

**Philadelphia Board of Ethics**  
**Meeting Minutes**  
*December 4, 2006*  
Philadelphia Bar Association  
ARAMARK Building, 11<sup>th</sup> Floor  
1101 Market Street, Philadelphia PA  
11:00 am

**Present:**

Board

Pauline Abernathy  
Richard Glazer, Esq., Chair  
Richard Negrin, Esq., Vice Chair  
Stella M. Tsai, Esq.  
Rev. Dr. Alyn E. Waller

Staff

J. Shane Creamer, Jr., Esq.

Guests

Joan Decker  
Fred Fedak  
Richie Feder, Esq.  
Lewis Rosman, Esq.  
Evan Meyer, Esq.  
Michael Nutter

**Agenda:**

**I. Approval of Minutes**

The Board approved the meeting minutes for the public meeting on the November 27, 2006.

**II. Advisory Opinion**

The Chair asked for a motion for a special order to consider an Advisory Opinion prepared by staff for the Board's review. The motion was approved

and the Chair asked Mr. Creamer to present the Advisory Opinion to the Board.

Mr. Creamer provided the Board with a legislative update concerning a recent amendment to the City's campaign finance law. He advised them that, on November 16, 2006, the Mayor signed Bill 060629 into law. Mr. Creamer said that new law amends and clarifies the campaign finance provisions of Chapter 20-1000 of the Philadelphia Code. The amendments are effective on December 16, 2006. Some of the key substantive changes include:

- 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; and
- 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 that candidate's own resources to the candidate's political committee.

Mr. Creamer added that the most significant change to the law is that it grants jurisdiction over the campaign finance law to the Board of Ethics. Specifically, in addition to enforcement authority, all of the Ethics Board's powers, including the powers related to education, training, issuance of advisory opinions, receipt of complaints, investigations, referral and adjudication, are explicitly incorporated into the Board's new jurisdiction over the campaign finance law.

In addition to the general jurisdiction over the campaign finance law granted to the Ethics Board, Mr. Creamer said that the law also requires the Board to publish a notice setting forth the political contribution limits and a plain English explanation of the campaign finance law in the three newspapers with the largest circulation in the City at least every six months, beginning thirty days after the effective date of the new law. That means that the Board must first publish this information no later than January 15, 2007. He said that the notice must also be posted on the City's web site at all times.

As mentioned previously, Mr. Creamer said that the amendments to the City's campaign finance law include 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 that candidate's own resources to the candidate's political committee. That provision is in Section 20-1002(6).

Mr. Creamer reported that Tom Knox announced his candidacy for the City elective office of Mayor on November 30, 2006. Mr. Creamer said that he reviewed the Campaign Finance Database created and maintained by the Department of Records since February 2006 (pursuant to Section 20-1006(1) of the Philadelphia Code), which indicated that Mr. Knox made contributions to the political committee known as "Knox for Philly" totaling \$5,000,020 in October 2005.

Mr. Creamer advised the Board that Section 20-1003 requires all candidates for City elective offices to have no more than one political committee and one checking account for the City office being sought. On December 1, 2006, Mr. Creamer added that he contacted the Knox campaign to determine whether the "Knox for Philly" political committee would be Mr. Knox's one political committee for his mayoral campaign. Mr. Creamer reported that he was told that it would be Mr. Knox's political committee and confirmed that its account includes contributions from Mr. Knox that would be sufficient to trigger the doubling provision under Section 20-1002(6).

After consulting with the Law Department, Mr. Creamer said that he had concluded that the doubling provision of Section 20-1002(6) has been triggered and that the contribution limits *for the City elective office of Mayor* should be doubled, effective December 16, 2006. Since the Ethics Board has been given the explicit authority to issue advisory opinions on the City's campaign finance law, Mr. Creamer said that he had prepared a proposed "Candidate Advisory Opinion" for the Board's consideration. Because it is likely that the Board will issue more advisory opinions in the future, Mr. Creamer said that he identified it as "Candidate Advisory Opinion 01-06," indicating that it is the first such advisory opinion in calendar year 2006.

Mr. Creamer then recommended that the Board consider Candidate Advisory Opinion 01-06 for approval and immediate publication. The Chair then opened the floor for discussion on the recommendation.

Mr. Negrin asked whether Mr. Knox's campaign treasurer, Michael Ecker, confirmed that "Knox for Philly" was Mr. Knox's one political committee for purposes of his Mayoral campaign. Mr. Creamer replied that Mr. Ecker specifically confirmed that it was.

Ms. Abernathy thanked staff and the Board for preparing the Advisory Opinion, and suggested that the following subject line be added, so that people would know what the Opinion is about: "Limits on Political Contributions for the Mayoral Campaign." She also suggested that all the Opinion should reflect that it was adopted by the Board by listing the names of all Board members, rather than just the Chair, as in the proposed draft.

Ms. Tsai suggested that the word "own" in the second sentence on the last page be changed to "personal," to be consistent with the first sentence of that paragraph.

Evan Meyer, Esq., Senior Attorney in the City's Law Department was present at the meeting and suggested that the Board consider renaming the Opinion from "Candidate Advisory Opinion" to "Advisory Opinion," and to change the numerical designation from "01-06" to "2006-01," to avoid confusion with the year 2001. Ms. Tsai further suggested the additional change to "2006-001" to ensure that the second number would not be mistaken for a calendar year.

With no further discussion, the Chair then called for a motion to approve Advisory Opinion 2006-001: Limits on Political Contributions for the Mayoral Campaign," with the changes reflected in the Board's discussion. Upon motion and vote, the Board unanimously approved Advisory Opinion 2006-001: Limits on Political Contributions for the Mayoral Campaign, as amended, and directed Mr. Creamer revise the draft, post it on the Board's web site and prepare it for distribution.

### **III. Presentation on Philadelphia's Political Contribution and Campaign Finance Law by the Law Department**

Richie Feder, Esq., Chief Deputy Solicitor for Appeals & Legislation, and Senior Attorneys Lewis Rosman, Esq. and Evan Meyer, Esq., presented the Board with an overview of the City's political contribution and campaign finance laws.

Mr. Rosman told the Board that he has worked in the City's Law Department for the past six years and has worked on campaign finance issues for the past three years. He explained that the campaign finance law was introduced in September 2003 and it became law in December 2003. Since then, it has been amended three times.

Mr. Rosman told the Board that the publicly printed version of the City's Code is updated twice per year. The last update was made during the summer. He then provided the Board with copies of the most recent version of the City's political contribution and expenditure law, which is contained in Chapter 20-1000 of the Philadelphia Code. He then provided the Board an overview of that law.

He explained that section 20-1002 contains the contribution limits for City elective offices. The most recent amendment to the law included a definition for "candidate" that includes anyone who either files nomination papers or publicly declares his or her candidacy for a City elective office.

Mr. Rosman added that there is a limit on receipts from political committees in non-election years, but those limits are rather high and apply to the total contributions from political committees. For example, Mr. Rosman noted that the total limit on receipts from political committees for a candidate for Mayor in a non-election year is \$250,000, which means that twenty-five political committees would have to each contribute the maximum \$10,000 to a particular candidate for Mayor in a non-election year before the limit on receipts would be triggered.

Mr. Rosman said that the campaign finance law includes a single account rule, which means that candidates must maintain a single account into which all contributions for the campaign must be deposited and out of which all expenditures are to be made. This provision was included so that it would be easier to track the finances of all political campaigns.

Mr. Rosman also mentioned that, as the Board was well-aware from the Advisory opinion approved immediately before his presentation, the most recent amendment to the campaign finance law includes a doubling provision for the contribution limits when a candidate for a particular City elective office contributes more than \$250,000 from that candidate's own resources.

He then explained that there is a spending rule that applies to money raised before a candidate declares his or her candidacy. Once a candidate declares, Mr. Rosman explained, he or she can only spend money raised before the declaration “as if” the candidate had received contributions within the limits that apply to contributions to declared candidates.

The Chair asked Mr. Rosman whether the most recent amendments to the campaign finance law in Bill 060629 were consistent with the advice contained in the Solicitor’s Opinion dated December 9, 2005. Mr. Rosman said that they were consistent, but that it would be advisable to remove that Opinion from the Ethics Board’s web site and replace it with an explanation of the amended law.

Mr. Rosman then told the Board that the most recent amendment to the campaign finance law includes a provision that requires the Ethics Board to publish a “plain English” explanation of the campaign finance limits in the three newspapers with the largest circulation, no later than thirty days after the amended law’s effective date of December 16, 2006. This means that the Board must publish the plain English explanation by January 15, 2007. The plain English explanation must also be posted on the City’s web site at all times, and must be published in the newspapers at least every six months. Mr. Rosman offered to work with Mr. Creamer to prepare a draft explanation of the campaign finance law for the Board to consider.

Mr. Rosman then explained to the Board that section 20-1006 requires candidates and political reports to submit the same campaign finance information that they are required to file with the State and/or City Commissioners with the new Ethics Board. The information must then be posted on the City’s web site. Until the Ethics Board was installed, the provisions of that law were to be carried out by the Records Department (Mr. Rosman acknowledged that Records Commissioner Joan Decker was present at the meeting and was prepared to explain the Campaign Finance Database to the Board).

Mr. Rosman explained that, in order for the electronic filing requirement to be a legal requirement, the Board must approve the form of the filing by regulation. The City Commissioners and the State will still have enforcement powers over the form and content of the financial disclosure reports – the Ethics Board has the authority to specify the form of the

electronic filing *with the Board* of the same financial information candidates are required to file with the State under State law.

The Chair asked whether the Board had jurisdiction over the content of the reports. Mr. Feder responded by explaining that State law governs what goes into the reports and that the Philadelphia Code now requires candidates to file the same information electronically with the Board whenever they are required to file with the City Commissioners.

Mr. Creamer asked whether the Board would have the authority to pursue a report that indicated on its face that a candidate accepted a political contribution in excess of the limits. Mr. Rosman said that it could in such a case, but added that the Board would be pursuing a violation of the contribution limits, rather than an issue concerning the State-mandated content of the finance reports.

The Chair asked whether an “Election Reform Board,” which is referred to in the expenditure limits section of the campaign finance law (Section 20-1004) was ever established. Mr. Rosman said that such a board was never created. However, he added that a candidate could voluntarily choose to be bound by the expenditure limits set forth in Section 20-1004.

The Chair then asked whether the doubling of contribution limits in the Mayoral campaign would apply to contributions made before the December 16, 2006 effective date for that provision under the Board’s Advisory opinion 2006-001. Mr. Rosman said that the answer turns on a matter of interpretation. He then provided two examples by way of illustration.

In the first example, a declared candidate for Mayor receives a \$2,500 contribution from an individual before December 16<sup>th</sup>, and then receives another \$2,500 contribution after that date, but before the end of calendar year 2006. In such a case, it would be clear that the candidate properly accepted the contributions under the invoked doubling provision. In the second example offered, a hypothetical candidate receives two \$2,500 contributions from an individual in 2006, but before December 16<sup>th</sup>. Mr. Rosman that in such a case, the Board would have flexibility to interpret the law in the manner it deems appropriate. Mr. Feder suggested that the Board might seek a penalty in connection with the violation caused by the second

\$2,500 contribution, but not seek to prohibit the candidate from spending the funds or seek to require the candidate to return the funds.

#### **IV. Campaign Finance Database Presentation by Records Commissioner Joan Decker**

Records Commissioner Joan Decker provided a PowerPoint presentation to the Board on the Campaign Finance Database created and maintained by her Department since February 2006, pursuant to Philadelphia Code Chapter 20-1000. The searchable Campaign Finance Database can be accessed at the following URL: <http://phila-records.com/campaign-finance/web/>.

After briefly reviewing the general features of Chapter 20-1000, which were discussed in detail during the Law Department's presentation, Commissioner Decker explained to the Board that there are seven filing cycles under State law:

- A. Cycle 1: 6<sup>th</sup> Tuesday pre-primary
- B. Cycle 2: 2<sup>nd</sup> Friday pre-primary
- C. Cycle 3: 30 days post-primary
- D. Cycle 4: 6<sup>th</sup> Tuesday pre-election
- E. Cycle 5: 2<sup>nd</sup> Friday pre-election
- F. Cycle 6: 30 days post-election
- G. Cycle 7: annual report

Commissioner Decker noted that Section 1628 of the State law requires late contributions and independent expenditures of \$500 or more made after the final pre-election report (Cycle 5), to be reported within 24 hours.

She then described the contents of the campaign finance reports, which include:

- Summary of receipts & expenditures
- Schedule I: Contributions & receipts
- Schedule II: In-kind contributions
- Schedule III: Statement of expenditures
- Schedule IV: statement of unpaid debts

When the amount of contributions received, the amount of expenditures and the liabilities incurred *each* did not exceed \$250 during the reporting period, Commissioner Decker said that a document called a “Campaign Finance Statement” is filed instead of a full report. She then described her Department’s approach to implement the new law.

Commissioner Decker first pointed out that the technical specifications for the City’s [Campaign Finance Database](#) are identical to the State’s specifications. She then explained that her Department’s goals were to provide as much information to the public and to make the submission process as user-friendly as possible. They accept paper, CD and on-line submissions to be as flexible as possible. Her Department requires a separate written and signed cover affidavit form. On filing deadlines, Commissioner Decker said that her Department remains open until 7:00 pm, to mirror the City Commissioners’ practice.

The [Database](#) itself is searchable by all names. Searches can be narrowed by cycle date, document type, contributor, political committee and by candidate.

Commissioner Decker then displayed a series of slides depicting various pages from the [Database](#). At the present time, her Department is working on two new features for the [Database](#). The first is a “mass import utility,” that would permit data submission in bulk online. The second feature is an online submission system, where information could be submitted online in a piecemeal fashion. She also mentioned that the system generates internal reports for quality control purposes.

The Chair asked whether Commissioner Decker expected an increase of filings in 2007, since it will be an election year. Commissioner Decker speculated that there would be an increase in attention, but not a significant increase in the number of reports filed. Mr. Negrin asked how many employees were needed to maintain the [Database](#). Commissioner Decker said that she has two full-time employees and one temp worker assigned to manage it. They tend to work overtime during filing cycles.

Mr. Creamer asked whether State officials also file campaign reports with the Records Department. Commissioner Decker confirmed that State officials who reside in Philadelphia submit reports to her Department whenever they are required to file with the State.

Commissioner Decker said that she and her Department are happy to support the Ethics Board by maintaining the [Database](#) until the Board is ready to take over its management. The Chair proposed that a working group be formed to plan for the transition of the [Database](#) from the Records Department to the Ethics Board. Commissioner Decker said that she was willing to work with the Board and offered to assist the Board with the development of a method to generate reports and to compile contributions from multiple reports.

After interrupting the presentation to accommodate a person who asked to address the Board in advance of the meeting described in the “Public Comment” section below, the Board returned to the discussion. The Chair requested a motion to authorize the Records Department to maintain the [Database](#) until such time that the Board is has the capacity and is prepared to accept management and oversight responsibilities for it. The Board unanimously approved the motion.

The Chair then requested a motion to authorize Mr. Creamer to work with the Law Department to draft a plain English explanation of the City’s campaign finance law, as required by Chapter 20-1007. Rev. Waller so moved. Mr. Negrin seconded the motion, and it passed by a unanimous vote.

## **V. Public Comment**

In advance of the meeting, former Councilman and declared Mayoral candidate Michael Nutter requested an opportunity to address the Board and to present a list of questions concerning interpretation of the campaign finance law. Because the Board was only installed a week before, on November 27, 2006, it has not had sufficient time to consider a process to allow for public comment. Nevertheless, it was the sense of the Board to permit Mr. Nutter to address the Board and present his questions.

The Chair then acknowledged Mr. Nutter, and commented that the Board owed a debt of gratitude to him for introducing the legislation that led to the establishment of the new, independent Board of Ethics while he was a member of City Council. The Chair then turned the floor over to Mr. Nutter.

Mr. Nutter began his remarks by thanking the Board members for their service. He then said that this was the third time that he had

participated in the creation of a new body in the City (the Police Advisory and Tax Reform Commissions were the other two). Mr. Nutter then offered to provide background information on the intent behind the legislation if the Board was interested, and offered to make himself available to the Board in the future.

Mr. Nutter then submitted a two-page letter with seven questions concerning the City's campaign finance law. As he did so, he explained that the Board had jurisdiction to answer the questions. He characterized the questions as a broad request for guidance on the City's campaign finance law. He added that the context for the questions was immediacy, because there is a December 31, 2006 cutoff date for annual financial reports that candidates will rush to file by the January 31, 2007 deadline. Mr. Nutter then highlighted some of his questions.

One question relates to pre-candidacy contributions in excess of the limits. Mr. Nutter asked what should be done to ensure that candidates observe the spending limits on excess pre-candidacy contributions. He added that it was critical to the integrity of the process. He suggested that the money should be clearly accounted for, but noted that it was for the Board to determine.

Mr. Nutter then commented on his sixth and seventh questions (asking whether the Board would offer training for candidates, and if so, whether it would be mandatory), which he characterized as philosophical questions for the Board to consider. It is his hope that the Board will lead with its education and training mandate, rather than with its enforcement powers. Mr. Nutter then said that the Law Department deserved much credit for the development and improvement of the campaign finance law, but that the Law Department was not the best entity to go to with questions of interpretation.

Mr. Nutter then offered his own observations on two points that were discussed in the Law Department's presentation. First, with respect to filing campaign finance reports with the Board, he believes that, if you are required to file with the State under State law and with the Board under the Philadelphia Code, and the report violates the City's campaign finance law, then you have violated the Code. Second, with respect to the doubling provision, Mr. Nutter said that he would not be comfortable with a subsequent curing of an earlier contribution in excess of the original limits

simply because the limits were subsequently doubled. He believes that the only way to adhere to the doubling provision is by adopting a post-December 16<sup>th</sup> receipt rule (for Mayoral candidates).

The Chair thanked Mr. Nutter for appearing before the Board and told him that the board takes the opportunity to answer his questions very seriously.

## **VI. Interim Executive Director's Report**

### **1. Space Planning**

Mr. Creamer said that he and the Chair were working with Public Property to locate space suitable for the Board's needs.

Mr. Creamer said that they were exploring one possible location, but that we were waiting for confirmation from Public Property that the space is available for the Ethics Board.

### **2. Outreach Plan**

At last week's first meeting, Mr. Creamer reminded the Board that he was asked to begin work on an outreach plan for the Board. To develop an effective outreach plan for the Board, Mr. Creamer said that the Board will need to:

- Define our goals and objectives;
- Identify constituent groups (internal & external);
- Create our message(s); and
- Execute the plan.

Mr. Creamer said that the Board's initial objectives should focus on building awareness and understanding of the new Board and its duties. At the same time, the Board will want to begin to build trust and confidence in our ability to fulfill our mission responsibly and with integrity. The details of the outreach may vary, he said, depending on the group.

Mr. Creamer suggested that some internal (City) constituent groups might include:

- City Council
- City Commissioners
- District Attorney
- Controller
- Inspector General
- Sheriff
- Department Heads
- Board & Commission Members

External constituent groups might include:

- Newspaper Editorial Boards
- The Committee of Seventy
- League of Woman Voters
- Philadelphia Forward
- The Chambers of Commerce
- Candidates for City Elective Offices
- City Vendors
- State Ethics Commission

Mr. Creamer noted that the Board is required to reach out to some of these constituencies for certain purposes, so those requirements may drive the outreach in those instances, but in many cases, the Board will have to develop its message. In addition, he said that the Board might find it useful to seek the advice of some of these constituencies as it reaches out to others. Mr. Creamer added that the Board would have to prioritize from this list and develop its message for the various groups. Once that is done, he said that the Board will have to work on the logistics of executing the plan.

### **3. Inspector General**

Mr. Creamer told the Board that he met with Inspector General Seth Williams on November 30, 2006. Mr. Creamer said that they discussed the need to work on protocols between the Office of Inspector General and the new Ethics Board that would ensure efficient referrals where appropriate and avoid unnecessary duplication of effort in matters where there may be an overlap of jurisdiction. Mr. Creamer also informed the Board that Mr. Williams would like to have the opportunity to speak to the Board at a future meeting.

#### **4. COGEL**

Mr. Creamer advised the Board that the COGEL (Council on Government Ethics Laws) 28<sup>th</sup> Annual Conference began in New Orleans yesterday, on December 3, 2006, and ends on Wednesday, December 6<sup>th</sup>. Mr. Creamer said that he and Evan Meyer attended the conference last year in Boston, but that they were unable to go to this year's conference because it essentially coincided with the installation of the new Board and this meeting.

However, on Friday, December 1<sup>st</sup>, Mr. Creamer reported that he spoke with LeeAnn Pelham, Executive Director to the Los Angeles City Ethics Commission, and provided her with an overall summary on what has happened with Philadelphia's ethics program over the past year (including that the new Board was sworn-in last Monday by COGEL member Judge Ida Chen). Mr. Creamer noted that Ms. Pelham is leading the Municipal Roundup Session at the Conference (where they highlight and discuss developments in municipal ethics programs around the country), so she would be able to provide the Conference with a summary of how far ethics reform has advanced in Philadelphia since last year's Conference.

#### **5. Budget**

Mr. Creamer said that he confirmed with the Budget Office that the Ethics Board has a \$1 million budget in current Fiscal Year 2007. However, it is subsumed within the Law Department's budget, since the new Board was not operational at the beginning of the fiscal year. Mr. Creamer was also told by the Budget Office that they cannot create a separate budget for the Board during the fiscal year, and that they must wait to do so in the next fiscal year.

Until the Budget Office is able to create a separate "department" and assign a department number to the Ethics Board for the FY 08 budget, Mr. Creamer said that the support staff in the Law Department will continue to manage our budget, and they will continue to process authorizations for expenditures and reimbursements on the Board's behalf. As the City begins the budget hearing process for FY 08 in early 2007, Mr. Creamer said that the Board will have to determine what its staffing needs will be to have the

necessary capacity to perform the tasks related to maintaining an independent budget (budgeting, payroll, etc.).

## **6. Web Site**

Mr. Creamer reported that Mr. Meyer revised the Bill Chart under the “Recent Legislation” link on the Board’s web site to reflect the most recent ethics legislation considered or passed by the City.

Mr. Creamer also reported that he has added content about the establishment of the new Ethics Board. He said that the new content is featured at the top of the home page. Information about the prior Board has been moved to a link labeled “Ethics Board History” on the left-side navigation tree. Mr. Creamer added that he would continue to revise the site and add content to it as necessary.

## **VII. New Business**

### **A. Staffing Committee**

The Chair proposed that two members of the Board serve on a Staffing Committee to develop a plan to hire a permanent executive director, a general counsel and such other staff as necessary. Rev. Waller and the Chair volunteered to serve on the Staffing Committee.

### **B. Rules Committee**

The Chair proposed that two members of the Board serve on a Rules Committee to prepare regulations, procedures and policies for the Board to consider. Mr. Negrin and the Chair volunteered to serve on the Rules Committee.

### **C. Posting of Meeting Minutes**

Mr. Creamer advised the Board that the prior Ethics Board posted its public session meeting minutes and asked whether the Board wanted to continue the practice with its public session minutes. By unanimous vote, the Board approved the posting of its public session meeting minutes on the Board’s web site, once the Board has approved them.

#### **D. Budget Expenses**

After a brief discussion about how expenses should be approved, it was agreed unanimously that all budget expenses would require joint-approval by the Chair and the interim executive director.

#### **E. Outreach Plan**

Ms. Abernathy volunteered to work with Mr. Creamer to develop a message for the Board's outreach plan.

#### **VIII. Executive Session**

At the conclusion of New Business, the Board concluded the public session of its meeting and went into Executive Session.