

Philadelphia Board of Ethics
Meeting Minutes
December 15, 2010
Board of Ethics
Packard Building
1441 Sansom Street, 2nd Floor
1:00 pm

Present:

Board

Richard Glazer, Esq., Chair
Pastor Damone Jones
Sister Mary Scullion

Staff

J. Shane Creamer, Jr., Esq.
Nedda Massar, Esq.
Evan Meyer, Esq.
Michael Cooke, Esq.
Maya Nayak, Esq.
Tina Formica
Elizabeth Baugh

I. Call to Order

Mr. Glazer recognized that a quorum was present and called the meeting to order.

II. Approval of Minutes

The Board approved the meeting minutes, as printed and distributed, for the public meetings that were held on October 20, 2010 and November 17, 2010.

III. Executive Director's Report

A. Enforcement Update: Settlement Agreement

Mr. Creamer reported that an announcement was made on Monday, December 6th that the Board had approved a Settlement Agreement with former Chief Deputy City Commissioner Renee Tartaglione, who retired from her position in November, four days after he notified her that there was probable cause to believe that she had committed multiple violations of the political activity restrictions in Section 10-107 of the Philadelphia Home Rule Charter. That section of the Charter generally prohibits City officers and employees from collecting or

receiving any contribution for any political purpose and from taking any part in the management or affairs of any political party or in any political campaign.

Mr. Creamer explained that City officers or employees who violate section 10-107 of the Charter are subject to a \$300 fine for each violation and removal from office. They are also ineligible for any City office or position for one year. The finding of probable cause consists of allegations that violations occurred, but did not establish those violations. However, Ms. Tartaglione admitted to nine violations of section 10-107 of the Charter in the Settlement Agreement.

Mr. Creamer said that in addition to her prompt, voluntary retirement after receiving notice of the probable cause finding, Ms. Tartaglione has agreed to neither seek nor hold City office or employment for one year, beginning December 3, 2010, and to pay a \$2,700 aggregate civil penalty for the nine admitted violations of section 10-107 of the Charter.

Mr. Creamer also said that, as described in the Settlement Agreement, Ms. Tartaglione took part in the affairs of the 2008 campaign of a candidate for State Representative by personally placing seven orders with Kennedy Printing for campaign materials. In total, she ordered 4,500 campaign posters, 20,000 palm cards, and 64,000 bullet ballots that promoted the candidate. She also ordered 2,000 bullet ballots with the candidate's opponent's name but the wrong ballot button number for the opponent.

Mr. Creamer stated that the candidate's campaign and the 19th Democratic ward distributed the campaign posters, palm cards, and the 64,000 bullet ballots that promoted the candidate on and about the day of the April 2008 primary election in order to promote the candidate. The candidate paid for four of the orders. Ms. Tartaglione paid for the other three orders with a check drawn on her personal checking account.

Mr. Creamer also explained that the Settlement Agreement also describes how Ms. Tartaglione took part in the affairs of the campaigns of 32 challenger candidates for Judge of Election and Machine Inspector in the 7th ward by placing an order with Kennedy Printing on May 14, 2009 for 5,100 bullet ballots promoting those candidates. The bullet ballots were distributed in the 7th ward on the day of the May 2009 primary. She paid for the sample ballots with a check drawn on her business checking account.

The Settlement Agreement also explains how Ms. Tartaglione took part in the affairs of the 19th Democratic ward by:

- i. Placing an order with Kennedy Printing on May 15, 2009 for 6,000 copies of the "Official 19th Ward Democratic Ballot." She later paid for the "Official 19th Ward Democratic Ballot" with a check drawn on her business checking account;
- ii. Organizing and running an October 27, 2009 meeting of the 19th ward, the purpose of which was to tell committee people about their assignments for the upcoming election; and
- iii. Arranging and attending a November 2, 2009 meeting of the 19th ward, the purpose of which was to distribute campaign literature to committee people.

Finally, the Settlement Agreement details how Ms. Tartaglione collected \$56,000 in political contributions used to fund election-day “street money” for the 19th and 62nd Democratic wards over six separate elections in 2007, 2008 and 2009. She also personally cashed the political contribution checks used to fund election-day “street money” for the 19th and 62nd Democratic wards for the 2008 general election and for the 2009 primary and general elections.

B. Litigation Update

1) Cozen O’Connor v. Philadelphia Board of Ethics

Mr. Creamer said that as he reported at last month’s Board meeting, the Board filed their Motion to Dismiss Cozen’s appeal to the Pennsylvania Supreme Court on September 29th – two days after Amended Regulation No. 1 took effect. Cozen filed a Response to the Board’s Motion to Dismiss on October 14th.

Mr. Creamer explained that before the Board filed their Motion to Dismiss when instructed by the Court, Cozen filed an Application for Post-Submission Communication By Appellant on September 20th, in which Cozen argues that neither the change in the law, nor the new debt forgiveness provision in Reg 1 have any affect on Cozen’s Appeal or on its ability to forgive its debt. Cozen’s unusual Application essentially enabled the firm to make their argument first. The Board is waiting for the Court to rule on their Motion to Dismiss.

2) McCaffery v. Creamer, et. al.

Mr. Creamer said that as he reported last month, oral argument on Mr. McCaffery’s appeal to the Commonwealth Court, which had been scheduled for October 12th, has been postponed until February at the request of Mr. McCaffery’s attorney.

C. Political Activity Update

Mr. Creamer said that at the September meeting, the Board began to discuss a new regulation to clarify the political activity restrictions in the City Charter. Staff presented a draft proposed Regulation at that meeting, and the Board deferred action on the draft because it wanted to hear from as many stakeholders as possible during the early drafting process. Staff continued to meet with stakeholders and will carefully consider their feedback in the next few weeks. Their goal is to present a draft regulation to the Board in next month and then to schedule a public hearing in February.

D. Lobbying Update

Mr. Creamer said that as he explained last month, the new lobbying law mandates that lobbying registration begins on July 1, 2011, and there is much work to do before that date. The law also requires the Board to provide a searchable database of lobbying information for the public. Since the November meeting, DOT staff visited the Pennsylvania Department of State to evaluate possible use of the State’s lobbying software as a platform for the City’s mandatory public search and electronic filing functions. Since meeting with the Department of State, DOT has recommended that the City not use the State software for technical reasons.

First, the current State system relies heavily upon SQL Server Reporting Services (SSRS), and DOT does not have expertise in that area. Second, because there are problems with the current software, the Department of State has decided to replace their current system. Once replaced, there will be no support to assist the City with the existing software. Third, the new State system cannot be ready in time to meet the July 1, 2011 date for lobbying registration to begin in Philadelphia. Finally, the new City law requires lobbying disclosure that is not required under the State law, and the State system would require significant modification.

Mr. Creamer reported that as a result of these issues, DOT will design the lobbying software, and a meeting is scheduled with DOT on December 20th to confirm plans for developing the new system.

E. New Staff Member

Mr. Creamer said that he was very pleased to introduce Elizabeth Baugh as the Board's new Information Specialist. This Information Specialist title has special significance because Ms. Baugh brings ideal credentials to our staff. She most recently served as the Library Director for the Free Library of Northampton Township in Richboro, Pennsylvania. Prior to this position, Ms. Baugh was a reference librarian and branch manager in the Suffolk County Library System in Virginia. She has wide experience in assisting the public with access to information and with training, both of which are key components of the Information Specialist position. Staff is especially pleased that Ms. Baugh will play an important role in our outreach and training plans and in implementation of the new lobbying law.

Chair Glazer echoed a welcome to Elizabeth.

F. COGEL Conference

Mr. Creamer reported that Richard, Nedda, Evan, Maya, Michael and he attended the December 2010 Conference of the Council on Governmental Ethics Laws (COGEL) in Washington, DC. COGEL is a voluntary international organization comprised primarily of local, state, and national government officials who regulate ethics, campaign finance, lobbying, freedom of information, and election administration laws. More than 50 workshops, panels and discussion sessions were offered. COGEL members also conduct "Breakfast Table Topics" each morning so that members can meet over juice and coffee to discuss topics including technology, legislation, litigation, and programming in difficult budget times.

Mr. Creamer also reported that they attended sessions that discussed the impact of the Supreme Court decision in Citizens United v. FEC upon campaign finance laws at the national, state, and local levels. There were excellent sessions on recent developments in ethics laws, lobbying laws, and training techniques. In one especially interesting session, a public interest lobbyist and the president of the American League of Lobbyists, debated the impact and limits of lobbying activity and the flow of money in politics.

Mr. Creamer reported that Ms. Massar moderated the annual Local Agency Roundtable on Sunday afternoon where more than 30 representatives of local ethics, campaign finance, and lobbying agencies shared their solutions to problems and their plans for new programs. Since the Board's inception, they have relied upon members of COGEL for advice and assistance.

Mr. Creamer said that he was very pleased to have been elected as a member of the COGEL Steering Committee which forms policy for the organization and supervises planning for the annual conference. For the next year, Mr. Creamer advised that he is going to be the chairman of the Ad Hoc Website Committee. Our major responsibility is to improve the COGEL website which serves as a clearinghouse from member agencies.

G. Questions/Comments

Chair Glazer said that the Tartaglione Settlement is the eighteenth settlement reached by the Board. Over the last fourteen months, Michael Cooke our Director of Enforcement overseen by Executive Director Shane Creamer subpoenaed documents, took depositions, interviewed witnesses and spent hours on this investigation. If this was a private law firm the time value would be in the tens of thousands of dollars.

Michael and Shane's tenacity and professionalism should be applauded and the message should go out that the Board is prepared to enforce violations whatever the complexity.

Chair Glazer said he was looking at the lobbying chronology, which seems significantly behind schedule. He assumed that DOT is aware of the July 1st deadline and doesn't think the Board is in crisis mode yet. He expects Ms. Massar to keep the Board well informed.

Ms. Massar responded that staff and DOT are well aware of the July 1st deadline. DOT has been in the planning and design mode even though there is a software issue. DOT is talking about using software that was purchased for other services and adapting it for the lobbying program. This should save on time and cost.

Mr. Creamer said that the Board has maintained a one hundred percent settlement rate. Four cases were compelled to go to court before settling, which means that twenty-two percent of the cases went to court before they entered into a settlement agreement.

Chair Glazer said that those numbers speak to thoroughness and merits. Staff should be applauded for that.

Chair Glazer requested the minutes to reflect that the Tartaglione Settlement was approved in Executive Session before it was announced.

IV. Approval of 2011 Board Meeting Calendar

Chair Glazer said that the Board meetings take place on the third Wednesday of each month at 1 pm, except February. He asked for a motion to approve the 2011 Board Meeting calendar located in the Board books. The motion passed with a 3-0 vote.

The following calendar will be published and placed on the Board's website:

January 19, 2011
February 23, 2011
March 16, 2011

April 20, 2011
May 18, 2011
June 15, 2011
July 20, 2011
August 17, 2011
September 21, 2011
October 19, 2011
November 16, 2011
December 21, 2011

V. General Counsel's Report

1. Formal Opinions. Mr. Meyer reported that there were no Formal Opinions since the November report.

2. Advices of Counsel. Mr. Meyer reported that there was one Advice of Counsel since the November report.

a. Advice of Counsel GC-2010-520 (November 24, 2010) The Chief Integrity Officer for the City requested a public advisory reviewing a draft memo that she proposed to send to the Mayor's office staff, the Cabinet, and the Executive Team. The draft memo, to be captioned "2011 Philadelphia Elections Guide," would provide general guidance on what activities are likely permissible under the Charter's political activities restrictions and those that should be avoided, under existing interpretations of Charter Section 10-107. The memo, however, would note that it is not formal advice on which the recipients can rely and that any questions should be addressed to the Board of Ethics.

The draft memo (which was attached to the Advice of Counsel) would advise staffers in the Executive Branch that they may communicate information about the administration's agenda and performance, so long as such communications are not promoting the Mayor's potential candidacy for re-election. Specific suggestions were included for schedulers, press staff, security staff, and aides who assist the Mayor with official City business while attending campaign events.

The Advice of Counsel noted that the Board of Ethics is preparing a proposed Regulation No. 8 ("Political Activity") to provide additional and revised interpretations of some aspects of Charter Section 10-107, but advised that, inasmuch as the proposed draft memo is limited to general guidance that officials and employees in the Executive Branch keep separate City official business and activity promoting a candidacy, nothing in the memo presented any concerns under the Charter provision.

The public version of this Advice is available on the Board's website. (We are up-to-date on the website. There is no Advice GC-2010-519 posted because this Advice has not yet been issued.)

3. Informal e-mail guidance. Mr. Meyer reported that through Thursday, December 9, 2010, there were four of these since the November report.

a. Received an inquiry from a City employee asking whether complaints may be filed via U.S. Mail. Advised that complaints may be sent to our Director of Enforcement, Michael Cooke, and provided the address of our offices.

b. Received an inquiry from a City employee who had agreed to present at a workshop. The agency putting on the workshop had sent a contract which included a line indicating that there was an honorarium of \$100, and including a blank to check if the employee wished to “donate back” the \$100 to the agency. The employee was aware that City employees are generally prohibited from accepting honoraria, but wanted advice as to whether it was permissible to select the “donate back” option. We noted that the prohibition is a matter of State law, under the jurisdiction of the State Ethics Commission. However, we can advise as to our prediction of what the Commission might say. Advised that, in this case, since the employee would never receive the money, and since the concept of "donate back" to the agency is functionally the same as refusing the money (except perhaps for the agency's internal bookkeeping purposes), we concluded that this option would present no issue under the State Ethics Act.

c. Received an inquiry from a City employee noting that the employee had been invited to the holiday party of an association that the employee identified as “a strategic partner” with his office in certain official matters. The employee asked if he may attend the event.

Advised: Provision of free food at a holiday party by a City vendor raises issues under various ethics laws restricting receipt of gifts by City employees. Advised that generally there would be no issue under the State Ethics Act, Charter, or City Code. Noted that we have no jurisdiction over the Mayor's Executive Order on Gifts, so the requestor would need to check with Chief Integrity Officer Joan Markman on the effect of the Executive Order.

d. Received another inquiry from an out-of-town attorney concerning gifts to employees of PGW. Provided standard gift advice summarizing the State Act, Charter, Code, and Executive Order, and noted that the precise legal status of PGW is a matter of interpretation that is outside our jurisdiction, and suggested that the requestor also consult with the executive staff of PGW.

V. New Business

Mr. Cooke presented a possible draft ordinance to the Board to amend Section 20-1002 by adding text that will help prevent possible circumvention of contribution limits by disallowing a political committee from making contributions to and through another political committee. Staff also proposed changes to Section 20-1007 regarding the publication requirements of the Plain English Explanation of the Campaign Finance law, which costs over \$8,000 a year.

Sister Mary suggested that staff find ways to inform the public about the Board’s mission.

Chair Glazer suggested that the Board should convince newspapers to publish the Plain English document without charge. He added that the Board invited a pro bono public relations person to speak with staff about improving outreach.

Ms. Massar said that staff will look into public service announcements.

Sister Mary made a motion to seek the two amendments, which was passed unanimously with a 3-0 vote.

Mr. Cooke informed the Board that staff added additional sessions of Campaign Finance training. Two sessions were added in January, three sessions in February and two in March.

Chair Glazer asked how the distribution list was assembled.

Mr. Cooke responded that he received a list from the Records Department and he has also compiled a list of anyone that has contacted the Board of Ethics.

VIII. Questions/Comments

The public did not have any questions or comments.

The public session of the Board's meeting was adjourned after public questions and comments, so that the Board could meet in executive session to discuss enforcement matters and non-public opinions.