

Philadelphia Board of Ethics

Contact: J. Shane Creamer, Jr., Executive Director, 215-686-9450

For Immediate Release: May 8, 2015

PHILADELPHIA – On May 8, 2015, the Board of Ethics approved a settlement agreement with the Citizens for Kenyatta Johnson campaign relating to excess pre-candidacy contributions as well as material misstatements and omissions made in a campaign finance report filed with the Board.

A copy of the approved settlement agreement is attached.

The Philadelphia Board of Ethics is a five-member independent board established by ordinance, approved by Philadelphia voters in May 2006, and installed on November 27, 2006. It is charged with providing ethics training for all City employees and enforcing among other things, City campaign finance, financial disclosure, lobbying, and conflict of interest laws. The Ethics Board has authority to render advice, investigate complaints and issue fines.

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SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into by the Board of Ethics of the City of Philadelphia, J. Shane Creamer, Jr., Executive Director of the Board of Ethics, the Honorable Kenyatta Johnson, and Citizens for Kenyatta Johnson, jointly referred to as “the Parties.”

RECITALS

- A. The Board of Ethics of the City of Philadelphia is a five-member, independent board established by ordinance, approved by Philadelphia voters in May 2006, and installed on November 27, 2006. Pursuant to Section 4-1100 of the Home Rule Charter the Board is charged with administering and enforcing Philadelphia’s Campaign Finance Law. The Ethics Board has provided a detailed interpretation of the campaign finance law in its Regulation No. 1 (Campaign Finance).
- B. Councilman Kenyatta Johnson is a candidate for City Council in the 2nd District in the upcoming May 2015 Democratic primary election. Councilman Johnson announced his candidacy for City Council on January 24, 2015.
- C. Councilman Johnson has designated the political committee Citizens for Kenyatta Johnson as the one committee which will accept contributions and make expenditures for his campaign for City Council.
- D. When Councilman Johnson became a candidate for City elective office, he became subject to the City’s Campaign Finance Law, as set forth in Philadelphia Code Chapter 20-1000 and interpreted by Board of Ethics Regulation No. 1.
- E. Pursuant to Philadelphia Code § 20-1002(1) and Regulation No. 1, Paragraph 1.2(a), an individual cannot contribute more than \$2,900 per calendar year to a candidate for City elective office.
- F. Pursuant to Philadelphia Code § 20-1002(2) and Regulation No. 1, Paragraph 1.3(a), a political committee cannot contribute more than \$11,500 per calendar year to a candidate for City elective office.
- G. Before an individual becomes a candidate, the contribution limits do not apply. However, pursuant to Regulation No. 1, Paragraph 1.44(a) and (b), within ten days after becoming a candidate, a candidate must exclude all excess pre-candidacy contributions received during the accounting period from his or her candidate political committee checking account by either transferring them to a segregated pre-candidacy excess contribution account, or returning them to their contributors.
- H. An excess pre-candidacy contribution is the portion of a pre-candidacy contribution to a political committee that, had it been made to a candidate for City elective office, would have been in excess of the contribution limits.

- I. The accounting period is the period from January 1 of the year following the previous election that was held for the City elective office a candidate is seeking through 5:00pm of the day before he or she became a candidate. In this instance, for Councilman Johnson, the accounting period was January 1, 2012 through 5:00pm on January 23, 2015.
- J. Pursuant to Regulation No. 1, Paragraph 1.44(b), a candidate determines the amount of money to exclude either by using a dollar-for-dollar calculation or an accounting-based calculation. Under an accounting-based calculation, a candidate does not have to exclude any excess pre-candidacy contributions that he or she demonstrates, using a reasonable accounting method, were actually spent before becoming a candidate. However, any pre-payments the committee made do not constitute expenditures of excess pre-candidacy contributions when using this accounting method. A pre-payment is a payment made during the accounting period for anything used or to be used by a candidate's campaign.
- K. Pursuant to Regulation No. 1, Paragraph 1.43(a), a candidate may not spend any excess pre-candidacy contributions for the purpose of influencing the outcome of a City election in which he or she is a candidate.
- L. From January 1, 2012 through January 24, 2015, the Citizens for Kenyatta Johnson committee accepted approximately \$6,100 in excess pre-candidacy contributions.
- M. In late January 2015, Board enforcement staff received a complaint regarding the Kenyatta Johnson campaign's handling of excess pre-candidacy contributions.
- N. In response, Board enforcement staff opened an investigation and reviewed documents to determine whether the Johnson campaign's accounting of excess pre-candidacy contributions complied with the City's Campaign Finance Law.
- O. After a thorough review of the Citizens for Kenyatta Johnson committee's financial records, the Board determined and the committee agreed that, based on a first-in, first-out accounting method, the committee had spent all but \$3,900 of the excess pre-candidacy contributions it had accepted during the accounting period.
- P. Pursuant to Philadelphia Code § 20-1006(1)(a) and Regulation No. 1, Paragraph 1.21(a), candidates for City office and their political committees are required to electronically file campaign finance reports with the Board. Pursuant to Philadelphia Code § 20-1006(4) and Regulation No. 1, Paragraph 1.24, the making of a material misstatement or omission in a report filed with the Board is a violation of the City's Campaign Finance Law.
- Q. Separate and apart from the matters described above, the 2014 cycle 7 campaign finance report Citizens for Kenyatta Johnson filed with the Board contained several material misstatements and omissions.
- R. Pursuant to Philadelphia Code §20-1302, the base penalty for a violation of Philadelphia Code § 20-1006(4) and Regulation No. 1, Paragraph 1.24 is \$1,000.

- S. When Board enforcement staff brought the matters described in this agreement to the attention of the Johnson campaign, the campaign promptly acknowledged them and agreed to resolve them by settlement. At all times, the Johnson campaign fully cooperated with the Board's investigation.
- T. The Parties desire to enter into this Agreement in order to resolve the issues described herein.

AGREEMENT

The Parties agree that:

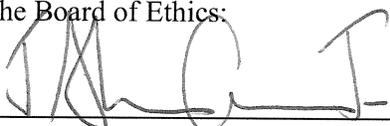
1. Within three days of the effective date of the Agreement, Citizens for Kenyatta Johnson will transfer \$3,900 to a segregated pre-candidacy excess contribution account. As long as Councilman Johnson is a candidate for City office in 2015, he will not spend any monies held in this account nor will he transfer such monies to a litigation fund. Nor, at any time will he use such monies for post-candidacy expenditures.
2. By making material misstatements and omissions in the 2014 cycle 7 campaign finance report it filed with the Board, Citizens for Kenyatta Johnson violated Philadelphia Code § 20-1006(4) and Regulation No. 1, Paragraph 1.24, and is subject to a civil monetary penalty of \$1,000, which it shall pay by check made payable to the City of Philadelphia and delivered to the offices of the Board within seven days of the effective date of the agreement.
3. Within seven days of the effective date of the Agreement, Citizens for Kenyatta Johnson shall file electronically with the Board an amended 2014 cycle 7 campaign finance report correcting all omissions and misstatements made in the report as originally filed.
4. Councilman Johnson and Citizens for Kenyatta Johnson release and hold harmless the Board and its staff from any potential claims, liabilities, and causes of action arising from the Board's investigation, enforcement, and settlement of the matters described in this Agreement.
5. In consideration of the above and in exchange for Councilman Johnson's and Citizens for Kenyatta Johnson's compliance with all of the terms of the Agreement, the Board waives any further penalties or fines against them for the violations described in this Agreement.
6. The Parties will not make any public statements that are inconsistent with the terms of the Agreement.
7. If the Board or the City is forced to seek judicial enforcement of this Agreement, and prevails, Councilman Johnson and Citizens for Kenyatta Johnson shall be liable for attorneys' fees and costs reasonably expended in enforcing compliance with the Agreement. Fees for time spent by Board or City attorneys shall be calculated based

upon standard and customary billing rates in Philadelphia for attorneys with similar experience.

8. The Agreement contains the entire agreement between the Parties.
9. The Executive Director will submit a signed copy of the Agreement to the Board for approval.
10. The Agreement shall become effective upon approval by the Board. The effective date of the Agreement shall be the date the Board Chair signs the Agreement.
11. If the Board rejects the proposed Agreement, presentation to and consideration of the Agreement by the Board shall not preclude the Board or its staff from participating in, considering, or resolving an administrative adjudication of the matters described in the Agreement.
12. If the Board rejects the proposed Agreement, nothing in the proposed Agreement shall be considered an admission by either party and, except for paragraphs 11 and 12, nothing in the Agreement shall be effective.

Dated: 5/6/15

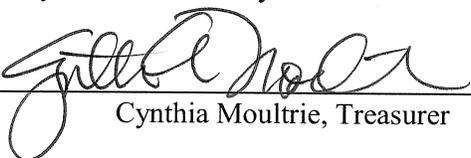
By the Executive Director of
the Board of Ethics:



J. Shane Creamer, Jr.

Dated: 5/5/2015

By Citizens for Kenyatta Johnson:



Cynthia Moultrie, Treasurer

By Hon. Kenyatta Johnson:

Dated: 5/4/15

Kenyatta Johnson

Approved by the Board of Ethics:

Dated: 5/8/15

Michael H. Reed
Michael H. Reed
Chair