Philadelphia Board of Ethics
DRAFT Meeting Minutes
Public Session
December 12, 2005
Municipal Services Building
Room 16 B
8:00 am – 10:00 am

Present:

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

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

Agenda:

I. Approval of Minutes

The Board approved the meeting minutes for the public and executive sessions of the November 15, 2005 Board meeting, subject to several corrections.

II. Legislative Update and Transition Planning

Mr. Creamer reported that the Committee on Law & Government held a hearing on November 16th for five ethics bills and one resolution. Dan McElhatton testified at the hearing on behalf of the Board. Although he submitted written testimony (which is posted on our web site), Mr. McElhatton spoke extemporaneously in support of their effort to bring ethics reform to the City.

All six measures were voted out of Committee, and, on December 1, 2005, Council passed all but one measure. Resolution 040817 passed with a unanimous vote. That Resolution will create a strong and independent ethics board, subject to approval of a ballot question in the May 16, 2006 election. Bill 040769 contains the language of the ballot question, and also passed with a unanimous vote. Two other bills that will expand the duties and powers of the new ethics board also passed unanimously.

The first expanded duty bill (051024) establishes a detailed complaint, investigation and referral process for the new board and contains provisions for civil fines for violations of the ethics rules. The other bill (050014) will require all candidates and political committees who are required to file campaign finance reports with the City Commissioners to simultaneously file the same information with the new ethics board. The board must then publish the information on the City's website.

Only Bill 01023, which would have extended the recently approved regulations for no-bid contracts to competitively bid contracts, was defeated in an 8-8 vote. Another Bill (050613), that will extend the contracting regulations to people seeking "financial assistance" from the City, passed with a 15-1 vote.

Mr. Creamer suggested that the Board should consider what its role will be over the next six months, before voters are asked to approve the creation of a new Board of Ethics with expanded powers and duties. He also noted that there were many provisions within the new legislation that will require prompt action by the new Board and suggested that this Board could consider how to it might facilitate the transition to the new Board. Mr. Creamer then highlighted a few of the provisions requiring action by the new Board, including:

<u>Resolution 040817:</u>

3-806(b): Initial Appointments: All Board appointments shall be made within 90 days after Board is first created.

….

(g) Executive Director, Counsel and Staff: Board appoints and fixes salaries for the executive director, counsel and such other staff and consultants. The selection of an executive director and counsel requires a vote of three Board members.

….

(i) Meetings: The Board must convene its first meeting within 30 days after all of its initial appointments are made and confirmed.

….

4-1000: Powers and Duties: All enforcement actions are to be brought in the Court of Common Pleas, or by administrative adjudication, if authorized by Council.

<u>Bill 051024:</u>

20-606(1)(a): Powers and Duties: Board shall promulgate rules and regulations as are necessary to implement and interpret the provisions of this chapter.

(b) Mandatory Training and Education: Must disseminate educational materials, including a "code of ethics manual." The Board must also provide routine and mandatory educational and training programs for all City employees. Failure to attend training shall be a violation. Within 60 days, of the effective date of this ordinance, each department head must distribute a copy of the law to all employees.

Mr. Diaz said that the transition should be a seamless one. He then suggested that consideration should be given to minimizing the potential conflict between the new Board's legal work and that of the Law Department, since the new Board would not necessarily be bound by the opinions of the Solicitor on the one hand, but the Solicitor is required to defend and indemnify City officials in certain instances on the other. Mr. Diaz said that the new Board would have a range of options in terms of how it relates to the Law Department and suggested that it could chose to be proactive to avoid potential conflicts.

Mr. McElhatton said that it would be essential for the new Board to avoid such potential conflicts. He also suggested that other jurisdictions may have experienced similar issues and that the Board could learn from those experiences. Mr. Diaz then asked Mr. Meyer to outline what other jurisdictions facing similar issues have done to minimize the potential for conflict.

III. Board Membership

Mr. Creamer reported that Mr. McElhatton's reappointment letter was being processed by the Administration.

Mr. McElhatton said that the Mayor should consider filling the two vacancies on the Board because such interim appointments would provide a unique opportunity to get engaged in the creation of the new Board.

IV. Whistleblower Protection Ordinance

Mr. Creamer reported that he delivered the Board's Whistleblower Protection Ordinance Policy to the Administration on December 2nd. Since then, the Administration had raised the issue of conforming the complaint process in the proposed ordinance to the amendments to Bill 051024.

Mr. Diaz informed the Board that Mr. Meyer had made the necessary revisions to the complaint process. Under those revisions, complaints would go to the Ethics Board, which could refer matters to appropriate agencies. A copy of the revised ordinance was circulated at the meeting. Mr. Meyer said that a new package would have to be prepared for resubmission to the Administration.

V. Executive Director's Report

1. Gift Ban Reminder Initiative

At the November 15th meeting, the Board discussed recommending to the Administration that a letter be sent to City vendors to remind them about the gift ban during the Holiday Season. A draft reminder letter was circulated at the meeting and some possible distribution options were discussed.

Mr. Creamer reported that the draft letter was subsequently sent to the Administration with the suggestion that they consider having department heads send the letter to their vendors. A draft gift return letter was also sent to the Administration for officials and employees to use when returning gifts from prohibited sources.

On December 7, 2005, the Mayor signed the gift ban reminder letter, which is in the process of being sent to approximately 8,000 City vendors, using the FAMIS database of vendors paid by the City.

In addition, copies of Executive Order 002-04 (the gift ban order), Board of Ethics Opinion 2004-03 (explaining the gift ban for the Holiday Season) and the gift return letter template are being distributed to all City employees through the payroll distribution system. The Holiday Gift Ban Reminder Initiative was reported in the Daily News on December 8, 2005.

On Friday, December 9th, Mr. Creamer was asked to speak at the Managing Director's Commissioners' meeting, to describe the gift ban reminder initiative and to remind the Commissioners about the gift ban. Mr. Creamer learned at that meeting that the Capitol Program Office sent a similar reminder letter to approximately 1,000 contractors, architects and engineers some time before Thanksgiving. Mr. Creamer also took the opportunity to ask the Commissioners to check with their Human Resource Managers to ensure that they submit their ethics training schedule by December 15th, if they have not already done so.

2. Ethics Training Update

A sixth "Train the Trainers" session was conducted on November 22, 2005 for the Health Department for approximately 20 trainers. A seventh session was held for another 20 trainers on December 8, 2005, bringing the total number of trainers to just over 200.

A eighth "Train the Trainers" session has been scheduled for December 14, 2005. In that session, we will train approximately 80 trainers for the Department of Human Services. That will bring the number of trainers to approximately 280.

Training schedules for individual departments and agencies must be submitted to Central Personnel by December 15, 2005. The Managing Director has sent a memorandum to all commissioners and directors asking them to check with their human resource managers to ensure that their schedules are submitted by the deadline.

3. COGEL Conference

Mr. Meyer and Mr. Creamer both attended COGEL's 2005 Conference in Boston last week. The annual Conference ran from Sunday, December 4th, through Wednesday, December 7th. Representatives from government ethics agencies, commissions and boards from around the country and from several foreign countries attended the Conference.

Mr. Creamer said that it was extremely valuable to learn how other ethics programs are developing and to meet the various leaders and representatives of ethics bodies from around the country. Mr. Creamer also said that he had an opportunity to describe what is happening in Philadelphia during a municipal update session, and that Councilman Nutter spoke on a panel in a session on "pay-to-play" reform efforts.

4. Web Site Update

We continue to add more content to the web site. Since the last Board meeting, we have added Dan's written Testimony before Council's Committee on Law & Government, submitted on November 16th. We have also added the short version of the Whistleblower Protection Policy approved at the last meeting, as well as the Campaign Donation Limit FAQs and the Mayor's Holiday Gift Ban Reminder letter to City vendors. Finally, we have posted the Board's 2006 meeting schedule.

Mr. Creamer reported that he received an email from the Executive Director to the State Ethics Commission after the COGEL Conference, indicating that he had visited our web site and that he was instructing his IT officer to create a link to our web site on the State Ethics Commission's web site.

5. DOJ Antitrust Awareness Training Update

Ed Panek continues to make progress with the DOJ Antitrust Awareness Training project. He is scheduled to train the School District Procurement officers on December 13th and the PGW procurement officers on the 14th. He has offered dates to the City's Procurement Department and hopes to have them scheduled by the 16th.

VI. Posting Public Session Board Meeting Minutes on Web Site

It was agreed that the meeting minutes for the Board's public sessions would be posted on the Board's web site in order to give the public greater access to information about the Board and how it has operated.

VII. New Business

There was no new business.