

Philadelphia Board of Ethics
Meeting Minutes
June 17, 2009
Board of Ethics
Packard Building
1441 Sansom Street, 2nd Floor
1:00 pm

Present:

Board

Richard Glazer, Esq., Chair
Rich Negrin, Esq., Vice Chair
Phoebe Haddon, Esq. (via Conference Call)
Kenya Mann, Esq.

Staff

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

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 revised meeting minutes for the public meeting that was held on May 13, 2009.

III. Executive Director's Report

A. Enforcement Update

1) Litigation

(a) Friends of Maria

Mr. Creamer announced that on June 11th, the Board filed a Petition in the Philadelphia Court of Common Pleas against the Friends of Maria Candidate Committee, Councilwoman Maria

Quiñones-Sanchez, and the treasurer of Friends of Maria to enforce violations of the City's campaign finance law committed in the 2007 primary election.

He said that the Board's Petition alleges that the Quiñones-Sanchez Campaign violated the "single committee rule" of the City's campaign finance law (§20-1003) by using a second political committee, called New Direction Philly.org, to make expenditures to influence candidate Quiñones-Sanchez's election and by soliciting contributions to that second committee to help pay for those expenditures. The expenditures were to pay for ten full-page newspaper ads that cost \$12,500

Mr. Creamer stated that, according to the Petition, the ads were prepared and ultimately funded by the Quiñones-Sanchez Campaign, but were placed in newspapers and initially paid for by New Direction Philly.org at the direction of Quiñones-Sanchez's campaign manager. In addition, New Direction Philly.org, a PAC, agreed to pay for the Quiñones-Sanchez ads with a promise from Quiñones-Sanchez's campaign manager that the Quiñones-Sanchez Campaign would both solicit and make contributions to the PAC to reimburse it for advancing the newspaper ad expenditure, which it subsequently did.

He said that as explained in the Board's Petition alleges that the Quiñones-Sanchez Campaign violated the single committee rule in two ways. First, it violated the rule by directing contributions to the PAC, rather than to the candidate's committee, Friends of Maria. Second, it violated the rule by using the PAC to pay for the Campaign's ad, rather than the Friends of Maria.

Mr. Creamer added that in addition, the ten full-page ads disclosed that they were paid for by the PAC. While this was technically accurate, the Board's Petition states that it effectively misled the public because those who read the ads would have no idea that the Quiñones-Sanchez Campaign actually created, ordered and ultimately funded the ads.

He also said that in addition, the \$12,500 advance payment for the ads by the PAC constituted a contribution to the Quiñones-Sanchez Campaign, according to the Petition. This \$12,500 contribution was not disclosed by the Quiñones-Sanchez Campaign in any of its campaign finance reports filed electronically with the Board, in violation of §20-1006(4) of the City's campaign finance law, and exceeded the \$10,000 contribution limit in violation of §20-1002(2) of that law. The Petition seeks a monetary penalty of \$7,500 for these violations and an order from the Court compelling the Friends of Maria Campaign Committee to file an amended campaign finance report.

Mr. Creamer reported that the Petition has been assigned to Judge Gary DiVito. The Respondents have until July 1st to file an Answer to the Board's Petition.

(b) McCaffery for DA

Mr. Creamer reported that the Board's Petition against the McCaffery for DA Committee has been assigned to Judge Idee Fox. The Respondents requested an extension of time to file an answer, which we did not oppose. They now have until June 26th to file an Answer to the Board's Petition.

B. Financial Disclosure

Mr. Creamer announced that staff has already begun to work on next year's financial disclosure season. Staff will shortly begin revisions to the Frequently Asked Questions sheet on our website after we sort through the dozens of telephone and email questions that were received this year. Staff will also meet with the Records Department to discuss enhancements to the financial disclosure system software, including solutions to problems reported by users.

He said that according to Records Department information, to date, almost 4,800 financial disclosure reports have been filed. This includes the City, State, and Mayor's forms. Because the Board has jurisdiction over the City Form, staff confirmed that all officeholders and City officials who were required to file the City Form have filed. In the months to come, staff will review whether or not members of the many City boards and commissions have complied with the City Form filing requirements.

C. Ethics Training

Mr. Creamer stated that at the end of this month, staff expects to announce a schedule of ethics training sessions for officeholders, City officials, members of City boards and commissions, and new City employees. The schedule will be posted on the Board's website and individuals may register either via the website or by calling the Board. Maya Nayak, Evan Meyer, and Nedda Massar have been working to revise the ethics training materials.

III. Messages from the Chair

A. Executive Session

Chair Glazer would like the minutes to note that the Board met in Executive Session a number of times since the May meeting to discuss enforcement matters.

B. Creamer Settlement

Chair Glazer stated that the Board of Ethics announced on May 22nd that it had entered into a Settlement Agreement with Executive Director, J. Shane Creamer, Jr., after finding that Mr. Creamer had violated Section 20-606(1)(i) of the City Ethics Code. The Section provides that "no person shall disclose or acknowledge to any person any information relating to a complaint, investigation, referral or pending adjudication, except as otherwise provided by law."

Chair Glazer added that the Board found that a violation occurred when Mr. Creamer spoke to a reporter "off the record" and "confidentially" on May 7, 2009, about settlement negotiations in a pending matter concerning Seth Williams, a candidate for the office of District Attorney. Mr. Creamer made the statements to the reporter in an attempt to correct an apparent rumor that the Board was going to impose a penalty in a much higher amount than was actually being considered by the Board. Because Mr. Creamer believed that he might have breached his confidentiality obligation when he spoke with the reporter, he took immediate remedial steps to advise all interested parties of his actions, including advising Mr. Williams' attorney. On that

same day, Mr. Creamer advised me of his contact with the reporter and the corrective steps he had taken to advise the candidate's attorney of his actions.

Chair Glazer said that the full Board was advised of these events and began an investigation pursuant to its Regulation 2.3(c)(3). The investigation was supervised by the Board's outside counsel, and Mr. Creamer played no role in the investigation and had no role whatsoever in the Board's deliberations. The Settlement found that, however well-intentioned, Mr. Creamer had violated the confidentiality section of the Code and imposed a penalty of \$500 upon Mr. Creamer for the violation, which has been paid. Mr. Creamer also agreed to strictly adhere to Section 20-606(1)(i) of the Code and any Press Policy that the Board may adopt.

V. General Counsel's Report

1. Advices of Counsel. Mr. Meyer reported that there was one new Advice of Counsel issued since the last report:

a. Advice of Counsel No. GC-2009-506 (June 11, 2009). A City employee requested nonpublic advice as to procedures that he/she must take to ensure compliance with the ethics laws, because the employee serves as another official's alternate on a City non-advisory board, and in the near future the board will consider a matter in which the applicant is represented by the law firm of which a relative-in-law of the employee is a partner, although the relative is not involved in the representation. The only issue presented is whether a law firm partner in such a matter would have a "financial interest" in the board alternate's official action, under Code Section 20-607 ("Conflict of Interest"). The requestor was advised that, in light of the lack of prior rulings on similar facts construing the term "financial interest," the requestor was not required to file a public disclosure under Code Section 20-608. However, the requestor was advised that he/she should not participate in this matter before the board.

Nonpublic Advice of Counsel No. GC-2009-506 is available on the Board's website.

2. Informal e-mail guidance. Mr. Meyer reported that through Friday, June 12, 2009, there were five of these since the May report. Note that in every such e-mail, a link is provided to Regulation No. 4 and explanation that the requestor may obtain a written advisory opinion, if they wish to have a formal ruling on which they may rely.

a. Received an email less than a week before the May primary from a member of a City board concerning endorsement of a candidate in the primary. It was unclear from the message whether the board itself was contemplating an endorsement, or one or more members only. Moreover, there was a novel question concerning the application of Charter §10-107 to members of this particular board, which made the matter more appropriate for an Advice of Counsel or Formal Opinion, and in some respects a matter for the Law Department. In view of those issues, and the closeness of the election date, we advised that we would be unable to provide a ruling before the election.

b. Received an email the day before the primary election from a City board/commission member, inquiring about publishing a blog post complimentary to a candidate in the election.

We advised that, although Charter Section 10-107 applies to that board/commission under Board Formal Opinion No. 2007-006, whether such a blog post would be “participating in a campaign” would be a question of first impression that would require a formal advisory opinion, not an Informal General Guidance e-mail. Accordingly, we advised that we would be unable to provide a ruling before the election.

c. Received an inquiry from a City employee as to whether, if the person left their City position, they would be able to “work for the City again” in the near future. As it was unclear whether the person was talking about resigning and being rehired (which is not addressed by the ethics laws), we provided advice concerning the one-year cooling-off period before becoming a City contractor.

d. Received an inquiry from a City officer concerning potential conflicts held by persons recommended to the Mayor for appointment to the new Park and Recreation Commission. As the requestor was not the person in question, nor a supervisor or representative, advised the requestor that he/she lacked standing to request advice on the question.

e. Received an email from a person representing (apparently) a political organization and asking questions concerning certain kinds of proposed fund-raising activities. We advised that we do not make formal rulings in emails, and would need more facts in any event. As the email was couched in the form of an argument that the Board of Ethics did not have jurisdiction over the organization, we pointed out that the campaign finance chapter applies to a wide variety of persons and entities, and provided directions to find “Campaign Donation Limits FAQs” and “A Plain English Explanation of Philadelphia’s Campaign Finance Law” on our website.

VII. New Business

There was no new business to discuss.

VIII. Questions/Comments

Lauren Vidas asked if whether the Board was considering a Regulation to clarify the confidentiality rules?

Mr. Glazer responded that the Board passed a Resolution at the last Board meeting and is considering a regulation. Mr. Creamer stated that the Board wanted to get the Resolution in place first since the regulation will take longer.