

THE BOARD OF ETHICS
of
The City of New York

COUNCIL REPORT
CODE OF ETHICS AND RELATED LAWS



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Communications and inquiries should be in writing and
addressed to the

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City Hall
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Section 1106-2.0 of the Administrative Code of the City of
New York provides:

"The board shall render advisory opinions to officers and employees, with respect to section 1106-1.0 of the administrative code of the city of New York. Such advisory opinions shall be rendered pursuant to written request by the officer or employee concerned. The board shall publish its advisory opinions with such deletions as may be necessary to prevent disclosure of the identity of the officer or employee involved."

THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK, IN RELATION TO THE CODE OF ETHICS

Section 1106-1.0 CODE OF ETHICS.

a. **Conflicts of interest**—No councilman or other officer or employee, whether paid or unpaid, shall engage in any business or transaction or shall have a financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his official duties.

b. **Representing private interests before city agencies**—No councilman or other officer or employee whose salary is paid in whole or in part from the city treasury shall appear in behalf of private interests before any agency, including the New York city transit authority, the New York city housing authority and the Triborough bridge and tunnel authority. Councilmen, however, may appear without compensation in behalf of constituents, or in the performance of public or civic obligations. This section shall not prohibit appearances upon matters only incidentally requiring official action which do not develop into a substantial part of the employment, provided, that the retainer is not for the purpose of appearing before the agency, and provided further, that the compensation, in whole or in part, is not contingent or dependent upon the action of such agency. No person serving the city without compensation shall appear, either directly or indirectly, on behalf of private interests in matters involving the agency which he serves or before any agency of the city affecting matters involving the agency in which he serves.

c. **Representing private interests before courts**—No councilman or other officer or employee whose salary is paid in whole or in part from the city treasury shall represent private interests in any action or proceeding against the interests of the city, in any litigation to which the city, the New York city transit authority, the New York city housing authority or the Triborough bridge and tunnel authority is a party, or in any action or pro-

ceeding in the New York City Criminal Court involving any charges of misdemeanor or violation of the type included within the jurisdiction of the municipal term as defined by law on the thirty-first day of August, Nineteen Hundred Sixty-two in which the City or any agency or any officer or employee thereof in the course of his official duties is a complainant.

d. Disclosure by councilman of interest in legislation—A councilman who has a direct or indirect financial or other private interest in any proposed legislation shall publicly disclose, on the official records of the council, the nature and extent of such interest.

e. Disclosure by officer or employee of interest in legislation—An officer or employee who whether paid or unpaid has a direct or indirect financial or other private interest in any legislation, and who participates in discussion before or gives official opinion to the council, the board of estimate or the mayor, shall publicly disclose on the official record the nature and extent of such interest.

f. Gifts and favors—No councilman or other officer or employee, whether paid or unpaid, shall accept any valuable gift, whether in the form of service, loan, thing or promise, or any other form from any person, firm or corporation which to his knowledge, is interested directly or indirectly, in any manner whatsoever, in business dealings with the city.

g. Disclosure of confidential information—No councilman or other officer or employee, whether paid or unpaid, shall disclose confidential information concerning the property, government or affairs of the city. Nor shall he use such information to advance the financial or other private interest of himself or others.

h. Investments in conflict with official duties—No councilman or other officer or employee, whether paid or unpaid, shall invest, or hold any investment directly or indirectly in any financial, business, commercial or other private transaction, which creates a conflict with his official duties.

i. Incompatible employment—No councilman or

other officer or employee, whether paid or unpaid, shall engage in or accept private employment or render services for private interests when such employment or service is incompatible with the proper discharge of his official duties.

j. Future employment—No councilman or other officer or employee whether paid or unpaid, shall solicit, negotiate for, or promise to, accept employment, by any person, firm or corporation with which he or his agency is engaged on behalf of the city in the transaction of business or which is or may be affected by his official action.

§ 2. Any violation of any of the provisions of this section shall constitute cause for fine, suspension or removal from office or employment.

Note: Formerly Section 898.1-0 of the Administrative Code; Local Law No. 73 (1959)—Passed without opposition by vote of the City Council on August 4, 1959. Approved by the Board of Estimate on August 20, 1959. Approved by the Mayor on September 3, 1959.

**THE ADMINISTRATIVE CODE OF THE CITY OF
NEW YORK, IN RELATION TO THE BOARD OF ETHICS**

§ 1106-2.0 Board of ethics.—a. There is hereby created and established a board of ethics to consist of the corporation counsel, the director of personnel and three public members to be appointed by the mayor who shall be domiciled in the city of New York, who shall serve without compensation. The public members shall each serve for a term of four years. The members shall elect a chairman.

b. The board shall render advisory opinions to officers and employees, with respect to section 1106-1.0 of the administrative code of the city of New York. Such advisory opinions shall be rendered pursuant to written request by the officer or employee concerned. The board shall publish its advisory opinions with such deletions as may be necessary to prevent disclosure of the identity of the officer or employee involved.

Note: Formerly Section B1-7.0 of the Administrative Code; Local Law No. 74 (1959).—Passed without opposition by vote of the City Council on August 4, 1959. Approved by the Board of Estimate on August 20, 1959. Approved by the Mayor on September 3, 1959.

**THE ADMINISTRATIVE CODE OF THE CITY OF
NEW YORK, IN RELATION TO APPEARANCES BEFORE
CITY AGENCIES OF FORMER OFFICERS
OR EMPLOYEES**

§ 1106-3.0 Appearances before city agencies of former officers or employees. No person who has served as officer or employee of the city shall within a period of two years after termination of such service or employment appear before any agency of the city or receive compensation for any services rendered on behalf of any person, firm, corporation or association in relation to any case, proceeding or application with respect to which such person was directly concerned, or in which he personally participated during the period of his service or employment, or which was under his active consideration or with respect to which knowledge or information was made available to him during the period of said service or employment. Any violation of this section shall be a misdemeanor.

Note: Formerly Section 897-1.0 of the Administrative Code; Local Law No. 75 (1959).—Passed without opposition by vote of the City Council on August 4, 1959. Approved by the Board of Estimate on August 20, 1959. Approved by the Mayor on September 3, 1959.

THE CHARTER OF THE CITY OF NEW YORK IN RELATION TO CONFLICTS OF INTEREST

Section 1106. Conflicts of Interests Prohibited.

(1) No councilman or other officer, employee or person whose salary is payable in whole or in part from the city treasury

- a. shall be or become interested directly or indirectly in any manner whatsoever except by operation of law in any business dealings with the city;
- b. shall act as attorney, agent, broker or employee for any person, firm or corporation interested directly or indirectly in any manner whatsoever in business dealings with the city;
- c. shall accept any valuable gift, whether in the form of service, loan, thing or promise, or any other form from any person, firm or corporation which to his knowledge, is interested directly or indirectly, in any manner whatsoever in business dealings with the city;

d. shall represent private interest before any agency;

e. shall appear as attorney or counsel or give opinion evidence against the interests of the city in any litigation to which the city, or an agency is a party, or in any action or proceeding in the municipal term of the magistrates' courts* of the city of New York in which the city or an agency or any officer or employee of the city or an agency acting in the course of his official duties is a complainant.

(2) As used in this section, the words "business dealings with the city" shall mean

- a. any contract, work or business or the performance of or litigation arising out of or involving any such

*Note: The magistrates' courts are now part of the New York City Criminal Courts (See Administrative Code, Section 1106-1.0 c. and Sections 20 and 101 of the Criminal Courts Act.)

contract, work or business or the sale or acquisition of any property, the expense, price or consideration for which is payable to or from the city treasury or by any assessment levied pursuant to law;

- b. or the purchase, lease, rental or letting of, or grant of license or permit in relation to, any real or other property belonging to or taken by the city, or which shall be sold for taxes or assessments, or by virtue of legal process or any provision of law by or at the suit of the city.

(3) This section shall not be construed

a. to prohibit a councilman or other officer or employee from being affiliated with, employed by or representing a person, firm or corporation whose direct and indirect interest in business dealings with the city forms an insubstantial part of its total business, provided that he has no direct or indirect interest in such business dealings and receives no part of the benefit thereof and takes no active part in connection therewith;

b. to prohibit a councilman or other officer or employee from appearing before any agency upon matters only incidentally requiring official action, which do not develop into a substantial part of the employment provided that he has not been retained for the purpose of appearing before the agency, and provided further that the compensation in whole or in part is not contingent or dependent upon action by such agency;

c. to prohibit a councilman from appearing without compensation before any city department or agency in behalf of constituents or in the performance of public, official or civic obligations;

d. to prohibit a councilman or other officer or employee from accepting or receiving any benefit or facility which is provided for or made available to citizens or residents or classes of citizens or residents under housing or other general welfare legislation or in the exercise of the police power;

e. to prohibit any councilman or other officer or employee from holding stock or investing or holding

any investment, in any corporation or any financial, business, commercial or other private transaction, provided that such stockholding or investment does not create a conflict with his official duties.

(4) As used in this section, the term "agency" shall mean a city, county, borough or other office, position, department, division, bureau, board or commission or other agency of government, the expenses of which are paid in whole or in part from the city treasury, including the board of education, the board of higher education, and the board of trustees of a community college. The term "agency" shall also include the New York city transit authority, New York city housing authority and the triboro bridge and tunnel authority, but shall not include any court or any corporation or institution maintaining or operating a public library, museum, botanical garden, arboretum, tomb, memorial building, aquarium, zoological garden or similar facility.

(5) Any violation of any of the provisions of this section shall, at the option of the comptroller, render forfeit and void the contract, work, business, sale or transaction affected.

(6) Any violation of any of the provisions of this section shall constitute cause for fine, suspension or removal from office or employment.

(7) If, however, any person shall knowingly and intentionally violate any of the provisions of this section, he shall, on conviction thereof, forfeit his office and be punished for a misdemeanor.

Note: Became a law April 20, 1959, with the approval of the Governor. Passed, on city message, pursuant to article IX, section 11 of the Constitution, by a two-thirds vote. Chapter 532—Laws of 1959. As amended by the New York City Charter adopted November 7, 1961; effective January 1, 1963.

INTRODUCTION TO THE REPORT OF COMMITTEE ON ETHICS AND STANDARDS

The New York City Council duly appointed this Committee to "study sections of the Charter involving the duties and obligations of Councilmen, city officials and city employees and to recommend any amendments, corrections or new legislation required."

After an exhaustive study, this Committee recommended the following:

1. The revision and clarification of Section 886 of the City Charter.
2. The adoption by Local Law of a Code of Ethics as part of the Administrative Code.
3. The creation by Local Law of a Board of Ethics for officers and employees.
4. The adoption of a Local Law prohibiting former officials from appearing before city agencies on behalf of private interests for a period of two years on matters in which they participated while in public office.

* * * *

Ethics in government is a matter of serious concern not only to our City but throughout the entire fabric of government—municipal, state and federal. Government has grown enormously in size and complexity and problems of conflicts of interest and ethics cannot always be easily resolved in the present day structure of modern society.

This Committee is deeply concerned with its responsibilities to the people of the City of New York and to its more than 200,000 officers and employees, the vast majority of whom serve with integrity, loyalty and with devotion to the public welfare.

The proposed revision and clarification of Section 886 of the Charter, which retains and utilizes those principles which have weathered the test of time and experience, and the proposed Code of Ethics, are intended to complement each other and together they are intended to furnish a comprehensive standard of conduct for government service.

Because the Legislature of the State of New York has the sole right to revise Section 886 of the Charter, the Committee recommends that such revision be submitted for its consideration as soon as possible. A resolution is being introduced in the Council simultaneously with this report requesting prompt action by the Legislature, so that the Code of Ethics and Section 886, as revised, shall become effective at the same time.

This Committee has endeavored to accomplish its objective in a fair, practicable and reasonable manner, knowing that there is no simple and sure way of handling the problem.

Our recommendations represent an effort to employ a new approach designed to curb the natural inclination to self-interest.

The Committee recommends that immediate public hearings be held on its proposals, so that all those interested or concerned may have the fullest opportunity for public expression.*

DATED: February 3, 1959

Committee on Ethics and Standards
Council of The City of New York

MORRIS J. STEIN, *Chairman*

JOSEPH T. SHARKEY

Majority Leader

DAVID ROSS

STANLEY M. ISAACS

Minority Leader

LOUIS OKIN

ERIC J. TREULICH

S. STANLEY KREUTZER, Counsel to the Committee
BENJAMIN HELLER, Associate Counsel
HERBERT I. BAYEVSKY, Counsel to Majority Leader

** Public Hearings were held and the legislation recommended was passed and is now the law.*

*SPECIAL NOTE:

The following Report of the Special Committee on Ethics and Standards was submitted on February 3, 1959. Public hearings were thereafter held and final recommendations for legislative action were submitted to the State Legislature and the City Council.

On April 20, 1959, the old section 886 of the City Charter was revised and amended and a new section 886 became law after enactment by the legislature and approval by the Governor.

On September 3, 1959, Local Laws No's 73, 74 and 75 became law after enactment by the City Council and approval by the Board of Estimate and the Mayor of the City of New York.

These "conflicts of interest" laws, were based on the report of the Special Committee. The full report follows:

REPORT OF THE SPECIAL COMMITTEE ON ETHICS AND STANDARDS

Pursuant to Resolution No. 816, adopted by the Council on December 18, 1956, a Special Committee was appointed to study the sections of the Charter involving the duties and obligations of Councilmen, City officers and City employees in matters in which they may be financially interested. The following members composed the Committee: Messrs. Stein, Chairman; Sharkey (Majority Leader); Isaacs (Minority Leader); Merli and Ross.

Thereafter, pursuant to Resolution No. 846, the Council on February 5, 1957, appointed an Advisory Board of four members to advise the Special Committee concerning the subject matter involved. The following were appointed to the Advisory Board: Hon. Charles C. Lockwood*, former Justice of the Supreme Court of the State of New York; Hon. Joseph M. Callahan, former member of the Appellate Division of the Supreme Court of the State of New York; Cloyd Laporte, Esq., former President of the New York State Bar Association and Edwin L. Weisl, Esq., member of the Character Committee of the Appellate Division.

** Deceased, September 21, 1958.*

On February 11, 1957, the Council, by Resolution No. 847, adopted an Interim Code of Ethics for the members of the City Council based on the New York State Code of Ethics, Section 74 of the Public Officers Law. In adopting this Interim Code of Ethics, the Council, recognizing the complexities and fine distinctions which permeate conflicts of interest, expressed the desire for a permanent Code of Ethics setting forth the general standards of conduct reasonably to be expected of municipal officers and employees. From its very inception, the Committee was concerned with two inter-related problems—clarification of the Charter provisions dealing with conflicts of interest and further implementation with a Code of Ethics governing all officers and employees of the City.

On March 21, 1957, the Council, by Resolution No. 1016, designated S. Stanley Kreutzer as Counsel to the aforesaid Special Committee on Ethics and Standards.

Pursuant to Resolution No. 1 adopted by the present Council on January 21, 1958, the Special Committee was reappointed and the following were named members thereof: Messrs. Stein, Chairman; Sharkey (Majority Leader); Isaacs (Minority Leader); Ross, Okin and Treulich.

The Advisory Board was reappointed on March 4, 1958, pursuant to Resolution No. 229 and on the same day Mr. Kreutzer was reappointed as Counsel to the Special Committee, pursuant to Resolution No. 230.

THE WORK OF THE SPECIAL COMMITTEE

Preliminary investigations have made available a very substantial amount of information bearing on the subject of ethics in government. The information was obtained from the writings of experts, textbooks and law review articles, court decisions, statutes of many states and municipalities, opinions of Corporation Counsels, statutes of the Federal Government, regulations adopted by Federal agencies, many studies of Federal, State and Municipal Legislative Committees and numerous other sources.

The reports of the United States Senate Sub-Committee of the Committee on Labor and Public Welfare, headed by Senator Paul Douglas, of the New York State Committee on Ethical Standards in Government, of which the late Justice Charles C. Lockwood was Chairman, of the New Jersey Legis-

lative Commission on Conflicts of Interests and, in addition, an excellent study of this general problem in Great Britain compiled by the British Legislative Services Commission, were of particular value to the Committee. In addition, communications were sent to officials of 96 United States cities, the Governors of 45 states, the Mayors of 29 foreign cities, with a view of obtaining information regarding existing or proposed codes of ethics. Extensive correspondence was exchanged with many of these officials. Many statutes, enactments, decisions and regulations were received on the subject of ethical principles affecting public servants which have already been adopted, and these form the basis for the study of the proposed code. We have also studied many codes of professional ethics.

The Committee has had numerous meetings during the course of which every aspect of the problem has been carefully explored. We are grateful to the members of the Advisory Board who have given of their services and advice, without compensation.

DEVELOPMENT OF THE NEW YORK RULE PROHIBITING CONFLICTS OF INTEREST

During recent years, nation-wide attention has been focused on conflicts of interests and standards of conduct affecting governmental officers and employees. This has resulted in a greater public awareness of the need for reappraisal of the subject geared to the requirements of modern society.

In speaking of conflicts of interests, we refer to the principle which forbids public officers or employees from placing themselves in a position where their private interests may conflict with their official duties. The principle is derived from the equitable rule which requires fiduciaries to act in good faith for the benefit of those whose affairs are entrusted to their care.

At common law, a contract between a municipality and one of its officers was against public policy and illegal. Its illegality was not dependent upon statutory enactments which have been held to be merely declaratory of the common law rule.

As early as 1830, members of the Board of Aldermen and Board of Assistants of The City of New York were prohibited by statute from having any direct or indirect interest in any contract, the expense or consideration of which were to be paid under an ordinance of the Common Council (Laws of 1830, Chapter 122, Section 11). In 1849, the prohibition was extended to "Head of Department, Chief of Bureau, the Deputy thereof, or Clerk therein, or other officers of the Corporation" and was made to embrace any direct or indirect interest "in any contract work or business, or the sale of any article, the expense, price or consideration of which is paid from the City Treasury, or by any assessment levied by any act or ordinance of the Common Council, nor in the purchase of any real estate, or other property belonging to the corporation, or which shall be sold for taxes or assessments" (Laws of 1849, Chapter 187, Section 19). Without substantial change, this statute was reenacted in 1873 (Laws of 1873, Chapter 355, Section 101), in 1882 (Laws of 1882, Chapter 410, Section 59) and in 1897 (Laws of 1897, Chapter 378). The 1897 Statute was amended in 1901 to read as follows:

"Officers; not to be interested in contracts.

Section 1533. No member of the board of aldermen, head of department, chief of bureau, deputy thereof or clerk therein, or other officer of the corporation, shall be or become interested directly or indirectly, as contracting party, partner, stockholder or otherwise, in or in the performance of any contract, work or business, or the sale of any article, the expense, price or consideration of which is payable from the city treasury, or by any assessment levied by any act or ordinance of the board of aldermen; or in the purchase or lease of any real estate or other property belonging to or taken by the corporation, or which shall be sold for taxes or assessments, or by virtue of legal process at the suit of the said corporation. If any person in this section mentioned shall, during the time for which he was elected or appointed, knowingly acquire an interest as above described in any contract or work with the city, or any department or officer thereof, unless the same shall be devolved upon him by law, he shall, on conviction thereof, forfeit his office, and be punished for a misdemeanor. All such con-

tracts in which any such person is or becomes interested as above described shall at the option of the comptroller, be forfeited and void. No person in this section named shall give, or promise to give any portion of his compensation, or any money or valuable thing, to any officer of the city, or to any other person in consideration of his having been or being nominated, appointed, elected or employed as such officer, agent, clerk or employe under the penalty of forfeiting his office and being forever disqualified from being elected, appointed, or employed in the service of the city, and shall, on conviction, be punished for a misdemeanor."

Section 1533 of the Greater New York Charter remained substantially unchanged until the adoption of the New York City Charter which became effective January 1, 1938. This, then, was part of the basis for the enactment of Section 886.

RELATED STATUTES

Section 886 of the present Charter is only part of a wider body of statutory law governing the conduct of officers and employees whose salaries are paid in whole or in part out of the City Treasury.

Under Section 3 of the General City Law, City officers are not to be interested, directly or indirectly, "either as principal, surety or in any other manner, in any contract, lease, concession or other agreement in which the city is a party.***"

Section 518 of the Public Authorities Law makes it a misdemeanor for any member of the Board, any Clerk, employee, Architect, Surveyor, Engineer or Superintendent appointed by the Authority to be in any way or manner interested, directly or indirectly, in furnishing materials, supplies or labor for the erection of a project, or in any contract which such Authority is empowered to make.

Section 412 of the County Law provides that no officer or employee shall be interested, directly or indirectly, in any claim, account, or demand against or contract with the county.

Section 1617 of the Education Law prohibits a school trustee from being interested in contracts with the school district.

Section 1868 of the Penal Law prohibits a public or school officer from making any sales, leases or contracts with respect to public property within their authorization where they have a private interest in such transaction.

Section 16 of the Banking Law provides penalties and restrictions on officers and employees of the Banking Department.

Thus, by a variety of statutes, in most cases declaratory of the common law rule, there is revealed a clearly expressed public policy against government officers and employees utilizing their positions in furtherance of their private interests.

Closely related to conflicts of interests is the concept that a public servant shall faithfully discharge the duties of his office exclusively in the interests of the public. This concept is expressed in constitutional and statutory provisions which include New York State Constitution, Article 13, Section 2 (declaring to be a felony the receipt of a bribe to perform or omit to perform or influence performance of an official act), and Section 5, providing that "public officers who ask, demand, accept or receive free passes, free transportation, franking privileges, or discrimination in passenger, telephone or telegraph rates are guilty of a misdemeanor"; Civil Service Law, Section 27 (declaring "bribery or attempted bribery, the corrupt use, or threatened use, of influence gained by public office" in appointments or promotions); Penal Law, Section 1823 (prohibiting an officer from asking, receiving or agreeing to receive any bribe upon agreement or understanding that his official action shall be influenced thereby), and Section 1826 of the Penal Law (prohibiting a public officer from asking or receiving or agreeing to receive any gratuity, reward, money, property or thing of value, except such as may be authorized by law, for doing or omitting to do any official act); Sections 13 to 16 of the Banking Law, the Insurance Law and others, in addition to numerous provisions affecting Federal agencies.

The most recent enactments on the subject are Sections 73 and 74 of the Public Officers Law, which became effective January 1, 1955. Section 73 prohibits by statute and provides criminal penalties for certain enumerated conflicts of interest. Section 74 is a Code of Ethics designed for the guidance of State officers and employees with respect to conflicts in those

areas where it was deemed unwise or unjust to impose criminal sanctions.

Section 73 prohibits officers and employees from receiving compensation for services to be rendered in matters before any State agency where the compensation is contingent upon the official action taken by such agency. It prohibits them, or firms or associations of which they are members, or corporations in which 10 per cent or more of the stock is owned or controlled by them, from selling any goods or services to the State having a value in excess of \$25, unless pursuant to an award or contract let after public notice and competitive bidding. It prohibits the receipt of compensation by former officers or employees within two years after termination of their service or employment for services rendered on behalf of any person, firm, corporation or association in relation to any matter with respect to which such person was directly concerned and in which he personally participated during the period of his service or employment. The rule is extended to officers of a political party such as a member of a national committee, an officer or member of a State committee, or a County chairman of any political party. They are declared ineligible to serve as a judge of any court of record, Attorney General, District Attorney or Assistant District Attorney. The section does not proscribe appearances before State agencies, or business transactions with the State by firms or associations of which the officers or employees are members, provided that they do not share in the profits resulting therefrom. A violation of this section is a misdemeanor under Section 1878 of the Penal Law.

As noted above, the Code of Ethics is embodied in Section 74.

It is against the background of all of these laws, decisional, constitutional and statutory, that Section 886 of the New York City Charter must be read.

It was felt that attention should first be directed to the promulgation of a proposed code of ethics, and then to a consideration of recommendations for clarifying and amending parts of Section 886 of the Charter, so that the code and the Charter section may effectively implement each other.

ETHICS IN GOVERNMENT

Municipal government is one of the mainstays of our Republic. The privilege of serving our government is made available to our citizenry in various ways and in varying capacities. This privilege is an honor coupled with a responsibility—upon which the very integrity of our government depends. That is why it is overwhelmingly important that the honorable reputation of our public servants be maintained. We must not risk even a doubt among our citizens concerning the integrity of our governmental processes and the fidelity of our public servants to these principles.

Section 886 of the New York City Charter is designed to prevent an officer or employee from being interested in transactions with the City. The interest need not be a pecuniary one, for the purpose is to prevent a possible conflict of interest (Haslett vs. Minetti, 374 App., Div. 519, 522). By Section 890, all employees of the City are trustees of the City property committed to their management or control and are "subject to all the duties and responsibilities imposed by law on trustees." Section 901 provides in part that any officer or employee of the City who "shall accept or receive any gratuity from any person whose interest may be affected by his official action, shall be guilty of a misdemeanor and if convicted shall forfeit his office or employment."

Broad as these Charter provisions are, they presently do not furnish a comprehensive definition of standards of conduct for the guidance of City officers and employees, particularly in those areas where, because of the complexity of modern government, honest doubts may arise.

The public has the right to expect integrity and morality in government service. As John Calhoun said more than 100 years ago:

"The very essence of a free government consists in considering offices as public trusts bestowed for the good of the country and not for the benefit of an individual or party."

More than 80 years ago, the Court of Appeals, in applying to a public officer the rule "That no man can faithfully serve two masters," stated:

"While efforts have been made to evade the rule, its justice has never been questioned; it is a rule of necessity, which the test of experience has rendered inflexible." (Smith vs. City of Albany, 61, N. Y. 444, 446).

The statement is as true today as it was when written, although modern government has since attained a magnitude and complexity of awesome proportions. Time and history have emphatically approved this rule of conduct.

We are satisfied that compliance with and the adoption of a fair and workable code of ethics for the more than 200,000 officers and employees of the City will do much to strengthen the faith and confidence of the public in their municipal government.

In assuming the responsibility for devising such a code, we have weighed in careful balance the right of the public to expect morality and integrity in government service as well as the right of those in government service to be appraised with a reasonable degree of certainty of the standards of ethics to which they must adhere in their official conduct.

We have drawn freely from the many studies made on the subject. One of the most exhaustive studies in recent years was that of the subcommittee of the Committee on Labor and Public Welfare of the United States Senate under the chairmanship of Senator Douglas of Illinois. In 1951, the subcommittee heard many prominent witnesses from public and private life. No one suggests that a code of ethics will, in and of itself, furnish an easy solution for the problems that may arise. These prominent witnesses before the Douglas Committee felt generally that such a code would be helpful for the following reasons:

1. It would serve as a useful reminder to officials of what is expected of them;
2. It would furnish a guide in uncharted areas where applications of ethical principles may be in doubt;
3. It would generate public interest in proper standards of official conduct and may thereby encourage a greater measure of respect for public office;
4. It would focus attention on those of our govern-

... "NO WOULD corrupt officials in order to gain unwarranted favors or privileges, and in this way help to dispel the notion of a double standard—one for the corrupted and another for the corruptor. Mr. Harold Ickes, one of the witnesses appearing before the Douglas Committee, in his characteristically salty style, said that he had never known an official to bribe himself.

Among the basic facts which emerged at the hearing before the Douglas Committee were:

1. Most public servants are faithful and devoted. Vigorous enforcement of defined standards of conduct will insure that the infractions of the few will not bring dishonor on an entire body of public service. It is as important to recognize and reward the desirable as it is to identify and punish the undesirable.
2. Time and experience prove that the standards of political morality have been raised, not lowered.
3. The moral standards of the community, condition in a large measure the moral standards of public officials. Conversely, because the two are so closely interrelated, the conduct of public officials has a powerful influence on the general public towards higher or lower standards.
4. The ethical standards of public officials are probably higher than those prevailing in business and other walks of life.
5. As government becomes more complex, the need for higher standards of integrity and competence becomes more compelling.

In formulating a code for all City officials and employees, we have sought to relate basic moral principles to the practical business of serving a modern municipal government. In doing so, we profess no moral superiority or special skill. On the contrary, we approach the task with deep humility. We recognize that we are treading on new and difficult fields in which morals, personal honor, conscience and law are intertwined.

We agree with the statement in the Douglas Report that "The Code should not be over-righteous." We have sought

to establish a standard which would appeal to reasonable men as proper and practicable and readily understandable. A code which is unnecessarily rigid and restrictive will defeat its purpose. It would discourage qualified persons from entering government and will have a demoralizing effect upon incumbents. We believe it should be specific and not be so general as to constitute a mere expression of pious hopes. Nor should it be a trap for the unwary. Within reasonable limits, it should clearly specify the area of unethical conduct—so that violators will be punished and the good and dedicated public servant will not be deceived.

Our concern is with those conflicts which influence or may influence official action and thereby degrade public service.

NOTES CONCERNING THE PROPOSED CODE OF ETHICS

Subdivision a of proposed Section 898.1-0, reads:

"No councilman or other officer or employee, whether paid or unpaid, shall engage in any business or transaction or shall have a financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his official duties."

This subdivision is broad and should receive a sensible interpretation which recognizes that there may be private interests which are too remote and insubstantial, or which for other reasons pose no threat to the public interest.

Thus, the interests of officers and employees, in common with those of other residents, may be affected by what the City does. Such interests are not necessarily within the coverage of this rule, depending upon whether they are such as to influence the proper discharge of official duties.

It is not possible to anticipate every conceivable problem that may arise. Doubts, or uncertainties, should be presented to the Board of Ethics, which is being proposed to interpret the rules and their application to specific cases.

Subdivision b provides as follows:

"No councilman or other officer or employee whose salary is paid in whole or in part from the city treasury shall appear in behalf of private interests before any

agency, including the New York City Transit Authority, the New York City Housing Authority and the Triborough Bridge and Tunnel Authority. Councilmen, however, may appear without compensation in behalf of constituents, or in the performance of public or civic obligations. This section shall not prohibit appearances upon matters only incidentally requiring official action which do not develop into a substantial part of the employment, provided the interests of the city remain incidental, and provided, further, that the retainer is not for the purpose of appearing before the agency, and provided further, that the compensation, in whole or in part, is not contingent or dependent upon the action of such agency. No person serving the city without compensation shall appear, either directly or indirectly, on behalf of private interests in matters involving the agency which he serves or before any agency of the city affecting matters involving the agency, in which he serves, or in any representative capacity against the interests of the city."

This subdivision is directed only to those officials who are permitted to engage in their business or profession under the Charter, and is not intended to change the law or the practices with respect thereto.

Councilmen, in line with legislative tradition, often are required to appear without compensation before City agencies on behalf of constituents in compliance with civic or official obligations. Such appearances, as Councilmen, and not in furtherance of their private interests, do not offend this rule.

Apart from the exceptions noted, the prohibition applies to all and embraces every form or representation. Appearances other than those indicated herein, would be in conflict with the public interest and would make it difficult, if not impossible, to avoid the suspicion that undue advantages are sought by virtue of influence or position.

Subdivision d provides as follows:

"A councilman who has a direct or indirect financial or private interest in any proposed legislation shall publicly disclose, on the official records of the council, the nature and extent of such interest."

Under Section 21 of the Charter, the Council is designated as the local legislative body of the City. A Councilman, like all other legislators, is not disqualified by law, from acting on legislative matters which affects his interest in common with many others of a class.

Where a Councilman has a special interest, in proposed legislation, propriety dictates a public disclosure of such interest. Such disclosure serves a healthy purpose. It enables officials to appraise their conduct with sharpened vision. It also enables members of the Council and the public to judge the pending matter with full knowledge of the pertinent facts.

There may be cases, where the nature of such interest may impel the Councilman on his own initiative, out of a sense of high responsibility, to refrain from acting with respect thereto, even though no legal prohibition exists.

Subdivision e provides as follows:

"An officer or employee who has a direct or indirect financial or other private interest in any legislation, and who participates in discussion before or gives official opinion to the council, the board of estimate or the mayor, shall publicly disclose on the official record the nature and extent of such interest."

This subdivision imposes a duty on officers and employees of the City who have direct or indirect financial or other private interests to disclose such interests and thus keep the Council, the Board of Estimate, the Mayor and the public fully informed.

The paramount obligation of a public servant is to avoid basis for the suspicion that any special or private interests may affect his official action. A public officer or employee should be guided by the highest public interest in all official acts, in order that his decisions, views or opinions shall be free from any influence that would interfere with the objectivity, impartiality and integrity so basic in the consideration of municipal legislation.

While the Committee has earnestly tried to deal with those situations in major areas of governmental concern, we recognize that it is not possible to anticipate every conceivable situation.

these supplementary notes have been prepared by this Committee, concerning those subdivisions which seemed to call for specific explanation. As to the others, notes were not deemed necessary.

It is the view of this Committee that a study or consideration of the sections of this report referring to the history, background, governmental experience and studies in other forums, will furnish additional light on the subject matter embraced within the proposed code of ethics.

BOARD OF ETHICS

The Committee recommends the establishment of a Board of Ethics to render advisory opinions to officers and employees of the City based upon a given set of facts.

Impartial and objective opinions rendered by a Board of Ethics, composed of outstanding citizens, will have public value. In effect, such decisions would be comparable to those rendered by the committees on ethics of professional associations. In this way, officers and employees who wish to obtain impartial and objective advice will be able to do so. No public officer or employee need be uninformed on any ethical problem.

With the passage of time, advisory opinions will furnish valuable guides, in addition to being a source of reference for all persons concerned, and will contribute to a proper understanding of the code. These opinions will reflect the practical operation of the code, and will be of value to those who must pass upon recommendations concerning its modification or amplification.

The Committee recommends that the Board be appointed by the Mayor; that it shall consist of five members; that three shall be selected from the public, and two shall be City officials; that each shall have an equal vote; and that they shall serve in this capacity without compensation. It is further recommended that the City officials should be the Corporation Counsel, and the Chairman of the Department of Personnel, both of whom have an official concern in matters of this kind.

The right to request an opinion of the Board of Ethics is a valuable privilege, and should be availed of whenever any doubt exists.

FORMER OFFICERS AND EMPLOYEES

Since 1872 there has been a Federal statute prohibiting former government officials from practicing for two years before the agency which they served on matters which they handled. The State Legislature, when it enacted Section 73 of the Public Officers Law, Subdivision 4, dealt with this same subject.

It is the opinion of this Committee that a former officer or employee of the City should not be permitted for a period of two years after leaving the City service to directly or indirectly represent private interests against the City in any matter for which he was responsible or in respect of which he participated while in City service. It is an extension of the rule that government service is not to be utilized for private advantage. This is fundamental to the spirit of fairness and integrity which a public official should manifest towards his municipality, and neither the public officer nor those he represents shall take undue advantage of information, knowledge and facts gained by one to whom the municipality entrusts its affairs.

The local law setting forth this concept appears in the appendix herewith.

SECTION 886 OF THE CHARTER

Section 886 of the Charter now reads as follows:

"§ 886. Officer or employee not to be interested in transactions with city.—a. (1) No councilman or other officer or employee or person whose salary is payable in whole or in part from the city treasury shall be or become interested directly or indirectly in any manner whatsoever, except by operation of law, or act as attorney, agent, broker or employee for or accept any gift, loan or thing or promise of value from any person, firm or corporation interested directly or indirectly in any manner whatsoever, in or in the performance of or in any litigation arising out of or involving any contract, work or business or the sale or acquisition of any property, the expense, price or consideration of which is payable from the city treasury or by any assessment levied pursuant to law; or in the purchase, lease, rental

or letting of, or grant of license or permit in relation to any real or other property belonging to or taken by the city, or which shall be sold for taxes or assessments, or by virtue of legal process or any provision of law by or at the suit of the city.

"(2) If any such person shall knowingly and intentionally violate any of the provisions of this subdivision, he shall, on conviction thereof, forfeit his office and be punished for a misdemeanor.

"(3) Any violation of any of the provisions of this subdivision shall, at the option of the comptroller, render forfeit and void the contract, work, business, sale or transaction affected.

"b. No councilman or other paid officer or employee of the city or of any agency except a county shall during his employment or incumbency, act as a real estate broker, engage in the real estate business, appear as attorney or counsel before any agency, appear as attorney or counsel in an action or proceeding or give opinion evidence against the interests of the city in any litigation to which the city is a party. This subdivision shall not be construed to restrict or prohibit the retainer of persons engaged as brokers or otherwise in the real estate business for the rendition of expert services.

"c. Any violation of any of the provisions of this section shall constitute cause for removal from office or employment."

Much has been said about the need for clarifying the language of subdivision a of Section 886. The New York County Grand Jury said it was "loosely and vaguely drawn". The Commissioner of Investigation said that there was a definite need for a clearer definition of "the duties and obligations of councilmen, City officials and City employees in matters in which they may be financially interested".

We have been handicapped in our reading of Section 886 because there are no memoranda or formal records of the (Thacher) Charter Revision Commission or its predecessors. The reasons for the form or substance of Section 886 are,

therefore, not available and except for provisions carried from earlier laws, no clear expressions of the charter members or staff could be found.

The Committee, through its Counsel, sought but could not locate details of the Charter studies which led to the provisions in the present section, among the effects of the late Judge Thomas Thacher, Chairman of the Charter Revision Commission which recommended it. Nor were they available in any libraries, in the Office of the Mayor, the City Council, the Municipal Reference Library, the New York Public Library or the Office of the Corporation Counsel or Comptroller of The City of New York, or in any of the repositories where such records or documents might be expected to be found.

The initial draft of the present section was made in April, 1936. It simply re-stated the predecessor section. The draft ultimately adopted was made in August, 1936. We cannot locate any formal record which was made of the intermediate considerations between the first draft in April, 1936 and the final one which led to the adoption of the present language. From the fact that the language of Section 886 is unusually broad in contrast to its predecessor section and to other statutes dealing with the same general subject, there is clearly indicated a definite intent to expand the prohibitions beyond those previously in effect. There have been very few judicial interpretations. If the section is read literally, even so-called "technical" violations which involve no real conflicts of interest could constitute cause for removal from office. The Committee believes that the public interest will be served by a revision of the section and clarification of its language, so that what is prohibited and what is permitted will be clearly stated.

We further believe it is in the best public interest to take into consideration the experience of government since 1938 when this section became effective.

Section 886 superseded Section 1533 of the Greater New York City Charter, which had been entitled "Officers; not to be interested in contract." The prohibitions of Section 1533 were confined to officers interested in business dealings with the City, and as such were consistent with Section 3 of the General City Law and the other statutes mentioned above.

Section 886 extended the coverage of prior statutes to employees as well as officers. This was a useful and desirable extension, because there are many public employees who enjoy wide discretionary powers and, accordingly, they were subjected to the same standards of loyalty, fidelity and integrity as are applied to public officers.

In addition, the scope of the former statute was widened by the Thacher Charter Revision Commission in the following respects:

It prohibits any councilman or other officer or employee from:

1. Acting as Attorney, agent, broker or employee of any person, firm or corporation interested, directly or indirectly, in City business;
2. Accepting any gift, loan or thing or promise of value from any person, firm or corporation interested directly or indirectly, in City business;
3. Appearing as attorney or counsel before any agency or from so appearing or giving opinion evidence against the City in any litigation to which the City is a party.

The portion of the section dealing with real estate brokers or those engaged in real estate business has received varied and conflicting interpretations.

Each of these provisions was new. They never existed before in any form and became effective for the first time in 1938. They will be discussed in the order stated.

1. Mere employment by or representation of one having business dealings with the City is ground for removal from office, regardless of the absence of knowledge of or interest in such business dealings. This goes further than other laws. For example, neither Section 3 of the General Municipal Law nor Section 1868 of the Penal Law imposes any such prohibition. These statutes and the others mentioned above deal with direct or indirect interests in government contracts, work or business which involved or may involve conflicts of interests.

The provision as to employment did not appear in the

old Charter (Section 1533), which was in effect prior to 1938 and which prohibited a direct or indirect interest in a contract, and those subject to the prohibition were clearly specified as "the contracting party, a partner, stockholder or otherwise". The courts have held that employment was not an interest.

The Federal law prohibits a person who is an officer or agent of, or has a direct or indirect interest in, the pecuniary profits of contracts of a corporation, from acting as officer or agent of the United States for the transaction of business with such corporation. In essence, the Federal provision is similar to that contained in the General City Law.

The State Code of Ethics (Public Officers Law, Section 74) prohibits employment which impairs independence of judgment in official duties. As a consequence it is apparent that in dealing with the subject of employment by or representation of persons having business dealings with the City, Section 886 goes beyond other applicable laws.

It is recognized that mere employment by one doing business with the City may involve no conflict of interest where the officer or employee has no personal interest in the City business; does not participate therein and extracts no benefit therefrom, but may nevertheless be regarded in the language of Commissioner of Investigation Tenney as a "technical" violation. The imposition of unnecessary restrictions upon outside activity may deprive the City of the services of eminently qualified persons and would bear harshly on the honest public servant.

The mere employment in these days of complexity, by one doing business with the City in and of itself constitutes no threat to the interests of the City. Whether or not it does depends upon the extent of the employer's business dealings with the City and whether or not the employee has any interest or participates therein. The Committee feels that no useful public purpose is served and harm may result from prohibiting employment in a case where the employer's City business forms an insubstantial part of its total business and where the employee has no direct or indirect interest in the City business and performs no activities in connection therewith. Employment of that nature does not of itself involve

a conflict of interest and unless it does, it is the opinion of this Committee that such prohibition could not be in the public interest.

2. Acceptance of gifts from persons doing business with City is ground for removal from office and applies regardless of any other circumstance. It has been contended that the prohibition applies no matter whether the recipient of the gift knows of the donor's business dealings with the City and regardless of whether the acceptance of the gift is calculated to or may result in influencing official action.

This provision is to be contrasted with Section 901 of the Charter, which provides in part that any "officer or employee of the City who * * * shall accept or receive any gratuity from any person whose interest may be affected by his official action, shall be guilty of a misdemeanor and if convicted shall forfeit his office or employment." It is also to be contrasted with Section 1826 of the Penal Law, making it a felony for any public officer or employee to receive anything of value for doing or omitting to do any official act, directly or indirectly related to any matter to which any duty or discretion is imposed upon or vested in him or may be exercised by him by virtue of his office.

In view of the magnitude of our City government and the vast number of persons having business dealings with the city, it is conceivable that an officer or employee may accept a gift in good faith without knowing that his donor has business dealings with the City. Under the existing statute (Section 886), such employee may be placed in serious jeopardy when a gift is received.

The Committee recommends that the prohibition shall apply to the acceptance of gifts where the donor has dealings with the City, and that fact is known or should reasonably be known to the receiver of the gift. Certainly where the relationship is not one arising out of employment or business activity with our municipality, an officer or employee should not be penalized.

3. Appearance as attorney or counsel before any agency or in any court in litigation to which the City is a party or the giving of opinion evidence against the City in litigation to which the City is a party is ground for removal from

office under Section 886. The Committee regards this as a wholesome provision calculated to protect the interests of the City.

With respect to appearances before City agencies, it should be noted that the Public Officers Law permits State employees and legislators to appear before State agencies and merely prohibits arrangements for compensation contingent upon success. The Federal law prohibits law makers from appearing for compensation on behalf of private parties before Federal agencies only on matters to which the government is a party or in which it is directly or indirectly interested.

The section, in so far as it proscribes appearances before City agencies, presents a number of problems. Councilmen are obliged from time to time to appear without compensation for constituents, or in connection with public, official or civic matters. They appear in such cases in furtherance of their public obligations and not in furtherance of their private interests.

On occasion, Councilmen or other officers while properly representing private interests on private matters are confronted with the necessity of requesting official action from a City agency. Whether their appearances before City agencies on such occasions should be prohibited depends upon the terms of the employment or retainer and the nature of the requested official action. A Councilman or other officer may not accept a retainer for the purpose of appearing before a City agency or in a case where such appearance constitutes a substantial part of the employment. On the other hand, the Committee feels that a lawyer, for instance, should not be required to surrender his retainer in a case where the required official action is and never ceases to be incidental to the employment or retainer, and where the employment is not for the purpose of appearing before a City agency and where the compensation is not contingent or dependent upon the action of the City agency. In such situations there is lacking the element of venality with which the statute is concerned. It is similar to the kind of situation Governor Thomas E. Dewey referred to when he said (referring to the Report under the chairmanship of the late Justice Charles C. Lockwood) :

"Certainly government should not be deprived of the services of all but princes and paupers. The business of

government cannot and should not be separated from the day-to-day lives of the human beings who conduct it. The problem is to separate the unavoidable conflicts of interests from the venal and the doubtful; to chart the shadowlands of conduct where men of good will may have difficulty in deciding whether a course is proper or improper."

4. It has been contended that a real estate broker or one engaged in the real estate business is disqualified from holding City office or employment under Section 886. Research has failed to disclose any other statute in this or any other jurisdiction imposing a disqualification so specific and so absolute, directed to one business or profession.

If the purpose of the alleged prohibition is to avoid conflict of interests, there is no need to exclude from public service any given occupation, for subdivision (a) prohibits any direct or indirect interest in City business, including the purchase from or sale to the City of any real or other property, and prohibits a broker from acting for any person, firm or corporation interested directly or indirectly in any manner whatsoever in business dealings with the City.

If it were intended that the prohibition should attach to real estate transactions with the city or involving the City, the language of the subdivision may go far beyond such intention.

It is the opinion of the Committee that the section may be subject to the rule of a strict construction because it is quasi-criminal in nature. Under such a rule of construction, anyone engaging in the business of real estate broker may be disqualified from membership in the Council.

The Committee has unanimously agreed that any disqualifying provision as to real estate brokers is unrealistic and discriminatory. We fail to see any useful public purpose as the provision reads. What is affirmatively bad is the fact that it may encourage deception, place a stigma on a business or profession and seriously prejudice the City by excluding from its service eminently qualified persons.

ACKNOWLEDGMENTS

This Committee wishes to acknowledge its thanks to the numerous civic leaders and public officials in municipal, State

and Federal Government both here and abroad, who took the time and trouble to comment, report and advise about their respective laws, and who made many valuable suggestions.

We are deeply indebted to Benjamin Heller, Esq., associated with Mr. Kreutzer as counsel to this Committee, for his constant and faithful attendance at the many extended sessions of our Committee and for his valuable assistance to this Committee. He gave this Committee the benefit of his extensive experience and exceptional legal ability.

We are also deeply indebted to Herbert I. Bayevsky, Esq., counsel to the Majority Leader. Mr. Bayevsky attended the many meetings of this Committee regularly and was of invaluable assistance in the deliberations of the Committee and its counsel. He brought to the Committee his comprehensive knowledge of legislative procedures and gave generously and graciously above and beyond his usual duties, the benefit of his penetrating and deep perception in the careful consideration and solution of the many problems that arose.

The numerous meetings and conferences of the Advisory Board with counsel, public officials and others, and their conferences with this Committee were of inestimable value in formulating the concepts and recommendations incorporated in this Report. To the family of the late Justice Charles C. Lockwood, who brought to this work, his experience and knowledge as Chairman of the New York State Ethics Study, we extend our thanks for his devoted service and helpful advice. To Justice Joseph M. Callahan, and Messrs. Cloyd Laporte and Edwin L. Weisl, this Committee wishes to express its deep and everlasting appreciation for their sustained interest and cooperation. In their capacity as members of the Advisory Board, they have given generously of their time and wise counsel, with a constant and considerate concern for the welfare of our City.

Finally, and most important, the Committee, acknowledges with deep gratitude its vast debt to the Hon. S. Stanley Kreutzer who has, from the inception of its labors, so ably acted as counsel. At the very commencement of our task, his collection and evaluation of source material gave direction to our work. His tremendous energy, his boundless enthusiasm and his complete devotion to the task before us have

contributed immeasurably to the work of the Committee. Throughout the innumerable meetings at which the Committee sought solution to the multitude of problems, his calm and considered approach and his willingness to undertake any burden, were in the highest tradition of public service.

CONCLUSION

We do not believe it is possible to meet every conceivable situation. A code embracing ethical principles will help in the major areas of concern. What we have submitted represents a worthwhile endeavor which we trust will help to resolve those problems which have plagued government.

With a genuine desire to serve the public and protect its welfare, we respectfully submit the program of legislation, annexed hereto. We believe this program is clearly in the public interest and can be unhesitatingly accepted by sincere and dedicated public servants.

Dated: February 3, 1959

THE COMMITTEE ON ETHICS AND STANDARDS
OF THE CITY COUNCIL OF NEW YORK