

Mayor's Advisory Task Force on Ethics and Campaign Finance Reform
Testimony
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Good morning, Mr. Chairman and members of the Task Force. My name is Shane Creamer, and I am the Executive Director of the Philadelphia Board of Ethics. With me today are Nedda Massar, Deputy Executive Director for the Board and Evan Meyer, our General Counsel. On behalf of the Board, I would like to thank you for this opportunity to speak to you today and to suggest improvements to Philadelphia's public integrity laws for the Task Force to consider.

Since its inception just over two years ago, the new Ethics Board has administered and enforced the City's public integrity laws with vigilance. Beginning with the 2007 Primary Election, the Board provided guidance and training, conducted investigations and reached settlements with several campaigns for violations of the campaign finance law.

When necessary, the Board has also gone to court to enforce the new campaign finance law and to compel candidates, political committees and individuals to cooperate with the Board and comply with the law. There are also numerous on-going confidential investigations into other potential campaign and Ethics Code violations. In addition to its compliance work, the Board has provided live ethics training to all 25,000 City employees. Philadelphia is the only major City to accomplish this training goal.

Now that the Board has both established and exercised its authority to administer and enforce the City's public integrity laws, the next logical step is to determine whether public confidence in government could be improved further by rewriting, modifying or supplementing those laws. That is the express mandate that has been assigned to this Task Force. Although the new Board has been in existence only since November of 2006, we believe that the Board's experience in administering the City's public integrity laws over the past two years provides a solid basis for the recommendations which follow.

As you will see from the recommendations from both the Board and from other witnesses, there are many ways to modify, enhance and supplement the City's public integrity laws. Regardless of which recommendations the Task Force ultimately includes in its final report, I would urge you to ensure that all recommended changes to the City's public integrity laws be clearly written and narrowly tailored to meet identified goals.

If public officials and others are going to be held accountable for transgressions in a fair manner, the rules must contain clear "bright lines," which can be easily understood, that neither go too far nor fall short toward meeting their identified goals. Enforcement of vague or overbroad rules will be perceived as being unfair. At the other end of the spectrum, the absence of a rule prohibiting certain conduct by officials where the public might reasonably expect there to be one leaves the Board in the awkward position of explaining that it lacks jurisdiction to address the conduct in question. Both the enforcement of vague or overbroad rules and the Board's inability to address

certain conduct for lack of specific jurisdiction tend to undermine public confidence in the rules, the Ethics Board and City government.

In my testimony, I will discuss three major topics which parallel the Task Force subcommittees: Campaign Finance, Ethics, and Political Activity. The order of these recommendations is not intended to suggest their importance.

I. Campaign Finance

(1) Change the contribution limits in the Code (§20-1002) to a “per election” basis from the current “per calendar year” limits which apply only in the year of an election for City elective office. At the moment, 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.

(2) Change the text of Code Section 20-1005 to clarify that the Ethics Board has exclusive jurisdiction to enforce the campaign finance law. The provision in Section 20-1005 that permits “any person” to bring an action for injunctive relief to enforce the law predates the addition of Section 20-1008 in November 2006, which gave the new Ethics Board jurisdiction to enforce all provisions of the campaign finance law.

(3) Improve the wording of Code Section 20-1006(1) to clarify the requirement that a political committee must file electronically with the Board whenever its report contains contribution information to or from a candidate for City elective office.

(4) Require incumbent officeholders and committees who contribute to them to continue to file electronic reports with the Ethics Board in non-election years. Currently, when there are no “candidates” for City office, no reports are required to be electronically filed.

(5) Clarify that each day that a required report is not filed electronically with the Ethics Board constitutes a separate and distinct violation subject to the statutory penalty.

(6) Require each candidate to provide to the Ethics Board information identifying the candidate’s single committee and account at the inception of their candidacy. This information is necessary for the Board to communicate effectively with campaigns.

(7) Establish contribution limits and reporting requirements for inaugural and transition committees. The campaign finance provisions of the Code are silent concerning inaugural events for City elected officeholders. Although limits did not technically apply to inaugural and transition activities in early 2008, the Nutter inaugural and transition committees voluntarily observed contribution limits and publicly disclosed contributor information at the Board’s suggestion.

(8) Eliminate the twice-yearly requirement to publish a “plain English” version of the campaign finance law in three newspapers. This is a costly mandate with limited effect. In the alternative,

only require that the “plain English” text be published in January of those years when there is an election for City elective office.

II. Ethics

(1) Reword three sections of the Code to clarify key provisions of the ethics laws:

- Section 20-607 deals with conflicts of interest and would benefit from revisions to make conflict situations more easily identifiable, to define key terms, such as “financial interest,” and to address new family structures that give rise to conflict situations, including domestic partnerships.

- Clarify and simplify Section 20-608, the Public Disclosure and Disqualification section of the Code. Eliminate an outdated reference to notice by registered mail and consider permitting disclosure and disqualification notification by electronic means and provide a mechanism for board and commission members to address conflict situations when they arise at the last-minute.

- Similarly, clarify and simplify Code Section 20-602 which regulates when City officers, employees, and members of Council may represent other individuals in transactions involving the City.

(2) Consider legislation to amend the City’s conflict of interest rule by prohibiting City officials and employees from taking any personnel action concerning a close relative. Even though relatives of City officials may be well-qualified for City positions, such a prohibition would enhance public confidence in government by eliminating the appearance that a person received a City job merely because he or she is related to a City official.

(3) Amend the City Code to create a single gift rule to apply to all City officials and employees that would prohibit them from accepting anything of value from a “prohibited source.” A “prohibited source” would generally include any person or business that is in the City, does business with the City, or is subject to action by the City.

An absolute ban on accepting anything of value from a prohibited source would replace the Code’s current, vague ban on receiving anything of “substantial economic value that might reasonably be expected to influence” the actions of a City official. This subjective standard leaves too much room for interpretation. An absolute ban would establish a clear, bright line for all City officials and employees and would further enhance public confidence in City government by eliminating the appearance that City officials and employees might be influenced by gifts from those businesses and individuals who are affected by City rules, policies, or actions.

(4) Amend the Ethics Code to prohibit City officials and employees from holding other paid positions, in addition to their City jobs, with firms or businesses that either have a City contract or are seeking one. Outside teaching positions should be exempt, and authority should be vested in the Board of Ethics to grant exceptions whenever it is in the City’s best interest.

A prohibition on such “conflicted” outside employment would bolster public confidence in City government by eliminating the appearance that an outside firm has won a City contract because it employs a City official or employee, or that a City official or employee is paid by an outside firm because it may help the firm to win a City contract.

(5) Codify the existing City policy that prohibits personal retaliation against whistleblowers. Currently, City Code Section 20-606(1)(j) prohibits official retaliation against any City officer or employee who has in good faith filed a complaint alleging improper activity by another City officer or employee. Personal retaliation by coworkers should also be prohibited.

(6) Require that the City’s Ethics Code and the Charter restrictions on political activity apply to all contract workers.

III. Political Activity

Ethics Board members have expressed their belief that the City’s political activity restrictions are considerably more stringent than those which exist in other jurisdictions and may be more restrictive than necessary. As I expressed earlier, the enforcement of overbroad rules does not promote public confidence in the rules, the agency that enforces them or the City.

The restrictions on political activities exist to separate politics from the operation of the City and to prevent the perception or reality that official decisions and actions are inappropriately influenced by political interests. Because the restrictions limit rights of expression, they must be narrowly tailored with clear, enforceable boundaries. Where to draw the boundaries requires careful study and thought, and we know that the Task Force has invested significant time considering this issue.

I would like to briefly discuss two other topics that have been considered by the Task Force. Each is an area of law not currently addressed in the City Charter or Code, but which may be characterized as an important component of comprehensive ethics reform.

IV. Lobbying

While some firms and individuals may attempt to use political contributions in an effort to get City contracts or to influence City policies that affect their interests, others seek to influence City decisions by lobbying City officials. Lobbying is a legitimate activity and can lead to better City policies and laws, but the public deserves to know who is lobbying their City government, on what issues, how they are doing it and how much money is being spent in the process.

Requiring those who lobby to register with the Board of Ethics and to file quarterly reports with the Board to disclose details of their lobbying activity, relating to legislation, regulations and business development, would make lobbying activity transparent to the public.

Creating transparency for lobbying activities will work to enhance public confidence in City government. Citizens will have the means to evaluate the actions of City officials armed with

knowledge and information about paid efforts to influence those actions, rather than with doubts and cynicism. The Board's enforcement authority will ensure that lobbyists make the required public disclosures or face consequences for failing to do so.

V. Public Financing

Another major step in campaign finance reform in Philadelphia is consideration of a public financing system for Mayoral and Council candidates. Public financing programs are beneficial because they permit candidates of limited means to run for public office. The Board understands that now is not the time to dedicate limited City resources to provide public funds to political campaigns, but suggests that now is the time to begin to plan for such a program in the future. There are many options with such a system to consider.

Some public financing programs provide only partial public funding. There are matching fund programs, grant programs, and "clean elections" programs. All public financing programs share certain common elements. They require candidates to qualify to receive public funding, tightly regulate the permissible uses of public funds, and usually require mandatory debates for candidates who accept public funding. All of these features and more can be evaluated in order to create a public funding program that is uniquely suited to Philadelphia.

In conclusion, the Ethics Board believes that the City's public integrity laws can and should be clarified, improved and supplemented as the next critical step in Philadelphia's continuing effort to promote public confidence in government. The Ethics Board commends the Task Force for its hard work and commitment to thoroughly reviewing the existing rules and considering how to improve and enhance those rules.

Thank you again for allowing the Board the opportunity to participate in this process. I would be happy to answer any questions you may have.