



CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

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August 3, 2009

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NEW YORK CITY CONFLICTS OF INTEREST BOARD RELEASES PROPOSED AMENDMENTS TO CITY'S CONFLICTS OF INTEREST LAW.

The New York City Conflicts of Interest Board (the "Board"), the ethics board for the City of New York, has released a comprehensive set of proposed amendments to the City's conflicts of interest (ethics) law for New York City public servants.

The New York City Charter, the City's "constitution," sets forth in Chapter 68 the City's ethics law, which governs the conduct of every public servant of the City, from the Mayor and other elected officials on down. Section 2603(j) of that law requires the Board to periodically review the law and make recommendations to the Council for changes and additions as the Board considers appropriate and desirable.

The proposed amendments reflect a complete review by the Board of Chapter 68 and recommend numerous changes, some substantive and some technical, some new and some that the Board has proposed before. A copy of the proposal is attached, as is the transmittal letter to City Council Speaker Christine C. Quinn and a summary of the amendments prepared by Board staff. These documents may also be found on the Board's website: <http://nyc.gov/ethics>.

Steven B. Rosenfeld, Chair of the Board, stated: "While New York City's ethics law is among the very best in the nation, it needs to be updated and undergirded. These amendments, some of which the Board has been proposing for years, would substantially strengthen Chapter 68 and, in the case of budget protection and investigative authority, would plug two major holes in the law."

The amendments proposed by the Board can generally be divided into four types:

(1) Substantive changes that have previously been recommended by the Board, in particular

- **Budget protection for the Board (§ 2602(i))**

As a result of the Board's small size and tight budget, budget cuts fall particularly heavy on the perennially underfunded Board. In addition, the Board is virtually the only City agency that regulates the conduct of the very persons who set its budget, often at the very time they are setting its budget.
- **Investigative authority (§ 2603(e), (f))**

New York City appears to be the only large municipality in the country in which the agency that has the power to enforce the ethics code and impose fines lacks the power to investigate violations. Granting the Board investigative authority would enable it to make quick, surgical investigations, particularly in smaller cases requiring expedition.
- **Mandatory Chapter 68 training and education (§ 2603(b))**

Although the Board is mandated to train every public servant about Chapter 68, neither public servants nor their agencies are mandated to receive such training. As a result, many public servants, and even some entire agencies, receive no training, compromising the Board's primary mission of *preventing* conflicts of interest violations.
- **An increase in the maximum fine and provision for disgorgement of ill-gotten gains (§ 2606(b))**

The maximum fine has not increased since current Chapter 68 was adopted 20 years ago and requires upward adjustment merely to keep pace with inflation. But even a \$25,000 fine may be a small price to pay when the respondent's Chapter 68 violation produces a benefit worth many times that amount, necessitating disgorgement of such unlawful gains as an additional available sanction.

(2) New substantive changes, in particular

- **Accountability of private persons and entities that induce a public servant to violate Chapter 68 (§ 2605(b))**

Currently, absent outright bribery, a private person or entity that induces a public servant to violate Chapter 68 (e.g., by giving a prohibited gift) may suffer no consequences, except in certain narrow circumstances such as violations of the lobbyist gift rule. The Board thus recommends a new provision making such persons subject to enforcement actions and penalties.
- **Expansion of the definition of "associated persons" (§ 2601(5))**

Charter § 2604(b)(3), perhaps the key provision in Chapter 68, prohibits a public servant from taking an action to benefit himself or herself or an "associated person," a phrase that, in contrast to most other government ethics codes, does not, but should, include grandchildren, grandparents, and the immediate family members of one's spouse or domestic partner, as well as major campaign contributors (defined as those who contribute in excess of the Campaign Finance Law limits).
- **A prohibition on receipt of valuable gifts by high-level public servants even where the giver does not do business with the City (§ 2604(b)(5))**

When a high-level public servant, including an elected official, receives a gift from someone with whom the official has no personal connection, the clear appearance exists that the gift is given as a result of the official's City position; such gifts should be prohibited, subject to the usual exceptions.

- **A prohibition on public servants requesting political campaign work or political contributions from any person with a matter before them (§§ 2604(b)(9)(c), 2604(b)(11)(d))**

Such requests are inherently coercive and should be prohibited.

(3) Changes to make Chapter 68 internally consistent, such as

- **The addition of District Attorneys to the definition of “elected officials” (§ 2601(11))**

The District Attorneys are currently subject to Chapter 68 but are exempt from certain restrictions on other elected officials, resulting in anomalous results under some provisions.

- **The elimination of “determinations of probable cause” from the list of public Board documents (§ 2603(h)(5))**

Section 2603(h)(4) makes all enforcement documents and proceedings confidential except the final finding of violation, while § 2603(h)(5) inexplicably (and presumably inadvertently) makes “determinations of probable cause” (a pre-petition/pre-hearing document) public. Such documents, which often contain unsubstantiated allegations, should remain confidential.

(4) Changes to make the language of Chapter 68 consistent with Board precedent interpreting existing language, such as

- **The limitation of the safe harbor for Councilmembers acting on matters affecting themselves or associated persons to voting on such matters (§ 2604(b)(3)(a))**

The Board has interpreted this provision (current § 2604(b)(1)(a)) to permit Councilmembers to act on a matter that may benefit themselves or an associated person as applying only to voting, not to sponsoring or lobbying.

- **Amendment of the “waiver” provision to explicitly include “actions” as well as “positions” otherwise prohibited by § 2604 (§ 2604(e))**

Consistent with its reading of the original intent of the waiver provision, the Board has long granted waivers under § 2604(e) to cover actions as well as positions.

The Conflicts of Interest Board is responsible for interpreting, administering, training on, and enforcing Chapter 68, as well as the City's financial disclosure law and lobbyist gift law. The Board is composed of five members, appointed by the Mayor with the advice and consent of the City Council. In addition to Mr. Rosenfeld, the current members of the Board are Angela Mariana Freyre, Monica Blum, Andrew Irving and Burton Lehman. Mr. Lehman joined the Board on July 22, 2009, and it was his predecessor, Kevin B. Frawley, who took part in the review and recommendations of amendments to Chapter 68.