

**Philadelphia Board of Ethics**  
**Meeting Minutes**  
June 15, 2011  
Board of Ethics  
Packard Building  
1441 Sansom Street, 2<sup>nd</sup> Floor  
1:00 pm

**Present:**

Board

Richard Glazer, Esq., Chair  
Michael H. Reed, Esq., Vice Chair  
Judge Phyllis Beck (Ret.)  
William H. Brown, III, Esq.  
Sanjuanita González, Esq.

Staff

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

**I. Call to Order**

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

**II. Changes to the Order of Agenda Items**

Chair Glazer requested a motion to change the order of the items on the agenda and to hold the public hearings on Regulations 1 and 9 after the agenda items. The Board approved this motion by a 5-0 vote.

Chair Glazer asked that the Executive Director and General Counsel be brief with their reports and requested that the full text of their reports be included in the minutes.

**III. Approval of Minutes**

By a 5-0 vote, the Board approved the meeting minutes, with corrections, for the public meeting that was held on May 11, 2011.

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

Mr. Creamer read only the portions of his Executive Director's Report related to a litigation update, compliance update, lobbying update and a welcome to the Board's new intern. He asked that the minutes incorporate his entire report and that the compliance update include lists of campaign finance non-filers who came into compliance by the extended deadline.

The full text of the Executive Director's report follows here:

#### **A. Litigation Update**

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

The City's Police Union, Lodge No. 5 of the FOP, has filed a lawsuit in Federal Court challenging the City's ban on political contributions by members of the police department. Named defendants include the City, Mayor Nutter (official and individual capacity), the Ethics Board, each individual Board Member (official capacity only) and me (official and individual capacity). Plaintiffs include Lodge No. 5 of the FOP, John McNesby (President of the FOP), COPPAC (the FOP's PAC), and four individual police officers. The Complaint was filed on May 18<sup>th</sup>, but we weren't served until May 26<sup>th</sup>. We have notified the Law Department, which will defend us in the litigation. The case has been assigned to Judge Juan R. Sánchez.

The suit raises challenges to the contribution ban in section 10-107 of the Charter and Ethics Board Regulation No. 8 under the US and Pennsylvania Constitutions. Plaintiffs seek declaratory relief and even punitive damages against the Mayor and me.

This challenge appears to be directed at funding the FOP's PAC, rather than the ability of individual officers to make political contributions. In fact, the individual Plaintiffs allege that they want to make voluntary contributions to COPPAC (see paragraphs 37 & 38), but do not allege that they want to make any other political contributions, although they could if the challenge is successful. Last year, Council passed a law that would permit members of the FOP to sign-up for an automatic payroll deduction for contributions to the FOP's PAC. However, according to the Complaint, the Solicitor refuses to approve the implementation of the payroll deduction, because it would violate the Charter and Reg. 8. The payroll deduction law is discussed in paragraphs 30-35 & 37 in the Complaint.

Earlier this year, before the Board approved Reg. 8, we requested and received an Opinion from the Solicitor on the Constitutionality of the ban on political contributions by members of the police department. The Solicitor concluded that the ban is Constitutional. A copy of that opinion was attached to the Reg. 8 Hearing Report approved by the Board on March 16<sup>th</sup>.

Long before the Board approved Reg. No. 8, I sent a draft of Reg. No. 8 to Mr. McNesby last September as part of our outreach effort, but neither he nor anyone else at the FOP responded to my letter, nor did any representatives from the FOP testify or appear at the Board's public hearing on Reg. No. 8 on February 23<sup>rd</sup>.

**ii. Cozen O'Connor v. Philadelphia Board of Ethics**

On May 16<sup>th</sup>, the Commonwealth Court granted Cozen O'Connor's Motion to Remand in a *per curium* Order. The Court did not rule on our Motion to Dismiss for Mootness, in which we argued that the 2010 amendment to the campaign finance law that expressly applies the contribution limits after the election for candidates who seek to raise money to pay off campaign debt mooted Cozen's claim for a declaration as to whether or not the limits apply post-election.

The case will go back to Common Pleas Court Judge Gary DiVito, who dismissed Cozen's Complaint in June 2008 for lack of standing and because advisory opinions are not reviewable by the courts. The Board can raise the mootness argument before the trial court, since neither the Supreme Court nor the Commonwealth Court has ruled on that issue.

Cozen filed its Complaint against the Board just over three years ago, making it the longest running challenge to the City's contribution limits since the law took effect seven years ago. The firm has argued alternatively that the contribution limit rule impairs the Friends of Bob Brady's ability to raise money to retire the firm's debt or that the firm should be permitted to make a \$448,000 in-kind contribution to Congressman Brady's mayoral campaign by forgiving the debt at one time, notwithstanding the \$10,000 contribution limit. Essentially, the firm argues that the City's rules should not apply to its fees or to its former client. Beyond the City's law, the firm, which is a professional corporation, has not explained how it could forgive the debt without violating the ban on corporate contributions under section 3253 of the State Election Code.

The Friends of Bob Brady has never paid Cozen any money, but it has raised just over \$135,000 and spent approximately \$90,000 since 2008.

**iii. McCaffery v. Creamer, et al.**

On March 16<sup>th</sup>, in an unpublished, memorandum opinion, the Commonwealth Court reversed the trial court and remanded to the Court of Common Pleas for disposition of the preliminary objections the court dismissed as moot.

On March 30<sup>th</sup>, we filed an Application for Reargument with the Commonwealth Court. In our Application, we argued that the panel overlooked directly relevant law establishing that press conferences are within the scope of public officials' duty and authority and that agencies and officials are absolutely immune for informing the public about pending enforcement matters. We also argued that the panel improperly limited the scope of quasi-judicial immunity to exclude prosecutorial functions. Finally, we argued that the panel overlooked other immunity doctrines, including high public official immunity and Tort Claims Act immunity. Regrettably, the Commonwealth Court denied our Application for Reargument on May 18<sup>th</sup>, so the case will go back to Common Pleas Court Judge Gary Glazer, who dismissed Mr. McCaffery's Complaint in January, 2010.

In his Opinion issued last year, Judge Glazer ruled that the Board and I are covered by "quasi-judicial" immunity when we are acting in our official capacity. He explained the rationale for the quasi-judicial immunity when he wrote: "[t]he public has a right to Board members who can honestly and independently examine and enforce campaign finance rules . . . without fear of harassment or retaliation." Judge Glazer also noted that "[t]he distraction and expense associated

with obviously retaliatory lawsuits undermines public confidence in the electoral process and compels the result in this case,” and that “precious governmental resources should not be expended on defending frivolous lawsuits.”

## **B. Compliance Update**

### **i. Candidate Non-filers**

After the close of the cycle 2 deadline on May 6<sup>th</sup>, Board staff identified 14 City candidates that apparently failed to electronically file a required cycle 2 report with the Ethics Board. On May 11<sup>th</sup>, Board staff sent these candidates letters informing them of the failure to file required reports. We informed them that, if they filed the reports by May 13<sup>th</sup>, we would not initiate enforcement proceedings for the failure to file.

In response to our letter, the following candidates filed a cycle 2 report by the extended deadline:

Councilwoman Blondell Reynolds Brown  
Bobby Curry  
Damon Roberts  
Elmer Money  
Jeff Hornstein  
Malcolm Lazin  
Michael Jones  
Suzanne Carn  
Sandra Stewart  
Vern Anastasio  
Verna Tyner

I should note that some of the candidates to whom we sent non-filer letters had attempted to file, but had made formatting mistakes that prevented the reports from appearing in the database as filed reports.

### **ii. Political Committee Non-filers**

After the close of the cycle 2 deadline on May 6<sup>th</sup>, Board staff also identified approximately 140 Pennsylvania-based political committees that apparently had failed to electronically file a required cycle 2 report with the Ethics Board. On May 26<sup>th</sup>, Board staff sent these committees a letter informing them of the failure to file required reports. We informed them that, if they filed the reports by June 7<sup>th</sup>, we would not initiate enforcement proceedings for the failure to file.

In response to our letter, the following 72 committees filed required reports by the extended deadline (some of these committees were given additional time beyond June 7<sup>th</sup> to file):

5 Guys PAC  
AFSCME DC 47 PAC  
Barrack, Rodos & Bacine- PAC  
Bricklayers & Allied Craftworkers Local 1 PAC  
Buchanan Ingersoll Comm for Effective State Govt

Buchanan Ingersoll & Rooney Committee for Effective Government  
Bucks Victory- PAC  
CDM Pennsylvania PAC  
Cement Masons Local #592 – PAC  
Citizens for a Better Commonwealth- PAC  
Citizens for John Yudichak and John Pekarovsky- PAC  
Citizens to elect Mike O'Brien  
Committee to Elect Charles Ehrlich Judge  
Day & Zimmerman  
Deep Blue  
Democracy Fund  
DePasquale 1199C PAC  
FIRE PAC  
Friends of Edward S. Thornton- PAC  
Friends of Jeff Dence – PAC  
Friends of John Myers  
Friends of Josh Shapiro  
Friends of Mike Gerber  
G.P.C.C. PENN PAC  
Gannett Fleming, Inc. PAC  
HAPCO PAC  
Honest, Integrity & Performance PAC  
H-Tech PAC  
I.U.P.A.T District Council 21 PAC  
IBEW Local 743 – PAC  
IBEW Local 81 – PAC  
IMPEL PAC  
International Brotherhood of Electrical workers #5 – PAC  
International Long Shoremens ILA Local 1291 PAC  
Ironworkers Local 401  
IUPAT DC42 – PAC  
Ken Powell for Judge  
Kennedy 2011 – PAC  
Levdansky for Legislature  
Markossek for State Legislator  
Michael Baker Corporation PAC  
NECA PAC  
Operating Engineers Local 542 PAC  
PARD Phil PAC  
Pennsylvania AFL-CIO COPE – PAC  
Pennsylvania Liberty Fund- PAC  
PHILA PAC  
Philadelphia Joint Board Unite PAC  
Philadelphia PAC  
Pilots Assn for Bay & River DE  
Plasterers' Local Union No. 8  
Plumbers Local Union 27 PAC  
Pride of Philadelphia PAC

Reinforced iron Workers Riggers LU #405  
Republican Committee of Lower Merion  
Roofers Local #30 – PAC  
Society Hill Towers Community PAC  
SPA Committee for Safe Schools  
Sprinkler Fitters Local 692 PAC  
SRW&A PAC  
Teamsters Joint Council #53  
Teamsters Local #107 – PAC  
Teamsters Local 115 PAC  
Teamsters’ Local 830 PAC  
Teamsters Union Local 628 PAC  
Transport Workers Union Local 234  
Unity 2001  
W.E.S.T.R.U.M. PAC  
WAWA PAC

In some cases, we discovered that the recipients of the letters were not actually political committees but were partnerships or some other form of entity that is not required to file reports. A handful of committees have been given additional time to file.

Enforcement staff will take appropriate action with regard to committees that remain non-compliant despite our letter of May 26<sup>th</sup>.

**iii. Bobby 11**

After the primary election, Board staff received information that the candidate committee Bobby 11 had failed to electronically file required 24 hour reports with the Ethics Board. On May 20<sup>th</sup>, Board staff sent the committee a letter informing it of the failure to file required reports. We informed the committee that, if it filed the reports by May 27<sup>th</sup>, we would not initiate enforcement proceedings for the failure to file. In response to our letter, and by the extended deadline, the committee filed 24 hour reports disclosing a total of 30 contributions.

**iv. Cozen O’Connor State and Local Government PAC**

Finally, prior to the May primary the Cozen O’Connor State and Local Government PAC brought to our attention the fact that it had failed to file required reports in 2011, 2009, and 2007. Board staff worked with the committee to identify which report it was required to file and set an extended deadline of June 3<sup>rd</sup> to file the required reports. As a result, the committee has now filed the following reports with the Ethics Board:

2011 Cycle 1  
2009 Cycles 1 and 5  
2007 Cycles 1, 3, 4, and 6.

### **C. Lobbying Update**

We have been extremely busy with outreach to individuals and groups that might have an interest in lobbying in Philadelphia. On May 20<sup>th</sup>, we sent approximately 660 letters and 180 emails to announce the public hearing for the lobbying regulation and to invite public comment. On May 12<sup>th</sup> and 20<sup>th</sup>, and June 1<sup>st</sup>, staff spoke at meetings of the following groups: the Legislative Affairs and Delivery of Legal Services committees of the Philadelphia Bar Association, and at the Committee of 70 and Chamber of Commerce Local Legislation Committee. At each session, we discussed major features of the new Lobbying Law and differences between the City and State laws. We believe that many people are here today to listen or to testify because of our outreach efforts.

### **D. Budget**

The FY12 budget Ordinance (110137) is on the June 10<sup>th</sup> agenda City Council's Committee of the Whole. Staff will provide a budget update based on the results of this meeting. To date, the Board's FY12 budget remains the same as the FY11 budget. The internal transfer of funds to Class 100, as requested by the Board, has not been made and no additional funds have been appropriated for lobbying staff.

### **E. Welcome**

We would like to welcome Daniel Auerbach as our summer intern. Daniel is a second year law student at Vanderbilt University. He is a lifelong Philadelphia resident and is interested in the work of administrative agencies such as the Board of Ethics. Daniel has already begun to assist our staff on various research projects. We are delighted to have him with us during this extremely busy summer.

## **IV. General Counsel's Report**

Mr. Meyer noted that there was nothing remarkable in his report this month. The full text of the General Counsel's report follows here:

1. Formal Opinions. There were no Formal Opinions since the May report.
2. Advices of Counsel. There was one Advice of Counsel since the May report.

Effective May 6, 2011, we amended Advice of Counsel GC-2010-503 (originally of March 11, 2010) to reflect changes in authorities cited therein. The original Advice was issued to the Health Commissioner, advising as to restrictions on prospective members of a then-proposed Animal Advisory Committee. Due to the subsequent promulgation of Board of Ethics Regulation No. 8 on political activities, and the Mayor's issuance of a new Executive Order on gifts, we revised the Advice to refer to the changed rules under these new authorities. Since we were advised that the Animal Advisory Committee is now under the aegis of the Managing Director's Office, we provided a copy of the revised Advice to that office.

3. Informal e-mail guidance. Through Thursday, June 9, 2011, there were four of these (one involving several requests) since the May report. *Note that in every such email we state the following: “This informal general guidance is not a ruling on your particular situation and does not provide you protection from an enforcement action.” We add that if the requestor would like a definitive ruling that applies the Public Integrity Laws to his/her specific situation and that protects against a possible enforcement action, then they should ask us for an advisory opinion, providing, in writing, full and specific facts on which the opinion is to rely, including their name and title, specific question, and whether they are requesting a public or nonpublic advisory.*

a. Received an inquiry from a City official who had received notice that she had been selected to receive an award that carries a cash prize of \$1000. The awarding agency advised that the official could designate the cash prize to the charity of her choosing. We provided the standard gift analysis, and added that, based on rulings of the State Ethics Commissions, we would likely conclude that having the ability to direct a charity to receive a cash gift is equivalent to having the benefit of the gift personally, and thus if the gift is impermissible, the City official-recipient may also not designate the charity to receive the cash, in lieu of accepting the gift.

b. Received an inquiry about a City official serving on the board of directors of a local nonprofit organization. The official asked to be advised of “any possible concerns I need to be aware of.” We provided a detailed general summary of the possible ethics provisions that might apply, and included our standard note that the official could request a written advisory opinion. Subsequently, we did receive such a request, so an Advice of Counsel will be prepared.

c. Received separate inquiries from a City employee, his supervisor, and his HR manager regarding a possible conflict in the employee continuing to work on a certain City project, in view of the fact that the employee was “pursuing employment with” a subcontractor to the City’s contractor. The employee had filed a disclosure letter. We provided links to three Advices of Counsel issued in 2010 involving a current City employee pursuing employment with a City vendor. Subsequently, the employee contacted us, noted that the employment possibility no longer existed and requested advice on next steps. We advised, based on the facts of the particular matter, that “so long as it is clear that there is no longer any possibility of your being hired for the job discussed, and there is no present or expected consideration for any other job with that company, you may withdraw your disqualification. A letter, once filed, may not be ‘unfiled’, so the original letter may not be removed from Records. However, in order to avoid any confusion by any member of the public who sees the original letter, I recommend that you file a separate letter, noting that the employment opportunity no longer exists and stating that you no longer intend to be disqualified from working for the City in this matter.”

d. Received an inquiry from a City employee in a department apparently complaining that some departmental employees had been prohibited from raising money for functions by holding raffles, and others had not, and asking whether any law prohibits such raffles. We advised that there are no ethics rules that appear to apply to whether City employees may hold a raffle. We noted that this seemed more to be a question of lines of authority within the office, and communication with superiors of the reason behind decisions, if there are questions. We did note that Charter-based restrictions on departments raising their own funds and the law on “small games of chance” could provide a rationale for a departmental policy on raffles, but that such matters are not in our jurisdiction.

## **VI. New Business**

There was no new business at this time.

## **VII. Questions/Comments**

Chair Glazer said that due to the regulation hearings that were about to take place the Board would not answer questions or receive comments during the public session meeting.

## **VIII. Meeting Adjourned**

By a 5-0 vote, the Board voted to temporarily adjourn the public meeting and proceed with two public hearings: one on amendments to Regulation 1 on campaign finance and one on proposed Regulation 9 on lobbying. Chair Glazer announced that the Board would hold an executive session if time permitted after the two public hearings.

[The Board held public hearings on Regulation 1 and Regulation 9.]

## **IX. Meeting Reconvened**

After the public hearings on Regulations 1 and 9 were completed, the Board unanimously voted to reconvene the Board meeting.

## **X. Resolution on Lobbying Software**

Ms. Massar described a proposed resolution related to an expected delay in the availability of the electronic registration system. Ms. Massar explained the importance of rigorous testing of the electronic system before it goes live. The proposed resolution declared that those required by the lobbying law to register shall not be in violation if the electronic system is not yet available.

Mr. Reed inquired whether it was possible the electronic system would never be ready, and Ms. Massar responded that was not the case and that it was just a matter of time until the system is ready.

Mr. Creamer stated that the Board took similar action extending a deadline in 2007 when the campaign finance filing electronic system was not ready by the original deadline.

A discussion followed regarding the 10-day time period named in the resolution for registration to occur after notice is posted on the Board's website that the electronic system is available. Staff noted that only those who have lobbied on or after July 1 would be required to register. Mr. Meyer suggested alternative language to clarify what was meant by the date of posting that would trigger the 10-day period.

By a 5-0 vote, the Board voted to adopt the resolution with the language suggested by Mr. Meyer. The adopted Resolution is attached to these minutes as Attachment 1.

The Board also voted 5-0 to delegate authority to the Board Chair to schedule a special meeting if necessary prior to the next scheduled Board meeting.

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