Unity 2001 PAC;
- Councilwoman Carol Ann Campbell, Secretary, Democratic City Committee; and
- Rachael Strassheim, Strassheim Printing & Graphics.

The Board retained outside counsel to file four emergency petitions in the Court of Common Pleas to compel compliance, and all four petitions were granted.

The Appreciation Fund

Because there were technical problems with the electronic filing system and limited time to address the problems before the January 31st filing deadline for Cycle 7 annual reports, candidates and committees were given an extension to file until February 15, 2007. The Appreciation Fund PAC failed to file its Cycle 7 campaign finance report by the extended February 15th deadline and did not respond to a letter demanding that the report be filed by April 4th. As a result, the Board's outside counsel filed a Petition in the Court of Common Pleas against the PAC for its continued failure to file the Cycle 7 report in an electronic format. The PAC filed its report on April 30th, but did not respond to the Board's Petition. An Order of Contempt was issued against the Fund on August 9th. On September 21st, the court granted the Board's Petition for Contempt and for Default Judgment

and ordered the Fund to pay a \$39,000 civil penalty. During 2008, the Board will take steps to enforce the September 21st order.

Enforcement Related Regulations

The Board is authorized to adjudicate alleged violations after it has adopted a regulation to ensure that the adjudication process provides for due process safeguards of notice and an opportunity to be heard. A working group examined various municipal regulations and model codes and prepared a draft of **Regulation 2**, Investigations and Enforcement Proceedings. The regulation was initially adopted by Board on April 17, 2007. A public hearing concerning the regulation was held on June 19, 2007, and it was finally adopted by Board, with modifications on June 26, 2007. Regulation 2 became effective July 12.

This comprehensive regulation described the steps the Board must take in an action to enforce the ethics and campaign finance laws. The regulation establishes the process by which a member of the public can submit a written complaint of an alleged violation, describes the requirements of the investigative process, authorizes settlements, and provides for an administrative hearing process. In the alternative, the regulation authorizes the Executive Director to institute a judicial enforcement process in lieu of an administrative hearing.

Should the Board determine during the course of an investigation that there may be a violation of a statute or ordinance not within its jurisdiction, **Regulation No. 3**, Referrals to and Cooperation With Other Governmental Enforcement Agencies, adopted on October 16, 2007 and effective on November 16, 2007, authorizes the Board to refer all or part of an investigative matter to another appropriate law enforcement authority.

Such a referral might be to the Philadelphia Police Department, the City Controller, the City Inspector General, the Philadelphia District Attorney's Office, the Federal Bureau of Investigation, the

United States Attorney's Office, the Pennsylvania Attorney General, or another governmental entity with civil or criminal enforcement authority.

Importance of Campaign Finance Enforcement Efforts

The public interest was well served by the Board's enforcement activity in 2007 to uphold the new campaign finance laws. For the first time, there

were limits on how candidates for local office could raise and spend money – and consequences when they failed to comply with those limits. Using various methods during the 2007 election cycle, the Board not only made candidates, committees, and their treasurers aware of the new campaign finance requirements, but also demonstrated its intent to enforce those laws. All this was accomplished with very limited staff. Regulations 2 and 3 are included in the appendices to this report.

Legislative Developments

Not only in late 2006, only months into its existence, but also throughout 2007, the Board faced major issues arising from recent campaign finance reform legislation. As noted earlier, the amendments to the City's campaign finance laws that became effective on December 16, 2006, significantly expanded the scope of the Board's responsibilities and required that the Board address campaign-related issues such as spending of excess pre-candidacy contributions and doubling contribution limits for mayoral candidates. The constitutionality of the recently-enacted contribution limits was the subject of a legal challenge that was only finally resolved at the end of December, 2007. These issues were the subject of Board advisory opinions that were intended to provide necessary clarity and guidance to candidates, treasurers, contributors, and committees in the first election covered by the new laws.

Potential Challenge to Electronic Filing of Campaign Information

Philadelphia's progress toward creating greater transparency and accountability in City government was jeopardized by State legislation, introduced on April 23rd, that would prohibit "cities of the first class," such as Philadelphia, from requiring any committee for a candidate for state office or a committee of a party organization representing a ward in Philadelphia to file campaign finance reports in an electronic format instead of paper. Twenty-one members of the Philadelphia delegation to the State House of Representatives co-sponsored the Bill.

On July 3, 2007, without a hearing or public input, the Pennsylvania House of Representatives passed an amended version of House Bill 1130 that would prohibit Philadelphia from requiring any candidate or committee from filing any campaign finance reports – electronically or in paper – with the Ethics Board. The bill was referred to the Senate. The Board immediately issued a statement on July 5, 2007, stating that elimination of the electronic

filing requirement would essentially gut the City's 2003 campaign finance law and reverse the progress Philadelphia has made toward greater transparency and accountability in City government. The Board stated that "[w]ithout electronic disclosure of campaign finance reports, it would be extremely difficult for the Ethics Board to enforce the City's campaign finance law's contribution limits and other provisions. The bill also would limit public access to the campaign reports because the Board could no longer post them on the Internet."

The Board called on all Members of the Pennsylvania Senate and the Governor to oppose House Bill 1130 and to support Philadelphia's progress toward "transparency and accountability in City government."

On July 18th, the Board sent a letter to all Pennsylvania Senators urging them to oppose any legislation such as HB 1130 that would roll back Philadelphia's recent ethics reforms. On September 5th, representatives of the Board met with members of the House of Representatives to discuss H.B. 1130 and to explain how the Bill would affect the Board's enforcement efforts and how the Board depends upon the electronic campaign finance reports to fulfill its oversight mandate. The Sept. 13th Senate State Government Committee public hearing on HB 1130 was postponed. The Board will continue to monitor House Bill 1130.

Additional 2007 Legislation

If enacted, two bills that were introduced in 2007 would have had an immediate impact on the 2007 election by altering the existing contribution limits that were the cornerstone of the City's campaign finance reforms. If a mayoral candidate used more than \$2 million of his or her own money in his or her mayoral campaign, Bill 070044 would remove the contribution limits, and Bill 070068 would increase the contribution limits.

While the Board understood the concern about the impact of spending by a wealthy mayoral candi-

date, it believed that these bills would severely undermine a major reform goal to reduce the disproportionate influence of large contributors in City government. The Board also felt that either of these bills would change the campaign finance rules “mid-course,” introduce uncertainty in the campaign process, and raise questions of fundamental fairness in the election. No further action was taken on either bill.

The bills listed below were introduced in 2007 with the intention of advancing ethics and campaign finance reform in Philadelphia. The Board looks forward to reintroduction of these and other reform bills and their future consideration:

- Bill 070069 would have amended the Code to establish a public financing matching system for campaigns, regulate the permissible uses of public funds, and require mandatory debates for publicly-financed candidates. Bill 070070 provided for submission to the voters of a ballot question whether to amend the Home Rule Charter to permit public financing for candidates for elective City office and to allow appropriations to the Board of Ethics for that purpose.
- Bill 070172 would have amended the Code to require lobbyists to register with the Board of Ethics and to file quarterly disclosure reports of lobbying financial activity. The Board would have

jurisdiction to enforce these requirements and to issue advisory opinions.

- Bill 070705 would have amended the conflict of interest section of the Ethics Code to prohibit City officers from taking any personnel action concerning a close relative.
- Bill 070828 would have amended the Gift rule and essentially codified the gift ban in Executive Order 002-04 to apply to all City officials and employees. With limited exceptions, gifts would be banned from prohibited sources, and the Board would have jurisdiction to enforce the gift ban.
- Bill 070795 would have prohibited City officers and employees from being employed by outside firms or businesses that either have or are seeking contracts with the City. Certain teaching positions are exempt and the Board would be authorized to grant exceptions where it is in the interest of the City to do so.

The Board welcomes the opportunity to provide assistance to the Mayor and Council in considering legislation to advance the cause of ethics and campaign finance reform in Philadelphia.

Legislative Recommendations

In its first full year the Board had the exciting responsibility of implementing the City's new campaign finance law while assuming responsibility for providing training and advice concerning the ethics laws for the thousands of City officials and employees. This was an exhilarating year for the Board because it provided many opportunities to examine the strengths and weaknesses of the laws. These experiences form the basis of the recommendations, which follow, to the Mayor and Council for further study and possible legislative action to strengthen and clarify the ethics and campaign finance laws.

The Board looks forward to an opportunity to work with the Mayor and Council to implement these and other legislative initiatives.

Conflicts and Public Disclosure and Disqualification

The Board believes that Code Sections on Conflict of Interest and Public Disclosure and Disqualification (Sections 20-607 and 20-608, respectively) could be clarified and rewritten to be more "user friendly." Section 20-607 prohibits members of Council and City officers and employees from having any conflict of interest associated with their official actions, while Section 20-608 establishes the procedures a member of City Council, City officer, or employee must use to remedy a conflict situation. As steps toward clarification of Section 20-607, the Board recommends that:

- It might be less confusing to use the term "transaction involving the City," which is defined in Code Section 20-601(4), to replace the lengthy list of official actions (legislation including ordinances and resolutions, award, contract, lease, case, claim, decision, decree or judgment) that is currently repeated several times in Section 20-607.
- It might be desirable to simplify Section 20-607 by expanding the definition of the term "immediate family," which already appears at Section 20-601(9), and using that term rather than re-

citing the lengthy list of family members which is repeated several times in Section 20-607.

- The two separate lists of business or other entities with which a City official or employee may be associated could be made identical and referred to by a single term (such as "related business entity or entities").

Section 20-608 establishes the procedures a member of City Council, City officer or employee must use to remedy a conflict situation. To preserve public confidence, the member, officer, or employee must publicly disclose the conflict and disqualify himself or herself from the matter. As with Section 20-607, the Board recommends reexamination and clarification of Section 20-608.

- It might be possible to restate Section 20-608 by providing specific definitions of the terms "public disclosure" and "disqualification" so that a City official or employee will know what specific behavior is required when he or she faces a conflict situation.
- "Public disclosure" might include both the public statement "on the record" by a Council member and a written statement filed by an employee with the Board, as well as with his or her supervisor. The term "disqualification," that is removal from involvement in a matter, could similarly be defined to list the actions that a City official or employee must take.

Financial Disclosure Requirements

Code Section 20-610 generally establishes the requirement for city officers, employees, and members of boards and commissions to file annual financial disclosure statements. There are two additional financial disclosure requirements, arising under State law and regulations and Mayoral Executive Orders 11-84 and 1-90, each of which requires that a form, different from the City form, be filed. Based upon the position that an individual holds in City government, he or she may be re-

quired to file all three disclosure reports, while others may file one or two.

The information to be reported and the reporting thresholds differ from form to form; however some of the differences are minor. The Mayor and Council may wish to consider the following to simplify the financial disclosure requirements:

Permit the State disclosure form to be used to satisfy the City Statement of Financial Interest and the Executive Order filing requirements

- The Executive Orders require reporting of the amount or value of each financial interest that is reported and of the interests of a filer's spouse and minor dependent children. It might be possible to report such additional information on a separate schedule as an attachment to the State form which does not require such disclosures.

- The State thresholds for reporting at times differ from those required by the City or the Mayor's Executive Orders. Therefore, if an individual were to use the State form to satisfy the City reporting obligation, he or she would appear to "over report" by disclosing sources of income of \$500 or more, instead of \$1,300 or more.

Similarly, individuals disclose creditors of more than \$5,000 on the City report, while the threshold for the State report is \$6,500. There does not appear to be any reason to preclude such "over reporting."

- In the alternative, it may be reasonable to conform the City reporting thresholds to those in the State Ethics Act. For example, the Board believes that the City and State thresholds for reporting creditors (\$5,000 and \$6,500) and income (\$500 and \$1,300) are not so different that the public would be deprived of significant information if the higher State thresholds were adopted for City disclosure.

Contribution Limits

Contribution limits operated in the 2007 elections to reduce the appearance of influence from unlimited large contributions to candidates for City elective office. However, the annual contribution limits do not apply during a calendar year when a covered City election does not occur.

In a non-election year the only limit, at Code Section 20-1002(3), is on the aggregate total amount that a "candidate" may accept in contributions from political committees. Therefore, effectively, candidates who observed contribution limits during 2007 are no longer subject to those limits. As a result, a City Council candidate who was limited to a \$2,500 contribution from an individual in 2007 may accept a contribution in any amount from that individual in 2008.

The reality of this application of contribution limits all but eliminates any protection from the undue influence of unlimited contributions, because in non-election years, incumbents are no longer "candidates" who are subject to any limits on contributions. A contributor need only wait until a few months after the November election to give an unrestricted contribution to a successful candidate and to create at least the appearance of influence.

The Board does not believe that this was the result intended by the campaign finance reforms of the past few years, and therefore recommends that the Mayor and Council consider implementation of "per election" contribution limits. A change to "per election" limits used in other jurisdictions would eliminate the negative appearance of unlimited contributions, restrict the amount that individuals could amass as a "war chest" in non-election years, and assist the candidate who uses maximum funds in a hotly-contested primary election, and then has little left in annual contributions to fund a difficult general election.

Inaugural Event and Transition Activities

The Board was called upon to address questions concerning the financing of inaugural events and transition activities by the new Nutter administration. These questions arose because the campaign finance provisions of the Code are silent concerning such activities. The Board notes its approval that the “Nutter Inaugural Committee” and the entity formed to support transition activities, “A New Day, A New Way,” voluntarily adopted the contribution limits in the campaign finance provisions of the Code and have committed to publicly disclosing contributors.

The Board recommends that now is the opportune time, well in advance of the next inaugural event or transition, for the Mayor and Council to consider legislation to extend the campaign finance reforms to inaugural activities and suggests the following for consideration:

Require that a separate single political committee be established, after the date of the general election, for conducting inaugural event activities.

Establish that the contribution limit to such an entity be the same as the contribution limit for individuals, created by §20-1002(1) of the Code, in the immediately preceding mayoral election. There is no need to double the contribution limit for the purpose of an inaugural event. In subsequent years, the contribution limit would automatically be adjusted for inflation as a result of the quadrennial adjustment process in §20-1002(8) of the Code.

- Require that the inaugural event entity file reports of financial activity until all funds are disbursed. The first report might be due 30 days after the inaugural event, with subsequent reports to be filed on the same cycle as campaign finance reports.
- Prohibit the inaugural event committee from incurring new liabilities after January 31st following

the election, or some other fixed date, and prohibit receipt of new contributions after all outstanding obligations are paid.

- Require the City to provide funds for transition activities for a new mayor during the period of time between the election and a specified date in the year following the election. In the alternative, permit expenditures for transition activities to be paid out of a candidate’s political committee account. Such contributions should be subject to the contribution limit.

The Board also anticipates that reform legislation, similar to bills mentioned above, will be reintroduced concerning public financing of campaigns, lobbying, conflicts of interest, gifts, and outside employment. The Board welcomes an opportunity to provide technical support as these reforms are considered.

Future Regulations

The Home Rule Charter and City Code authorize the Board to adopt regulations concerning the campaign finance and ethics laws. In 2006 and 2007, the Board adopted three regulations: Regulation 1 concerned electronic filing of campaign finance reports; Regulation 2 concerned the Board’s investigative and enforcement procedures; and Regulation 3 established procedures for referral of a potential enforcement matter to another law enforcement agency. These rules are discussed elsewhere in this report.

As a result of its activity during 2007, the Board has identified several topics which would benefit from clarification through new regulations. Among other issues, the Board anticipates that it will propose regulations during 2008 to:

- Distinguish among the requirements for and legal effect of the types of advice provided by the Board (advisory opinion, advice of counsel, and informal advice);

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- Clarify the process for invoking confidentiality in the advisory opinion process;
 - Establish a process for dealing with excess pre-candidacy contributions, as noted in Advisory Opinion 2006-003; and

- Require that the registration statement required by the State campaign finance reporting law also be filed with the Board to identify bank account information for candidates for City elective office and committees involved in City elections.

Board Independence

The hallmark of an ethics agency is its independence because such an agency cannot fear that it will suffer repercussions or be subject to political pressure if it takes unpopular positions or makes decisions critical of those in City government. The legislation creating the Board of Ethics recognized the importance of the Board's independence in three key aspects. First, Board members may only be removed for cause, and its members, whose terms are staggered and will, after the first appointments, last for five years, are chosen for their independence, integrity, civic commitment and high ethical standards. Board members may not engage in political activity. Second, the Board is given the authority to hire its own staff.

Third, and perhaps most important, the Board was given financial independence with a guaranteed budget of at least \$1 million for each of its first two years of operation. In subsequent years, if Council does not make an adequate appropriation, the Charter grants authority to the Board to seek appropriate funding in court. This financial independence permits the work of the Board to continue without regard to the political environment.

Budget and Staffing

During Fiscal Years 2007 and 2008, spending by the Board was well below its \$1 million budget because staffing was incomplete, office space was only occupied during part of 2007, and furniture and equipment had not been purchased. The Board also received significant support from other City departments, including the Records and Personnel Departments. It must be noted as well that the Board relied heavily during 2006 and 2007 on *pro bono* legal counsel to support its litigation activity.

In Fiscal Year 2009, to meet its mandates, the Board must significantly expand its staff to provide advice and to conduct training, outreach, and enforcement activities. The Board cannot assume

that volunteer legal services will always be available to support its litigation activity and will therefore request additional funds for Fiscal Year 2009 for such legal services.

The Board is aware that it has to date been unable to undertake certain tasks because of its limited staff. For example, the Board is required to prepare a business ethics manual and to provide training for businesses that may conduct business with the City. The Board welcomed an intern during the summer of 2007, who began preparation of materials for business training, but more staff is needed to complete the manual and to conduct the mandatory training sessions. Similarly, the Board wishes to conduct outreach sessions for the public, but cannot undertake such a program with its current complement of staff.

Therefore, for Fiscal Year 2009, the Board expects that its \$1 million budget will cover the actual cost of additional staff, as well as operations, equipment, and supplies. The Board anticipates that it will request an additional \$100,000 for Fiscal Year 2009 to meet the need for outside legal counsel and other services. There are now four full-time staff members whose salaries on an annualized basis would be approximately \$400,000, and the Board expects to hire seven additional staff members in 2008: an associate general counsel, a director of enforcement, two staff investigators, two information and research specialists, and one clerk. Salaries for the seven new positions are expected to total more than \$400,000. With a larger staff, the Board will be able to enhance the reach of its education and training programs, produce more "user-friendly" materials, and respond to inquiries from City officials and employees, candidates, and committees.

It has been an honor for the members of the Board of Ethics and its staff to serve the citizens of the City of Philadelphia during 2007. This was a year of achievement on an unparalleled level as the Board implemented the first elections conducted under the City's new campaign finance laws, com-

pleted ethics training for more than 25,000 City employees, and issued individualized guidance to City officers and employees.

The Board wishes to expand upon this record in

2008 as it continues to grow and serve the citizens of the City of Philadelphia in an exemplary manner. It will continue to ensure that honesty, integrity, and transparency define the political and ethical climate of the City.

APPENDICES

Appendix I: History of the Independent Board of Ethics

The Philadelphia Board of Ethics traces its roots back to 1962, when the Ethics Code was enacted by City

Council in response to the recommendations of the 1962 [Fordham Report](#). This all-volunteer Ethics Board had limited powers and responsibilities and did not have a permanent staff to carry out its mission. It was empowered to issue opinions on ethics to City officers and employees and to make recommendations to the Mayor and Council to improve ethics in City government. In 1980, the mandate of the Ethics Board was expanded, and, in following years, the Ethics Board issued advice to City officers and employees, adopted official ethics standards, prepared a “Guide to Ethical Conduct,” educated department heads concerning ethics restrictions, and expanded the number of financial disclosure reports filed.

A major step in reform of City government and ethics was taken in December, 2003 when City Council passed Bill 030562. The Bill created Code Chapter 20-1000 to establish contribution limits for candidates for Mayor and City Council which became effective on January 1, 2004.

On August 12, 2004, ethics reform in City government took another important step when former Mayor John F. Street signed an Executive Order to reconstitute the Board of Ethics. The Executive Order gave the new advisory Ethics Board clear responsibilities and for the first time authorized the Ethics Board to hire staff, including an Executive Director, to carry out its duties, which included:

- Providing education and training to all city employees on the city’s ethics rules and regulations.
- Reviewing financial disclosure forms filed by city officials and candidates for city offices to determine whether any conflicts of interest appear.
- Responding to ethics questions raised by city officials and employees.
- Recommending improvements or advances in laws and policies that would strengthen confidence in government and promote public trust.

City Council subsequently amended Code Chapter 20-1000 in June of 2005 to expand the reach of contribution limits to include candidates for all City elective offices and to increase the limits to \$2,500 per candidate per year from each individual and to \$10,000 per candidate per year from each business or political committee.

These reform initiatives shaped the agenda of the advisory Board of Ethics in 2005 and 2006. Its work was devoted to five key components which formed a bridge to the work of the current independent Ethics Board and built the foundation for the current robust ethics program. The advisory Ethics Board undertook the following:

- **TRAINING** - To ensure that city officials and employees understood the ethics rules that apply to their conduct, the advisory Board created a Citywide Ethics Training Program. Launched in September 2005, the Citywide Ethics Training Program used a “train the trainers” model that would eventually result in ethics training for an overwhelming majority of the city’s workforce. It may be that no other city in the country has trained as much of its workforce over a similar time period as have already received trained in Philadelphia.
- **ELECTRONIC FILING** - With the unparalleled cooperation of the City Records Department, described later in this report, crucial steps were taken to permit electronic filing of campaign finance reports and disclosure of contribution and expenditure information to the public.
- **WEB SITE DEVELOPMENT** - The advisory Board created the Ethics Board web site that is a powerful resource for anyone who seeks to learn more about the ethics rules, recent ethics legislation, or about the current

Board's activities and operation.

- **DISTRIBUTION OF THE CODE OF ETHICS** - The advisory Board arranged for and facilitated the distribution of the Philadelphia Code of Ethics to every city official and employee beginning in July of 2006.
- **LEGISLATION** – The advisory Board of Ethics strongly supported the legislation necessary to produce an independent Ethics Board, and understood that the legislative process would take time. Four bills and one resolution were passed by City Council on December 1, 2005 to establish the new, independent Board of Ethics. The bills and resolution were signed by then-Mayor Street on December 15, 2005:
- **Resolution 040817** contained the amendment to the Philadelphia Home Rule Charter, which required voter approval of a ballot question on May 16, 2006, to establish an independent Board of Ethics.
- **Bill 040769** contained the ballot question to be submitted to the voters. It asked: "Shall the Philadelphia Home Rule Charter be amended to provide for the creation, appointment, powers, duties and annual funding for an independent Board of Ethics which shall administer and enforce all ordinances pertaining to ethics?" On May 16, 2006, Philadelphia voters overwhelmingly approved that amendment to the Charter which provided that the Mayor appoint the five members of the new Board of Ethics, with the advice and consent of City Council.
- **Bill 051024** amended Chapter 20-600 of the Philadelphia Code to significantly increase the powers and duties of the new, independent Board of Ethics. The Board would now have responsibility for ethics training for all City officers and employees, for issuing Advisory Opinions, for ensuring compliance with financial disclosure requirements, and for receiving and investigating complaints of ethics violations.
- **Bill 050014** now required that any candidate or political committee filing campaign reports with the City Commissioners to also file those reports with the Board of Ethics. This bill became effective immediately upon signing by Mayor Street on December 15, 2005, before voter approval and creation of the new Ethics Board. As required by the bill, the City's Department of Records therefore took immediate steps to make electronic filing a reality and to create a searchable database of campaign finance information.
- **Bill 050613** extended the disclosure requirements for no-bid contracts of \$10k or more to businesses seeking "financial assistance" from the City.

Having received voter approval in May, 2006 to establish an independent Board of Ethics, on October 19, 2006, former Mayor John F. Street nominated five candidates to the new Ethics Board. City Council's Committee of the Whole held a confirmation hearing on November 14, 2006, and unanimously confirmed the nominees on November 16, 2006. On November 27, 2006 the independent Philadelphia Board of Ethics was installed and held its first meeting in the Kirby Auditorium in the National Constitution Center.

A smooth transition to the tasks facing the new independent Board was facilitated by the structure and foundation laid by the advisory Board's work. Its efforts permitted the new independent Board to seamlessly take charge of providing ethics training for all city employees, enforcing city campaign finance, financial disclosure, and conflict of interest laws, as well as rendering advice, investigating complaints and issuing fines. Without the foundation laid by the advisory Board of Ethics in 2005 and 2006, the tasks facing the new Board might have been insurmountable in 2007.

Expansion of the Board's Campaign Responsibilities

At almost the same time as the new Board was installed, further amendments to the City's campaign finance laws (Bill 060629) were signed into law on November 16, 2006, and significantly expanded the scope of the Board's campaign finance responsibilities in the fast-approaching 2007 elections . The amendments became effective December 16, 2006, and included:

- A clear definition of who a "candidate" is for purposes of the political contribution and expenditure regulations;
- Restrictions on candidates from spending pre-candidacy contributions that exceeded the contribution limits that apply to candidates once they declare as candidates;
- A provision for doubling the contribution limits for a particular City elective office if a candidate for that office contributes more than \$250,000 of his or her own resources to the candidate's political committee; and
- The grant of jurisdiction over the campaign finance law to the Board of Ethics.

In addition to enforcement authority, all of the Board's powers, including those related to education, training, issuance of advisory opinions, receipt of complaints, investigations, referral and adjudication, were now explicitly incorporated into the Board's new jurisdiction over the campaign finance law. It was this expanded responsibility that shaped much of the Board's activity in 2007, as it worked with an Acting Executive Director and occasional part-time staff to implement and enforce a brand new campaign finance law.

Ethics Reform Advances in Philadelphia

The new Ethics Board has investigative and enforcement powers and jurisdiction over all of city government and works to assure that all city officials and workers are held accountable to the same high standards of conduct. The Board is responsible for providing guidance and education on the ethics rules to the entire city workforce as well as to city vendors. The new Board promotes greater transparency in government by overseeing financial disclosures by city officials and by providing public access to campaign finance information filed by elected officials and candidates. All of these responsibilities were pursued by the new, independent Board of Ethics in 2007, its first year of existence.

Appendix II: Regulations

**PHILADELPHIA BOARD OF ETHICS
REGULATION NO. 1
ELECTRONIC FILING OF CAMPAIGN FINANCE REPORTS**

WHEREAS, The Board of Ethics is empowered by Sections 4-1000 and 8-407 of the Home Rule Charter and Section 20-606(1) of the City of Philadelphia Ethics Code (“Ethics Code”) to make all necessary regulations to carry into effect the provisions of the Ethics Code; and

WHEREAS, Section 20-1008 of the Philadelphia Code provides that the provisions of Code Chapter 20-1000 (“Political Contributions and Expenditures”) shall be subject to the jurisdiction of the Board of Ethics under Section 20-606; and

WHEREAS, In particular, Section 20-1006(2) of the Philadelphia Code requires the Board of Ethics to mandate an electronic form for campaign finance disclosures required by that section, and Section 20-1006(3) requires the Board to devise efficient means of advising candidates, treasurers, political committees and other persons of the requirements of that Section;

NOW THEREFORE, The Board of Ethics hereby adopts this Regulation No. 1, relating to the “Electronic Filing Of Campaign Finance Reports.”

1.1 A filing of a report of receipts and expenditures pursuant to section 20-1006 of The Philadelphia Code must be made by submission to the Philadelphia Department of Records (acting on behalf of the Board of Ethics) of a Compact Disc containing the report pursuant to the technical specifications set forth in the attached Exhibit “A.”

1.2 When the Department issues a public notice that it is prepared to receive the reports through on-line submission, such reports may, alternatively, be filed in such manner, in the form prescribed by the Department of Records.

1.3 Such filing shall be accompanied by a written statement, on a form available from the Department of Records, signed by the person making the filing, that subscribes and swears to the information set forth in the filing.

1.4 The electronic filing requirement pursuant to Section 20-1006 of the Philadelphia Code and this Regulation shall apply only to filings that identify one or more contributions made to or received by or expenditures made by one of the following:

- a. a candidate for elective office of the City of Philadelphia; or
- b. a political committee

where the contribution or expenditure was for the purpose of influencing an election concerning an elective office of the City of Philadelphia.

For purposes of this Regulation the phrase “elective office of the City of Philadelphia” shall include only those offices identified in Code Section 20-1001(5), to wit, the following offices of the City and County of Philadelphia:

Mayor
District Attorney
City Controller
Register of Wills
Sheriff
Clerk of Quarter Sessions
City Commissioner
City Council

Approved by the Board December 18, 2006
Became effective January 17, 2007
Amended by adding ¶ 1.4 approved by Board August 21, 2007
Became effective September 21, 2007

PHILADELPHIA BOARD OF ETHICS

REGULATION NO. 2

INVESTIGATIONS AND ENFORCEMENT PROCEEDINGS

SUBPART A. DEFINITIONS; SCOPE.

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

a. Public Integrity Laws. Chapter 4-1100 of the Philadelphia Home Rule Charter, Chapters 20-600 and 20-1000 of the Philadelphia Code, and such other laws and regulations over which the Board has jurisdiction, as well as other matters assigned to the Board by City Council.

b. Board. The Board of Ethics, including, with respect to Subpart C of this Regulation, any Hearing Officer appointed by the Board.

c. Executive Director. The Executive Director of the Board (including the interim Executive Director until a permanent Executive Director is appointed), and his or her designee or designees.

d. General Counsel. The General Counsel of the Board, or his or her designee, designees, or agents.

e. Paragraph. A numbered paragraph contained in this Regulation.

2.1 Scope. This Regulation, promulgated by the Board pursuant to its authority under Sections 4-1100 and 8-407 of the Home Rule Charter (“Charter”) and Section 20-606(1) of the City of Philadelphia Ethics Code (“Ethics Code”), sets forth the procedures for the Board’s investigations, the conduct of enforcement proceedings, and related matters.

2.2 Powers of the Board. The Board shall have the power to investigate all matters related to its responsibilities under the Public Integrity Laws. Pursuant to Ethics Code § 20-606(1)(g) and Charter §§ 8-409 and 8-412, the Board and its designated agents shall have the power to inspect books and records; receive and investigate complaints; issue subpoenas to require the attendance of witnesses and the production of books, accounts, papers and other evidence; and administer oaths and take the testimony of witnesses. The Board may refer any matter related to, or discovered in, an investigation pursuant to this paragraph to any other governmental or law enforcement agency as the Board deems appropriate. As required by law, the Board shall maintain a separation between functions related to determining whether there is probable cause to believe that a violation of the Public Integrity Laws has occurred and functions related to adjudicating final determinations. In this regard, the individual members of the Board, any hearing officer in a particular case, and the General Counsel shall be considered to be part of the “adjudicative function,” and the Executive Director and professional staff or consultants directed by the Executive Director shall be considered to be part of the “investigatory” or “prosecutorial” function.

SUBPART B. INVESTIGATIONS.

2.3 Initiation of Investigations. An investigation may be commenced on the basis of any of the following three circumstances:

- a. receipt of a complaint that meets the requirements of Paragraph 2.4(b), submitted pursuant to Ethics Code § 20-606(1)(f) and Paragraph 2.4(a);
- b. upon a referral from another government and/or law enforcement agency; or
- c. upon the Executive Director becoming aware of facts or allegations that may indicate a potential violation.

The Executive Director shall have the authority to initiate an investigation in any of the above three circumstances. An investigation initiated by the Executive Director that is not in response to a complaint from any other person shall not be subject to the requirements of Paragraphs 2.4(a), (b), and (c).

2.3A Preliminary Inquiry. The Executive Director may, at his or her sole discretion, conduct a preliminary inquiry of any alleged violation of the Public Integrity Laws, whether initiated by complaint, referral, or upon the initiative of the Executive Director as described above in Paragraph 2.3 (a), (b), (c). Information relating to a preliminary inquiry shall be kept confidential and no notices will be provided that such an inquiry has commenced.

2.4 Complaints.

a. General. Any person who believes a violation of the Public Integrity Laws has occurred may submit a written complaint to the Board in such form as prescribed by the Board. A complaint shall be mailed to, or personally served on, the Board at: City of Philadelphia Board of Ethics, Packard Building, 2 Floor, 1441 Sansom Street, Philadelphia, PA 19102. For purposes of the foregoing sentence, a complaint shall be considered mailed if sent via electronic mail to the Board via the Board's Web site or by other electronic means.

b. Requirements. A complaint shall conform to the following requirements:

- i. It shall provide the full name and address of the complainant, and identify as the respondent of the complaint those individuals or entities who are alleged to have committed violations of the Public Integrity Laws, including their names and addresses to the extent known.
- ii. It shall contain clear allegations of fact, including times, places, and names of witnesses to the extent known, which describe a violation of the Public Integrity Laws.

c. Initial Review. Upon receipt of a complaint, the Executive Director shall review the complaint for substantial compliance with the requirements of subparagraph (b). If the complaint is in compliance, the staff shall mail the complainant notice that the complaint has been accepted. If a complaint is not in compliance, the Executive Director shall dismiss the complaint and shall mail notice thereof to the complainant.

d. Notice and Opportunity to Respond. Upon conclusion of any preliminary inquiry and if the Executive Director concludes that an investigation should proceed, or after a full investigation has been initiated, and the Executive Director, in his discretion, determines that there is reason to believe that a violation of the Public Integrity

Laws has occurred, but no later than ten days prior to any hearing or final adjudication, the Executive Director shall mail to each respondent notification that the complaint has been filed or an investigation initiated. If based on a complaint, the Executive Director shall enclose a summary of the factual basis for the violations of the Public Integrity Laws alleged in the complaint. If the investigation is not based on a complaint, the Executive Director shall enclose a summary of the factual basis for any violations of the Public Integrity Laws that are being investigated. The notice shall further inform each respondent of his or her opportunity to respond to the allegations in the complaint within ten (10) days of the date of the notice, or in such time as the notice specifies.

e. De Minimis Complaints; Frivolous Complaints.

- i. The Executive Director may dismiss or suspend further processing of a complaint or other investigation if, in his or her judgment, the alleged violation is trivial, typographical or clerical, or in other respects a *de minimis* violation; provided, however, that the Executive Director shall report regularly to the Board on the number and nature of complaints dismissed or suspended under this subsection.
- ii. If the Executive Director receives information that a complaint is false or frivolous, or reasonably finds after review that a complaint is false or frivolous, the Executive Director, pursuant to Ethics Code § 20-606(1)(k), may initiate an investigation on behalf the Board into the circumstances surrounding the drafting and filing of the complaint, including requesting or compelling testimony from the complainant.

2.5 Conduct of Investigation.

a. Purpose. The purpose of an investigation is to determine whether there is probable cause to believe that a violation of the Public Integrity Laws has occurred.

b. General. An investigation may include, but is not limited to, field investigations and inspections, the issuance of subpoenas, the taking of sworn testimony, requests for the production of documents, interrogatories, requests for admissions, the review of public filings, and other methods of information gathering.

c. Subpoenas and Subpoenas Duces Tecum. The Executive Director shall have the authority to issue subpoenas and subpoenas duces tecum on behalf of the Board in connection to any investigation conducted pursuant to Ethics Code § 20-606(1)(g) and Subpart B of this Regulation. If any person refuses to comply with any subpoena issued under this paragraph, or while appearing pursuant to it, refuses to answer any question or produce any records or materials, the Board, by majority vote, may direct the Executive Director to apply for the enforcement of the subpoena in the appropriate Court of Common Pleas.

d. Testimony. The Executive Director shall have the authority to administer oaths and affirmations on behalf of the Board, and to take testimony from any person, in connection to any investigation conducted pursuant to Ethics Code § 20-606(1)(g) and Paragraph Subpart B of this Regulation.

e. Termination. The Executive Director shall have discretion to terminate an investigation upon reasonable written notice to the Board. If the investigation is upon a complaint meeting the requirements of Paragraph 2.4(b), the staff shall mail both the complainant and the respondent notice of this termination.

f. Confidentiality. All investigations shall be subject to the confidentiality provisions of Code §20-606(1)(i).

SUBPART C. ADMINISTRATIVE ENFORCEMENT.

2.6 Initiation of an Administrative Enforcement Proceeding. If the Executive Director finds there is probable cause to believe that a violation of the Public Integrity Laws has occurred, and that the matter is appropriate for an administrative adjudication by the Board, then, except as provided in Subpart D, the Executive Director shall direct the initiation of an enforcement proceeding pursuant to Code § 20-606(1)(h). In accordance with Code § 20-605, the Executive Director shall not engage in any *ex parte* communications with the Board, its General Counsel, or any Hearing Officer appointed by the Board, with respect to any such matter. See Paragraphs 2.2 and 2.10(c).

2.7 Notice of Enforcement Proceeding. To commence the enforcement proceeding, the Executive Director shall issue written notice to each respondent regarding the violations of the Public Integrity Laws for which probable cause have been found.

a. Contents. The notice shall contain the following: (i) a description of the acts and/or omissions of the respondent(s) that form the basis for each alleged violation; (ii) the applicable provisions of law that are alleged to be violated; and (iii) the deadline for the respondent's response required under Paragraph 2.8.

b. Service. Service of process upon a respondent whose address is known to the Board shall be made either by personal service or by mailing the notice to respondent(s) by first class, certified or overnight mail. Notice to a candidate or treasurer of a campaign for city elective office shall be mailed to the addresses provided in the campaign's disclosure reports filed with the Board pursuant to Code § 20-1006. The candidate and treasurer are responsible for maintaining a correct address on file with the Board, and for notifying the Board in writing in any change in their addresses. Service of process upon a respondent(s) whose address is unknown shall be made either by personally delivering the notice to such respondent, or his or her attorney or agent; or by any means of substituted or constructive service authorized by Pennsylvania statute or civil rule. A copy of the notice shall be provided to the General Counsel.

2.8 Opportunity to Respond. The respondent(s) has the right to respond in writing to the allegations of violation in the notice. The response shall be deemed timely if it is submitted by the date specified by the notice, which shall not be less than fourteen (14) days from the date of the notice, unless, for exigent circumstances, the Board shall fix a shorter time. Upon the request of the respondent(s), the Board, in its discretion, may grant the respondent(s) an extension of time to respond to the notice. No request for an extension shall be granted unless such request is in writing, and alleges good cause for such extension.

a. Appearance. If the respondent(s) wishes to appear before the Board to contest the allegations of violation in the notice, the respondent(s) shall timely request a hearing in his or her response to the notice. The respondent shall be notified of the date, time, and place of the requested hearing. The respondent(s) has the right to be represented by counsel, and to call witnesses and present evidence in his or her defense at such hearing.

b. Representation. If the respondent(s) wishes to be represented by counsel in any matter before the Board, the respondent(s) shall so advise the Board in his or her response to the notice, or shall provide the Board with a letter of representation, stating the name, address, telephone number, and attorney number of the counsel.

2.9 Settlement and Conciliation.

a. Settlement negotiations. At any time, the Executive Director may seek to settle the matter.

b. Stipulation of settlement. The Board and the respondent(s) may agree to enter into a written conciliation agreement or stipulation of settlement in any pending enforcement proceeding in lieu of conducting a hearing. The adoption of a stipulation of settlement is entirely within the discretion of the Board. A stipulation of settlement is not binding until it is signed by the respondent(s) and the Executive Director and approved by a majority vote of the Board. All final stipulations of settlement shall be made available to the public.

2.10 Public Hearings. The Board is authorized by Ethics Code § 20-606(1)(h) to conduct public hearings to adjudicate alleged violations of the Public Integrity Laws and/or Board regulations. The Board shall preside over all such hearings, and determine the conduct and order of the proceeding, subject to the Pennsylvania Local Agency Law, 2 Pa.C.S. §§551-555, the Charter, the Philadelphia Code, this Regulation, and other applicable law; provided, however, that the Board may appoint a Hearing Officer to prepare Findings of Fact and Conclusions of Law for the Board's consideration. Respondents to an enforcement proceeding will be afforded a full and fair opportunity to be heard before the Board.

a. Oaths and Affirmations. The Board and its designated agents shall have the power to administer oaths and take testimony on any matter relevant to the alleged violations that are the subject of the hearing.

b. Subpoenas. The Board and its designated agents shall have the power pursuant to Charter § 8-409 to issue subpoenas to compel the attendance of witnesses and the production of documents and materials relevant to the alleged violations that are the subject of the hearing, and to enforce such subpoenas in the manner set forth in Paragraph 2.5(c).

c. Ex parte communications. In accordance with Code §20-605, no person shall engage in an inappropriate *ex parte* communication with any member of the Board (including, for purposes of this subparagraph, the General Counsel and any designated Hearing Officer).

2.11 Discovery.

a. Pre-hearing disclosures. All parties to an enforcement proceeding shall give notice of the names of the witnesses they plan to call to testify, or whose testimony they plan to submit, at least seven (7) days prior to the hearing at which the witnesses are to testify, unless the Board or its designated Hearing Officer shall, for exigent circumstances, fix a shorter time. The Board may require the Executive Director and Respondent to exchange copies of documents they intend to offer as evidence at the hearing.

b. Evidence. Other than witnesses and documents as identified under (a) above, there shall be no evidence admitted at the hearing, provided that the Board may grant exceptions, for good cause shown.

c. No other discovery. Except as provided in subparagraphs (a) and (b) of this paragraph, there shall be no other discovery, although the parties in an enforcement proceeding may voluntarily agree between themselves to other forms of discovery.

2.12 Examination and Cross-Examination. Witnesses shall testify under oath or affirmation, and shall be subject to reasonable examination and cross-examination. Witness shall appear on behalf of or at the invitation or subpoena of the Board or on behalf of the parties to the proceeding.

a. Written Testimony. The Board, at its discretion, may allow any party or witness to offer testimony in written form. Such written testimony shall be received in evidence with the same force and effect as though it were stated orally at the hearing by the party or witness who has given the evidence, provided that such testimony is

sworn under penalty of perjury, and the party or witness is available to appear at the hearing for cross examination as requested by any party to the proceeding.

b. Examination of Witnesses by the Board. Board members and Board-appointed Hearing Officers may ask questions of witnesses at any time.

2.13 Evidence. As provided in the Pennsylvania Local Agency Law, the Board shall not be bound by technical rules of evidence at Board hearings, and all relevant evidence of reasonably probative value may be received.

a. Official Notice. The Board may take official notice of relevant laws, official regulations and transcripts of prior administrative enforcement proceedings; and of judicially cognizable facts, facts of common public knowledge, and physical, technical or scientific facts within the Board's specialized knowledge.

b. Documentary Evidence. The Board may accept, at its discretion, copies and excerpts of documents and other records if the original is not in the possession of a party or readily available.

2.14 Final Board Determinations. After providing the respondent(s) with an opportunity to respond to the notice and to contest any alleged violations at a hearing conducted pursuant to Ethics Code § 20-606(1)(h) and these Regulations, the Board shall deliberate on the evidence and determine, by a preponderance of the evidence, whether a violation of applicable law has occurred, and whether to assess penalties for any such violations. A determination to find a violation and assess a penalty requires a majority vote of Board members present and voting, but in no case less than three. The decision of the Board shall be the final agency action. Notice of the final determination shall be sent to each respondent in the manner described in Paragraph 2.7(b), and shall be made public upon the conclusion of enforcement proceedings.

SUBPART D. JUDICIAL ENFORCEMENT

2.15 Scope. Subpart C shall not apply, and this Subpart D shall apply, to those enforcement actions to be instituted by the Board filing an action in the Court of Common Pleas.

2.16 Institution of a Judicial Enforcement Proceeding. If the Executive Director concludes that, based on all the circumstances, the determination of probable cause should be made by the Board, and the ultimate adjudication by the courts, the Executive Director shall institute a judicial enforcement proceeding, in lieu of an administrative enforcement proceeding. In such a case, the Executive Director shall present the Board with the charges and explanation of his or her recommendation of probable cause. The Board may do one of the following:

- a.** Determine that no probable cause exists and direct that the charges be dismissed;
- b.** Determine that the matter is appropriate for an administrative enforcement proceeding and direct that the Executive Director proceed with such a proceeding; or
- c.** Undertake any other appropriate resolution, in the Board's discretion.

Initially adopted by Board April 17, 2007

Public Hearing held June 19, 2007

Finally adopted by Board, with modifications June 26, 2007

Effective July 12, 2007

PHILADELPHIA BOARD OF ETHICS

REGULATION NO. 3

REFERRALS TO AND COOPERATION WITH OTHER GOVERNMENTAL ENFORCEMENT AGENCIES

SUBPART A. DEFINITIONS; SCOPE.

3.0 Definitions. The definitions in paragraph 2.0 of Board Regulation No. 2 shall apply herein. Additionally, as used herein, the following words and phrases shall have the meanings indicated.

a. Other appropriate enforcement authorities. The Board interprets this phrase in Code Section 20-606(1)(f)(ii)(.5) to include, without limitation, the Philadelphia Police Department, the Philadelphia City Controller, the Philadelphia Inspector General, the Philadelphia District Attorney's Office, the Federal Bureau of Investigation, the U.S. Attorney's Office for the Eastern District of Pennsylvania or other appropriate Districts, the Pennsylvania Attorney General's Office or that of other appropriate States, the Disciplinary Board of the Pennsylvania Supreme Court or of any other State, and any other federal, state, or local governmental entity with civil or criminal enforcement powers.

3.1 Scope. This Regulation, promulgated by the Board pursuant to its authority under Sections 4-1100 and 8-407 of the Home Rule Charter ("Charter") and Section 20-606(1)(a) of the City of Philadelphia Ethics Code ("Ethics Code"), sets forth the Board's interpretation of Code Sections 20-606(1)(f)(ii) and 20-606(1)(g)(ii), relating to referrals from the Board to other appropriate enforcement authorities.

3.2 Authorization for Referrals by the Board. The Board notes Paragraph 2.3 of Board Regulation No. 2 provides as follows:

An investigation may be commenced on the basis of any of the following three circumstances:

- a. receipt of a complaint that meets the requirements of Paragraph 2.4(b), submitted pursuant to Ethics Code § 20-606(1)(f) and Paragraph 2.4(a);
- b. upon a referral from another government and/or law enforcement agency; or
- c. upon the Executive Director becoming aware of facts or allegations that may indicate a potential violation.

This Regulation No. 3 will refer to these three types of initiations of an investigation, respectively, as "complaint," "referral," and "Executive Director initiation." The Board further notes that Code section 20-606(1)(g)(ii), as amended by Bill No. 051024 (effective June 5, 2006), currently provides as follows:

Whenever a City agency receives a complaint alleging a violation of the provisions of this Chapter or determines that a violation of this Chapter may have occurred, it shall refer such matter to the Board.

Such referral shall be reviewed and acted upon by the Board in the same manner as a complaint received by the Board under paragraph (e) of this Section.

The Board interprets the cross-reference to “paragraph (e)” to be a typographical error. Paragraph (e) relates to financial disclosure, which does not make sense in this context. The Board concludes that the intended cross-reference was to paragraph (f), which relates to complaints. Accordingly, the Board interprets Code section 20-606(1)(g)(ii) to authorize the Board to act upon an investigation, whether initiated by “complaint,” “referral,” or “Executive Director initiation,” in the same manner as a complaint, including any of the action enumerated in Code Section 20-606(1)(f)(ii). This includes, in 20-606(1)(f)(ii)(.5), the Board referring the matter to the Inspector General or other appropriate enforcement authorities.

3.3 Procedure for Referrals by the Board. A referral to other appropriate enforcement authorities may include any of the following:

- a. Partial referral. The Board retains jurisdiction in the matter, but shares file information with the other enforcement authority, subject to appropriate controls to maintain confidentiality and limit access to information on a “need to know” basis with appropriate personnel in both agencies.
- b. Complete referral. The Board concludes that the matter is not appropriate for Board action, and transfers the entire file to the other enforcement authority for possible action.

3.4 Confidentiality. Code Section 20-606(1)(i) provides as follows:

Confidentiality. Except as otherwise provided in this Chapter, the records, reports, memoranda and files of the Board shall be confidential and shall not be subject to public inspection, except as otherwise provided by law. Also, no person shall disclose or acknowledge to any other person any information relating to a complaint, investigation, referral or pending adjudication, except as otherwise provided by law.

The Board interprets the exception phrases, “Except as otherwise provided in this Chapter” and “except as otherwise provided by law” to mean that the referral language in Code Section 20-606 cited in paragraph 3.2 above and this regulation authorize this Board and its staff to share information with appropriate enforcement agencies, subject to reasonable controls on confidentiality.

Adopted by the Board October 16, 2007.
Effective November 16, 2007

Appendix III: Index to Advisory Opinions and Advice of Counsel

Advisory Opinions

Advisory Opinion #	Major Subject Area	Subject	Citations
			Key Words
2006-001	Campaign Finance	Explains doubling of limits on 2007 mayoral campaign contributions because a mayoral candidate contributed more than \$250,000 in personal resources to his campaign.	Code §20-1002(1), §20-1002(2), & §20-1002(6)
			CONTRIBUTION LIMITS
2006-002	Campaign Finance	Explains that the City's Campaign Finance Law, including contribution limits, remains in effect despite a court ruling that the law is unconstitutional & unenforceable	Code Chapter 20-1000
2006-003	Campaign Finance	Finds that the burden is on a candidate to comply with restriction on spending excess pre-candidacy contribution amounts; Board recommends that candidates place excess pre-candidacy contribution amounts in a separate Segregated Pre-candidacy Excess Contribution account (SPEC), provide notice to the Board of the SPEC account, & follow State reporting law.	Code §20-1002(4), §20-1003, & §20-1001(11)
			EXCESS PRE-CANDIDACY CONTRIBUTION
2007-001	Ethics	Concerns restrictions applicable to a current City employee who is exploring or pursuing future employment; current employee cannot benefit from an entity with a City contract while still an employee; a financial interest exists where there is an application for employment or a job offer, therefore employee must follow public disclosure & disqualification requirements, although such public disclosure is required only in the late stages of the "job hunt"; concern with appearance of impropriety; discusses Board's concurrent jurisdiction with Law Department to issue advisory opinions on State Law. (Confidential opinion)	Charter 10-102 & 4-1100; Code §20-607(a) & (b), & §20-608; State Ethics Act: 65 PA.C.S. §1101 & §1103
			NEGOTIATING FOR EMPLOYMENT; CONFLICTS
2007-002	Ethics	Finds it is not a violation of the conflict of interest rule for a City official to appoint a close relative to an unpaid City position because the uncompensated relative has no direct financial interest. No conflict exists under State law which requires a "private pecuniary benefit" to give rise to a conflict. Caution that under other circumstances, appointment might be impermissible. However, there may be an appearance of impropriety, which has the potential to be more detrimental than a conflict. (Confidential opinion)	Code §20-607
			RELATIVE; NEPOTISM; CONFLICTS

Advisory Opinion #	Major Subject Area	Subject	Citations
			Key Word(s)
2007-003	Campaign Finance	Finds that contribution limits apply to a post-election contribution for the purpose of retiring campaign debt. A post-election contribution used to retire debt is made for advocating or influencing the election of a candidate. (Confidential opinion)	Code §20-1001(2), §20-1001(6) §20-1002(1) §20-1002(2), & §20-1002(9)
			CONTRIBUTION LIMITS; POST-ELECTION DEBT
2007-004	Ethics (see related A.O. 2007-006)	Applies Charter restrictions on political activity to members of 4 boards in City government: Zoning Board of Adjustment; L&I Review Board; Board of Building Standards; and Malt & Brewed Beverage Hearing Board. Analysis is based on powers of each board & compensation received.	Charter §10-107(3), 10-107(4), 10-107(5); Code §20-601(2)
			POLITICAL ACTIVITY; BOARDS & COMMISSIONS
2007-005	Campaign Finance/ Vendor Restrictions	Finds that neither Code Chapter 20-1000 (campaign finance) nor Chapter 17-1400 (non-competitively bid contracts) applies to contributions made to two nonprofit corporations created to assist with mayoral inaugural & transition activities because no funds received will be used for a political purpose (Chapter 20-1000) & no City employees will be soliciting donations to the nonprofit corporations (Chapter 17-1400).	Code §17-1401, §1402(1)(b)(i)(.4), §17-1404(3)(a), §17-1402(1)(e)(iii), §17-1401(8), §20-1003, §20-1006
			CONTRIBUTION; CONTRACTS; SOLICITATION; INAUGURAL; TRANSITION
2007-006	Ethics (see related A.O. 2007-004)	Applies Charter's restrictions on political activity to members of boards & commissions not examined in AO 2007-004; analysis looks primarily at the "powers and responsibilities" of each board or commission, although significant compensation may also be a factor.	Charter §10-107; 10-107 (5); (see related AO 2007-004)
			POLITICAL ACTIVITY; BOARDS & COMMISSIONS

Advice of Counsel

Advice Issued	Subject Area	Issue/Response	Citations
			Key Word(s)
9/12/07	Ethics	Concerns solicitation of donations to & gifts received as incentives for employees to make contributions to the City's charitable "combined campaign." Finds it is not a gift for an employee who pledges to the campaign to be entered into a raffle & to win a prize. However, a gift may not be given to a specifically identified employee because it is not random or anonymous. Also find funds donated to underwrite the costs of the "combined campaign," & food & drink donated for a "kick-off" event are not gifts to an employee.	Charter §10-105; State Ethics Act: 65 Pa.C.S. §1103(b) & §1103(c); Code 20-604; EO 002-04
			GIFTS
12/18/07	Ethics	Finds no violation of the ethics gift restrictions if a present or former City official or employee attends an event, which includes free food & drink & token awards (plaques), funded by private donations. Caution was expressed concerning how expenditures were made for the event and that there may nevertheless be an appearance issue. (Confidential advice of counsel)	Charter §10-105; State Ethics Act: 65 Pa.C.S. §1103(b) & §1103(c); Code §20-604; EO 002-04
			GIFTS; EVENT ATTENDANCE
12/21/07	Ethics	Applies post-employment restrictions to a department director who might take a position with a nonprofit corporation that has contracts with the City department where the requester works. Under the State Ethics Act, for one year after leaving City employment, the employee may not represent anyone, including the nonprofit corporation, before the City. Under the City Code, the requester was permanently prohibited from assisting anyone at any time in a transaction involving the City on a matter in which he or she had been involved as a City employee. Also, under the City Code, the requester was advised that for a period of two years he or she was prohibited for acquiring a financial interest in any official decision that he or she made as a City employee. (Confidential advice of counsel)	State Ethics Act: 65 Pa.C.S. §1102 & §1103(g) Code §20-603(1) & §20-607(c)
			POST-EMPLOYMENT

Advice Issued	Subject Area	Issues/Response	Citations
			Key Word(s)
1/2/08	Ethics (see related A.O. 2007-005)	Reviews possible gift issues raised by fund-raising activities & attendance at inaugural events. Examined Executive Order No. 002-04, prohibiting gifts to any officer or employee in the Administrative or Executive Branch of City government, & the gifts sections of the City Code. Finds that there would be no violation of ethics provisions prohibiting gifts provided that all donations were made to the non-profit "Nutter Inaugural Committee." Further, the possibility of any ethics appearance issue was minimized by the Committee's voluntary adherence to limits on contributions; suggested that to avoid appearance issues, donations to the Committee be solicited by private individuals & that the names of donors should not be prominently publicized. Finds that "to the extent that attendance at each inaugural event, whether complimentary or at a discounted ticket price, constitute gifts, they are gifts to the City" & not gifts to individuals.	Executive Order 002-04; Code §20-604
			GIFTS; INAUGURAL; TRANSITION

