

Philadelphia Board of Ethics
Meeting Minutes
November 20, 2013 - 1:00 p.m.
One Parkway Building
1515 Arch Street, 18th Floor

Board Present

Michael H. Reed, Esq., Chair
Judge Phyllis Beck (Ret.), Vice-Chair
Brian J. McCormick Jr., Esq.
Reverend C. Kevin Gillespie

Staff Present

J. Shane Creamer, Jr., Esq.
Nedda Massar, Esq.
Maya Nayak, Esq.
Michael Cooke, Esq.
Elizabeth Downey, Esq.
Bryan McHale
Tina Formica
Hortencia Vasquez

A public hearing was held prior to the Board meeting regarding the Board's proposed Regulation No. 10, Gifts, commencing at approximately 1:00 p.m. A court reporter was present during the hearing, as was Martha Johnston, a representative of the Philadelphia Law Department. Board member Sanjuanita González, Esq. was present for the hearing by phone.

Chair Reed recognized the presence of a quorum and called the meeting to order at 2:15 p.m.

I. Approval of Minutes

By a 4-0 vote, the Board approved the meeting minutes for the public meeting that was held on October 16, 2013.

II. Executive Director's Report

A. Litigation Update

i. Lodge No. 5 of the Fraternal Order of Police, et al. v. City of Philadelphia, et al.

Mr. Creamer explained that on May 18, 2011 the FOP brought suit against the City and the Board of Ethics seeking to strike down the Home Rule Charter's ban on members of the Police Department making political contributions. He reported that on February 21, 2013 Judge Sanchez of the Federal District Court granted the City's motion for summary judgment and

dismissed the FOP's case, thereby upholding the ban. The FOP has appealed Judge Sanchez's ruling to the Third Circuit Court of Appeals. The FOP filed their brief in support of their appeal in late May and the Board's brief in response was filed on July 11, 2013. On behalf of the Board, Mr. Creamer thanked Eleanor Ewing of the Law Department who represented the Board at oral argument on November 12, 2013.

ii. Cozen O'Connor v. Philadelphia Board of Ethics

As Mr. Creamer reported last month, a panel of the Commonwealth Court affirmed the trial court's ruling in the Board's favor in the case *Cozen O'Connor v. Board of Ethics*. Mr. Creamer added that Cozen filed a petition for allowance of appeal with the Pennsylvania Supreme Court on July 17, 2013 and the Board's attorneys at Dechert filed an answer to Cozen's petition on July 31, 2013. Whether Cozen's attempted appeal is allowed to go forward or not is up to the Supreme Court's discretion.

B. Lobbying Update

Mr. Creamer reported that since the October Board meeting, staff has worked on a daily basis on the registration portion of the online lobbying system. The Board's project team, which consists of three members of the Board's staff and the OIT project manager, and the project team from the vendor, Acclaim Systems, have compiled the system requirements for the registration software, and the developers at Acclaim are simultaneously working on the software design.

Because Acclaim has experience with the state lobbying software system, staff remains optimistic that the online lobbying registration component can be ready by early 2014.

C. COGEL

Mr. Creamer said that he will report next month on staff's participation in the December 2013 Conference of the Council on Governmental Ethics Laws (COGEL). COGEL is a voluntary international organization composed primarily of local, state, and national government officials who regulate ethics, campaign finance, lobbying, freedom of information, and election administration laws. This year's Conference will be held in Quebec City from December 8 through December 11, 2013.

Mr. Creamer said that he is proud that members of staff continue to be involved in COGEL activities, including the Conference. Mr. Creamer said that he is currently serving as a member of the COGEL Steering Committee which functions as the organization's Executive Committee. He explained that he will attend the conference with Michael Cooke and Elizabeth Downey and that Ms. Downey will host a Breakfast Table Topic at the Conference. Ms. Massar, who is a COGEL Past President, currently serves on the Awards Committee and has helped organize a Conference session called the Local Agency Roundtable.

D. Resign to Run Amendments

Mr. Creamer informed the Board that a public Council hearing would take place on November 22, 2013 to discuss legislation sponsored by Councilman Oh removing the Charter's resign to run requirement for City elected officials. He explained that Councilman Oh made a presentation on this legislation to the Board at the August Board meeting and that the Councilman has invited the Board to testify on the legislation at the November 22nd Council hearing. Mr. Creamer sought guidance from the Board on whether he should testify on the Board's behalf and what his testimony should include.

The Board did not want to take a position for or against the legislation without more time to consider the matter. Board members, however, wanted Mr. Creamer to testify before Council to reiterate the Board's support for amendments to the bill, which had been suggested by Board Staff and incorporated by Councilman Oh, pushing the effective date to 2016 and allowing a candidate to run for only one public office at a time. Also, the Board wanted Mr. Creamer in testifying to be available as a resource to answer questions from Council about the possible interaction of the legislation with the City Campaign Finance Law that the Board oversees.

III. General Counsel's Report

A. Advisory Opinions

Ms. Nayak reported that no advisory opinions have been issued since the October Board meeting.

Ms. Nayak explained that with Elizabeth Downey and Bryan McHale, she has created indexes covering the approximately thirty advisory opinions that the Board and General Counsel issued during 2012 and the first half of 2013. The indexes have an entry for each opinion with a summary of the opinion, keywords that identify what the opinion addressed, and a list of significant legal citations contained in the opinion. Ms. Nayak said that the keywords are particularly helpful for searching for opinions that address specific topics and that the indexes are available on the Board's website as well as included as appendices to the Board's annual report that was issued in September.

There was a brief discussion regarding the advice indexes. Mr. McCormick suggested looking at the website of the First Judicial District for further ideas as to how to compile searchable data of legal opinions.

B. Informal Guidance

Ms. Nayak briefly reviewed the summary of informal guidance chart for Board members.

Summary of Informal Guidance Provided October 9 – November 12, 2013

General topic	Total #	Phone	email	phone & email	in-person	Subtopics
Lobbying	22	11	6		5	Q3 expense reports; completing, amending, and terminating lobbying registration; activities reportable as lobbying
Campaign Finance	16	13	2	1		Reporting and registration requirements; independent and coordinated expenditures; contribution limits; campaign finance database; doubling of contribution limits
Political Activity	5	2	3			Restriction on City employee participation at ward meeting; voting during lunch break; political fundraiser in City facility rented to public
Gifts	4	2	1	1		Acceptance of tickets; annual aggregated value of gifts from a single restricted source; City-related non-profit accepting private event proceeds
Post-Employment	1			1		
Other	1			1		Non-competitively bid contract reform law

This chart is a partial picture of informal guidance provided during the specified time period. Five Board Staff members tracked the assistance they gave and provided data: the General Counsel, Director of Enforcement, Deputy Executive Director, Public Integrity Compliance Supervisor, and Associate General Counsel.

V. New Business

No new business was discussed.

VI. Questions/Comments

Ellen Kaplan of the Committee of Seventy commented on the resign to run legislation, noting it was the goal for the ballot question to be on the May 2014 ballot. She stated she did not believe it was incumbent on the Board to take a position on the legislation.

Chair Reed announced the Board would meet in executive session to address confidential enforcement matters. The public session of the Board's meeting was adjourned at 3:00 p.m.