

Philadelphia Board of Ethics
Meeting Minutes
March 19, 2008
Board of Ethics
Packard Building
1441 Sansom Street, 2nd Floor
1:00 pm

Present:

Board

Richard Glazer, Esq., Chair
Kenya Mann, Esq.
Phoebe Haddon, Esq.

Staff

J. Shane Creamer, Jr., Esq.
Tina Formica
Nedda Massar, Esq.
Evan Meyer, Esq.

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 for the public meeting on February 20, 2008.

III. Executive Director's Report

A. Compliance Update

1. Excess Contribution by Local 98 IBEW COPE to the Friends of Juan Ramos

Mr. Creamer explained that the Friends of Juan Ramos returned a \$2,500 excess contribution from the Local 98 IBEW COPE PAC and paid a \$500 fine to the Board for accepting the excess contribution, pursuant to a Settlement Agreement between the Committee and the Board.

He added that according to the cycle 2 campaign finance report filed on behalf of the Friends of Juan Ramos committee, the committee received a \$2,500 contribution from the “Local 98 IBEW Comm on Political Ed” PAC on January 31, 2007, which was after Councilman Ramos’ candidate declaration on January 25, 2007. Subsequently, the committee’s cycle 3 report disclosed a \$10,000 contribution from the “Local 98 Committee on Political.”

Mr. Creamer said he discovered the excess contribution in November and sent a letter to the Committee requesting confirmation on November 14th. After the Committee confirmed the excess contribution, he negotiated a Settlement Agreement whereby the Committee agreed to repay the \$2,500 excess contribution to the PAC and pay a \$500 fine to the Board by February 22nd. The Committee returned the money to the PAC on February 20th and paid the fine on February 22nd. The Committee provided its full cooperation in the Board’s inquiry and in the resolution of this matter.

2. Possible Ineligibility for “Financial Assistance” and Contracts

Mr. Creamer said that after the Board advised the Managing Director’s Office that three affiliated real estate entities each gave \$10,000 to the Friends of Jack Kelly, a notice was circulated to all City departments and City-related agencies alerting them to the potential ineligibility of the three affiliated firms for “financial assistance” from the City or no-bid contracts over \$25,000.

Mr. Creamer stated that the three firms are Sant Properties, Philadelphia Chancellor, LP and 11501 Roosevelt Partners, LP. The notice also mentioned two additional affiliated firms, World Acquisition Partners and 2040 Market Street Associates, which did not make any contributions to the Friends of Jack Kelly, but may be subject to the same possible ineligibility as the affiliated firms that did make contributions.

Mr. Creamer also stated that none of the firms applied for or is receiving financial assistance, nor are any of them an applicant or contractor under a no-bid City contract. The purpose of the alert was simply to provide information to

departments and City-related agencies in the event that any of the firms applied for financial assistance or a contract in the future.

B. Budget Issues

a. Transfer Ordinance: Mr. Creamer reported that the Administration's Transfer Ordinance (Bill 080010) was signed by the Mayor on February 27th giving final approval to the Ethics Board's request to internally transfer \$50,000 from class 200 to class 400. This change enables us to complete our office furnishings and to pay for desks, chairs, tables and filing cabinets and other equipment needs. We are now working on those purchases.

b. FY2009 Budget: Mr. Creamer stated that the final FY09 budget documents were submitted to the Budget Office on February 19th. He reported that the Board's budget hearing is scheduled for April 7th at 2:30.

C. Cozen O'Connor Suit Against the Board in the Court of Common Pleas

Mr. Creamer reported that on March 6, 2008, the Cozen O'Connor law firm filed suit against the Board and the City seeking a declaratory judgment that under the City Charter and Code legal expenses incurred by a mayoral campaign are not "expenditures" and post-election funds received are not "contributions" subject to the Code's contribution limits. Congressman Robert Brady and the Friends of Bob Brady committee are listed as Additional Parties-In-Interest.

Mr. Creamer explained that the suit arises from events in the 2007 primary election. Mayoral candidate Bob Brady faced a lawsuit brought by his opponent Tom Knox alleging that Candidate Brady should be removed from the ballot because he failed to disclose certain financial interests on his Statement of Financial Interest. Plaintiff Cozen O'Connor represented Candidate Brady in this challenge which reached the Pennsylvania Supreme Court and was decided in Candidate Brady's favor on April 24, 2007.

He added that as a result of this litigation, the firm is owed \$448,468.09 in legal fees. Although the ballot challenge was litigated in March and April, the Friends of Bob Brady first reported these legal fees as debt in its cycle 7 annual campaign finance report and lists the date of the bill as December 17th.

Mr. Creamer reported that after the primary election, Candidate Brady, through plaintiff Cozen O'Connor, sought advice from the Board in a request, dated July

27, 2007, as to whether post-election “payments to the Brady Mayoral Campaign Committee would be subject to the contribution limits” in the Code where such funds would be used to pay campaign debt. In Advisory Opinion No. 2007-003, the Board advised the Brady Campaign that post-election funds raised to retire campaign debt are subject to the Code’s contribution limits.

He explained that at its core, Plaintiff argues that the Board lacked authority to extend contribution limits to funds received after an election and to treat legal expenses as expenditures of the campaign. However, as explained in the Board’s Opinion, the contribution limits would be meaningless if a candidate could raise unlimited funds immediately after an election to retire campaign debt.

Mr. Creamer explained that Charter Section 4-1100 vests authority in the Board to interpret and render advice concerning the application of contribution limits established in the Campaign Finance provisions of the Code. Remarkably, as the firm describes what it considers to be the Board’s “limited” authority in its Complaint, it never mentions Section 4-1100 of the Charter.

He added that the firm argues the Board’s Opinion “impairs” Congressman Brady’s ability to raise money to pay the firm’s legal bills and that it “impairs” the firm’s ability to be paid for its services. However, the Board believes that the firm lacks standing to assert the alleged impairment on Congressman Brady, and the firm doesn’t allege any facts to support their contention that the Opinion has impaired either Congressman Brady’s ability to raise money or the firm’s ability to get paid. In fact, the Brady Committee has never paid any amount to the firm and it is the only Mayoral Committee that did not pay any legal fees.

C. Local 98 IBEW COPE’s Federal Lawsuit Against the Board

Mr. Creamer informed the Board that the parties have stipulated to a March 31st deadline for responses to Local 98 IBEW COPE’s Complaint. The PAC will have until April 30th to reply to the responses. The case has been assigned to Chief Judge Harvey Bartle. Mr. Creamer said that as he noted at the February meeting, Local 98 IBEW COPE filed a Complaint in Federal Court against the Ethics Board, naming the Board, the Attorney General, the Secretary of the Commonwealth, the District Attorney and me as Defendants. Local 98, a political action committee, claims that the Board’s request for expenditure documents made pursuant to §3246(c) of the Pennsylvania Election Code violates its First Amendment rights.

Mr. Creamer said the PAC raises both facial and “as applied” Constitutional challenges to various provisions of the Election Code and the City’s campaign finance law, and seeks a declaratory judgment, preliminary and permanent injunctive relief and attorney fees.

He added that although the Complaint is frivolous, it will delay part of the Board’s investigation into the PAC’s 2007 campaign expenditures.

D. Ethics Training

a. **New Administration:** Mr. Creamer reported that in coordination with Chief Integrity Officer Joan Markman, the Board offered a total of four ethics training sessions for members of the new Administration. More than 60 persons have attended. The sessions were held on February 4th, 11th, 21st, and 27th.

b. **New City Council Members & Staff:** Mr. Creamer said that at the Board’s initiative, three ethics training sessions were conducted on February 25th, March 3rd, and March 12th for new City Council staff members and the three new Council members. More than 30 employees attended the sessions.

c. **Integrity Officer Training:** Mr. Creamer reported that the Board is coordinating with Inspector General Amy Kurland to offer ethics training on April 2nd and 8th for more than 30 departmental Integrity Officers.

d. **Future Training:** Mr. Creamer said that the Board will offer additional ethics training sessions in the spring for any members of the administration, City Council staff, or Integrity Officers who did not already participate, and the Board will schedule sessions for the members of boards and commissions. Mr. Creamer said that the Board will also coordinate with the Personnel Department to “train the trainers” who will offer annual ethics training to all other City officers and employees.

E. Records Management Update

Mr. Creamer reported that Diane Eulo and Tricia Dougherty, of LRW Solutions Group, continue to implement a new filing system for the Board’s files after their many interviews with staff and Richard. In addition, on February 25th, Kathy Ewing of Gable Consulting provided training on the new database which will permit us to search for and locate files in the new filing system.

F. Web Site Control

Mr. Creamer informed the Board that Tina, Nedda and he received training on February 27th at MOIS on the new Collage software program which is being used for City website management. Once we are proficient on the program and gain control of the Board's web site, we will be able to add content and make changes to the web site directly. Currently, the Board must ask MOIS to make any changes, which has caused delays in getting documents posted.

G. Planning for Annual Financial Disclosure Reporting

Mr. Creamer reported that Evan and Nedda have been involved in planning that is well under way for the May 1st financial disclosure reporting deadline for City officials and employees. Evan will provide more details in his report.

Mr. Creamer said he believes the Board will be interested in the new online reporting system developed by the Records Department and Commissioner Joan Decker. It may help to address the concerns of officials who are required to file more than one of the three disclosure reports (the State form, the Mayor's form, and the City form). The new software will permit a filer to enter financial information one time into the system, but will incorporate that information into any one or more of the three reports.

H. Personnel

Mr. Creamer informed the Board that staff conducted seven interviews for the two legal positions, Director of Enforcement and Associate General Counsel, and will soon make recommendations to the Board concerning those positions.

He added that staff is also reviewing resumes received for the two Research and Information Specialist positions and will begin interviews later this month.

IV. General Counsel's Report

1. Formal Advices of Counsel. Mr. Meyer reported that he issued six formal Advices of Counsel since last month's meeting.
2. Informal e-mail advice. Mr. Meyer stated that he responded to the following requests for informal advice since the last board meeting:

- a. A confidential advice on service on a nonprofit board.
- b. Advised the Law Dept. that there is no issue if law firms donate free instruction to the Law Department's Continuing Legal Education program next summer.
- c. Advised an official in the Administration on accepting an offer from the 76ers to provide a discount program to City employees.
- d. Advised a member of a board/commission that Charter Section 10-107 prohibits serving as delegate to a national party convention.
- e. Advised an attorney in the Law Department that free attendance at a Bar Association luncheon is part of benefits paid for by dues, and is thus not a gift.
- f. Advised a Prisons official that an offer by a City vendor to travel out of town to attend "customer conference," by vendor, including travel, accommodations and meals, is a gift prohibited by executive order.
- g. Advised DHS that a gift of free tickets from 76ers to DHS officials to a game where officials will be honored, may be accepted as "gift to the City" if the appointing authority concludes that attendance is a legitimate function of City government.
- h. Responded to an inquiry from member of Mayor's Office about service on a board of a nonprofit with a number of questions about facts. Never got a reply.
- i. Provided member of a board/commission with advice on completing Mayor's Financial Disclosure Form.
- j. Gave general post-employment advice to Finance Department.
- k. Advised Planning Commission on gift of 2 tickets to an event. (Answer: 1st ticket can be "gift to the City" if attending in official capacity, but may not take guest)
- l. Advised "Evans for Mayor" committee on disclosure filings.
- m. Advised Controller's Office on outside employment restrictions.

- n. Advised MBEC official on accepting gift meal.
 - o. Advised DHS official on hiring a former City employee as consultant.
 - p. Advised City Controller on running as delegate to a national convention. “Resign to run” provision does not apply.
 - q. Advised Planning Commission on who is subject to State Ethics Act, and post-employment rules.
 - r. Advised a City official on rules on serving as block captain.
 - s. Advise a City official on serving on board of nonprofit.
 - t. Advised Records Commissioner on endorsing a service formerly used by City.
3. Financial Disclosure. Mr. Meyer said that he participated in one meeting and he is preparing for a second, to schedule and prepare for the financial disclosure season. He noted that completing forms in the new on-line system does not satisfy the filing requirement. Forms must still be printed, signed, and filed in the Records Department.

V. Annual Report Update

Ms. Massar reported that we will use a picture of City Hall from the City’s photo archives on the Annual Report cover and acknowledged the help of the Records Department and Commissioner Decker in obtaining the picture. She thanked Ms. Formica for all her work on the layout which gives the Report a professional look.

Ms. Massar said that her goal is to have the report delivered to the Mayor and City Council members by March 28th.

VI. Cozen O’Connor Complaint

Mr. Glazer said that Mr. Creamer covered this issue in his Executive Director’s report.

VII. Proposed Regulation No. 4 on Process for Advisory Opinions

Mr. Meyer updated the Board on the progress of Regulation No. 4. He stated that it was given to the Law Department for a preliminary look at any legal issues or drafting problems. Lewis Rosman pointed out some issues which were incorporated in a new draft of the Regulation and returned to the Law Department for more comments.

Mr. Glazer stated that the Law Department has to sign off on the Board's Regulations. He asked who would prevail if there was a disagreement between the Board and the Law Department.

Mr. Creamer responded that in the past the Board and the Law Department have always reached a consensus, and the Law Department provides helpful recommendations.

X. New Business

General Counsel Meyer noted that with the addition of new staff members in the near future, including a Director of Enforcement who will handle prosecutorial functions, we will have to reexamine and make changes to the way certain Board business is conducted. Because the Board may act as judges in future enforcement actions, it would be a violation of due process under Pennsylvania law to commingle the prosecutorial and adjudicative functions in such cases.

Counsel Meyer recommended that the Board may wish to follow the model of the State Ethics Commission which completely separates the prosecutorial and judicial functions to create the "walls of division" required by State law. Different staff attorneys advise the State Ethics Commission when it acts in its judicial capacity from the attorneys who are involved in prosecutorial decisions. He noted that the Board and staff will have to reexamine many of its current procedures to create similar "walls of division."

Mr. Creamer said that the underlying question is how to provide legal advice to the Board without violating the "walls of division." He said that he would especially like to know how the State Ethics Commission operates.

Ms. Haddon suggested having a retreat in the summer to discuss this issue.

Ms. Massar indicated that she would work on such a session for the Board.

Counsel Meyer said that such a seminar would not present a sunshine issue.

XI. Questions/Comments

Lauren Vidas from Councilman Green's office had the following suggestions for the Board:

- 1) Post the Regulations on the website during the 30 day period the public has to request a hearing; and
- 2) Post the Board's monthly agenda on the website.