

*City of Philadelphia  
Board of Ethics  
2008 Annual Report*



*March 2009*

# **City of Philadelphia**

## **Board of Ethics**

### **Honesty, Integrity, Transparency**

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## Message from the Chair

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As we prepare an Annual Report for the second time since our formal establishment in late 2006, it is natural to consider and compare the Board of Ethics' performance over the last year to that of our first year.

While 2007 could be characterized as a year of beginnings, including the first investigations resulting in enforcement, this past year, 2008, found us in a more mature self-directed status. As described within this report, the addition of competent, energetic staff permitted comprehensive investigations of the 2007 election campaigns with significant settlements applauded by both the press and the public, made possible by thorough and tenacious efforts by staff.

One of the original Board Members, Stella Tsai, resigned in October of this year to join the newly created Zoning Code Commission. We are grateful for Stella's service and tangible contributions to our efforts over the course of her two-year tenure. Unfortunately, as of the preparation of this message, her position remains unfilled.

Again, in 2008, we, and, in turn, the citizens of Philadelphia have been the beneficiaries of the extraordinary *pro bono* service of Cheryl Krause and her colleagues at Dechert LLP and of Greg Miller, Gregg Mackuse and the members of Drinker Biddle and Reath LLP. The drastic budget reductions facing us in 2008 create real challenges for continued vigorous investigation and enforcement activity. With local law firms experiencing much the same economic pressures, I remain concerned about our continued reliance on the generosity of volunteer legal assistance in the near term.

The Philadelphia Inquirer best summed up this year's performance in a March 27, 2009 editorial:

"The (Ethics Board) panel's record of success so far probably offers the best evidence of real reform since Mayor Nutter took office on a change-the-culture pledge."

With continued focus and diligence we hope to merit such sentiments as we undertake our responsibilities.

RICHARD GLAZER, CHAIR  
Philadelphia Board of Ethics



## *Members of the Board of Ethics*

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**Richard Glazer, Esq.**, a founder of Cozen O'Connor, one of the 100 largest law firms in the United States. Mr. Glazer serves as Chair of the Board of Ethics. He has served on the boards of a number of local non-profit organizations, including the Committee of Seventy and also the Public Interest Law Center. He has recently accepted the position of Executive Director of the Pennsylvania Innocence Project. Mr. Glazer's term on the Board will run until 2011.



**Phoebe A. Haddon, Esq.**, Professor of Law, Temple University Beasley School of Law. Professor Haddon has served on the boards of numerous non-profit organizations related to equal access to education and social justice and is presently on the ABA Council of the Section of Legal Education and Admissions to the Bar, the Board of Trustees of Smith College, and Pennsylvanians for Modern Courts. Professor Haddon's term on the Board will run until 2009.

**Kenya Mann, Esq.**, a partner in the Litigation Department and a member of the White Collar Litigation Group at Ballard Spahr Andrews & Ingersoll, LLP. Prior to joining the law firm, Ms. Mann served as Assistant U.S. Attorney, Criminal Division, in the Eastern District of Pennsylvania. Ms. Mann's term on the Board will run until 2009.

**Richard Negrin, Esq.**, Vice President and Associate General Counsel for ARAMARK. Mr. Negrin serves as Vice Chair of the Board of Ethics. He served previously as an attorney at Morgan Lewis and as a prosecutor in the Major Trials Unit of the Philadelphia District Attorney's Office. Mr. Negrin's term on the Board will run until 2010.



**Stella Tsai, Esq.**, an attorney with the law firm of Archer & Greiner. Previously Ms. Tsai served as Chair of Administrative Law for the City of Philadelphia Law Department, and also as counsel to the City Civil Service Commission. Ms. Tsai's served on the Board through October, 2008. Her successor will be appointed by Mayor Nutter.



## *Message from the Executive Director*

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The Board of Ethics made significant strides in 2008 toward effective administration and enforcement of the City's public integrity laws, and those accomplishments are described in this Report. Much of our progress can be attributed to the expansion of the Board's staff to include five talented individuals

who have already contributed in many ways to our on-going training, advice, and enforcement activity. These new staff members bring a variety of experiences and great enthusiasm to the Board.

While our enforcement activity gets much public attention through newspaper articles and editorials, our day-to-day training and advisory roles are not as well known. Yet these tasks, which are detailed in this Report, are essential to creating a robust ethical culture in Philadelphia because they promote awareness of the rules and tend to prevent problems and violations before they occur.

Now that the Board has both established and exercised its authority to administer and enforce the City's public integrity laws, the next logical step is to determine whether public confidence in government could be improved further by rewriting, modifying or supplementing those laws. That is the express mandate that has been assigned to the Mayor's Advisory Task Force on Ethics and Campaign Finance Reform.

As described in this Report, we are proud to have provided significant support to the Mayor's Advisory Task Force based on our experience administering and enforcing the City's ethics and campaign finance laws. We also shared our knowledge of lobbying registration and reporting and public campaign financing and presented detailed legislative recommendations, many of which can be implemented at no cost in this difficult financial time.

The Ethics Board believes that the City's public integrity laws can and should be clarified, improved and supplemented as the next critical step in Philadelphia's continuing effort to promote public confidence in government. The Board and its staff are ready to assist in this important initiative. Finally, as we said last year in our first Annual Report, we will continue to fulfill our mandate with diligence and integrity for the benefit of the City and all its citizens.

J. SHANE CREAMER, JR.  
EXECUTIVE DIRECTOR  
Philadelphia Board of Ethics



## *Board of Ethics Staff*

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### *New Staff*

The Board is proud to have more than doubled the size of its staff by adding five exceptional individuals in 2008. They have already had a significant impact on the Board's work and have increased its ability to provide training and advice and to conduct enforcement activity.

**Michael J. Cooke, Director of Enforcement**, joined the Board in April. As chief deputy in this area to Executive Director J. Shane Creamer Jr., he has played a key role in helping the board reach successful settlements with several political candidates and their campaign committees

Mr. Cooke was formerly an associate with the firm of Burke O'Neil in Philadelphia. After receiving his undergraduate degree from the University of the South in Sewanee, Tenn. and his law degree from Northeastern University in his native Boston, he came to Philadelphia to work with the Pennsylvania Prison Society. There he developed a new program to increase the access of Pennsylvania inmates and ex-offenders to the judicial system. He also served as a staff attorney for the Pennsylvania Institutional Law Project, providing legal services to institutionalized people.

**Maya Nayak** joined the Board as **Associate General Counsel** in May. She works with General Counsel Evan Meyer, specializing in responding to ethics inquiries from City officials and employees and the public. She has also played a key role in the Board's expanded training efforts, leading seminars and helping design and revise training materials.

Ms. Nayak holds undergraduate and law degrees from Yale University and most recently was a litigation associate with the Philadelphia firm of Hangley Aronchick Segal & Pudlin. She served as a law clerk to the Honorable Berle M. Schiller in the U.S. District Court for the Eastern District of

Pennsylvania. Originally from Kentucky, Ms. Nayak was a student director of her law school's Community Legal Services Clinic. Prior to law school, she completed a public service fellowship teaching English in China.

**Danielle N. Cheatam and Brandon Terry West** have vastly increased the Board's research and training capabilities since they were hired in July as **Information Specialists**. In addition to supporting the administrative and enforcement staff, they respond to telephone inquiries for information, have taken over much of the hands-on responsibility for ethics training for City employees, and assist with independent data analysis.

Ms. Cheatam is a native of Kansas City, Mo. and previously worked as a truancy case manager for United Communities of Southeast Philadelphia, a non-profit agency. She is a graduate of Central Missouri State University with a bachelor's degree in criminal justice.

Mr. West, a 2007 graduate of Haverford College, is a native of South Orange, N.J., and recently finished a one-year post-graduate program in public service with the Committee of Seventy. He coordinated and organized the Election Oversight Program, a non-partisan election monitoring project in Philadelphia and Camden.

**Hortencia Vasquez**, clerical assistant, is the voice most people hear when they telephone the Board of Ethics. A native of the Virgin Islands, she joined the board in August to work with administrative assistant Tina Formica to support other staff members. Ms. Vasquez came to Philadelphia four years ago and attended Cite Business School, taking computer-related courses. Before joining the Board she was an intern with the Police Advisory Commission. She is bilingual in English and Spanish.

## *Board of Ethics Staff*

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### *Existing Staff*

**J. Shane Creamer, Jr.**, is the **Executive Director** of the Philadelphia Board of Ethics. He was first appointed interim Executive Director by the members of the new independent Board of Ethics, when the new Board was installed on November 27, 2006, and became the Executive Director in July 2007. Previously, Mr. Creamer served as the Executive Director of the advisory Board of Ethics, the predecessor of the new independent City Board of Ethics, beginning in May of 2005. Prior to that, he served as Assistant Secretary of Education and Assistant Managing Director for the City of Philadelphia. Before joining City government, he was a partner in the litigation department at Duane, Morris & Heckscher. A Philadelphia native, Mr. Creamer is a graduate of Gettysburg College and Villanova University School of Law.

**Evan Meyer** became **General Counsel** to the Board of Ethics in August 2007. He holds a B.A. from Kent State University and an M.A. in English from Temple University. Mr. Meyer received his J.D. in 1985 from Temple, where he was an editor of the law review. He was the administrative law clerk for the Hon. Phyllis W. Beck of the Superior Court before joining the Law Department in September 1987, where he worked closely with the Solicitor and wrote legal opinions interpreting federal, state, and local law on a wide variety of topics. From 1987 to 2005 Mr. Meyer served as counsel to the \$5 billion Municipal Retirement System. Prior to his appointment as the Board's General Counsel, he served as counsel to the City's Mayoral advisory Board of Ethics from 1989 to 2006, and has issued numerous legal opinions and conducted numerous trainings on ethics, public records, and political activity.

**Nedda Gold Massar** is **Deputy Executive Director** of the Board of Ethics. Prior to her appointment to that position in November 2007, for more than 21 years she was a staff member of the New Jersey Election Law Enforcement Commission (ELEC) where she served ELEC as a staff attorney, the Director of the Gubernatorial Public Financing Program, Deputy Legal Director, and Legal Director. Ms. Massar was involved in many reform efforts in New Jersey law, including New Jersey's comprehensive "pay-to-play" laws and its Fair and Clean Elections Pilot Project. She is a graduate of the University of Pennsylvania and Rutgers-Camden School of Law. Ms. Massar is an active member of the Council of Governmental Ethics Laws (COGEL), an international organization whose members work in the areas of governmental ethics, elections, campaign finance, lobbying, and freedom of information. She was COGEL president in 2007.

**Tina Formica** has played a key role in the organization and operation of the Board as its **Administrative Assistant** since March of 2007. Ms. Formica, a Philadelphia native, graduated from St. Hubert's High School and has worked in City government since 1997. She brings her administrative skills and experience in the City's financial and budget processes to her tasks at the Board. Before joining the Board of Ethics, Ms. Formica worked in the Law Department, Mayor's Office, and City Council.

## *Executive Summary*

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The Board of Ethics is proud to present its second Annual Report to the Mayor and City Council. It traces the steps taken in 2008 toward the goal of fostering honesty, integrity, and transparency in Philadelphia government and toward the overall goal of reform of the City's political culture. This Report will highlight the Board's activity and critical accomplishments in the following areas:

- Significant expansion of staff and its impact on the Board's capacity to conduct training, render advice, and investigate and enforce violations of the City's ethics laws.
- Enforcement and litigation, including continued challenges to the Board's authority.
- Confirmation from the City Solicitor of the Board's authority to provide advice and conduct enforcement activity.
- Increased and improved ethics training and plans for future training.

- Advice from the Board, including new Regulation 4 to spell out the types of advice and provide direction for obtaining advice.

Perhaps the most important section of this Annual Report is the Legislative Recommendations section. The Board, which is authorized by Section 20-606 of the Code to make recommendations to the Mayor and Council for legislative changes, suggests that the recommendations in this Report are a blueprint for furthering honesty, integrity, and transparency in City government. The Board presents for consideration by the Mayor and Council the recommendations it made on January 10, 2009 to the Mayor's Advisory Task Force on Ethics and Campaign Finance Reform. The recommendations cover campaign finance, ethics, political activity, lobbying, and public campaign financing. The Board understands that such changes must be accomplished in an incremental fashion, but believes that a plan to implement these recommendations over time is the next important step in reform in Philadelphia government.

## Setting the Tone

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With new staff hired and the 2007 elections behind it, the Board of Ethics was fully up and running by the end of 2008. One of the most ambitious ethics training efforts by any American city continued and key settlements were reached with political candidates and committees who had violated campaign finance laws. And the courts continued to uphold the Board's ability to enforce those laws.

"In 2007, we had to be reactive," said Executive Director J. Shane Creamer Jr. "This was the year we became proactive. We were able to set our own agenda."

"We operate with the assumption that if they know the rules, city officials and city employees will do the right thing. The same holds true for political candidates."

"But in the political arena, where the Board has enforcement jurisdiction, we showed that we will step in regardless of whether the violations are the result of carelessness or intent. The law makes no distinction."

In 2008, Board staff held 41 ethics training sessions attended by more than 700 people.

The sessions were tailored to address the concerns of five distinct groups:

- Administration
- City Council
- Departmental Integrity Officers
- Members of City boards and commissions
- Departmental trainers in the "Train the Trainers" program

The Board's authority to provide advice and conduct enforcement activity was upheld in three crucial opinions from the City Solicitor's Office. One affirmed the Board's independent authority to interpret the ethics laws and said the Board is not bound by prior opinions of the Law Department. The others confirmed the Board's authority to issue administrative subpoenas and to investigate

violations that may have occurred before the present Board was constituted.

The Board was also bolstered by a Commonwealth Court ruling that campaign contribution limits apply even after a General Election is over. A contrary ruling could have opened a gaping hole in the law: Candidates could amass large debts during the campaign knowing that they could raise the funds through unlimited contributions after the election.

The absence of a city election in 2008 ironically helped the Board take its enforcement efforts to a new level. Aided by new staff and the time to investigate, the Board closely examined the 2007 campaigns for Mayor and City Council.

The results were obvious in the settlements reached:

- A union political action committee admitted that it distributed thousands of anonymous campaign flyers and agreed to pay a fine of \$10,000 for eight separate City campaign law violations.
- A City Councilman's campaign committee agreed to pay more than \$22,500 in fines for campaign contribution law violations and to repay another committee more than \$5,000 for receiving excess contributions.
- A state legislator's campaign committee agreed to pay fines of \$7,500 for making those excess contributions to the Councilman.

The Board also provided significant formal and informal advice in interpreting ethics laws. In 27 Advices of Counsel and 128 Informal General Guidance email responses, the Board provided guidance on topics including conflicts of interest, gifts, political activity, outside employment and interest in city contracts.

The Board's work in 2008 both confirmed and demonstrated its critical role in improving ethics in Philadelphia government and political campaigns.

## *Opinions from the City Solicitor Affirming Board Authority*

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The Board sought and received three opinions from City Solicitor Shelley R. Smith in 2008 that confirmed its authority to issue advice and conduct investigations, activities that are at the core of the Board's mission.

The Board requested the Solicitor's advice to clarify the extent of the Board's authority to issue advisory opinions concerning City ethics laws because that authority had previously rested with the Law Department. In an opinion dated May 30, 2008, the Solicitor relied upon the Board's independent status as created in the City Charter and confirmed that the Board of Ethics has independent authority to interpret the ethics laws and is not bound by the advice (including prior published opinions) of the Law Department. The Solicitor stated that while the Law Department retained the authority to issue opinions on state law matters, "the Charter divests the Law Department of the authority to issue advisory opinions regarding ethics restrictions set forth in other sources of law."

In an April 2008 opinion, the Solicitor confirmed that the Board of Ethics has jurisdiction to investigate and enforce violations of the Ethics Laws, in-

cluding the campaign finance law, which may have occurred prior to the creation of the independent Board of Ethics. She noted that "[n]either the Charter nor the Code contains any limitation on the Board's investigatory powers based on whether the offense took place before or after the new [independent] Board was created . . . ."

The Solicitor also confirmed in an August opinion that Charter Section 8-409 gives the Board of Ethics the power to issue administrative subpoenas in its conduct of investigations. The Solicitor concluded that the Board of Ethics, which was given the power by Charter Section 4-1100 to "conduct investigations and convene hearings," has the same power to issue subpoenas as "all other officers, departments, boards and commissions empowered to hold hearings and conduct investigations under the Charter . . . ."

These three opinions put to rest questions about the scope of the Board's authority and confirmed the significant role that the Board is expected to play in City government.

## *Education and Training Activity*

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The Board of Ethics has the responsibility to provide ethics training to City officers, employees, and board and commission members. During 2006 and 2007 the Board reached more than 26,000 City employees with in-person ethics training sessions offered either by the Board or by departmental trainers who had been trained by the Board. During 2008, training was again a major focus of Board activity, and with the addition of new staff, the Board was able to offer more ethics training sessions and to prepare four different versions of training program materials to meet the specific needs of different attendees.

In 2008, Board staff concentrated on providing training to new City employees, including new City Council members and those who were hired as part of the new mayoral administration. There were also specific training sessions for the Inspector General's staff and for the Integrity Officers who serve in each City department to assist the

Inspector General's efforts to eliminate fraud and corruption. The Board continued to rely upon the Human Resources Department and departmental trainers to reach new City employees in 2008 with in-person ethics training and to meet the Board's mandate to provide training to all City employees.

With its additional staff members, the Board made a concerted effort in 2008 to contact and provide ethics training to members of more than 50 City boards and commissions. In 2007, approximately 80 people attended five ethics training sessions for board and commission members. In contrast, in 2008, almost 250 members of City boards and commissions attended 13 ethics training sessions resulting in an increase of more than 200 percent in training provided to board and commission members.

In 2008, Board staff offered 41 ethics training classes to more than 700 attendees:

| <i>Type of Ethics Training</i> | <i># of Sessions</i> | <i># of Attendees</i> |
|--------------------------------|----------------------|-----------------------|
| Administration                 | 8                    | 125                   |
| City Council & Staff           | 8                    | 179                   |
| Integrity Officers             | 3                    | 39                    |
| Union Officials                | 2                    | 7                     |
| Board & Commission Members     | 13                   | 245                   |
| Departmental Trainers          | 7                    | 136                   |
|                                | <b>41</b>            | <b>731</b>            |

## *Education and Training Activity*

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The Board also assisted the Philadelphia School District in presenting three ethics training sessions that were provided by the State Ethics Commission for Philadelphia School District administrators and principals. There were two sessions for School District Central staff and one for principals. Approximately 600 people attended the three sessions which were presented by State Ethics Commission Chief Counsel Robin Hittie and Assistant Counsel Brian Jacisin.

In December, the Board began a series of campaign finance training sessions for prospective 2009 candidates for District Attorney and Controller. These sessions will continue in 2009 and provide guidance on compliance with the City's campaign finance law and the electronic filing requirement for City candidates.

The City Code specifically mandates that certain City officials and employees and all board and commission members must have annual ethics training. It leaves to the Board the task of identifying which other City employees are subject to the annual training requirement. The Board remains committed to providing initial in-person ethics training to all new employees, but will in 2009 undertake an analysis of City positions to determine which other City employees must have annual ethics training and which may receive training on a different interval. The Board also hopes to implement a web-based training pilot project in order to maximize its training capacity.

Providing advice on the City's public integrity laws, including the ethics and campaign finance laws, is a major responsibility of the Board of Ethics. In its 2007 Annual Report, the Board identified a need for a regulation to distinguish among the types of advice it would provide and the legal effect of each kind of advice (formal opinion, advice of counsel, and informal advice). Also, because the Board is authorized by the City Code to keep confidential the identity of the person who requests an opinion, the Board understood that there was a need to clarify the process for invoking confidentiality.

### Regulation 4

Regulation No. 4, Seeking Advice from the Board of Ethics, was enacted to meet these needs and became effective on August 4, 2008, after a public hearing on May 30<sup>th</sup>. The regulation does the following:

- Identifies the information that must be included in a request for advice.
- Describes what a requester must do to maintain confidentiality.
- And defines three types of guidance provided by the Board: advices of counsel, formal opinions, and informal general guidance.

The regulation clarifies that a requester who receives an advice of counsel or a formal opinion may rely on the advice and will not be subject to penalties or sanctions under the ethics laws administered by the Board unless necessary information was omitted from the request for advice. By contrast, Regulation 4 specifies that informal general guidance, which may occur in many forms, including training sessions, newsletters, telephone calls, e-mails, or correspondence, does not provide pro-

tection against enforcement action under the ethics laws. Regulation 4 is attached as Appendix I.

### Advices of Counsel Issued

The 27 Advices of Counsel issued in 2008 addressed the application of the ethics laws to situations ranging from attendance at inaugural events and acceptance of expert witness fees to outside employment and non-profit service work. The 27 Advices are summarized in the Index to 2008 Advices of Counsel (Appendix II).

In addition to the staple of requests concerning potential conflicts of interest, another common subject of advice in 2008 were the post-employment restrictions that apply to former City employees. These requests for post-employment advice came from City employees contemplating retirement, former employees and also a former employee's City department. Their questions concerned activities such as working for employers that provide services to the City, owning a business that helps entities comply with City law, and serving on a City board associated with one's former department.

One of the 2008 Advices arose from a pattern of questions asked during ethics trainings. A frequent question posed by board and commission members was what they should do if a conflict of interest or prohibited representation came to their attention too late for them to file the disclosure and disqualification letters required by the City Code. During trainings, the Board's staff explained that the text of the Code did not appear to contemplate such last-minute notice of conflicts, but the Board of Ethics would endeavor to provide them guidance.

## 2008 Advice

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The result was Advice No. GC-2008-524, which the Board asked the General Counsel to issue and which was sent to board and commission members by email. In short, the advice was that where the last-minute notice of a conflict could not be avoided and City action could not be postponed, board and commission members should announce their nonparticipation, leave the room while their board handles the matter, and bring themselves into compliance with the Code's letter-writing requirements as soon as possible.

The General Counsel and Associate General Counsel responded to many requests in 2008 for advice about permissible political activity for City employees. The level of interest in this topic was most likely generated by increased interest in the 2008 presidential election. Charter § 10-107 governs political activity of City employees and officials and contains significant restrictions on City employees and officials.

An advice of counsel was issued to advise a civil service employee that he or she was prohibited 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. The employee's voluntary appearance in campaign literature photographs for any candidate, including a close relative, would violate Charter §10-107(4) because it is a public, partisan act that promotes the election of a candidate and is therefore prohibited by the Charter. See Appendix II, GC-2008-519.

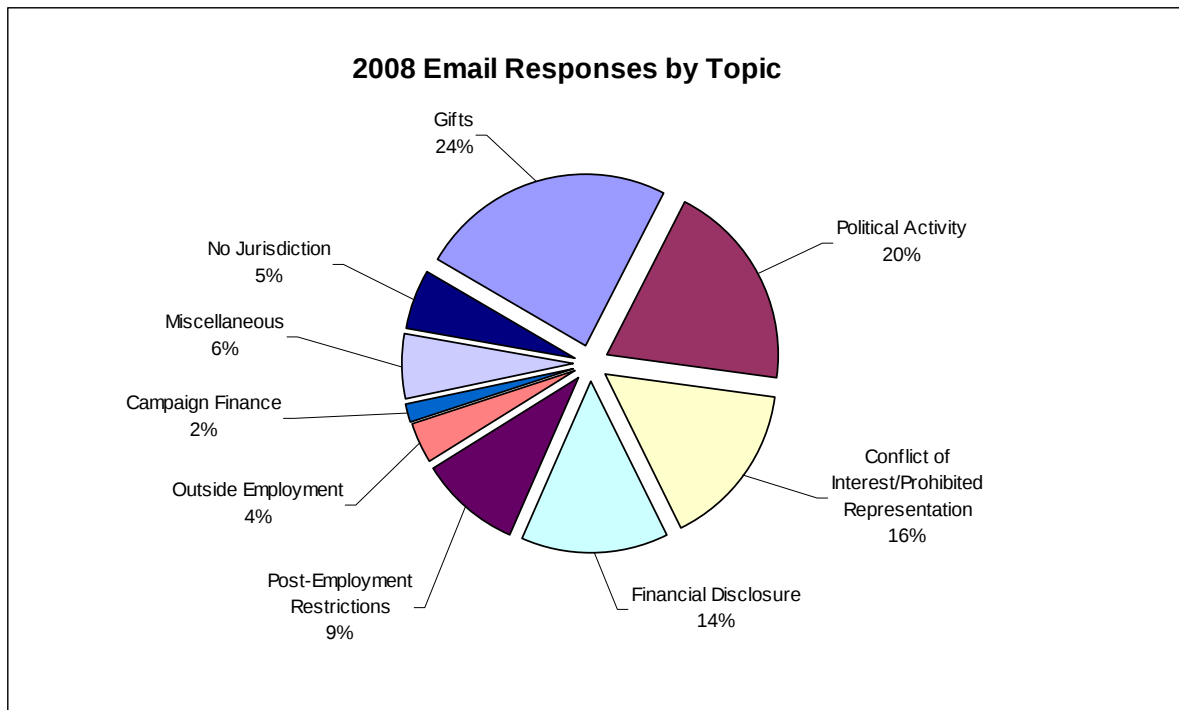
Two advices of counsel concerned political activity contemplated by an employee on the payroll of City Council. In the first, the employee was advised that under Charter §10-107(3) he or she is prohibited from being involved in fund-raising activity for any political purpose. In the second, among many questions, the employee was advised that participation in an exploratory committee to evaluate his or her possible candidacy does not, of itself, constitute a declaration of candidacy. This distinction is important because the "resign to run" provision of the law is triggered if a City employee becomes a candidate for elective office. See Appendix II, GC-2008-523 & 527.

| <i>Advice Topic</i>       | <i># of 2008 Advices</i> | <i>% of 2008 Advices</i> |
|---------------------------|--------------------------|--------------------------|
| Conflicts of Interest     | 9                        | 33                       |
| Gifts                     | 1                        | 4                        |
| Outside Employment        | 2                        | 7                        |
| Post-employment           | 5                        | 19                       |
| Political Activity        | 3                        | 11                       |
| Interest in City Contract | 3                        | 11                       |
| Miscellaneous             | 4                        | 15                       |

### Informal Email Guidance

Political activity inquiries were also a focus of informal email inquiries in 2008. Guidance was provided in 25 email responses applying the political activity restrictions to many kinds of “political” behavior, including whether or not it is permissible

to: attend a political event, wear clothing with a political logo, participate in get-out-the-vote activity, and work at the polls. Questions on gifts, conflicts of interest, and financial disclosure continued to be a large part of the informal guidance requested from the Board.



## *Enforcement and Litigation*

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Investigative and enforcement activity in 2008 was significantly enhanced by the Board's new staff members. By having a Director of Enforcement, whose time is entirely dedicated to investigations and litigation, the Board was able to examine complaints more quickly and engage in more sophisticated investigative activity.

The Board utilized both old and new methods in conducting investigative activity. Staff conducted manual review of campaign expenditure vouchers and detailed review and analysis of campaign finance reports as part of on-going investigations. Staff members spent hours reviewing and cross-checking contribution and expenditure information reported by candidates and committee. In addition to these "old fashioned" techniques, investigations for the first time used sophisticated electronic discovery technology to review the contents of computers and emails. As a result, the Board's investigative and enforcement activities in 2008 reflected a level of depth and maturation that was not possible before additional staff members were involved.

At the beginning of 2008, there were ten open investigations. Fifteen new investigations were opened in 2008. In the course of these investigations, staff reviewed publicly available documents such as campaign finance reports, expenditure vouchers, and press coverage, and took 23 depositions of witnesses and investigation targets. Staff also conducted witness interviews and, in some cases, obtained affidavits from witnesses as an alternative to a full deposition. Subpoenas were issued to obtain bank records and other documents from witnesses and PACs. The Board often works during investigations with other agencies such as the City Commissioners, the Pennsylvania Secretary of State, Inspector General, the F.B.I. and the U.S. Attorney's Office for the Eastern District of PA.

During 2008, the Board reviewed and rejected nine complaints submitted by members of the public.

Complaints are rejected if they fail to comply with Regulation No. 2, which establishes criteria for Board investigations. Complaints are most often rejected because they do not state a potential violation of a law within the jurisdiction of the Board of Ethics. In 2008, one matter was referred to the Office of Inspector General. At the end of 2008, there were 13 open and active investigations.

### **Matters Resolved**

Twelve investigative matters were closed in 2008 by one of three methods, voluntary compliance, settlement, or dismissal because no action was warranted.

- *Voluntary Compliance*

The Board continues to believe that it should act to prevent violations of the City's campaign finance laws whenever possible. As it did in 2007, the Board therefore took steps to obtain voluntary compliance from several committees that should have filed campaign finance reports with the Board, but had not done so. These committees were identified during staff review of campaign finance reports which indicated that the committees made contributions to candidates for City office, but had never filed reports with the Board, as required by law. The Board contacted each committee to explain the filing obligations under the City's campaign finance law and set a deadline for them to file their reports.

The PFT (Philadelphia Federation of Teachers) Committee to Support Public Education filed seven reports electronically with the Board by its deadline. Similarly, the Laborers District Council political committee filed four electronic reports by the deadline. Because the two committees voluntarily complied and met the Board's deadline, the Board did not seek to impose a late filing penalty. For other committees, allegations of non-filing were incorporated into larger investigations.

## ***Enforcement and Litigation***

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- *Settlements*

The Board entered into four settlement agreements during 2008 and early 2009 that involved violations of the campaign finance law:

The Friends of Juan Ramos admitted to receiving an excess contribution and agreed to repay the excess portion of the contribution as well as a \$500 civil penalty.

Local 98 COPE (Committee on Political Education) admitted to eight violations of the City's campaign finance law and agreed to pay a civil penalty of \$10,000.

Citizens for Vincent Hughes committee admitted to seven violations of the City's campaign finance law and agreed to pay a civil penalty of \$7,500.

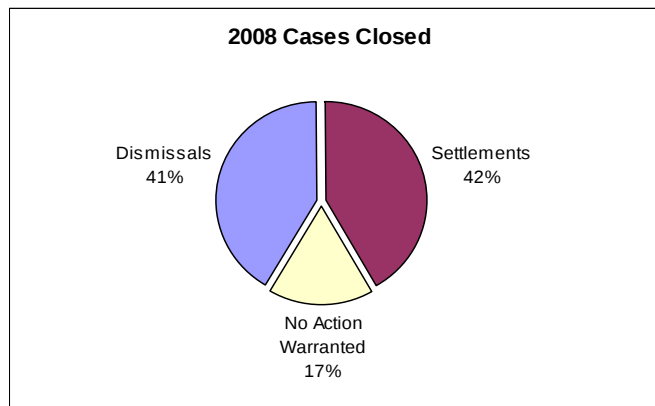
Friends of Curtis Jones, Jr. committee admitted to 17 violations of the City's campaign finance law

and agreed to pay a civil penalty of \$22,500. The Jones committee also agreed to pay back \$5,335 in excess contributions.

The Board also entered into a settlement agreement with City of Philadelphia police officer Michael Trask, who admitted that his appearance in a campaign advertisement for a State senate candidate violated the prohibition on City employees engaging in political activity.

- *Dismissal*

Where the Board determines that a complaint has no merit, it will dismiss the matter. Of the five matters that were dismissed during 2008, four involved allegations that employees had violated the political activity restrictions of Section 10-107 of the Philadelphia Home Rule Charter and one involved allegations against a candidate for City of fice.



## ***Enforcement and Litigation***

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### **Enforcement of Financial Disclosure Requirements**

The Board has jurisdiction over the requirement in the City Code at Section 20-610 that certain elected officials, department heads, and key employees must file the City Statement of Financial Interests (the City Form) by May 1<sup>st</sup>. Each filer must disclose financial information for the prior calendar year, including sources of income, real estate interests involved with the City, creditors, and business interests. The purpose of the financial disclosure requirement is to serve as a check on whether or not those in City government might have financial interests that would affect their official duties.

The Board undertook a review to determine whether or not 72 key officials in City government filed the City Form in a timely fashion. In all but five cases, the reports were filed on time. The remaining five individuals filed immediately after they were notified of their non-filing status. At least two of the five had inadvertently filed their City Forms in the wrong office. The Board believes that this scrutiny reminded the 72 officials of the importance of the financial disclosure requirement.

For the first time ever, the Board has begun to enforce compliance with the City Form financial disclosure requirement for members of City boards and commissions. The Board examined whether or not members of 20 of the more than 80 City boards and commissions filed the City Form. To date, only nine of the 149 members of these boards and commissions, or six percent, remain non-filers, and the Board will take necessary steps in 2009 to enforce the filing requirement.

### **Legal Challenges to the Board's Authority**

In two significant cases, the authority of the Board of Ethics was affirmed. The first case presented a challenge to the Board's ability to investigate political entities and the second sought to undo the Board's authority to interpret the City Charter and Code. In each of the two matters, the Board was represented by *pro bono* counsel whose services were crucial to the Board's success. The Board was represented by the Dechert firm in *Local 98 IBEW COPE v. Philadelphia Board of Ethics, et al*, and by Drinker Biddle in *Cozen O'Connor v. Philadelphia Board of Ethics, et al*. Without the invaluable work of the two law firms, the Board would have had to suspend other critical activity in order to defend itself in these two cases.

#### ***Local 98 IBEW COPE v. Philadelphia Board of Ethics, et al.***

In November 2007, pursuant to §3246(c) of the Pennsylvania Election Code, the Board requested expenditure vouchers from Local 98 IBEW COPE during the course of an investigation. On February 8, 2008, Local 98 IBEW COPE filed a Complaint in Federal Court against the Ethics Board in which the political action committee argued that the Board's request for expenditure documents violated its First Amendment rights. In addition to the Board, the Complaint named the Pennsylvania Attorney General, the Secretary of the Commonwealth, the District Attorney, and Shane Creamer, the Board's Executive Director, as defendants.

Local 98 IBEW COPE alleged that the requirement to produce vouchers of all of its 2007 expenditures, pursuant to the Board's request under state law, was overbroad because it required disclosure of more than just election-related expenditures.

## *Enforcement and Litigation*

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The PAC raised both facial and “as applied” Constitutional challenges to various provisions of the Election Code and the City’s campaign finance law, and sought a declaratory judgment, preliminary and permanent injunctive relief and attorney fees. Cheryl Krause, a partner at the Dechert law firm, represented the Board and the Executive Director on a *pro bono* basis.

On March 31<sup>st</sup>, Ms. Krause filed a Motion to Dismiss Local 98 IBEW COPE’s Complaint on behalf of the Board and Executive Director Shane Creamer. The Attorney General and District Attorney filed separate motions. On May 30<sup>th</sup>, Chief Judge Harvey Bartle heard oral argument on the Defendants’ Motions to Dismiss. On July 9<sup>th</sup>, Judge Bartle granted the motions of all defendants, including the Board of Ethics, to dismiss the suit filed by Local 98 COPE.

The Court agreed with the defendants and found that Local 98 is a “political committee” under the law 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.”

On August 8<sup>th</sup>, Local 98 IBEW COPE PAC filed an appeal from Judge Bartle’s July 9<sup>th</sup> dismissal of the Complaint. Before the appeal was heard, Local 98 IBEW COPE granted the Board access to its vouchers for 2007 expenditures, including those that related to elections for City office that were relevant to the Board’s investigation, and the matter was settled.

### ***Cozen O’Connor v. Philadelphia Board of Ethics, et al.***

On March 6, 2008, the Cozen O’Connor law firm filed suit against the Board and the City seeking a declaratory judgment that under the City Charter and Code legal expenses incurred by a mayoral campaign are not “expenditures” and post-election funds received are not “contributions” subject to the Code’s contribution limits. Congressman Robert Brady and the Friends of Bob Brady committee were listed as Additional Parties-In-Interest.

The suit arose from events in the 2007 primary election. Mayoral candidate Bob Brady faced a lawsuit brought by an opponent, Tom Knox, alleging that Candidate Brady should be removed from the ballot because he failed to disclose certain financial interests on his Statement of Financial Interest. Plaintiff Cozen O’Connor represented Candidate Brady in that challenge which reached the Pennsylvania Supreme Court and was decided in Candidate Brady’s favor on April 24, 2007. As a result of this litigation, the Cozen firm is owed \$448,468.09 in legal fees.

After the primary election, Candidate Brady, through plaintiff Cozen O’Connor, sought advice from the Board in a July 2007 request as to whether payments to the Brady Mayoral Campaign Committee received in the post-election time period would be subject to the Code’s contribution limits if the funds would be used to pay campaign debt. In Confidential Opinion No. 2007-003, the Board advised the Brady Campaign that post-election funds raised to retire campaign debt are subject to the Code’s contribution limits. The Board explained that contribution limits would be meaningless if a candidate could raise unlimited funds immediately after an election to retire campaign debt.

## *Enforcement and Litigation*

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The Plaintiff maintained that the Board lacked authority to extend contribution limits to funds received after an election and to treat legal expenses as expenditures of the campaign. While asserting that the Board had only “limited” authority to provide advice, Cozen never acknowledged the existence of Section 4-1100 of the Charter which vests authority in the Board to interpret and render advice concerning the application of contribution limits established in the Campaign Finance provisions of the Code.

The firm argued that the Board’s Opinion “impairs” Congressman Brady’s ability to raise money to pay the firm’s legal bills and that it “impairs” the firm’s ability to be paid for its services. However, the Board of Ethics maintained that Cozen lacks standing to assert the alleged impairment on Congressman Brady, and that the firm alleged no facts to support its contention that the Opinion has impaired either Congressman Brady’s ability to raise money or the firm’s ability to get paid.

Gregory Miller and Gregg W. Mackuse at Drinker Biddle represented the Board as *pro bono* counsel in this case. The Board filed Preliminary Objections on April 14<sup>th</sup> requesting that the Complaint be dismissed with prejudice because there was no actual case or controversy between Cozen and the Board; alternatively the Court lacked subject matter jurisdiction because neither the Friends of Bob Brady nor Cozen filed a timely appeal of the Board’s opinion; and Cozen lacked standing to sue the Board because it is merely an unpaid campaign vendor that did not have a direct, substantial, or immediate interest in the controversy.

On June 10<sup>th</sup>, Judge Gary DiVito dismissed the Cozen complaint with prejudice concluding that Cozen O’Connor was without standing in the matter. On July 21<sup>st</sup>, Cozen filed a Notice of Appeal from Judge DeVito’s Order dismissing the law firm’s complaint. In an opinion filed on March 12, 2009, a panel of the Commonwealth Court of Pennsylvania affirmed the lower court ruling dismissing the Complaint and concluding that Cozen lacked standing in the matter.

## *Legislative Recommendations*

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The Board of Ethics is directed by Section 20-606 (1)(l) of the Philadelphia Code to include in its annual report to the Mayor and City Council recommendations for legislative change. During 2008 and early 2009, the Board was given an additional opportunity to make legislative recommendations when Mayor Nutter, by Executive Order 12-08, established the Mayor's Advisory Task Force on Ethics and Campaign Finance Reform. The Task Force was charged with providing a comprehensive review of the City's campaign finance law and was directed to examine public campaign financing laws in other jurisdictions. The Task Force was also asked to focus on topics such as nepotism, outside employment, gifts, lobbying, and political activity restrictions for City officers, employees, and board and commission members.

To receive public input on these topics, the Task Force conducted a public hearing on January 10, 2009. The Board of Ethics was among many groups and individuals who offered suggestions for legislative action to the Task Force. The Board's legislative recommendations were based on its experiences, since its inception just over two years ago, with administration and enforcement of the City's public integrity laws. Executive Director Shane Creamer testified before the Task Force that the next logical step in promoting ethics in Philadelphia government is to determine whether public confidence could be improved further by rewriting, modifying or supplementing those laws. Mr. Creamer stressed a theme that was repeated by many who testified before the Task Force: that any legislation that results from the efforts of the Task Force must be clearly written and narrowly tailored to meet identified goals. As a basic premise, enforcement of vague or overbroad rules will be perceived as being unfair. Further, there are certain gaps in the integrity laws that should be addressed so that the Board is not placed in the awkward position of explaining that it lacks jurisdiction to address the conduct in question.

The Board made the following recommendations to the Task Force and recommends them for consideration by the Mayor and City Council:

### **I. Campaign Finance**

(1) Change the contribution limits in the Code (§20-1002) to a "per election" basis from the current "per calendar year" limits which apply only in the year of an election for City elective office. At the moment, a contributor need only wait until a few months after the November election to give an unrestricted contribution to a successful candidate and to create at least the appearance of influence.

(2) Change the text of Code Section 20-1005 to clarify that the Ethics Board has exclusive jurisdiction to enforce the campaign finance law. The provision in Section 20-1005 that permits "any person" to bring an action for injunctive relief to enforce the law predates the addition of Section 20-1008 in November 2006, which gave the new Ethics Board jurisdiction to enforce all provisions of the campaign finance law.

(3) Improve the wording of Code Section 20-1006 (1) to clarify the requirement that a political committee must file electronically with the Board whenever its report contains contribution information to or from a candidate for City elective office.

(4) Require incumbent officeholders and committees who contribute to them to continue to file electronic reports with the Ethics Board in non-election years. Currently, when there are no "candidates" for City office, no reports are required to be electronically filed.

(5) Clarify that each day that a required report is not filed electronically with the Ethics Board constitutes a separate and distinct violation subject to the statutory penalty.

## *Legislative Recommendations*

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(6) Require each candidate to provide to the Ethics Board information identifying the candidate's single committee and account at the inception of their candidacy. This information is necessary for the Board to communicate effectively with campaigns.

(7) Establish contribution limits and reporting requirements for inaugural and transition committees. The campaign finance provisions of the Code are silent concerning inaugural events for City elected officeholders. Although limits did not technically apply to inaugural and transition activities in early 2008, the Nutter inaugural and transition committees voluntarily observed contribution limits and publicly disclosed contributor information at the Board's suggestion.

(8) Eliminate the twice-yearly requirement to publish a "plain English" version of the campaign finance law in three newspapers. This is a costly mandate with limited effect. In the alternative, only require that the "plain English" text be published in January of those years when there is an election for City elective office.

### **II. Ethics**

(1) Reword three sections of the Code to clarify key provisions of the ethics laws:

- Section 20-607 deals with conflicts of interest and would benefit from revisions to make conflict situations more easily identifiable, to define key terms, such as "financial interest," and to address new family structures that give rise to conflict situations, including domestic partnerships.
- Clarify and simplify Section 20-608, the Public Disclosure and Disqualification section of the Code. Eliminate an outdated reference to notice by registered mail and consider permitting disclosure and disqualification notification by electronic means and provide a mechanism for board and

commission members to address conflict situations when they arise at the last minute.

- Similarly, clarify and simplify Code Section 20-602 which regulates when City officers, employees, and members of Council may represent other individuals in transactions involving the City.

(2) Consider legislation to amend the City's conflict of interest rule by prohibiting City officials and employees from taking any personnel action concerning a close relative. Even though relatives of City officials may be well-qualified for City positions, such a prohibition would enhance public confidence in government by eliminating the appearance that a person received a City job merely because he or she is related to a City official.

(3) Amend the City Code to create a single gift rule to apply to all City officials and employees that would prohibit them from accepting anything of value from a "prohibited source." A "prohibited source" would generally include any person or business that is in the City, does business with the City, or is subject to action by the City.

(4) Amend the Ethics Code to prohibit City officials and employees from holding other paid positions, in addition to their City jobs, with firms or businesses that either have a City contract or are seeking one. Outside teaching positions should be exempt, and authority should be vested in the Board of Ethics to grant exceptions whenever it is in the City's best interest.

(5) Codify the existing City policy that prohibits personal retaliation against whistleblowers. Currently, City Code Section 20-606(1)(j) prohibits official retaliation against any City officer or employee who has in good faith filed a complaint alleging improper activity by another City officer or employee. Personal retaliation by coworkers should also be prohibited.

## *Legislative Recommendations*

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(6) Require that the City's Ethics Code and the Charter restrictions on political activity apply to all contract workers.

### **III. Political Activity**

Ethics Board members have expressed their belief that the City's political activity restrictions in Section 10-107 of the City Charter are considerably more stringent than those in other cities and may be too restrictive. The restrictions on political activities are intended to separate politics from the operation of City government and to prevent the perception or reality that official decisions and actions have been inappropriately influenced by political interests. But as the Board's Executive Director stated to the Task Force, overbroad rules do not promote public confidence in the rules, the agency that enforces them, or the City. The Board suggested that the Task Force was well-suited to examine where to draw new boundaries for prohibited political activity.

The Board recommends to the Mayor and Council that the following restrictions are frequently found in other jurisdictions and may serve as a framework for a new set of political activity restrictions in Philadelphia:

- Prohibition on all political activity during the hours for which a City employee or official is paid to work for the City, but no prohibition on political activity at other times;
- Prohibition on the use of all City resources for any political purpose;
- Prohibition on solicitation of political contributions from fellow City employees, vendors, or those who have matters pending before the City, but no prohibition on soliciting contributions from others;

- Prohibition on asking a City subordinate to engage in campaign activity; and
- Prohibitions that apply to board and commission members may be considerably different from those that apply to City employees and officials.

### **IV. Lobbying**

The Board of Ethics advised the Task Force that it endorses a requirement that those who lobby City officials must register and file quarterly reports of their lobbying activity and expenditures. Lobbying is a legitimate activity and can lead to better City policies and laws, but the public deserves to know who is lobbying their City government, on what issues, how they are doing it, and how much money is being spent in the process. The Board noted to the Task Force that reports should include lobbying relating to regulations and business development, as well as legislation, in order to make lobbying activity transparent to the public.

### **V. Public Financing**

Lastly, the Board noted that another major step in campaign finance reform in Philadelphia would be consideration of a public financing system for Mayoral and Council candidates. Public financing programs are beneficial because they permit candidates of limited means to run for public office. The Board explained that now is not the time to dedicate limited City resources to provide public funds to political campaigns, but suggested to the Task Force that now is the time to begin to plan for such a program in the future.

The Board of Ethics welcomes the opportunity to work with the Mayor and Council to improve and advance Philadelphia's public integrity laws.

## Looking Ahead

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The Board of Ethics faces three major challenges in 2009:

- Seeing that the candidates for District Attorney and Controller comply with all campaign finance and reporting laws.
- Continuing to support changes that strengthen and clarify the City's ethics laws.
- Continuing to fulfill its mission in a challenging economic climate.

Even though the Board faces financial obstacles with significant budget cuts in 2009, there is reason for great optimism. Training programs for 2009 candidates for District Attorney and Controller and their campaign treasurers have already begun and have been expanded from those introduced in the Mayoral and Council elections of 2007. By its vigorous enforcement of campaign finance laws in the 2007 election, the Board made clear that campaign finance reports would be closely scrutinized and violations would be pursued, even after the election is over.

The Board is encouraged by Mayor Nutter's appointment of the Advisory Task Force on Ethics and Campaign Finance Reform. In his testimony before the Task Force in January, 2009, Executive Director J. Shane Creamer, Jr. recommended improvements to the laws governing campaign finance, ethics, and restrictions on political activity. The Board looks forward to working with the Mayor and City Council to implement these and other important reforms.

The reality remains that enforcing ethics laws produces savings for City government. Testimony by other officials before the Mayor's Advisory Task Force made clear that the City's traditional "pay to play" culture costs the taxpayers millions of dol-

lars in the awarding of contracts and the granting of political favors based on campaign contributions or other conflicts of interest. It blocks out individuals and vendors who might have provided higher quality goods and services at a more reasonable price had the playing field been level. The Board's education and enforcement efforts are at the core of the City's efforts to end the "pay to play" culture.

Cutbacks in City agency budgets will clearly affect the Board in 2009. Two vacancies for investigators will remain unfilled and limited funding will have a significant impact upon the Board's activities. However, the Board and its staff will make every effort to educate and advise employees, officials, and candidates for elective office, and where necessary, to enforce the City's public integrity laws.

It continues to be an honor for the members of the Board of Ethics and its staff to serve the citizens of Philadelphia. In its October 15, 2008 editorial praising the Board's enforcement action against the Local 98 IBEW PAC, the Philadelphia Inquirer pronounced that "the city Board of Ethics has proven its worth as a watchdog." This recognition of the Board's role in promoting honesty and integrity in City government underscores the importance of the Board's work. With its dedicated staff, the Board will continue to enhance its training, advice, and enforcement activity. The Board is proud of its achievements and expects to continue to serve the citizens of the City of Philadelphia in an exemplary manner. The central goal of the Board remains to ensure that honesty, integrity, and transparency define the political and ethical climate of the City.

## ***APPENDICES***

## ***APPENDIX I: Regulation No. 4***

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## PHILADELPHIA BOARD OF ETHICS

### REGULATION NO. 4 SEEKING ADVICE FROM THE BOARD OF ETHICS

**WHEREAS**, as provided in Section 4-1100 of the Home Rule Charter, the Philadelphia Board of Ethics (“the Board”) is empowered to administer and enforce all provisions of the Home Rule Charter and City ordinances pertaining to ethical matters, which matters shall include “conflicts of law, financial disclosure, standards of governmental conduct, campaign finance matters, prohibited political activity,” and such other matters as may be assigned by Council; and

**WHEREAS**, the Board has the power to administer and enforce the laws pertaining to ethical matters, handle all inquiries and complaints and specifically to render advisory opinions, as provided in Section 4-1100 of the Philadelphia Home Rule Charter and Section 20-606(1) of The Philadelphia Code; and

**WHEREAS**, the Board is further authorized by Section 20-606(1) of The Philadelphia Code to develop procedures to provide informal guidance concerning the ethics laws; and

**WHEREAS**, the Board is empowered by Sections 4-1100 and 8-407 of the Home Rule Charter and Section 20-606(1) of The Philadelphia Code to make all necessary regulations to carry into effect its responsibilities;

**NOW THEREFORE**, the Board of Ethics hereby adopts this Regulation No. 4 to establish procedures for seeking advice from the Board.

#### **General Provisions**

##### **(a) Definitions:**

“Advisory opinion” or “Advice.” The Board interprets the phrase “advisory opinion,” as used in Section 4-1100 of the Charter and in Section 20-606(1)(d) of The Philadelphia Code, and the term “advice,” as used throughout this regulation, to mean a definitive written ruling of the Board or its staff on specific facts provided in a request made to the Board, under this regulation, for advice as to how the laws pertaining to ethical matters apply to the conduct of a particular person or persons. Informal General Guidance, as discussed in paragraph 4.7 below, shall not be considered to be “advice” or an “advisory opinion.” The term “advisory opinion” shall include both Advices of Counsel under Paragraph 4.5 of this regulation and Formal Opinions under Paragraph 4.6 of this regulation.

“The Board” shall mean the body of members of Board of Ethics appointed pursuant to Section 3-806 of the Home Rule Charter.

“The Board or its staff” shall mean the Board itself, or the General Counsel, the Executive Director, or any of their designees, as described in this regulation.

“Candidate,” “candidate political committee,” and “political committee” shall have the same meaning as set forth at Section 20-1001 of The Philadelphia Code.

“General Counsel” shall mean the General Counsel of the Board, or his or her designee.

“Officer or employee” shall have the same meaning as set forth at Section 20-601(2) of The Philadelphia Code.

**(b) Permissible subjects of requests.** In accordance with Section 4-1100 of the Home Rule Charter, the Board or its staff, as provided below, shall provide advice concerning provisions of the Home Rule Charter and City ordinances pertaining to ethical matters, which matters shall include conflicts of interest, financial disclosure, standards of government-

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tal conduct, campaign finance matters, prohibited political activity, disclosures required by Code Ch. 17-1400, and such other matters as may be assigned by Council.

(c) **Who may request advice.** Except as provided in paragraph 4.1(c)(1) below, advice or informal general guidance, which may be of any of the types discussed in paragraphs 4.5, 4.6, and 4.7 below, shall be rendered by the Board or its staff on the request of a City officer or employee, or upon the request of a candidate, candidate political committee, or political committee, and shall apply only to the requesting City officer or employee, candidate, candidate political committee, or political committee.

(1) **Requests about subordinates.** In addition to the above paragraph, advice or informal general guidance, which may be of any of the types discussed in paragraphs 4.5, 4.6, and 4.7 below, shall also be rendered by the Board or its staff on the request of a supervisor or appointing authority of a subject City officer or employee, concerning the conduct of that subject officer or employee.

(2) **Requests from representatives.** The Board generally expects that City officials and employees seeking advice concerning their own conduct will personally request such advice. However, the Board will receive requests from authorized representatives of requestors, such as deputies, attorneys and similarly situated individuals, but not from secretaries and other support staff without independent authority.

(d) **Advice on future conduct only.** Except as provided in paragraph (e) below, the Board or its staff shall only issue advice to a City officer or employee or a supervisor of such City officer or employee, or to a candidate, candidate political committee, or political committee with respect to the proposed future conduct or action of the subject whose conduct is at issue.

(e) In a Formal Opinion or Advice of Counsel, the Board or its General Counsel may, in their discretion, determine that it is necessary to address past conduct in the context of providing advice as to corrective action or future action that represents part of a continuing course of conduct that began prior to the request, and where the Board or its General Counsel concludes, based on the facts of the particular matter, that part of the advice as to future conduct necessarily involves providing a conclusion as to whether past conduct was in compliance with the ethics laws. The decision to address past conduct in a Formal Opinion or Advice of Counsel may include advice requiring remedial action going forward, shall not provide protection from penalties or sanctions under the ethics laws, as set forth in paragraph 4.1(f) below, and shall in no way preclude the Board from initiating an investigation or pursuing an enforcement action concerning the past conduct.

(f) **Reliance.** A City officer or employee, candidate, candidate political committee, or political committee whose conduct or action is the subject of either a Formal Opinion issued by the Board or an Advice of Counsel issued by the General Counsel shall not be subject to penalties or sanctions under the ethics laws administered by the Board by virtue of reasonable reliance on such advice, unless material facts were omitted or misstated in the request for the formal advice. Advice on statutes and other rules over which the Board has not been given jurisdiction by the Charter or The Philadelphia Code, including the State Ethics Act, will not be binding on any person and will not provide the protection from sanctions described in the preceding sentence of this paragraph.

In particular, the State Ethics Commission is the ultimate arbiter of interpretations of the State Ethics Act. The Act provides that: "A public official of a political subdivision who acts in good faith reliance on a written, nonconfidential opinion of the solicitor of the political subdivision . . . shall not be subject to the penalties provided for in [certain provisions of the Act]." 65 Pa.C.S. §1109(g). See Charter §4-1100 (giving Law Department concurrent jurisdiction with the Board regarding ethics matters under State law). Since the Board of Ethics is not "the solicitor" of the City, requestors have the option to obtain an opinion from the Law Department as to the application of the State Ethics Act. Should the Board give advice concerning the State Ethics Act, this option will be noted, along with a caution that a written, nonconfidential opinion of a solicitor will only protect the subject from the criminal penalties in subsections 1109(a) and (b) and from treble damages under subsection 1109(c) of the Act. (A violation of the Ethics Act can still be found, and restitu-

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tion can still be ordered.) Alternately, the Board may conclude that in matters where the law is unsettled, the requestor will be advised to seek advice directly from the State Ethics Commission.

## **4.2 Communication with the Board or its staff, in general.**

As provided in Paragraph 4.1(a) above, an “advice” is a definitive written ruling of the Board or its staff on specific facts provided in a request made to the Board, under this regulation, for “advice” as to how the ethics laws apply to the conduct of a particular person or person(s). After the effective date of this regulation, any communication with the Board by another person (as “person” is defined in Code Section 20-601(12)) shall not be considered to be a request for “advice” unless the communication clearly states that it is a request for “advice”, and otherwise complies with the requirements of paragraph 4.4.

Requests for informal general guidance, copies of Board publications, correspondence on investigations or other matters not involving a specific request for advice concerning the conduct of a person not subject to the Board’s jurisdiction, or requests to provide a nonbinding preliminary review of draft documents shall not be considered to be requests for “advice”. Additionally, a request for a preliminary informal review of a hypothetical or proposed request or situation will not be considered a request for “advice,” and the Board or its staff may decline to respond to such informal reviews in advance of, or in lieu of, a request for “advice”.

Any response provided by the Board or its staff, via e-mail, or in writing—unless specifically labeled “Formal Opinion” or “Advice of Counsel”—is not “advice” as that term is used in Charter Section 4-1100 or Code Section 20-606, and is therefore not advice upon which the requestor may rely. The Board has determined that neither it nor its staff will provide “advice” orally (including in person, in meetings, or on the telephone). Thus, any oral communication will not be advice upon which the requestor, or any other person, can rely for any purpose, including as protection from penalties or sanctions that may be imposed by the Board under Charter Section 4-1100 or Code Section 20-612, for violations of the ethics laws.

## **4.3 Public and non-public advice**

Section 20-606(1)(d)(iii) of The Philadelphia Code provides as follows, relating to advisory opinions issued by the Board of Ethics:

The Board shall make public its advisory opinions with such deletions as may be necessary to prevent disclosure of the identity of any City officer or employee or other involved party in accordance with regulations promulgated by the Board.

The Board interprets its responsibility to provide “advisory opinions” and to make them public to permit the Board to issue rulings (either a Formal Opinion or an Advice of Counsel) under the following conditions. At the time a requestor submits a request for advice, he or she must specify whether or not the requestor seeks a Formal Opinion or Advice of Counsel that preserves the anonymity of the requestor or subject of the advice. If the requestor requests anonymity, the Board or General Counsel shall issue a Nonpublic Formal Opinion or a Nonpublic Advice of Counsel, addressed to the requestor by name and including all necessary identifying information. That version of the document, with identifying information, will not be made public and will be provided only to the requestor. However, consistent with the Code provision cited above, a “redacted version,” of the document, edited to conceal the name, specific City position, and other identifying information about the requestor or subject of the advice, shall be made public.

## **4.4 Request for Advice**

(a) A request for advice shall be submitted in writing or faxed or e-mailed, and shall be signed by the person seeking the advice. An e-mail may be considered to be “signed” if it otherwise complies with the requirements of Paragraph 4.4(b) below and is sent by a person from whom the Board will accept requests under Paragraph 4.1(c) above. The request shall

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be considered complete and appropriate for Board action after it has been reviewed by the General Counsel, or his or her designee, and all necessary information has been received.

(b) Except as provided in (c) below, the request for advice shall include the following information:

- (1) The name, address, and telephone number of the person who is the subject of the request;
- (2) If the request is being made by a supervisor of a City officer or employee or by a representative on behalf of a requesting party, the name, address and telephone number of the supervisor or representative shall be supplied;
- (3) The name of the governmental body with which or for whom the subject serves and the name or title of the person's public office or position;
- (4) The nature and duties of the subject's office or job, a specific description of the conduct contemplated by the subject, and a specific statement of the question sought to be answered by the Board; and
- (5) A list of all relevant facts and circumstances surrounding the request.

(c) A request concerning a candidate, candidate political committee, or political committee shall include the following information:

- (1) The name, address, and telephone number of the person who is making the request, and that person's relationship to any entity in (2) below;
- (2) The name, address, and telephone number of any candidate, candidate political committee, or political committee that is the subject of the request, as well as the name, address, and telephone number of the treasurer of any such candidate political committee or political committee.
- (3) If the request is being made by an attorney or treasurer on behalf of a requesting party, the name, address and telephone number of the representative shall be supplied;
- (4) A specific description of the conduct contemplated by the subject and a specific statement of the question to be answered; and
- (5) A list of all relevant facts and circumstances surrounding the request.

(d) The requestor shall notify the Board, in writing, as to whether he or she is requesting an "advisory opinion" as defined in paragraph 4.1(a) or is seeking informal general guidance.

(e) Upon notification that the requestor is seeking formal advice from the Board, the General Counsel, or his or her designee, shall determine whether a Formal Opinion will be issued or whether the request will be answered as an Advice of Counsel.

#### **4.5 Advice of Counsel**

(a) An Advice of Counsel may be issued, and made public, if it is determined by the General Counsel that authority exists to issue a response without Board approval. Authority to issue an Advice of Counsel shall be based on one or more of the following when they are directly applicable to the question presented:

- (1) Prior advisory opinions of the Board or City Solicitor;

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(2) Specific provisions of the Home Rule Charter or The Philadelphia Code; or

(3) Court opinions interpreting the Home Rule Charter or The Philadelphia Code.

#### **4.6 Formal Opinion**

(a) If the General Counsel determines that an Advice of Counsel cannot or should not be issued, the General Counsel shall refer the matter to the Board, with a recommendation.

(b) A Formal Opinion shall be issued and made public after it has been approved by a majority of the members of the Board.

(c) The Board may amend a previously issued Formal Opinion or Advice of Counsel after giving reasonable notice to the affected City officer or employee, candidate, candidate political committee, or political committee that it is reconsidering its opinion or advice. An amended Formal Opinion or advice shall apply only to future conduct or action of the City officer or employee, candidate, candidate political committee, or political committee.

#### **4.7 Informal General Guidance**

The Board or its staff may provide, either upon request or on its own initiative, informal general guidance as a way to educate and inform the officers and employees of the City and others. Such general guidance may be provided in the form of trainings, meetings, newsletters, advisory notices, telephone calls, e-mails, memoranda, or correspondence. Any such informal general guidance shall not be captioned “Formal Opinion” or “Advice of Counsel;” will not be a definitive written ruling of the Board or its staff on specific facts; and may not be relied upon by any person as protection against any enforcement action under the ethics laws. Informal guidance requested by an individual will generally be confidential and will not normally be made public by the Board, but may be subject to disclosure pursuant to a valid request under the Pennsylvania Right to Know Law.

Initially adopted by Board April 16, 2008

Public Hearing held May 30, 2008

Finally adopted by Board, with modifications July 23, 2008

Effective August 4, 2008

## ***APPENDIX II: 2008 Advice of Counsel Index***

## *2008 Advice of Counsel Index*

| Advice No.                           | Date Issued | Brief Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Key Words                                                                             |
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|                                      |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Citations                                                                             |
| GC-2008-501                          | 1/2/08      | Advised Mayor-elect and Inaugural Committee on possible gift issues raised by fund-raising activities and attendance at inaugural events in light of Executive Order No. 002-04 and City Code gift restrictions. Advised there would be no violation provided that all donations were made to the non-profit “Nutter Inaugural Committee.” Concluded that to the extent attendance at each inaugural event, whether complimentary or at a discounted ticket price, constituted gifts, they are gifts to the City and not gifts to individuals. The possibility of an appearance of impropriety was minimized by the Committee’s voluntary adherence to limits on contributions. Suggested that to avoid appearance of impropriety private individuals should solicit donations to the Committee and the names of donors should not be prominently publicized. | Gifts; Gift to the City; Inaugural Committee and Events; Appearance of Impropriety    |
|                                      |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Executive Order 002-04; Code §20-604<br><br>(see related Formal Opinion No. 2007-005) |
| GC-2008-502                          | 1/9/08      | Advised a civil service employee in the City’s Capital Program Office that outside employment as an instructor at a local university was not prohibited. Explained relevant restrictions exist concerning conflicts of interest, interests in City contracts, confidential information, prohibited representations, and financial disclosure.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Outside Employment; Teaching Position                                                 |
|                                      |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Charter §10-102; Code §§ 20-602, 607, 608; 65 Pa.C.S. §1103; Civil Service Reg. 33.02 |
| GC-2008-503                          | 1/10/08     | Advised City employee that the employee’s proposed uncompensated service on the board of directors for multiple nonprofit organizations was not prohibited. Explained relevant restrictions exist concerning conflicts of interest, interests in City contracts, confidential information, prohibited representations, and financial disclosure.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Conflict of Interest; Uncompensated Non-profit Service                                |
|                                      |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Charter §10-102; Code §§ 20-602, 607, 608; 65 Pa.C.S. §1103                           |
| GC-2008-504<br><br>Non-public Advice | 4/1/08      | Advised a City official on recommending to the Mayor appointment of an attorney for a legal organization to a City board/ commission. Advised that the appointee could be appointed and generally avoid a conflict by complying with the disclosure and disqualification requirements of Code § 20-608.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Conflict of Interest; Attorney; Boards & Commissions                                  |
|                                      |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Code §§ 20-602, 607, 608                                                              |
| GC-2008-505                          | 1/29/08     | Advised a former Health Department employee about the effect of post-employment restrictions if he were to start a private consulting business that helps entities comply with the City Health Code. Explained the State Ethics Act’s one-year limitation on representation before the City, the City Code’s two-year limitation on certain financial interests, and the City Code’s permanent limitation on assistance with certain matters.                                                                                                                                                                                                                                                                                                                                                                                                                 | Post-Employment; Health Department; Consulting Business                               |
|                                      |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Code §§ 20-603, 607; 65 Pa.C.S. §1103                                                 |

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|                                  |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Citations                                                                                                                         |
| GC-2008-506                      | 1/29/08     | Advised a law firm attorney that he is not prohibited from serving as a member of the City's Prison Board where a client of his firm has provided services to the prisons, his firm has represented that client in past prison litigation, and the attorney would decline to participate in future prison litigation. Noted that under the State Ethics Act conflict of interest restrictions may extend to situations in which the requestor's clients have matters before the requestor's board. | Conflict of Interest; Prison Board; Attorney; Boards & Commissions<br>Charter §10-102; Code §§ 20-602, 607, 608; 65 Pa.C.S. §1103 |
| GC-2008-507<br>Non-public Advice | 3/31/08     | Advised a City official that a deputy in the official's office would not be permitted under the State Ethics Act to accept a witness fee for testifying as an expert witness for another Pennsylvania city's municipal agency because such a fee would be a prohibited honorarium. However, if the City decided that such testimony would vindicate a City purpose, the City might allow the official to be reimbursed for travel expenses.                                                        | Honorarium; Testimony as Expert Witness; Witness Fee; State Ethics Act                                                            |
|                                  |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 65 Pa.C.S. §1103                                                                                                                  |
| GC-2008-508                      | 2/7/08      | Advised a Sanitation Supervisor in the Health Department's lead poisoning prevention unit she is not prohibited from opening her own business that would provide a food safety certification course required for food establishments.                                                                                                                                                                                                                                                              | Outside Employment; Conflict of Interest; Health Department                                                                       |
|                                  |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Charter §10-102; Code §§ 20-602, 607, 608; 65 Pa.C.S. §1103; Civil Service Reg. 33.02                                             |
| GC-2008-509<br>Non-public Advice | 12/22/08    | Advised a City employee about the effect of post-employment restrictions if he/she were to retire from the City and work for an employer that does consulting work for the City. Explained the State Ethics Act's one-year limitation on representing others, the City Code's two-year limitation on certain financial interests, and the City Code's permanent limitation on assistance with certain matters.                                                                                     | Post-Employment                                                                                                                   |
|                                  |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Code §§ 20-603, 607; 65 Pa.C.S. §1103                                                                                             |
| GC-2008-510                      | 3/7/08      | Advised a Deputy Finance Director whose brother works for a local law firm that does bond work on conflict of interest principles. The official may generally avoid a conflict by complying with the disclosure and disqualification requirements of Code § 20-608.                                                                                                                                                                                                                                | Conflict of Interest; Sibling                                                                                                     |
|                                  |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Code §§ 20-607, 608                                                                                                               |

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|                                             |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Citations                                                                               |
| GC-2008-511                                 | 3/20/08     | Advised an employee of City Council who also serves on the board of a nonprofit that has received a grant of funds directed from the Commerce Department through PIDC on conflict of interest principles. The employee may generally avoid a conflict by complying with the disclosure and disqualification requirements of Code § 20-608.                                                                                                                                                                                                                                                                                                                 | Conflict of Interest; Nonprofit Board Service                                           |
|                                             |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Code §§ 20-607, 608                                                                     |
| GC-2008-512<br>Non-public Advice<br>Amended | 4/2/08      | A member of a City board or commission requested advice on the restrictions the ethics laws would place on that person's activities as an officer for a local nonprofit entity, in light of the requestor's position on the City board/commission. Advised that the board member may generally avoid a conflict by complying with the disclosure and disqualification requirements of Code § 20-608.                                                                                                                                                                                                                                                       | Conflict of Interest; Nonprofit Position; Boards & Commissions                          |
|                                             |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Charter §10-102; Code §§ 20-602, 607, 608; 65 Pa.C.S. §1103                             |
| GC-2008-513                                 | 4/18/08     | Advised a Telephone Maintenance Crew Chief for the City's Mayor's Office of Information Services (MOIS) who may seek to separate from the City and work for an employer that is a subcontractor for the company that provides the City with telephone and data service. Two questions were presented: whether the ethics laws would prohibit his applying for the position; and what post-employment restrictions apply after leaving the City. Advised the requestor on how to avoid conflicts of interest in pursuing future employment while still on the City payroll; and advised on the post-employment rules of the State Ethics Act and City Code. | Post-Employment; Conflict of Interest; Pursuing Future Employment while a City Employee |
|                                             |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Code §§ 20-603, 20-607; 65 Pa.C.S. §1103; Formal Opinion No. 2007-001                   |
| GC-2008-514                                 | 4/22/08     | Advised a Licenses & Inspections official regarding effect of post-employment rules on recently retired employee of L & I whom Mayor has just appointed to Board of Licenses & Inspections Review. The former employee was not prohibited from serving as a City board member.                                                                                                                                                                                                                                                                                                                                                                             | Post-Employment; Licenses & Inspections; Boards & Commissions                           |
|                                             |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Code §§ 20-603, 20-607; 65 Pa.C.S. §1103                                                |
| GC-2008-515<br>Non-public Advice            | 5/15/08     | Received a request from a member of a City board/commission on whether a violation of the Ethics Code would occur if that board/commission were to award a consulting contract to a certain independent contractor who has in the past done business with a company in which a member of this board/commission is a principal. Advised that no conflict issue was raised by the facts provided, but that the requestor might wish to avoid even the appearance of any personal bias by complying with the disclosure and disqualification requirements of Code § 20-608.                                                                                   | Conflict of Interest; Contract Award; Boards & Commissions                              |
|                                             |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Charter § 10-102; Code §§ 20-607, 608; 65 Pa.C.S. §1103                                 |
| GC-2008-516                                 | 5/6/08      | Advised Personnel Administrator for Health Department that City employees in civil service title of Sanitarian are "public employees" under the State Ethics Act, and thus are required to file the State financial disclosure form.                                                                                                                                                                                                                                                                                                                                                                                                                       | "Public Employee"; State Ethics Act; Financial Disclosure; Sanitarian                   |
|                                             |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 65 Pa.C.S. §1102                                                                        |

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| GC-2008-517<br><br>Non-public Advice<br><br>Amended | 8/4/08      | Advised a member of a City board/commission about the restrictions the ethics laws place on his/her activities as an employee of a business that has a contract with the City, the proceeds of which are realized by the company. Advised that Charter §10-102 (interest in City contracts) applied to members of that board/commission. Although the requestor's salary at the company is not connected to any particular contract, the requestor participates in an employee stock purchase and other investment interests determined in part based on the company's performance. We concluded that the requestor clearly has a financial interest in the company's present contract with the City as well as in potential future contracts. We concluded that there are circumstances under which a de minimis standard may be applied in determining whether a particular financial interest qualifies as a "direct or indirect interest in a City contract" under Charter § 10-102. We concluded that any financial interest the requestor may have in his company's contracts with the City (those currently in place or contemplated under the facts we were provided) is too insubstantial to constitute a "direct or indirect interest" in those contracts, so § 10-102 did not restrict the member's activities. | Interest in City Contract; De Minimis Standard; Boards & Commissions                         |
|                                                     |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Charter §10-102                                                                              |
| GC-2008-518                                         | 6/25/08     | Advised a member of the Board of Ethics, who is also in-house counsel for a local company, concerning the application of the conflict of interest rules to his representation of his company in matters involving the City such as participation in Council hearings. Also concluded that Charter § 10-102 does not apply to the members of the Board of Ethics because they are uncompensated.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Conflict of Interest; Appearance of Impropriety; Board of Ethics; Boards & Commissions       |
|                                                     |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Charter § 10-102; Code §§ 20-602, 607, 608                                                   |
| GC-2008-519<br><br>Non-public Advice                | 7/8/08      | Advised a City civil service employee that Charter § 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. The employee's voluntary appearance in campaign literature photographs for any candidate, including a close relative, would violate Charter §10-107(4) because it is a public, partisan act that promotes the election of a candidate and is therefore a prohibited political activity.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Political Activity; Family Member as Candidate for Office; Photograph in Campaign Literature |
|                                                     |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Charter §10-107(4); Civil Serv. Reg. 29                                                      |
| GC-2008-520                                         | 7/7/08      | Advised the City's Chief Information Officer, who was scheduled to separate from the City, about current restrictions on conflicts in seeking future employment and post-employment restrictions that will apply after separation.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Post-Employment; Conflict of Interest; Pursuing Future Employment while a City Employee      |
|                                                     |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Code §§ 20-603, 20-607; 65 Pa.C.S. §1103; Formal Opinion No. 2007-001                        |

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| GC-2008-521<br><br>Non-public Advice<br><br>Amended | 9/4/08      | Advised a member of a City board/commission who is an employee of a local business that may have an interest in transactions involving purchases of real property from the City. Advised that Charter § 10-102 (interest in City contracts) applied to members of the relevant board/commission, but that § 10-102 did not apply to purchases from the City in which funds would be paid into the Treasury. Advised that disclosure and disqualification is required if a representative of the requestor's company represented the company before the requestor's board. Advised as to the conflict of interest rules of the City Code and the State Ethics Act and also about avoiding appearances of impropriety.                                                                                                                                                                                                                                                                                                             | Interest in City Contract; Real Property Purchases from City; Boards & Commissions                               |
|                                                     |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Charter §10-102; Code §§ 20-602, 607; 65 Pa.C.S. §1103                                                           |
| GC-2008-522<br><br>Non-public Advice<br><br>Amended | 9/5/08      | This Advice was nearly identical to GC-2008-521, except that it involved a different requestor and a different board/commission. Advised a member of a City board/commission who is an employee of a local business that may have an interest in transactions involving purchases of real property from the City or City-related entities. Advised that Charter § 10-102 (interest in City contracts) applied to members of the relevant board/commission, but that § 10-102 did not apply to purchases from the City in which funds would be paid into the Treasury. Advised that disclosure and disqualification is required if a representative of the requestor's company represented the company before the requestor's board. Advised as to the conflict of interest rules of the City Code and the State Ethics Act and also about avoiding appearances of impropriety.                                                                                                                                                   | Interest in City Contract; Real Property Purchases from City; Boards & Commissions                               |
|                                                     |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Charter §10-102; Code §§ 20-602, 607; 65 Pa.C.S. §1103                                                           |
| GC-2008-523<br><br>Non-public Advice                | 10/9/08     | Advised an employee on the payroll of City Council about the effect of the application of Charter §10-107(3) on the employee's ability to participate in political fund-raising. Advised that under §10-107 (3) the employee is prohibited from being "in any manner concerned in demanding, soliciting, collecting or receiving, any assessment, subscription or contribution, whether voluntary or involuntary, intended for any political purpose whatever."                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Political Activity; Fundraising; Council Employee                                                                |
|                                                     |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Charter §10-107 (3)                                                                                              |
| GC-2008-524                                         | 10/21/08    | Advised board/commission members who said that conflicts of interest and prohibited representations occasionally come to their attention too late to file the disclosure and disqualification letter required by the Code prior to City action being taken on a matter. Advised them: (1) to take whatever steps they can to ensure they are informed of who will be appearing before them in good time so the occurrence of such last-minute situations is minimized; and (2) if such a situation occurs, to request their body postpone official action until they can comply with the Code's disclosure requirements; or (3) if postponement is not practicable, to announce their nonparticipation publicly at the meeting, leave the room during consideration of the matter, and bring themselves into compliance with the Code's requirements as soon as possible, which includes filing a letter that is in full compliance with Code §20-608(1)(c)'s requirements no later than 5 calendar days after the Board action. | Disclosure & Disqualification; Last Minute Notice of Conflict or Prohibited Representation; Boards & Commissions |
|                                                     |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Code §§ 20-602, 607, 608                                                                                         |

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| GC-2008-525<br><br>Non-public Advice | 12/3/08     | Advised a City department head regarding an employee's proposed appearance as a representative of a nonprofit organization in a City transaction. Concluded that the employee's proposed representation of the nonprofit was prohibited by Code §20-602.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Representation                                                                                               |
|                                      |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Code § 20-602                                                                                                |
| GC-2008-526<br><br>Non-public Advice | 12/4/08     | Advised a member of a City board/commission who was also an unpaid officer of a nonprofit and the board/commission was considering funding a program in which the member's nonprofit would provide services in connection with another nonprofit. Advised that there was no conflict of interest. However, Section 20-602 of City Code prohibits the requestor from representing his/her private organization, or any of its clients, in any matter involving the City in which the requestor acted previously acted while on the City board/commission. Also, the same provision prohibits him/her from representing the nonprofit, or any of its clients, while serving on the City board/commission in any matter that comes before that body. Another officer or employee of the nonprofit may represent the organization before the board/commission.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Conflict of Interest; Unpaid Officer of Nonprofit; Boards & Commissions                                      |
|                                      |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Code §§ 20-602, 607; 65 Pa.C.S. §1103                                                                        |
| GC-2008-527<br><br>Non-public Advice | 12/5/08     | Advised a City employee on the payroll of City Council who asked a number of questions related to the possibility of seeking elective office and the possibility of others opening an exploratory committee, which would include a candidate's political action committee (PAC). Advised as follows: (1) We can address only laws in our jurisdiction, and thus State Election Code is not addressed; (2) under Charter and City Code, person becomes a "candidate" upon the earlier of public announcement of candidacy or filing of nomination papers; (3) under case law, mere inquiry as to whether others would consider lending financial support to a candidacy or statement indicating only willingness and availability to run do not constitute declaration of candidacy; (4) formation or activities of exploratory committee, including fundraising using the requestor's name, would not constitute a declaration of candidacy, so long as such activities and any communications make it clear that the subject individual is not yet a candidate; (5) Code Ch. 20-1000 would not apply to such an exploratory committee, but application of the Chapter to any funds in a PAC after a declaration of candidacy is not addressed; (6) State Ethics Act definition of "candidate" is different and may require financial statement filing -- requestor was referred to State Ethics Commission; (7) Charter subsection 10-107(3) applies to the requestor and prohibits being in any manner concerned in soliciting or receiving donations "for a political purpose" and in the absence of clear precedent, requestor was advised to assume participation in fund-raising for an exploratory committee might be considered to be "for a political purpose"; (8) formation and existence of exploratory committee would not require requestor to resign his/her City position under Charter subsection 10-107(5), so long as he/she has not "become a candidate" as discussed in the Advice; and (9) Charter subsection 10-107(4) did not apply to requestor. | Campaign Finance; Exploratory Committee; Political Action Committee; Potential Candidacy for Elective Office |
|                                      |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Charter §§ 10-107 (3),(4),(5); Code §§ 20-1000, 1001; 65 Pa.C.S. §1102                                       |

