

INTRODUCTION

by

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The “code of ethics” governing the more than 300,000 officers and employees of the City of New York is set forth in Chapter 68 (“Conflicts of Interest”) of the New York City Charter. Chapter 68 provides for an independent agency, the New York City Conflicts of Interest Board, to interpret and enforce these ethics rules, whose purpose, in the words of the preamble, is “to preserve the trust placed in the public servants of the city, to promote public confidence in government, to protect the integrity of government decision-making and to enhance government efficiency.”

New York City’s ethics rules have their roots in the common law and in early legislation, going back at least to the Laws of 1830, Chapter 22, Section 11, which prohibited members of the Board of Aldermen and Board of Assistants from having any direct or indirect interest in any contract, the expense or consideration of which was to be paid under an ordinance of the Common Council. The City’s ethics rules took their modern form in 1959 when, as a local law and part of the City’s Administrative Code, a code of ethics was adopted and a Board of Ethics was established. The Board of Ethics had five members: the City’s Corporation Counsel, its Director of Personnel, and three public members appointed by the Mayor. In response to requests from individual public servants, the Board of Ethics issued advisory opinions interpreting the provisions of the ethics code.

That structure was continued with minor changes in 1975 when, as a result of a charter revision process, the ethics provisions of the Administrative Code became a new Chapter 68 (“Ethics”) of the New York City Charter. The current structure was adopted, and major changes occurred, in the 1989 Charter revision process, which, in addition to such changes as abolishing the Board of Estimate, created a new, independent City agency, the Conflicts of Interest Board. The Board has five members, appointed to staggered six-year terms by the Mayor, with the advice and consent of the City Council. Board members may not be public employees in any jurisdiction, may not hold political party office, and may not appear as lobbyists before the City. In addition to the responsibility of responding to requests for advice on Chapter 68 from current and former public servants, the Conflicts of Interest Board has several significant powers and responsibilities that the Board of Ethics did not have, including the power to enforce Chapter 68 by imposing civil fines, the power to promulgate rules, the duty to provide training on the ethics laws to all City officials and employees, and the responsibility for receiving and reviewing the annual financial disclosure reports required of certain public servants, candidates for public office, and officials and employees of local public authorities (currently over 9,000 reports annually).

In 2006, in the first change to its authority since 1989, the Board was charged with the administration and enforcement of a newly enacted prohibition on lobbyists making gifts to public servants. Local Law 16 of 2006 prohibited lobbyists from making gifts to public servants of the City and provided for civil fines for violations of the law. As directed in the legislation, the Board promulgated rules interpreting the law's provisions.

In 2010, on the recommendation of the Charter Revision Commission, the voters approved amendments to Chapter 68 (i) making it mandatory that all public servants receive training in Chapter 68; (ii) increasing the maximum fine per violation from \$10,000 to \$25,000; and (iii) giving the Board the authority to recover ill-gotten gains received by a public servant as a result of his or her violation of Chapter 68, that is, adding a disgorgement remedy.¹

On December 22, 2016, the Mayor signed Local Law 181 of 2016, codified in Chapter 9 of Title 3 of the Administrative Code ("Chapter 9"). Chapter 9 regulates not-for-profit entities affiliated with elected officials or their agents by requiring those entities to report annually certain donations and by limiting the permissible donations to certain of those entities. As directed in the legislation, the Board promulgated rules implementing Chapter 9. These rules took effect on March 16, 2018.

In interpreting Chapter 68, the Conflicts of Interest Board, like its predecessor the Board of Ethics, issues advisory opinions. The Board of Ethics issued 688 such opinions during its 30-year tenure, numbered consecutively from 1 to 688. Since 1989, the Conflicts of Interest Board has issued 251 advisory opinions, starting with a new number each year (*e.g.*, 2005-1, 2005-2). The Conflicts of Interest Board in its opinions does, from time to time, cite and sometimes adopt opinions of the Board of Ethics as authoritative interpretations of the current provisions of Chapter 68. Absent such adoption, the Board of Ethics opinions do not necessarily have any interpretative value in construing the current law. In addition, as a result of having enforcement authority, the Board from 1989 through 2017 received more than 7,600 complaints of Chapter 68 violations and issued public dispositions in 1,171 matters, in 957 of which fines were imposed. These dispositions, which unlike the advisory opinions do identify the public servant in question, also serve as authoritative interpretations of Chapter 68. All of the Board's formal advisory opinions and public enforcement dispositions may be found on the CityAdmin Online Library hosted by New York Law School (<http://www.nyls.edu/cityadmin>).

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¹ For a more extensive discussion of the history of the New York City Conflicts of Interest Law and Board, *see* Mark Davies, Steven G. Leventhal, & Thomas J. Mullaney, *An Abbreviated History of Government Ethics Laws – Part II*, NYSBA MUNICIPAL LAWYER, Vol. 27, No. 3, at 49 (Fall 2013), reproduced at <https://on.nyc.gov/2Gc3E7O>.