

**Philadelphia Board of Ethics**  
**Meeting Minutes**  
**Public Session**  
*August 9, 2005*  
Municipal Services Building  
Room 16 B  
4:00 pm – 6:00 pm

**Present:**

Board

Charisse R. Lillie, Esq., Chair  
Daniel P. McElhatton, Esq., Vice Chair

Staff

Evan Meyer, Esq.  
J. Shane Creamer, Jr., Esq.  
Shaun Staller, Summer Intern

Guests

Edward S. Panek, Esq., U. S. Department of Justice, Antitrust Division  
Kyle Odum, Mayor's Office of Information Services  
Venia Hill, Mayor's Office of Information Services  
Tanya Smith, Deputy Personnel Director  
Ashley Anders, Personnel Department

**Agenda:**

**I. Approval of Minutes**

The Board postponed the approval of the Minutes from the Public and Executive Sessions of the last two meetings on June 16, 2005 and July 11, 2005 until the next meeting in September.

## **II. Antitrust Awareness Training Presentation**

Edward S. Panek, Esq., an attorney with the Antitrust Division of the U. S. Department of Justice, gave a presentation to the Board on an antitrust awareness training program for municipal procurement officers offered by the DOJ Antitrust Division. Mr. Panek would like to reach out to the City's procurement officers to make them aware of what his office does, and would prefer to approach them through the Board of Ethics.

Mr. Panek explained that his office wants to help the City detect price fixing and bid rigging schemes. Although he has no knowledge of any such schemes in Philadelphia, Mr. Panek noted that they are "out there," and that his office can help the City detect them.

Mr. Panek is in the Philadelphia field office of the DOJ Antitrust Division. There are 16 attorneys in the office and one in-house F.B.I. agent. They do not report to the US Attorneys Office, but they do interface with them. The Antitrust Division field offices do the criminal prosecutions, while the large, structural antitrust cases, such as the Microsoft case, are handled out of Washington.

Price fixing, bid rigging and territorial allocations are "per se" violations for which there are no economic justifications. The crime is the agreement itself. Mr. Panek submitted a summary to the Board, but noted that some of the penalties were increased last year (the summary listed older penalties). Now, corporations face penalties of up to \$100 million and individuals face up to \$1 million in fines and 10 years in prison. If the harm exceeds \$100 million, then the judge may impose fines equal to the entire amount of the harm, or the amount of the overcharges, whichever is greater.

Once a criminal violation is established, the City would only have to prove that it was harmed to receive treble damages and attorney fees. The Antitrust Division has worked with the City in the past in the "voting machine hauling" case and the "snow fences" case, but it would like to do more. Mr. McElhatton suggested that it would be possible for the City to pursue a civil case, even with out a criminal conviction.

Mr. Panek explained that procurement officers are at the vanguard. Most bidders are good people, but a few are not. Mr. Panek would welcome the

opportunity to meet with the City's procurement officers, but he emphasized that he is not interested in auditing or criticizing their work.

Cheryl Kritz, Esq. and Francois Dutchie, Esq. from the Law Department were present for Mr. Panek's presentation and agreed to assist with scheduling a meeting. It was suggested that procurement officers from the Controller's Office, PGW and the School District be invited to attend the meeting.

### **III. Web Page Update**

Kyle Odum and Venia Hill, from the Mayor's Office of Information Services ("MOIS"), demonstrated the revised "beta" web page for the Ethics Board.

The draft mission statement was deleted at the top of the page and replaced with a brief history of the Board, with hyperlinks to Executive Order 001-04 and to the "Board Members" page for the site. A second navigation list was added to the right side of the home page, with links to "Proposed Legislation," Press Releases," "Board Meeting Schedule" and "Ethics Training Schedule" (the latter being a place holder for a future schedule).

Mr. Odum and Mr. Creamer are continuing to add content and modify the page. Mr. McElhatton suggested that we restore the "Report a Concern" link that was included in an earlier version of the web site, but had been removed.

### **IV. Ethics Training Program Presentation**

Tanya Smith and Ashley Anders, both from the Personnel Department, gave a presentation to the Board on the City-wide Ethics Training Program being developed by the Personnel Department and the Ethics Board.

Ms. Smith advised the Board that the Personnel Department will conduct "Train the Trainer" sessions on August 24 & 25, 2005. So far, a total of 71 trainers had signed up for the training from all but six City Departments. Mr. McElhatton asked Ms. Smith to advise Mr. Creamer if those six departments are not on board in time for the training. Once the trainers have been trained, citywide ethics training will begin once the departments determine what their training schedule will be.

Ms. Anders demonstrated a power point ethics training program that the Personnel Department developed with Evan Meyer's assistance. Trainers will be free to develop scenarios with Personnel that will be tailored to their departments. The power point also includes "speaker notes" for the trainers. The goal of the program is to promote awareness. City employees will be encouraged to submit questions to their H.R. representatives.

Inspector General William F. Gill, III attended the Board's meeting and asked whether the power point could include information on his office. [Note: After the meeting, Mr. Meyer noted that the Inspector General was included on one of the slides towards the end of the power point.]

## **V. Whistleblower Memorandum**

Mr. Meyer reported to the Board that the Law Department had received a 35-page memorandum from outside counsel that analyzes the whistleblower law, which prohibits employers from retaliating against employees who report potential violations. The outside counsel was asked to advise the Law Department on how the law might apply to retaliatory conduct by coworkers. In general, if the City has no policy or training, the City might be liable for coworker harassment.

It was agreed that the topic would be added to the Board's September meeting agenda.

## **VI. Vendor-Sponsored Trips**

Mr. Meyer reported to the Board that he has received many inquiries on vendor-sponsored trips, including three such inquiries in one week alone. Mr. Meyer continues to issue the same advice, but wanted to bring the issue to the Board's attention.

Mr. McElhatton suggested that we warn them about our concerns in a letter. He also suggested the possibility that we require them to submit a post-trip report. Mr. Creamer suggested the possibility of requiring a prior certification of work-relatedness along with an itinerary. For the present time, the Board will apply the "gift to the City" analysis, but will want to continue on a case-by-case approach.

## **VII. Executive Director's Report**

### Training:

On July 27<sup>th</sup>, Daniel McElhatton, Evan Meyer and Shane Creamer were on the panel of speakers for the ethics session of the City's CLE Program. The session lasted two hours and was attended by 267 people.

Mr. Creamer then updated the Board on all ethics training to date.

In the last 10 months or so, the following have received ethics training:

- 1) Cabinet (8/10/04: 7-8, with a make-up on 9/14/04: 3-4)
- 2) MDO Commissioners (August 18, 2004: 25-30)
- 3) Police Department's Commanders: approximately 100 on October 22, 2004
- 4) Lay-off Committee (mostly post-employment rules) – December 9, 2004
- 5) MDO Deputies: June 3<sup>rd</sup>: 48 in attendance
- 6) Non-MDO Deputies: June 20<sup>th</sup>: 46 in attendance
- 7) City CLE Program: July 27<sup>th</sup>: 267 in attendance

To train the balance of the City's workforce, we will use the Personnel Department's existing training infrastructure, which is used to deliver mandatory training in other subjects to all City workers (Equal Employment Opportunity, Sexual Harassment, Labor Relations and the Performance Excellence program).

### Financial Disclosure Review:

We are currently working with the Personnel and Records Department to determine who should be filing the forms. This will require us to go back to the departments for confirmation.

- i) Once we have accurate lists (3) of the people who are required to file, we will then compare that list to the lists (3) of filers.
  - (1) We will then follow-up with all non-filers.
  - (2) After that, the next cut will be to check the forms for completeness.

Beginning next year, we hope to identify all necessary filers well in advance of the May 1<sup>st</sup> filing deadline and we hope to have a better review system in place.

Web Page:

Mr. Creamer told the Board that we were continuing to add content to the web site and hope to “go live” by the end of August. Mr. McElhatton suggested that we prepare a press release for all newspapers announcing the new web site once it is activated.