

Philadelphia Board of Ethics
Meeting Minutes
Public Session
October 11, 2005
Municipal Services Building
Room 16 B
4:30 pm – 6:30 pm

Present:

Board

Charisse R. Lillie, Esq., Chair
Daniel P. McElhatton, Esq., Vice Chair
Romulo L. Diaz, Jr., Member

Staff

Evan Meyer, Esq.
J. Shane Creamer, Jr., Esq.

Guests

Lewis Rosman, Esq.

Agenda:

I. Approval of Minutes

The Board approved the meeting minutes for the public and executive sessions of the September 13, 2005 Board meeting, subject to several corrections.

II. Whistleblower Policy

At the last Board meeting, the Board instructed staff to draft a whistleblower policy for the Board to consider. A draft policy was circulated prior to the

October 11th meeting and Mr. Meyer explained the draft policy at the meeting.

Mr. Meyer said that he looked at whistleblower policies in other jurisdictions, such as San Francisco, and used them as models for basic points and carefully reviewed the Klett Rooney memorandum dated May 25, 2005 to ensure that the draft policy was consistent with Pennsylvania law.

Mr. Meyer explained that the first section of the draft policy establishes a complaint process. Mr. Meyer said that the Board would have to determine the scope of complaints that are covered by the policy, and noted that the draft included a number of possible subjects. Complaints would be filed with the Board of Ethics, which would be responsible to investigate or refer matters to the Inspector General's office to investigate the facts. Complaints that raise issues beyond the scope of the Board's jurisdiction would be referred to the appropriate agency for investigation.

The next section of the draft policy establishes the policy against official and unofficial retaliation against City officers and employees who, in good faith, filed a complaint with the Board of Ethics, the City Controller, the District Attorney, or with the complainant's department, alleging that a City officer or employee engaged in improper government activity covered by the scope of the policy, or for cooperating with an investigation of such a complaint.

Mr. Meyer explained that the policy includes a confidentiality provision, under which an individual who files a complaint would have the option to have his or her identity kept confidential.

The draft policy also requires the Board of Ethics to ensure that any ethics training include instruction on the policy, how to report violations and that retaliation against whistleblowers is prohibited. Finally, the draft policy includes a provision that the Board can promulgate additional regulations and procedures to implement the policy in an efficient manner.

Ms. Lillie asked whether the Board should recommend that the Mayor issue an executive order to adopt a whistleblower policy. Mr. Meyer said that an executive order would probably be the best way to proceed, because legislation to create a broader ethics board, which would require a charter amendment, has not advanced in City Council and because the current

Ethics Board is limited. Mr. McElhatton suggested that it would be up to the Administration to decide how to proceed.

Mr. Diaz said that he thought that the Board should prepare a legislative proposal in lieu of an executive order and that he would want to look at it closely. He also said that he would like to have a more streamlined policy for training and the web site. Mr. Diaz also said that he would prefer to have counsel in the Law Department working on Ethics Board issues to include him in the process, so that he can better manage the work product of his Department.

Mr. Diaz then asked a question about the source of the confidentiality provision in the draft policy. Mr. Meyer explained that the draft policy has a confidentiality option for the initial complaint of an alleged violation of the ethics laws, which is what the state ethics commission does.

Ms. Lillie then asked Mr. Diaz how he would like to proceed. Mr. Diaz said that he would circulate a revised draft with a policy and a draft bill for the Board's consideration and approval.

III. Vendor Training

Mr. Creamer discussed the issue of informing city vendors about the campaign contribution limitations that are in effect and others that might be adopted. He reminded the Board that Councilman Goode introduced a campaign donation limit bill (030562) that was passed and took effect in January 2004. Originally, the law set contribution limits for mayoral and city council candidates of \$1,000 by individuals and \$5,000 for PACs. The law was subsequently modified at the end of the last session (bill 050301-A) to include contributions to all other locally elected offices. Limits were also raised to \$2,500 for individuals and \$10,000 for PACs. Councilman Nutter's "pay-to-pay" legislation (bills 040772-AA and 040771-A) would impose similar contribution limits on vendors who seek city contracts worth more than \$25,000, subject to voter approval of the ballot question authorized by bill 040771-A.

Mr. Creamer said that concerns have been raised about the lack of awareness of the campaign donation limits that are currently in effect. He suggested that one option for the Board to consider would be a mass mailing to all city

vendors. The Procurement Department's SPEED database has the names and addresses of approximately 11,000 city vendors. Procurement can generate mass mailings with that system. Public Property processes the mass mailings at the discounted postal rate of .292 cents. Property also has the capacity to fold and stuff envelopes.

Mr. McElhatton said that the Board could consider a mass mailing, but that it should also consider advising candidates and ask them to advise their campaign staff as an interim step.

Mr. Diaz noted that the issue points to the emerging training role for the Board. He added that it could be incorporated into the training program once we have a better understanding of all the new campaign limits and how they operate. Mr. Diaz also told the Board that there is a contract reform project underway to enhance competition in city contracts. He suggested that the Board invite Susan Kretsge from the Managing Director's Office and Cheryl Kritz from the Law Department to the next Board meeting to brief the Board on the contract reform effort.

Lewis Rosman, Esq., a senior attorney in the Law Department's Appeals & Legislation Unit, appeared at the Board meeting to answer questions about the legislation. He explained that the campaign donation limitation law (the Goode/O'Neill law) was amended by Councilman Nutter to conform with his "pay-to-play" bills monetarily.

When asked about the idea of sending a letter to all vendors, Mr. Rosman said that a letter may not be necessary, since contractors will learn about the new rules if the ballot question is approved by voters on November 8th. Mr. McElhatton suggested that the Board has an opportunity to educate candidates and officials on the new restrictions. Mr. Diaz said that he saw this issue as a detail to the contract reform effort underway and thought that the Board should consider tailoring training for candidates. Mr. Rosman pointed out that the Goode/O'Neill campaign limits apply to the Controller and DA campaigns that are underway now.

Mr. Diaz noted that there are essentially three universes of trainees with respect to the campaign donation limits: (1) city employees who review contracts: (2) the vendor community (affected by potential legislative changes fully effective in February 2006): and (3) elected officials and potential candidates.

Mr. Rosman was asked to prepare a summary of the laws that could be used to inform the various groups about the restrictions. Mr. Rosman also circulated two Solicitor opinions on the Goode/O'Neill bills. Although the limits are now different, he said that the analysis is accurate. He also suggested that it would be appropriate to consider posting the second opinion on the Board's website.

IV. Public Complaint Process

Mr. Creamer reported that the Board recently received its first complaint through the "report a concern" section of the web site. While the complaint did not specify any particular conduct by any individuals in particular and involved issues with Redevelopment Authority contracts, rather than issues involving the administration, it raised a number of questions about how the Board should process similar complaints in the future.

Mr. Diaz said that the Board must deal with complaints on a case-by-case basis. He added that "bright lines" are not easily drawn and that the Board needs as much specificity as possible when considering a complaint. He also noted that Mr. Creamer had determined that the Board lacked jurisdiction with the RDA complaint.

Mr. McElhatton suggested that basic information on a complaint should be circulated to the Board to determine whether there is any conflict. He also said that, in cases such as the RDA complaint where the Board does not appear to have jurisdiction that the Board must avoid the appearance of being dismissive, because people do not understand that the Board is constrained.

Mr. Meyer suggested that the state ethics commission would have jurisdiction in this matter. Mr. Diaz recommended that the Board suggest to the person who submitted the complaint to report it to the state ethics commission. Mr. McElhatton added that the Board should follow-up with any referrals for informational purposes. Mr. Diaz said that raises questions about tracking and statistics and that the Board should have an internal tracking system to monitor the progress of the Board's responsiveness to complaints.

V. Executive Director's Report

1. Ethics Training Program Update

Mr. Creamer reminded the Board that the Citywide Ethics Training Program was launched on September 9, 2005. A fifth "Train the Trainers" session has been scheduled for November 1, 2005. This extra session has been scheduled because some departments want to have more trainers trained to deliver the ethics training program. To date, Mr. Creamer said that we have trained 125 trainers in four training sessions on August 24th & 25th and September 7th and 8th.

The Division of Aviation and the Department of Licenses and Inspections have submitted ethics training schedules for their entire workforce to Central Personnel. Aviation's training began on September 12, 2005. They expect to have provided ethics training to all 750 existing employees by October 20, 2005. Aviation also includes ethics training in its new employee orientation sessions.

Central Personnel's ethics training sessions for agencies that do not have an ethics trainer continue. So far, Central Personnel has conducted seven ethics training sessions. Central Personnel has fourteen more ethics training sessions scheduled through December 15, 2005.

Mr. Creamer said that he has asked Central Personnel to follow-up with all other departments to complete their ethics training schedules and submit them to Personnel. He added that we should have many more departmental ethics training schedules by our November 14th meeting. Central Personnel has set a December 15, 2005 deadline for all departments to submit their ethics training schedule.

2. Web site Update

Mr. Creamer said that the Board's web site went "live" on September 14, 2005. To help get the word out, a press release was issued (which is now posted on our web site). The web site is also "featured" on the City's home page and on the City's Intranet page. The Inquirer ran an article on the new web site the next day, on September 15th.

3. Financial Disclosure Review Update

Mr. Creamer reported that, since the last Board meeting, the Personnel Department has generated lists of exempt employees in 43 departments. The lists include 1,519 employees, of which 829 must file the state form, 74 must file the City form and 106 must file the Mayor's form. This represents approximately 30% of the 3,302 forms filed with the Records Department.

Getting an accurate master list of exempt employees who must file at least one of the disclosure forms will take a combination of strategies. While some departments only have two or three exempt employees who must file, other departments have many who must file. Among the larger departments, some appear to have more accurate information, such as the Law Department and the DA's office. Other large departments are more difficult to assess, because it is not apparent who must file from their job titles. Mr. Creamer said that some of these departments will be asked to go through their lists and make any additions or deletions, based on the instructions for who must file the various forms.

4. DOJ Antitrust Awareness Training Update

We have made arrangements for Ed Panek to present his antitrust awareness training program to the heads of procurement for the City, PGW and the School District of Philadelphia tomorrow, October 12th. The meeting will include the City's Procurement Commissioner, William Gamble, PGW's Director of Procurement, Kenneth Williams, and the School District's Procurement Supervisor, James Cannon. Four staff members from the Office of the Inspector General will also attend the meeting.

5. Miscellaneous

(a) Legislative Update

Mr. Creamer told the Board that it was his understanding that none of the pending ethics bills have been amended or scheduled for hearings, nor have any new ethics bill been introduced Since City Council returned on September 15, 2005.

On November 8, 2005, voters will decide a ballot question (Bill #040771-A) that would amend the City Charter by giving City Council the power to

regulate no-bid contracts valued at over \$10,000. Companion Bill #040772-AA would amend the Philadelphia Code with the regulations approved by Council and would have an effective date of February 1, 2006.

Councilman Cohen was chair of the Committee on Law and Government, so what happens to the various pending ethics bills may depend on who leads that Committee in the future. Councilman Kenney is currently co-chair of the Committee. Councilmen Mariano, Nutter, Goode, Rizzo and Kelly are members of the Committee.

(b) Managing Director's Commissioners Meeting

Mr. Creamer told the Board that the Managing Director asked him to speak at the monthly Commissioners Meeting on October 5, 2005. At the meeting, he gave them an update on our Ethics Training Program initiative and gave them a tour of our website. The Managing Director has asked Mr. Creamer to provide ethics updates at the Commissioners Meetings on a regular basis, which will give the Board an opportunity to stay in touch with the leadership of all the operating departments. Having regular ethics updates at the monthly Commissioners Meetings also serves to underscore the priority that the Administration is placing on ethics, which is essential to the success of the program that the Board is establishing.

(c) Meeting with the Mayor's Chief of Staff

Mr. Creamer advised the Board that he met with Joyce Wilkerson on October 7, 2005, to provide her with an update on the Board's activities and accomplishments.

(d) 1962 Fordham Report

At the last Board meeting, in a discussion about the 1962 Fordham Report, which is available on our web site, a question was asked about whether that Committee held public hearings. Staff was asked to review the archival materials to find out whether public hearings were held.

Mr. Creamer reported that the archival materials show that Mayor Richardson Dilworth formed the "Mayor's Ad Hoc Committee on Improvement in Municipal Standards and Practices" sometime after April

17, 1961 (the actual date is unclear). It was on that day that the City Controller released an audit that revealed details of a municipal corruption scandal involving construction firms and a “small number of high-ranking City employees.”

The Committee was chaired by Jefferson B. Fordham and had only two other members: Thomas H. Carroll and Charles H. Frazier. They were given a budget, with which they contracted with the Pennsylvania Economy League – Eastern Division, which apparently wrote the Report at the Committee’s direction. The Committee also hired two expert consultants and one staff.

To answer the question raised at the last Board meeting, Mr. Creamer said that the Committee did hold public hearings on January 18 and 19, 1962. Those hearings are described in the final report:

“In candor, it must be reported that the public’s response to the invitation was disappointing. Nevertheless, the Committee did have the benefit of helpful testimony by the President of the Council and the representatives of several interested organizations.”

The Committee’s Final Report was dated March 15, 1962, and released on March 28, 1962, during the Tate Administration. Mr. McElhatton interjected that Mayor Dilworth had resigned around that time in order to run for the U.S. Senate, which is why the Committee’s Report was directed to his successor. Councilman Carr introduced Bill #1715, which contained the ethics code recommended by the Committee, on April 26, 1962. Section 20-606 of Bill #1715 provided for the establishment of a Board of Ethics. It appears that Bill #1715 was approved by City Council, as amended, on Thursday, June 13, 1963.

Mayor Tate’s press releases in December 1962 and March 1963 announced appointments to the new “Citizens Committee on Ethics,” but the membership of that “Citizens Committee” appears to be the same as what is referred to as the “Board of Ethics” later in 1963. Mr. Creamer speculated that the “Citizens Committee on Ethics” was in fact the Board of Ethics and that Mayor Tate’s press office was simply being creative in the two press releases.

At the end of Mr. Creamer's executive director's report, he was asked how Board meeting were advertised. Mr. Creamer said that ads were placed in the Inquirer and Daily news and either the Tribune or Al Dia, or both, whenever possible. Mr. Diaz suggested that one or two substantive matters from the Board's agenda be included in the ads to give the public a better sense of the meeting. Mr. McElhatton suggested asking other organizations to post our schedule and to get their advice on how to promote meetings.

VI. New Business

Mr. McElhatton announced that he will speak on an ethics discussion panel at the Constitution Center on October 20, 2005 at 6:00 PM. Patrick Meehan and Neil Oxman are also scheduled to be on the panel.

Mr. Diaz said that he would circulate a memorandum analyzing public hearings.