

Philadelphia Board of Ethics
Meeting Minutes
February 20, 2008
Board of Ethics
Packard Building
1441 Sansom Street, 2nd Floor
1:00 pm

Present:

Board

Richard Glazer, Esq., Chair
Kenya Mann, Esq.
Rich Negrin, Esq. (via conference call)
Stella Tsai, Esq.

Staff

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

Guest

The Honorable Ida Chen

I. Call to Order

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

II. Swearing In

Mr. Glazer stated that Kenya Mann was nominated on January 24, 2008 to serve the unexpired two year term of Pauline Abernathy, who now works for the Administration. Ms. Mann was confirmed by City Council on February 4, 2008.

Mr. Glazer introduced Judge Ida Chen, who served as the Chair of the Ethics Committee for the 21st Century Review Committee. The recommendations of the

Ethics Committee led to the creation of the new board of ethics. Judge Chen installed the original Board as well as Phoebe Haddon.

After Mr. Glazer's introduction, Ms. Mann was sworn in by Judge Chen.

III. Approval of Minutes

The Board approved the meeting minutes for the public meeting on January 16, 2008.

IV. Executive Director's Report

A. Kenya Mann's Confirmation Hearing

Mr. Creamer stated that City Council's Committee of the Whole held Kenya Mann's confirmation hearing on February 4, 2008. Mayor Michael Nutter introduced her, which is the first time a Mayor has personally introduced an Ethics Board nominee. Ms. Mann was confirmed by Council later in the day.

B. Transfer Ordinance

Mr. Creamer reported that City Council's Appropriations Committee held a hearing on February 7, 2008 on the Administration's Transfer Ordinance (Bill 080010). Included in the Transfer Ordinance is the Ethics Board's request to internally transfer \$50,000 from class 200 to class 400 to enable us to pay for desks, chairs, tables and filing cabinets. Mr. Creamer said that although staff was prepared to present testimony at the hearing if necessary, no questions were asked about the Board's proposed internal transfer.

Mr. Creamer stated that City Council subsequently approved the Transfer Ordinance on February 14th.

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

Mr. Creamer stated that Local 98 IBEW COPE filed a Complaint in Federal Court against the Ethics Board on February 8, 2008, in which the 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 that 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. In addition to the Board, the Attorney General, the Secretary of the Commonwealth, the District Attorney and I are named Defendants.

Mr. Creamer also said that the PAC’s attorney, George Bochetto, first raised the Constitutional arguments in a letter dated February 1st. Mr. Creamer stated that in his response, dated February 5th, he explained in detail that the arguments were based on a complete misrepresentation of the case law. The PAC filed the lawsuit three days after my letter. Although Mr. Bochetto’s February 1st letter was attached as an exhibit to the Complaint, my February 5th reply was not, nor was it even mentioned.

Mr. Creamer informed the Board that Cheryl Krause, Esquire, a partner at the Dechert law firm, has entered her appearance for the Board and me. Ms. Krause, a former law clerk to US Supreme Court Justice Anthony Kennedy and Federal Prosecutor in the Southern District of New York, is representing the Board on a *pro bono* basis.

Mr. Creamer stated that in his February 1st letter, Mr. Bochetto claimed that Ms. Krause and Dechert had a conflict of interest because the firm represented the PAC’s treasurer, Mr. John Dougherty, in another matter. However, not only has Dechert never represented Mr. Dougherty, it actually turned-down his request for representation in another matter because an existing client of the firm was adverse to him.

Finally, Mr. Creamer said 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

1. New Administration

Mr. Creamer said that at the request of Chief Integrity Officer Joan Markman, staff offered two ethics training sessions for members of the new Administration. The

first session was conducted on February 4th and the second was held on February 11th. A third session for the Administration is scheduled for February 21st.

2. New City Council Members & Staff

Mr. Creamer stated that at the Board's initiative, staff scheduled three ethics training sessions for the three new members of City Council and their staff. The sessions are scheduled for February 25th, March 3rd and March 12th.

E. Records Management Update

Mr. Creamer reported that Diane Eulo and Tricia Dougherty, of LRW Solutions Group, completed an inventory of the Board's files and organized them into a filing system, based on what they learned about the Board's files and records from many interviews with staff and Richard. In addition, Kathy Ewing, of Gable Consulting, has created a database for the Board's files. The inventory of the Board's files has been imported into the database and staff will receive training on the database on February 25th. Once staff is trained, the next step will be to incorporate all files into the new filing system.

F. Web Site Control

Mr. Creamer stated that Ms. Massar, Ms. Formica and he are in the process of scheduling a training session with MOIS on the Collage program. Once we are trained 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, we must ask MOIS to make any changes, which has caused delays in getting documents posted. Recently, a number of documents that had been posted were inadvertently taken down by MOIS. It took weeks to get the content re-posted. Once we have control of our web site, we should be able to avoid these types of issues.

G. Actions by Inaugural Committee to Mitigate Appearance Issues

Mr. Creamer said that he was informed by counsel to the Mayor's Inaugural Committee, Larry Beaser, Esquire, that the Mayor's Inaugural Committee heeded the Board's recommendation to limit the potential for the appearance of impropriety if large donors received publicity at the Inaugural events.

Mr. Creamer also said that in particular, all sponsors from \$2,500 to \$10,000 were mentioned only in the event program and there was no mention of sponsors in any

press release prior to the event. There were no banners at the Inaugural Gala and no company logos were shown. The names of sponsors who donated \$10,000 were shown on three screens at the Inaugural Gala, but only prior to the live entertainment beginning. Urban Outfitters, which hosted one event, received no more recognition beyond that given to other \$10,000 donors. Finally, no sponsors were mentioned in the remarks at either of the two Inaugural events.

V. General Counsel's Report

1. Mr. Meyer reported that he issued six formal Advices of Counsel since last month's meeting. Copies are included in the public materials for this meeting.

2. Mr. Meyer stated that he issued the following informal advice:

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 Bar Association luncheon is part of benefits paid for by dues, and is thus not a gift.

f. Advised a Prisons official that offer by City vendor to travel out of town to attend "customer conference" by vendor, including travel, accommodations and meals, is gift prohibited by executive order.

g. Advised DHS that gift of free tickets from 76ers to DHS officials to game where officials will be honored, may be accepted as "gift to the City" if appointing authority concludes that attendance is legitimate function of City government.

h. Responded to 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 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 former City employee as consultant.

p. Advised City Controller on running as delegate to 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 City official on rules on serving as block captain.

s. Advise City official on serving on board of nonprofit.

t. Advised Records Commissioner on endorsing a service formerly used by City.

3. Mr. Meyer said that he participated in one meeting and is preparing for a second to schedule and prepare for financial disclosure season.

VI. Annual Report Update

Ms. Massar thanked Paul Jablow for his work on the 2007 Annual Report and explained that a few sections, including appendices, will be added to the draft that was circulated to the Board. She stated that the sections on Advice from the Board and Enforcement have been expanded, and messages from the Chair and Executive Director also will be included. The entire text will then be organized and formatted using the Publisher software that is used for the Newsletter.

Mr. Glazer explained that the Annual Report is required to be filed with the Mayor and City Council, and he would like for it to be filed by the end of February or early March. The Board is mandated to make the Annual Report available to the public, and it was concluded that posting the report on the website will be sufficient.

Ms. Tsai and Mr. Creamer thanked Ms. Massar for her work on the report.

VII. Budget Update

Ms. Massar stated that the Mayor delivered his budget address to City Council on February 14, 2008. The Board of Ethics has been allocated \$1 million for FY09, which is a continuation of the amount guaranteed in Charter Section 2-300 for the Board's first two fiscal years (FY 07 & FY08).

Ms. Massar said that she prepared the budget spreadsheets and filed them yesterday.

Ms. Massar informed the Board that there is a budget hearing scheduled for April 7, 2008 at 2:30. City Council will vote on the Budget in May.

Mr. Glazer asked if the Board requested an additional \$100,000 to fund legal services. Ms. Massar replied that it had requested the additional money.

VIII. Staffing Update

Ms. Massar reported that the Board is actively recruiting for three positions: Associate General Counsel, Director of Enforcement, and Compliance and Research Specialist.

Ms. Massar said that she has received several resumes for the two legal positions and expects to schedule interviews in the next month. She said that the positions will be circulated further if necessary.

Ms. Massar also said that she has begun to receive resumes for the Compliance Specialist positions. She is scheduled to attend two college career fairs this month. These are entry level positions, which she expects to begin interviewing for in March.

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

Mr. Meyer reviewed Regulation No. 4, which will establish procedures for seeking advice from the Board in the form of an advisory opinion, an advice of counsel, or informal advice.

After a discussion among the Board, it was decided that comments from this meeting and from the Law Department will be incorporated.

Mr. Glazer suggested that it might be possible to have the Board vote on this Regulation at its next meeting.

X. New Business

There was no new business to discuss.

XI. Questions/Comments

The public did not have any questions or comments.