

CHAPTER 68*

ETHICS

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§ 2600. **Board of ethics.** a. There shall be a board of ethics consisting of the corporation counsel, the director of personnel, and three public members appointed by the mayor, each for a term of four years, who shall serve without compensation. The mayor shall designate a chairman from among the public members.

b. The board of ethics may appoint a counsel to serve at its pleasure and may employ or retain other officers, employees and consultants within appropriations for such purpose.

§ 2601. **Investigations.** Upon request from the board of ethics, the commissioner of investigation shall investigate any matter within the jurisdiction of the board and report to it the result of such investigation.

HISTORICAL NOTE

Amended by L. L. 1977, No. 102.

§ 2602. **Advisory opinions.** a. The board of ethics shall render advisory opinions with respect to questions of ethical conduct, conflicts of interest and other matters arising under sections twenty-six hundred four, twenty-six hundred five, twenty-six hundred six and twenty-six hundred seven. Such advisory opinions shall be rendered on the written request of the officer or employee, former officer or employee concerned or any supervisory official of such officer or employee and in the board's discretion may be rendered on its own initiative or on the basis of an investigation.

b. The board of ethics shall make public its advisory opinions with such deletions as may be necessary to prevent disclosure of the identity of any officer or employee or other involved party. The records, reports, memoranda and files of the board shall be confidential and shall not be subject to public scrutiny.

HISTORICAL NOTE

Subd. a amended by L. L. 1977, No. 102.

Subd. a amended by L. L. 1979, No. 29.

* There are two chapters 68. This one is repealed on December 31, 1989 as per § 1152, subd. c par. 3.

§ 2603. **Revision.** The board of ethics shall review the provisions of this chapter and shall recommend to the council from time to time changes or additions that may be appropriate or desirable. Such review and recommendation shall be made at least once every five years.

HISTORICAL NOTE

Amended by L. L. 1977, No. 102.

§ 2604. **Conflicts of interest.** a. A council member 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.

b. No member of the board of estimate or the council or other salaried officer or employee of the city or any city agency:

(1) shall be or become interested directly or indirectly in any manner whatsoever except by operation of law in any business dealings with the city or any city agency;

(2) shall act as attorney, agent, broker, director, officer, employee or consultant for any person, firm, corporation or other entity interested directly or indirectly in any manner whatsoever in any such business dealings;

(3) shall accept any valuable gift, whether in the form of service, loan, thing or promise, or in any other form from any person, firm, corporation or other entity which to his knowledge is interested directly or indirectly in any manner whatsoever in any such business dealings;

(4) shall represent private interests before any city agency;

(5) shall appear as attorney or counsel against the interests of the city or any city agency in any litigation to which the city or any city agency is a party, or in any action or proceeding in which the city or any city agency, or any officer or employee of the city or any city agency, acting in the course of his official duties, is a complainant; or

(6) shall give opinion evidence as a paid expert against the interests of the city or any city agency in any civil litigation brought for private pecuniary gain against the city or any city agency.

(7) This subdivision shall not be construed to prohibit an officer or employee of the city or of any city agency, other than elected officials, employees in the office of property management of the department of housing preservation and development, employees in the division of real property of the department of general services and the commissioners, deputy commissioners, assistant commissioners and others of equivalent ranks in such departments, or the successors to such departments, from bidding on and purchasing any city-owned real property at public auction or sealed bid sale or from purchasing any city-owned residential building containing six or less dwelling units through negotiated sale, provided that such officer or employee, in the course of city employment, did not participate in decisions or matters affecting the disposition of the city property to be purchased and has no such matters under active consideration.

c. No member of the board of estimate or the council or other officer or employee of the city or any city agency, whether paid or unpaid:

(1) shall engage in any business or transaction or private employment, or shall have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his official duties;

(2) shall use or attempt to use his position to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for himself or any person, firm, corporation or other entity with which he is associated; he shall be deemed 'associated' with each person who is a close relative by blood or marriage, with each person with whom he has a business or other financial relationship and with each firm, corporation or other entity in which he has a present or potential substantial interest, direct or indirect;

(3) shall attempt to influence the course of any proposed legislation in the board of estimate or the council without publicly disclosing on the official records of the board of estimate or the council, as the case may be, the nature and extent of any direct or indirect financial or other private interest he may have in such legislation;

(4) shall coerce or attempt to coerce, by intimidation, threats or otherwise, any officer or employee of the city or of any city agency to engage in political activities;

(5) shall appear, directly or indirectly, on behalf of private interests in matters involving the city agency in which he serves or before any city agency affecting matters involving the city agency in which he serves;

(6) shall disclose any confidential information concerning any of the property, affairs or government of the city or any city agency, or use any such information to advance any direct or indirect financial or other private interest of himself or any other person, firm, corporation or other entity.

d. As used in this chapter, the words "business dealings with the city" shall include any contract, service, work or business with, any sale, renting or other disposition to, any purchase, leasing or other acquisition from, and any grant, license, permit or other privilege from, the city or any city agency, and any performance of or litigation with respect to any of the foregoing.

e. As used in this chapter, the term "agency" shall mean a city, county, borough or other office, position, administration, department, division, bureau, board, commission, authority, corporation or other agency of government, the expenses of which are paid in whole or in part from the city treasury, and shall include the board of education, the board of higher education, school boards, city and community colleges, community boards, the New York city transit authority, the New York city housing authority, and the triborough 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.

f. This section shall not be construed:

(1) to prohibit a council member from appearing without compensation before any city agency on behalf of constituents or in the performance of public official or civic obligations;

(2) to prohibit a member of the board of estimate or the council or other officer or employee from:

(a) 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;

(b) acquiring or holding an insubstantial investment or other insubstantial interest in any firm, corporation or other entity or business or private transaction, provided such investment or interest does not create a conflict with his official duties;

(c) being affiliated with, by investment or otherwise, employed by or representing a person, firm, corporation or other entity whose business dealings with the city or any city agency form an insubstantial and unimportant part of its total business, provided that he has no direct or indirect interest in such business dealings and takes no direct or indirect part in such business dealings and receives no direct or indirect compensation or other benefit in connection therewith;

(3) to prohibit any physician, dentist, optometrist, podiatrist, pharmacist, chiropractor or other person who is eligible to provide services or supplies under title eleven of article five of the social services law and is receiving any salary or other compensation from the city treasury, from providing professional services and supplies to persons who are entitled to benefits under such title, provided that, in the case of services or supplies provided by those who perform audit, review or other administrative functions pursuant to the provisions of such title, the New York state department of health reviews and approves payment for such services or supplies and provided further that there is no conflict with their official duties; nothing in this paragraph shall be construed to authorize payment to such persons under such title for services or supplies furnished in the course of their employment by the city.

(4) to prohibit any member of the uniformed force of the police department from being employed in the private security field provided that such member has received approval from the police commissioner therefor and has complied with all rules and regulations promulgated by the police commissioner relating to such employment.

(5) to prohibit an officer or employee, other than an elected official, from acting as attorney, agent, broker, employee, officer, director or consultant for any not-for-profit corporation or association or other such entity which operates on a not-for-profit basis, interested in business dealings with the city or a city agency, provided that:

(a) such officer or employee takes no direct or indirect part in such business dealings;

(b) such not-for-profit entity has no direct or indirect interest in any business dealing with the city agency in which the officer or employee is employed and is not subject to supervision, control or regulation by such agency;

(c) all such activities by such officer or employee shall be performed at times during which the officer or employee is not required to perform services for the city;

(d) such officer or employee receives no salary or other compensation in connection with such activities, and

(e) the head of the city agency which employs the officer or employee, the commissioner of investigation, and the board of ethics have determined that the proposed activity is in furtherance of the purposes and interests of the city and would not constitute a conflict of interest.

g. No member of the board of estimate or the council or other officer or employee of the city or any city agency, whether paid or unpaid, shall solicit, negotiate for or accept any employment from which, after leaving city service, he would be disqualified under subdivision h of this section.

h. No person who has served as a member of the board of estimate or the council or other officer or employee of the city or any city agency, whether paid or unpaid, shall, within a period of three years after termination of his employment, appear before any city agency, or receive compensation for any services rendered on behalf of any person, firm, corporation or other private entity, in relation to any case, proceeding, application or other matter with respect to which during his employment he was directly concerned, or in which he personally participated, or which was under his active consideration, or with respect to which knowledge or information was made available to him as a result of his city employment, provided, however, that:

(1) such a person shall be barred for eight years from any action in relation to any such case, proceeding, application or other matter on behalf of a private person, firm, corporation or other private entity which would be adverse to or against the interests of the city or any city agency;

(2) such a person may engage in private employment or action from which he would otherwise be prohibited by the aforesaid provisions of this subdivision where the employment or action would be in furtherance of the purposes and interests of the city and the city agency in question and not in conflict therewith, if, after written approval as satisfying this requirement by the head of such city agency, the corporation counsel and the commissioner of investigation, the board of ethics shall find that the employment or action involves no such conflict.

i. No member of the board of estimate, member of the city council, officer or employee of the city or one of its departments or agencies employed on a full-time basis by virtue of appointment of the mayor, and no officer or employee of the city or one of its departments or agencies employed in a policy-making position as determined by the appointing authority, shall solicit, negotiate for or accept any employment or agree to contract to render services, without regard to when such employment or contract shall commence, with or to any private person, firm, corporation or other entity who or which is involved in a matter with the city, while such member, officer or employee is actively considering, or is directly concerned or personally participating in such matter on behalf of the city.

j. 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 in question.

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

l. Any person who shall knowingly and intentionally violate any of the provisions of this section, shall be guilty of a misdemeanor and shall, on conviction thereof, forfeit his office and be punished for a misdemeanor.

CASE NOTES

- ¶ 1. Request of petitioners who were police officers and shareholders of a corporation, for approval of the commissioner to participate in the affairs of the corporation by keeping records and exercising inventory and purchasing control should not have been denied on ground that they would thereby have an indirect interest in "business dealings with the city" because of a contract that the corporation had with another corporation to sell certain items in the area adjacent to the Yankee Stadium which the New York Yankees leased from the city.—Matter of Smith (McGuire), 182 (8) N. Y. L. J. (7-12-79) 15, Col. 1 M.
- ¶ 2. This statute is not pre-empted by Public Authorities Law § 1211 and is applicable to Transit Authority employees and to such of their acts as occur after January 1, 1977, and thus a senior executive officer of the Transit Authority could be prosecuted for alleged improper receipt of meals occurring after that date.—People v. DeRoos, 118 Misc. 2d 445 [1983].
- ¶ 3. This section was designed to prohibit gifts to public officials, and clearly was not directed at political contributions which are the subject of § 2606 of the Charter. Thus the plaintiff cannot use this section to challenge campaign contributions to his opponent. DiLucia v. Mandelker, 68 N. Y. 2d 844 [1986].

HISTORICAL NOTE

Section amended by L. 1978, ch. 763.
 Par. 7 of subd. b added by L. L. 1980, No. 41.
 Subd. 4 of subpar. f added by L. L. 1979, No. 33.
 Subd. 5 of subpar. f added by L. L. 1979, No. 41.
 Subd. i added ch 687/86 § 1; Subds. j-l relettered ch 687/86 § 1 [formerly subds. i-k].

§ 2605. **Corrupt practices.** No member of the board of estimate or the council or other officer or employee of the city or of any city agency shall give or promise to give any portion of his compensation or any money or valuable thing to any person in consideration of his having been or being nominated, appointed, elected or employed as such officer or employee, under the penalty of forfeiting his office or employment and being forever disqualified from being elected, appointed or employed in the service of the city or of any city agency, and shall on conviction be punished for a misdemeanor.

HISTORICAL NOTE

Amended by L. 1978, ch. 763.

§ 2606. **Political contributions.** No council member or other officer or employee of the city shall, directly or indirectly, pay or promise to or compel, request or induce any person to pay any political assessment, subscription or contribution under threat of prejudice to or promise of or to secure advantage in rank, compensation or other job related status or function or in consideration of his having been or being nominated, elected, appointed or employed as such officer or employee, under the penalty of forfeiting his office or employment. Any violation of this section shall be a misdemeanor.

HISTORICAL NOTE

Amended by L. 1978, ch. 763.

§ 2607. **False reports; compensation; gratuities.** Any officer or employee of the city or of any city agency who shall knowingly make a false or deceptive report or statement in the course of his duty or shall,

except as in this charter otherwise provided receive compensation except from the city or a city agency for performing any official duty or shall accept or receive any gratuity from any person whose interests may be affected by his official action, shall be guilty of a misdemeanor and upon conviction, forfeit his office or employment.

HISTORICAL NOTE

Amended by L. 1978, ch. 763.

§ 2608. **Self-dealing among members of the governing boards of charitable institutions.** a. Any charitable institution which receives any payment from the New York city charitable institutions budget shall pass and implement by-laws which will:

1. Require disclosure to the agency responsible for the administration of Charitable Institutions Budget and his approval of the material terms of any contract or transaction, direct or indirect, between an institution and any member of its governing board, any partnership of which he is a member or any corporation in which he holds ten percentum (10%) or more of the outstanding common stock.

2. Preclude any member of the governing board of any institution from sharing, participating or benefiting, directly or indirectly, in the proceeds from any contract or transaction entered into between the institution and any third party unless such participation or benefit has been approved in advance by the agency and the governing board of the institution has approved the transaction by a two-thirds majority excluding the vote of the member to be benefited.

3. Require each member of its governing board to submit to the agency each year a disclosure statement including his name, home address, principal occupation and business interests from which he or his spouse received income equal to or greater than 10 per cent of their aggregate gross income during the previous year.

b. At the discretion of the agency, any payment or any portion of any payment may be withheld from any institution which has failed to pass and implement such by-laws.

CASE NOTES

¶ 1. This section is no defense to an Article 78 proceeding to annul a determination that rent moneys be returned to city where petitioner, which provided child care services, was reimbursed by the city for the rent it paid for its premises when one of the partners who owned the property to which the petitioner paid rent was also a member of the petitioner's board of directors.—Matter of Obel Children's Home (City of New York), 180 (48) N. Y. L. J. (9-8-78) 6, Col. 5 M.

HISTORICAL NOTE

Added by L. L. 1978, No. 1.