

Committee of Seventy

Attachment to Testimony on Proposed Ethics and Campaign Finance Bills

This document supplements written testimony submitted by the Committee of Seventy to City Council's Committee of the Whole at its May 12, 2010 public hearing on ethics and campaign finance proposals.

The Committee of Seventy's positions are articulated in its written testimony. Although we do not support each of the proposals, we expect that at least the bills that were introduced by 15 members of Council on March 4 will be approved in some form.

We would much prefer to have input into the bills than not. We urge Council to seriously consider the points raised below. As Seventy has over the last several weeks, we look forward to continuing discussions to strengthen the bills to the greatest extent possible.

We do not have comments on each bill. Where we do, they will be addressed in the order in which they were discussed in our testimony.

1. Lobbyist Registration and Disclosure (Bill No. 100127)

- **Disclosure.** The revised ordinance states that the expense reports could include "such additional information as is required by the Board by regulation." Rule 1.19 of the Professional Rules of Civil Procedure states that all disclosure required in connection with lobbying statutes, regulations, etc. is permissible, but lawyers are required only to comply with those statutes and regulations that "are consistent with the Rules of Professional Conduct." Even if reporting what specific administrative action or bill was being lobbied does not violate the Professional Rules, the language of Bill No. 100127 is sufficiently broad such that regulations enacted pursuant to the ordinance could require disclosure constituting a violation.
- **Lawyers/Lobbyists.** The Supreme Court's amendment to the Pennsylvania Rules of Professional Conduct provides that lawyers acting as lobbyists must comply with "any statute, or in any regulation passed or adopted by either house of the Legislature, or in any regulation promulgated by the Executive Branch or any agency of the Commonwealth of Pennsylvania." There is no mention of any statute or law passed by a political subdivision, although it is conceivable that Philadelphia's law would

fall under the definition of “statute.” The revised Bill changes the definition of “lobbyist” such that “attorneys engaged in lobbying are subject to the requirements and restrictions of this Chapter only to the extent permissible under the Pennsylvania Rules of Professional Conduct.” This may adequately address Seventy’s concern. However, to make sure the city’s new law is not challenged, Seventy recommends seeking an amendment to the Pennsylvania Rules of Professional Conduct to ensure coverage of lawyers acting as lobbyists (as opposed to lawyers acting in their capacity as lawyers, who cannot be regulated by the city’s law.

- **Effective Date.** Although the Committee of Seventy agrees that the original July 1, 2010 effective date for the Lobbyist Registration and Disclosure Law was not practical, we would prefer moving the revised start date from July 1, 2011 to January 1, 2011. Of course, this is contingent on adequate funds for the Ethics Board to carry out its responsibilities under the law.
- **Penalties.** While the penalty for negligent violations is increased, the revised bill does it by collapsing a separate category for intentional violations, where the Board could opt to refer the issue to the District Attorney. The punishments for negligent and intentional failure to file are now the same.
- **Lobbyists’ Training.** The bill requires all persons registered under the new law to participate in training by the Ethics Board, but does not mention any sanction for non-compliance. By contrast, Bill No. 100125 (Penalties) imposes a \$250 fine for failure to attend an ethics training session.

2. Political Expression and Political Activity (Bill No. 100128)

- **Resign to Run.** Section 20-616(1) states that the revised section of the ordinance controls over any contrary provisions of Section 10-107(3),(4) and (5) of the Home Rule Charter. Seventy is concerned that this would permit Council, by ordinance, to overrule Charter Section 10-107(5), which requires city officers and employees to resign before seeking nomination or election to any public office (except for reelection to the same position). In April 2007, 55% of Philadelphia voters rejected a proposed ballot question to overturn the “resign to run” provision. It can not be raised again by ballot question for five years.

For the record, Seventy favored eliminating “resign to run.” However, we would strenuously oppose any effort by Council to abolish this provision by ordinance given the clear sentiments expressed by the voters.

- **Ministerial Fundraising Tasks.** Section 20-616(2)(a) states that no city officer or employee (with the exception of elected officials or members of boards and commissions) shall “directly shall directly or indirectly demand, solicit, collect or receive, or be 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.” The section makes an exception for “ministerial tasks.” Seventy is concerned that this exception could turn regular city employees into accounting clerks for those who may solicit political contributions. It could take a fair amount of time away from the employee's normal duties. In addition, an employee may not want to perform the permitted ministerial tasks, and it puts that employee on the spot by requiring him or her to say “no” when asked to perform them.

- **Fundraising by members of Boards and Commissions.** Section 20-616(2)(b) exempts members of boards and commissions from the ban on city officers (except elected officials) or employees demanding, soliciting, collecting or receiving contributions (as described in the previous bullet). Seventy publicly questioned two 2007 rulings by the Board of Ethics applying political activity restrictions to volunteer members of 25 boards and commissions members because of our concern that high-quality, civic-minded volunteers would be dissuaded from serving on those groups. However, we believe Section 20-616(2)(b) goes too far by exempting members of *all* boards and commissions. Members of boards and commissions who perform functions that would subject them to greater restrictions as defined in Section 20-616(4)(d) – such as employees with the authority to assess the value of real estate, to impose a fee or fine or to enforce city laws – should not be permitted to demand, solicit or collect contributions at any time.
- **Participation in a Political Party or Campaign.** Section 20-616(4)(b)(iii) should define what is meant by “taking an active part in the management or affairs of a political party or in a political campaign.” For example, as we understand the federal Hatch Act, “less restricted” employees are permitted to serve as campaign treasurers, prepare and file campaign finance reports and pay campaign expenses. Comprehensive guidelines should illustrate by example the activities employees may engage in under this provision.
- **Definition of “On/Off Duty.”** Section 20-616(4)(c)(i) should define what is included when an employee is “on duty” and “off duty.” In Tucson, Arizona, “on duty” includes all scheduled work hours and overtime. It also includes time employees are released from their regular city workplace for union activities, union business or any other employee organization purpose under any leave agreement. “Off-duty” includes all time outside scheduled work hours and overtime, including annual leave, paid leave and leave without pay.
- **Registration of Political Activity.** Section 20-616(4)(c)(iv) requires employees who are ward leaders, committeepeople or who take an active part in the management or affairs of a political party or in a political campaign to register with the Board of Ethics. We also recommend requiring disclosure to the employee’s direct supervisor and department head.

3. **Litigation Fund (Bill No. 100124)**

- **Volunteer Labor.** Volunteer Labor is excluded from the campaign contribution limits. Seventy is uncertain about what effect, *if any*, volunteer labor to a political campaign would have on the Philadelphia Code's regulations precluding non-bid contract work worth more than \$25,000 to businesses that contribute more than \$10,600 to any city candidate or incumbent. The limit also applies if individual executive of for-profit businesses contribute this amount cumulatively. It would be exceedingly helpful to explain this issue to firms and companies so that they do unexpectedly find themselves ineligible for city business.

4. **Gifts (Bill No. 080058)**

- **Additional Exclusions.** Chapter 20-604(2) should include the following exclusions from the prohibition on the acceptance of gifts: (a) qualified travel expenses incurred pursuant to a legitimate municipal interest, (b) admission to events attended in furtherance of such an interest, (c) informational material, (d) devises and inheritances, and (e) gifts of a nominal value. In its January 2009 report to the Task Force, the Committee of Seventy recommended New York City's \$50 limit as a reasonable and modest threshold for acceptable gifts.
- **Substantial Economic Value.** Section 20-601 should define "substantial economic value," as that term is used in Section 6(a) of the bill (dealing with offering and giving gifts).
- **Gifts to Relatives.** Gifts to close relatives (family members residing within the same house) should be considered as equivalent to giving to the public official or employee. Chicago Municipal Code § 2-156-040(a) prohibits any person from giving any official or employee, his or her spouse, domestic partner, minor child or immediate relative residing with the official or employee, and any of these people from soliciting or accepting, any anonymous gift.

5. **Nepotism (Bill No. 080662)**

- **Unpaid Positions.** Chapter 20-601(14), which defines "personnel action," should be expanded to prohibit the articulated conduct relative to both paid and unpaid positions in a city agency. Pittsburgh's ordinance, for example, does not make a distinction based on compensation.
- **Definition of Relative: Life Partners.** Chapter 20-601(18) includes life partners, or the parent, child or sibling of life partners, within the definition of "relative." Chapter 20-601(16) defines life partner as a member of a life partnership as verified pursuant to Section 9-1106(2) of the Philadelphia Code. The Code

defines “life partnership” as a long-term committed relationship between two unmarried individuals of the same gender. A nepotism bill should also cover two unmarried individuals of *different* genders who are in a long-term committed relationship. A gender distinction makes no sense in this context.

- **Limitations on Recommended Personnel Actions.** Section 20-607(d)(ii) should be expanded to restrict non-elected city officers and employees from recommending personnel action concerning a relative by a person serving in a city agency or quasi-city agency regardless of whether the officer or employee serves in or exercises jurisdiction or control over those agencies. Both Oakland, California and San Francisco have similar provisions.
- **Securing City Contracts.** Section 20-607(d) should follow Chicago’s lead by restricting the ability of city officers or employees to use their positions to assist a relative in securing employment or contracts with any persons over whom the officer or employee has contract management authority.

6. Outside Employment (Bill No. 080660)

- **Scope.** The proposed bill uniformly bans all city workers, with limited exceptions, from any employment with any entity that has or is seeking a contractual relationship with any city agency or department. Seventy believes this is too broad and would recommend limiting the provision to elected officials or high level government employees.
- **Post-City Employment.** The proposed bill does not contain any language restricting covered employees from soliciting employment, either for a second job while remaining employed with the city, or for a position to commence after the termination of that position. New York restricts covered employees from soliciting employment if such work would be restricted as outside employment while still working for the city.