

Philadelphia Board of Ethics
Meeting Minutes
May 8, 2007
Philadelphia Bar Association
ARAMARK Building, 11th Floor
1101 Market Street, Philadelphia PA
11:00 am

Present:

Board

Pauline Abernathy
Richard Glazer, Esq., Chair
Phoebe Haddon
Richard Negrin, Esq., Vice Chair
Stella Tsai, Esq.

Staff

J. Shane Creamer, Jr., Esq.
Tina Formica
Timothy Porter

Guests

Evan Meyer, Esq.
Lawrence White, Esq.

After recognizing that a quorum was present, Board Chair Richard Glazer convened the meeting.

I. Swearing In

Phoebe Haddon was sworn in by Judge Ida Chen. Ms. Haddon will serve the unexpired three year term of Reverend Alyn Waller. Ms. Haddon stated that she looks forward to working with the Board.

II. Approval of Minutes

The Board approved the meeting minutes for the public meetings on the March 18, 2007, April 17, 2007 and May 8, 2007.

III. Resolutions of Appreciation

Mr. Glazer introduced Resolutions of Appreciation for the law firms of Dechert and Cafferty Faucher. Mr. Glazer stated that these law firms rendered exemplary pro bono legal services in the representation of the Philadelphia Board of Ethics. The Board unanimously approved a motion to adopt the Resolutions. Mr. Glazer said that the Resolutions would be presented to the attorneys on July 24th.

IV. Regulation No. 2

Mr. Glazer explained that, because §20-606(h) of the Philadelphia Code required the Board to provide for adjudication by regulation, a drafting team was assembled in February to assist in developing such a regulation. The drafting team includes Tara Malloy, Larry White, Evan Meyer, Shane Creamer and Richard Glazer.

Mr. Glazer said that, over the next few months the drafting team reviewed various municipal and model codes relating to adjudication and enforcement and drafted Regulation No. 2, which was presented to the Board, debated and unanimously passed at the April 17, 2007 Board meeting.

On April 25, 2007 pursuant to that passage the Board lodged with the Department of Records the proposed Regulation No. 2 to become effective May 25, 2007.

On May 14, 2007 Mr. Glazer said that he received a memo from the City Solicitor with comments to the proposed Regulation. Those comments resulted in the advertising on May 24, 2007 of public hearing set for June 18th, pursuant to §8-407 of the City Charter. Since the Solicitor's letter, there were discussions between the law department and the drafting team.

Mr. Glazer then asked Evan Meyer to review the proposed changes from the original posted Regulation. Mr. Meyer then listed and explained the following changes in proposed Regulation No. 2:

Subpart A. Definitions; Scope. 2.2 Powers of the Board: Mr. Meyer explained that the new addition seeks to delineate Board and General Counsel roles (adjudicative) from that of Executive Director and staff/consultants (investigatory/prosecutorial).

Subpart B. Investigations: Mr. Meyer explained that, after clarifying the roles of the General Counsel and Executive Director and staff/consultants, titles were inserted to reflect the responsibilities. Ms. Tsai suggested adding “calendar/business” between “ten” and “days.”

Subpart C. Administrative Enforcement: Mr. Meyer stated that the new language forbids the Executive Director from engaging in ex parte communications with the Board and General Counsel as well as any hearing officer appointed by the Board.

Subpart D. Judicial Enforcement: Mr. Meyer explained that Section 2.16 (c) was removed to ensure proper procedure.

After Mr. Meyer concluded his presentation on the proposed changes, Glazer then invited public comment.

Mr. Richard Dashefsky proposed the following additions/revisions:

2.2 Powers of the Board: Mr. Dashefsky proposed creating a statement that the separation of functions applies to b (Board) & c (Executive Director), but not does not apply to d (General Counsel). This change would permit the General Counsel to go to court and defend the Board.

2.4 Complaints: Mr. Dashefsky proposed two additions. First, he proposed adding a statement to clarify that there is no actual form for a complaint. Second, he proposed changing language, found in 2.4 f. (now 2.4 e.), from “De Minimis Complaints” to “De Minimis Violations.”

2.14 Final Board Determinations: Mr. Dashevsky proposed broadening of the term “penalty” to include “penalties and remedies.” He explained that he

thought that the “organic statute” allows for penalties *and* remedies, rather than just penalties.

V. Interim Executive Director’s Report

A. Legislative Update

1. Nutter v. Dougherty et. al.

Mr. Creamer report that on June 11, 2007, Appellants Fattah and Dougherty filed briefs in support of their appeal from the Commonwealth Court decision that upheld the City’s campaign finance law and reversed Judge Tereshko’s December 13, 2006 ruling. Appellees’ (City of Philadelphia and Michael Nutter) briefs are due on July 11, 2007. No date has been set for argument.

2. City Council

i. Financial Disclosure Training for Candidates

Mr. Creamer reported that Councilwoman Campbell withdrew Bill 020217, which would have required the Ethics Board to provide training to candidates four times per year on how to complete the State financial disclosure forms. Under the State Election Code, he explained that candidates must file the State financial disclosure from when they file their nominating petition with the City Commissioners.

Mr. Creamer also report that on June 7, 2007, Councilwoman Campbell replaced Bill 070217 with a package (Bills 070536 and 070537 and Resolution 070538) that would have required the City Commissioners to provide financial disclosure training to candidates and representatives of political committees. Mr. Creamer said that a hearing on the package had been scheduled before the Committee on Law and Government on June 14th, but did not occur. The package included a Charter amendment that would require voter approval on the November ballot. Because the package was not heard by the committee on June 14th, Mr. Creamer said that there is insufficient time for the package to be passed in time for the proposed Charter amendment to be placed on the November ballot.

ii. Lobbyist Registration Bill

Mr. Creamer reported that on March 8th, Councilman Frank Rizzo introduced Bill 070172, which would require lobbyists to register with the City. He explained that the Ordinance would grant jurisdiction to the Ethics Board to administer and enforce the law. The Board would also have the authority to issue advisory opinions on the law. The Bill has been referred to the Committee on Law & Government, however, Mr. Creamer said that the Bill had been deferred until the fall.

iii. Phoebe Haddon's Confirmation

Mr. Creamer reported that City Council confirmed Phoebe Haddon's appointment to the Ethics Board on June 7, 2007. Ms. Haddon fills the unexpired three-year term of Reverend Alyn Waller, who resigned due to time commitments in March.

3. General Assembly

i. Bill 116

Mr. Creamer stated that Representative Evan's Bill that would confirm Philadelphia's ability to enact campaign finance laws, including public finance laws, passed the House of Representatives and was referred to the Senate's State Government Committee on March 29, 2007.

ii. HB 1130

As reported at the May 8th Board meeting, Mr. Creamer said that HB 1130 was referred to the Committee on Urban Affairs on April 23rd. Mr. Creamer stated that it has not yet been rescheduled for a hearing. The Bill would prohibit the Ethics Board from requiring candidates for State office or Philadelphia ward committees from filing campaign finance reports electronically, rather than in paper.

B. Ethics Training Update

1. Citywide Ethics Training Progress

Mr. Creamer reported that over 23,500 City officials and employees have received ethics training in the Citywide Ethics Training Program. A breakdown by Department follows:

Department Name	# of Employees in Department	# Of Employees Trained	# Of Employees Not Trained
Aviation	800	800	0
Bd of Pensions & Retirement	69	54	15
Bd of Revision of Taxes	186	156	30
Capital Program	69	69	0
City Controllers	128	128	0
City Planning Comm	55	48	7
City Treasurer	12	6	6
Clerk of Qtr Sessions	85	33	52
Commerce/City Representative	36	23	13
Dept. of Human Services	1850	1553	297
District Attorney	541	2	539
Fairmount Park	170	170	0
Finance/MBEC	182	182	0
Fire Department	2395	2395	0
Fleet Management	392	392	0
Free Library	850	850	0
Health Department	1400	939	461
Historic Commission	6	0	6
Labor Relations	6	6	0
Law	357	357	0
Licenses & Inspections	388	388	0
MDO	123	123	0
MOIS	114	23	91
Office Supportive Housing	186	186	0

OHCD	62	62	0
Phila Com on Human Relation	36	36	0
Personnel	83	83	0
Police	7290	7290	0
Prisons	2243	2243	0
Procurement	63	63	0
Public Property	181	181	0
Records	73	73	0
Recreation Dept	762	700	62
Register of Wills	68	43	25
Revenue Department	520	184	336
Sheriff Dept	247	247	0
Streets	1900	1900	0
Water Dept	1720	1551	169
Totals	25648	23539	2109

Mr. Creamer said that the Personnel Department has verified all reported totals by tracking-back the reported numbers to training sign-in sheets.

2. City Council Training

Mr. Creamer reported that City Council was not originally included in the Citywide Ethics Training Program because it was not represented in the City's HR Training Consortium, which we used to coordinate ethics training by 163 trainers that were trained to deliver the ethics curriculum. However, he said that Evan Meyer recently trained 179 out of 192 City Council members and staff in three sessions, on June 8th, 11th & 14th. All 17 members of council received the training. Mr. Creamer said that make-up sessions will be offered to those who were unable to attend any of the three sessions.

3. Closing the Training Gap Strategy

Mr. Creamer stated that he met with Personnel Director Tanya Smith on June 15th to discuss strategies to provide ethics training to approximately 2000 City employees who have not yet been trained. Outside of City

government, he said that the Board must also provide training to the members of 81 boards and commissions.

Mr. Creamer said that, according to the Personnel Department's list, all employees in 23 departments have received ethics training. There are 13 departments with incomplete training and one (the DA's Office), that has not yet started training. Mr. Creamer said that he will send letters to the department heads reminding them of the training mandate and suggesting that they contact Central Personnel if they need assistance or support to complete the training. Mr. Creamer said that Central Personnel will offer overflow training for all departments and support for those that intend to complete the training with their own staff.

Mr. Creamer said that he plans to schedule a number of training sessions for board and commission members over the summer. He told the Board that he was waiting for a current list of board and commission members from the Mayor's Office. Once he has the list, Mr. Creamer said that he will notify all members in writing and ask them to sign-up for one of the sessions.

C. "Plain English Explanation of the Campaign Finance Law

Mr. Creamer reported that a slightly modified version of "Plain English Explanation of the Campaign Finance Law" was republished on June 15th. It was published on page D6 of the Philadelphia Inquirer and page 24 of the Daily News. It was also published in the June 15th edition of the Philadelphia Tribune. The Board is required to publish a "Plain English" guide to the law every six months in the three newspapers with the largest circulation.

D. Campaign Finance Cycle 3 Filing Status Report

Mr. Creamer stated that Cycle 3 campaign finance reports were due on June 14th. As of June 18th, the Records Department has received 186 electronic filings (reports & statements). Mr. Creamer explained that the filings and summary reports were still being reviewed.

Mr. Creamer said that he had asked the Records Department to generate trend reports in certain categories, now that we have experience with three reporting cycles in an electronic format. For example, Mr. Creamer said that in Cycle 7, there were 7 campaign finance reports with more than 20 missing

data entries, 5 such reports in Cycle 2 and only 2 reports with over 20 missing items in cycle 3. Mr. Creamer said that he had asked the Records Department to track other trends, including the number of reports that had to be resubmitted in each cycle; the number of reports with data errors in each cycle and the number of reports that were filed on time in each cycle.

Mr. Creamer reported that in Cycle 3, 91% of all reports were filed on time and that 99% were filed within five days of the deadline. He compared this to Cycle 2, where only 60% of reports were filed on time and only 80% were filed within five days of the deadline.

E. New Office Update

Mr. Creamer reported that Construction on the Board's new office began on June 4th. He said that the walls had been framed and the electrical lines had been run. He also said that furniture for eight offices; two conference rooms and chairs for the large meeting room have been ordered through PhilaCor. In addition, he said that nine pre-fabricated cubicles have been ordered from Supply Source.

VI. Intern Report: Timothy Porter

Mr. Timothy Porter introduced himself and said that it was an honor and privilege to work for the Board of Ethics as a legal intern. Mr. Porter stated that he will be researching independent "527" political committees, some of which emerged in the weeks before the May primary by making expenditures to influence the mayor's race. These committees appeared to operate beyond the scope of the City's new campaign finance law and raised many questions about their lack transparency and accountability. Mr. Porter also said that he is assisting the development of a business code of ethics manual, which the Board is required to produce under the amended Ethics Code. Finally, Mr. Porter said that he will also assist in updating the Board of Ethics website.

Mr. Porter and Larry White, consultant, gave a presentation on the Business Code of Ethics manual.

VII. Financial Disclosure Review

There was a discussion among the Board regarding the process of reviewing Financial Disclosure Statements. Because the Board has jurisdiction over the City Statement of Financial Interests forms that are filed pursuant to Section 20-610 of the Ethic Code, Mr. Glazer suggested that the Board develop a plan for reviewing the filed City forms.

VIII. New Business

There was no new business.

IX. Public Comment

Mr. Glazer recognized that Mr. Zack Stalberg, Executive Director to the Committee of Seventy was interested in addressing the Board, and invited Mr. Stalberg to speak.

Mr. Stalberg first reminded the Board that he had recently sent it a letter concerning the “doubling effect,” and its applicability after a candidate who triggers it is no longer in a race for office. Specifically, Mr. Stalberg noted that, while Mayoral Candidate triggered the doubling provision for the mayor’s race, it no longer made sense for that provision to remain in effect, because he lost in the primary.

Mr. Stalberg accepted that the law, as written, leaves the contribution limits double, once triggered, for that election, but suggested that the law should be amended to reverse the doubling of contribution limits for an office once the candidate who triggered the doubling was no longer in the race.

Second, Mr. Stalberg advised the Board that the Fairmount Park Commission was considering adopting its own ethics code. Mr. Stalberg asked whether the City’s Ethics Code applied to the Park Commission. Mr. Meyer explained that it did, and that any ethics rules adopted by the Commission would be in addition to the City’s Ethics Code.

Executive Session

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