

Philadelphia Board of Ethics
Meeting Minutes
July 23, 2008
Board of Ethics
Packard Building
1441 Sansom Street, 2nd Floor
1:00 pm

Present:

Board

Richard Glazer, Esq., Chair
Richard Negrin, Esq., Vice Chair
Phoebe Haddon, Esq.
Kenya Mann, Esq. (via Conference Call)
Stella Tsai, Esq.

Staff

Danielle Cheatam
Michael Cooke, Esq.
J. Shane Creamer, Jr., Esq.
Tina Formica
Nedda Massar, Esq.
Evan Meyer, Esq.
Maya Nayak, Esq.
Brandon West

Guest

Joseph Tressa

I. Call to Order

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

II. Approval of Minutes

The Board approved the meeting minutes for the public meeting that was held on June 18, 2008.

III. Executive Director's Report

A. Litigation Update

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

Mr. Creamer reported that on July 9th, Chief Judge Harvey Bartle III granted the motions of all defendants, including the Board of Ethics, to dismiss the suit filed by Local 98, a political committee, alleging that requirements of state and local law violate Local 98's First Amendment rights. Specifically, Local 98 COPE alleged that the requirement to produce vouchers of all of its expenditures in 2007, pursuant to the Board's request under state law, was overbroad because it required disclosure of its issue advocacy expenditures, as well as its election-related expenditures.

Mr. Creamer said that the Court agreed with the defendants and found that "[i]t is undisputed" that Local 98 is a "political committee" whose purpose is to influence elections. Judge Bartle rejected Local 98's argument that it had a "constitutional right to engage in issue advocacy without disclosure of vouchers substantiating their expenditures for that purpose . . ." He concluded that the state and City laws "are not unconstitutionally vague or overbroad in violation of the First Amendment."

2. Cozen O'Connor Suit Against the Board in the Court of Common Pleas

Mr. Creamer reported that on June 10th, Judge Gary DiVito dismissed with prejudice the complaint filed by Cozen O'Connor against the Board of Ethics. The Cozen lawsuit challenged the Board's authority to issue Advisory Opinion 2007-003 which concluded that contribution limits continued to apply after the 2007 primary election to contributions that are received by a candidate to retire campaign debt. The Cozen firm is owed almost \$450,000 by Bob Brady's 2007 campaign, and the law firm argued that the Board's September 2007 Advisory Opinion was an impediment to its receipt of payment.

Mr. Creamer said Judge DiVito concluded that Cozen O'Connor "has no standing to prosecute" its action. The Court stated that "[a]t best, the plaintiff has a contract dispute with its client, Friends of Bob Brady." Cozen O'Connor is not subject to the jurisdiction of the Board of Ethics, and even if the Court were to rule in Cozen's favor, "there is no guarantee" that the Friends of Bob Brady would raise enough funds to pay its debt to Cozen O'Connor.

Mr. Creamer also reported that on July 21st, Cozen filed a Notice of Appeal from Judge DeVito's Order dismissing the law firm's complaint. The Appeal will be filed with the Commonwealth Court.

B. Compliance Update

1. Nonfiler: PFT Committee to Support Public Educaiton

Mr. Creamer said that he sent a letter to the treasurer of the PFT Committee to Support Public Education on June 6, 2008, informing him that his committee should have electronically filed reports for cycles 1 through 7 in 2007 because the committee's reports filed with the Department of State disclosed contributions to candidates for City office. The letter set an extended deadline of June 20, 2008. All seven reports were electronically filed by the extended deadline. Because the extended deadline was not exceeded, the Board will not seek to impose a penalty.

2. Nonfiler: Laborers District Council

Mr. Creamer said that he sent a letter to the treasurer of the Laborers District Council political committee on June 6, 2008, informing him that his committee should have electronically filed reports for cycles 2, 3, 4 & 6 in 2007 because the committee's reports filed with the Department of State disclosed contributions to candidates for City office. The letter set an extended deadline of June 20, 2008. All four reports were electronically filed by the extended deadline. Because the extended deadline was not exceeded, the Board will not seek to impose a penalty.

C. Personnel

Information Specialists

Mr. Creamer introduced Danielle Cheatam and Brandon West, who were hired on July 1st as Information Specialists. They were provided with staff manuals which included sections of the Charter, Code, State law, and other materials. In addition

to receiving the Ethics Code, they were given copies of the City policies on email and Internet use, preventing sexual harassment, and political activity. Evan and Maya presented an Ethics Training session on July 2nd as an introduction to the Board's work, and Brandon and Danielle began immediately to work on an investigation-related project with Michael. Training is on-going and staff discussed ethics, campaign finance, and financial disclosure materials.

Mr. Creamer informed the Board that staff expects to make an offer by the end of July to fill the **Clerical Assistant** position.

He then introduced Joseph Tressa, a student at West Catholic High School, who is our **intern**. He too started on July 1st and works 16 hours per week here at the Board. Joseph sat in on several training sessions with Danielle and Brandon, answered telephone calls, filed documents, did data entry, made copies of documents, and made deliveries. The Mayor's Internship Program also provides seminars on various topics, including financial literacy and careers, for the student interns.

D. Training

Mr. Creamer reported that Evan and Maya presented an ethics training on July 17th for new administration employees, and yesterday they conducted an ethics session for officers of District Council 47. Another session for DC 47 is scheduled for August 21st.

He also reported that seven ethics training sessions are now scheduled in August (August 4, 6, and 18) and September (September 9, 11, 23, and 25) for members of the boards and commissions identified by the Board of Ethics as having significant City powers and responsibilities. Letters were sent to the 26 boards and commissions on July 14th announcing the August and September training dates and times, and members may register on our website or by mail. Notices will be sent to the remaining boards and commissions in the fall and several more training dates will be added for their members.

(Ms. Haddon arrived at the meeting.)

Mr. Creamer informed the Board that Evan, Maya, and Nedda met with Human Resources Director Al D'Attilio and his staff on July 11th to request the services of the departmental trainers to conduct ethics training for City employees. While the training consortium no longer exists, Mr. D'Attilio said that his training

professionals and additional Human Resources staff will work with the Board to train City employees. Evan and Maya will work with the HR Department staff and “train the trainers” in the near future so that we can meet our employee training mandate for 2008.

E. Financial Disclosure

Mr. Creamer informed the Board that staff has been working with Joan Markman and her assistant Lauren to compile a current list of the members of the many City boards and commissions. Staff created a list of the members of the City’s major boards and commissions and has begun to confirm compliance with the financial disclosure requirements. Staff also identified 47 members of the boards and commissions who have filed no financial disclosure statements, and letters advising them of their “non-filer” status were sent on July 21st. These individuals were given until August 4th to file, and staff will report to the Board on the results of this outreach at the next meeting.

Mr. Creamer also said that staff will continue to collect information on the members of the many remaining boards and commissions and will similarly review their compliance status.

F. Publication of Plain English Explanation of the Campaign Finance Law

Mr. Creamer reported that the “Plain English Explanation of the Campaign Finance Law” was republished on June 30th in the Philadelphia Inquirer, Daily News and 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. It was last published on January 14 (Inquirer & Daily News) & 15 (Philadelphia Tribune), 2008.

G. Future Board Meetings

Mr. Creamer advised the Board that staff is developing a series of topics for extended Board discussions to begin in the fall. These topics include future outreach plans for the business community and public, campaign finance questions and possible regulations for the 2009 elections, and possible future legislative recommendations. The Board has also expressed an interest in a luncheon or dinner discussion.

At the close of Mr. Creamer’s report, the Chair asked for any comments.

Ms. Tsai asked the Board to look into the requirement to place the “Plain English Explanation of the Campaign Finance Law”, which costs over \$10,000 every six months.

The Chair asked for a motion for the Executive Director to communicate in writing to the Department of State a request for the State to enforce the Board’s request to receive vouchers from Local 98. The motion was unanimously approved and the Chair asked Mr. Creamer to send a letter to the Department of State.

IV. General Counsel’s Report

1. Advices of Counsel.

Mr. Meyer reported that he issued three of these since last month’s report:

a. Advice of Counsel of June 25, 2008 (Negrin). Advised a member of the Board of Ethics, who is also in-house counsel for a local company (Aramark), concerning the application of the conflict of interest rules to his representation of his company in matters involving the City.

b. Advice of Counsel of July 7, 2008 (Phillis). Advised the City’s Chief Information Officer, scheduled to separate from the City on July 31, of current restrictions on conflicts in seeking future employment and post-employment restrictions that will apply after separation.

c. Nonpublic Advice of Counsel of July 8, 2008. Advised a City civil service employee that Charter Section 10-107 (Political Activities) would prohibit the employee from appearing in a current photograph of his/her family that would be included in campaign literature supporting the candidacy for elective office of a member of the employee’s immediate family.

2. Informal e-mail guidance.

Mr. Meyer stated that through Friday, July 18, there were four of these since last month’s meeting:

a. Received a request as to whether the Charter restriction on political activity applied while employee is on leave of absence. Answer: yes. Provided copy of

the 2005 Law Department Political Activity Guide, which addresses this point in a Q & A.

- b. Received a request from a former City official regarding post-employment restrictions. Provided a copy of the relevant Law Department newsletter and pointed out the procedure for requesting an advisory from the Ethics Board on which the requestor may rely.
- c. Received an inquiry, referred from the City's Chief Integrity Officer, regarding a short-term personal loan between a local attorney and a City official, based on a personal friendship. Upon follow-up to obtain more details as to the terms of the loan (specifically interest rate), the request was apparently dropped, as no response was received.
- d. Received an inquiry from a recently-retired City employee regarding consulting for a City contractor. Provided copies of Law Department Client News on post-employment and the Advice of Counsel of July 7, 2008 (Phillis) noted above, and summarized the three post-employment "rules."

3. Law Department CLE

Mr. Meyer informed the Board that he was asked to be a presenter on the panel for the "Ethics" session at the annual Law Department Continuing Legal Education program on July 16. The topic for the panel was "Who Ya Gonna Call?" and the subject was the relative responsibilities of the Board of Ethics, the Inspector General, the Chief Integrity Officer, and the Law Department. Also with him on the panel were Inspector General Amy Kurland, Chief Integrity Officer Joan Markman, and Law Department Senior Attorney Lewis Rosman. The panel was moderated by Law Department attorney Martha Johnston.

Mr. Negrin asked if the Law Department CLE program is open to lawyers outside of the Law Department. Mr. Meyer responded that the Law Department invites local lawyers and government agencies.

Mr. Glazer applauded Mr. Meyer for his work on the CLE presentation.

V. Report on Regulation No. 4, Seeking Advice from the Board of Ethics

The Chair stated that the Board is prepared today to approval Regulation No. 4. He asked the Board members if they have any questions, comments or concerns.

The Chair asked for a motion to approve Regulation No. 4. The motion was unanimously approved and Mr. Meyer was asked to send the Regulation to the Law Department for signature and then file with the Records Department.

Mr. Meyer asked if staff could make sure the Regulation is posted on the Board's website on August 4th.

VI. New Business

No new business was discussed.

VIII. Questions/Comments

Robert Ximines from Community Behavioral Health inquired about the ethics training program. There was a discussion among the Board regarding quasi-public agencies receiving ethics training.

IX. Executive Session

At the conclusion of Questions/Comments, the Board concluded the public session of its meeting and went into Executive Session.