



Testimony on Proposed Regulation No. 1

Philadelphia Board of Ethics

September 17, 2014

I am Ellen Mattleman Kaplan, Interim President and CEO of the Committee of Seventy, a non-partisan government watchdog.

With the 2015 municipal elections already underway, Seventy commends the Ethics Board for proposing amendments to its regulation interpreting the city's campaign finance law.

Yes, there are loopholes and violations have occurred. But, in large part, this law has worked exceedingly well in driving down the influence of big money in city politics.

In the wake of recent U.S. Supreme Court rulings in campaign finance cases, this may not continue. Over the next year, we are likely to see the first real display of outside money flowing into Philadelphia that is not subject to the city's contribution limits.

As this happens, Seventy urges this Board to play a proactive role in urging City Council to strengthen the campaign finance law.

In the meantime, here are some comments on today's proposed regulation.

- 1. Subpart B, Contributions Limits.** This is a small point. The \$2,900 and \$11,500 maximum contribution limits will not last forever. If this is to be a living document, you may want to explain that the maximum contribution limits are adjusted every four years according to a consumer price index multiplier.
- 2. Subpart H, Coordinated Expenditures, Section 1.41:** Seventy shares your desire to clarify the understanding around coordinated versus uncoordinated expenditures. The reality of "coordination" can be elusive, and in some cases, deliberately masqueraded.

For instance, during the 2007 Democratic mayoral primary, a campaign aide for U.S. Representative Bob Brady acknowledged advising others on setting up independent groups to attack opponent Tom Knox, who was ahead in the polls. Representative Brady said he didn't know about or endorse this conduct, and the aide left the campaign. If others used the campaign aide's advice – which could well have included information only the Brady campaign was privy to – it would be hard to argue this was not a coordinated expenditure.

Section 1.41c says an expenditure will not be considered coordinated “merely” because the person making the expenditure and the candidate's campaign have an agent in common. According to the regulation's definition of “agent,” this could include paid campaign strategists, polling firms and many others whose services are typically used by political campaigns. While a shared agent does not automatically confer a presumption of coordination, a shared agent certainly raises more eyebrows than the other examples cited in Section 1.41, e.g., where a person making the expenditure interviews or endorses a candidate; obtains the candidate's bio, position paper, press release or similar material about the candidate or; invites the candidate to appear before that person's members, employees or shareholders.

As we all know, it's not uncommon for employees of elected officials to join the staff of campaign strategists and polling firms who are then hired by the same elected officials for their campaigns. There is ample opportunity for coordination, or at least the appearance of coordination to occur.

For this reason, in the case of a shared agent, Seventy recommends putting the burden on the person or political committee making the expenditure – as well as the candidate's campaign – to *disprove* coordination. If they can't, those expenditures should be considered “in-kind contributions” that count against the contribution limits in the campaign finance law.

Attached to this testimony are factors adopted in January 2014 by the Maryland State Board of Elections in determining whether coordination has occurred. If this Board were to adopt these factors, and include them in Regulation 1, it would send a strong message to both candidates and others that complaints of coordination will be taken very seriously.

- 3. Subpart I, Section 1.45, Exclusion of excess pre-candidacy contributions upon becoming a candidate.** Again, this is a small point. Section 1.45b references “non-covered pre-candidacy expenditures.” Although this is included in Subpart A, 1.1q, it is still not clear what this

refers to. Some examples would be useful.

- 4. Subpart J. Retiring Debt:** The Brady/Cozen matter arose under the 2007 version of the city's campaign finance law. But could the Pennsylvania Supreme Court's decision in this case, which was just argued earlier this month, potentially have any impact on this provision? If so, you might want to hold off on a final version of this regulation until this decision is handed down.

Next, I want to raise a few issues that are not addressed in this regulation, but are closely related to the continued integrity of the city's campaign finance law.

Seventy understands that this Board does not have the power to create new law, but is bound by existing city rules.

However, as Seventy noted during discussions last fall over the city's gifts rules, the Philadelphia Code explicitly gives the Ethics Board the authority to tell the mayor and City Council when its laws are too weak or unclear:

The Board shall, whenever it deems necessary, make recommendations to the Mayor and to City Council which seek to improve the administration and enforcement of [the Code's Chapter on Conduct and Ethics], including any legislative changes which help strengthen or clarify the standards of conduct and ethics. Phila. Code, Section 20-606 (1)(l)(ii).

On a number of occasions in past years – in its Annual Reports and with respect to the gifts rules – the Ethics Board has taken this role to heart by recommending legislative action or changes to the Philadelphia Home Rule Charter.

Here, briefly, are Seventy's recommendations:

- 1. Limiting the doubling provision.** As it now stands, if a candidate triggers the doubling provision during the primary, all candidates in the same race (including the candidate who triggered the doubling provision) are permitted to accept doubled contributions. This continues even if the candidate who triggered the doubling provision loses in the primary election.

Unfortunately, truly competitive races are rare in this town. The current rule gives the primary winner (usually a Democrat) an inordinate fundraising advantage over his or her opponent. Donors are naturally more likely to give the maximum dollars to the person they believe is poised to become the winner in the November election.

The doubling provision should apply to the general election only if the person who triggered it survives the primary.

2. **Running for two elective city offices.** Candidates are currently permitted to run for two elective city offices, even a district Council seat and a Council At-Large seat. As a matter of good policy, and even if the financial aspects of two campaigns can be resolved as recommended in Subpart F of Regulation 1, Seventy believes this should not be permitted.
3. **Close loophole that permits incumbents to accept unlimited contributions if they have not declared their candidacies.** A bill to close this loophole was introduced by Councilman Jim Kenney in February 2013 after it was revealed that then-Councilman Bill Green accepted a \$30,000 donation from a beverage mogul when he was not a candidate for elective office – which is entirely legal under the current campaign finance law. The bill has been sitting without action in Council’s Law and Government Committee. This Board should urge City Council to pass this bill and incorporate it into the campaign finance law.
4. **Disclosures of independent expenditures.** City Council has already expressed its concerns regarding the unleashing of unlimited independent money in the wake of the U.S. Supreme Court’s *Citizens United* case. Other cities and states have taken steps to tighten disclosure requirements so that voters can know the sources of funds behind independent groups.

Philadelphia should do the same. Also in February 2013, then-Councilman Green introduced a bill to mandate disclosure of donors by independent political committees who produce campaign ads either for or against candidates for office. Again, this bill has been sitting without action in Council’s Law and Government Committee. This Board should urge City Council to adopt it.

In addition to our recommendations, this Board undoubtedly has recommendations of its own to make to Council.

It is the perfect moment to do this. One candidate has already declared for mayor. Another is announcing today. There will also be races for all 17 City Council seats, City Commissioners and Sheriff that are governed by the campaign finance law.

It may take a very long time to get this law right. Seventy looks forward to working with the Board, and with City Council and the Mayor's office, for as long as it takes.

Thank you.