

A Brief Overview of New York City's Conflicts of Interest Board: A Model Government Ethics Law

By Bonnie Beth Greenball



What Is the New York City Conflicts of Interest Board?

Some may say that "government ethics" is an oxymoron, particularly in the country's largest and most diverse metropolitan area, New York City. Yet, for the past thirteen years, a small city agency, the New York City Conflicts of

Interest Board (the "Board"), has been below the general public's radar screen carefully administering the government ethics law in New York City. The Board successfully monitors the work of over 300,000 city employees—a government workforce that is among the largest in the nation. The agency, on a small budget with minimal staff, has during its short history addressed the ethics issues of thousands of city employees. Last year, the Board's attorneys responded to approximately 2,500 phone calls through the agency's "attorney of the day" hotline; wrote 500 opinions; achieved a resolution of 179 enforcement matters; and trained over 12,000 employees. The Board is well regarded in New York City government and in recent years has become a "first stop" for City Hall in implementing many of its new initiatives.

Why Do We Need Government Ethics Laws?

In common parlance when we refer to government ethics, we are essentially talking about a system by which government has placed a check upon itself and public officials aimed at the *prevention* of unethical conduct. Quite simply, in order for government to function and for the people governed by the system to accept the decisions public officials make, the system must be built on trust. Once the citizens have faith in the system, the theory is that they will obey the rules and laws created by that system. Therefore, it is important not only for integrity in government *actually* to exist but also for it to *appear* to the public that it exists and for the public to have confidence in the government system. For example, if a public official accepts an expensive gift from a contractor, even though he or she may not actually be influenced by that gift, it may appear to a member of the public who becomes aware of that gift that the public offi-

cial may be setting up a "sweetheart deal" for that contractor. If there are no repercussions for the public official accepting such a gift, even if the contract itself was fair, the system fails. It is crucial to the success of government that the public does not lose faith in those who govern them.

How Do Government Ethics Laws Work?

If a public official is truly corrupt, then government ethics laws will not deter that public official, and those cases become matters for criminal prosecution. However, by and large, the average government official enters the field to serve the public and merely needs guidance for carrying out his or her official duties fairly and impartially. Most public servants want to do "the right thing," and ethics laws exist so that the average public servant can model his or her conduct to be in compliance with the law's requirements. With a straightforward, easily comprehensible ethics law, a government official can navigate the difficulties of public service armed with information about how best to conduct himself or herself with integrity. In fact, should public officials feel pressured by an outside interest, such as a vendor, an outside employer, a relative, a superior, or even a not-for-profit for which they volunteer, to take official actions, those officials may rely upon the ethics law to help them out of a difficult situation. They may simply tell the party that they are subject to public censure and fines should they violate the ethics law.

How Are the Ethics Laws Administered?

In New York City, the Board itself is the independent body charged with interpreting the city's ethics law, and the Board's *staff* administers the law. The city's conflicts of interest law is contained in Chapter 68 of the New York City Charter. Chapter 68 requires that the Board be made up of five part-time public servants, who themselves must comply with Chapter 68, and who "shall be chosen for their independence, integrity, civic commitment, and high ethical standards."¹ A Board member may not hold other public office, seek election to public office, be a public employee in any jurisdiction, hold any political party office, or appear as a lobbyist before the city.

The staff to the Board is made up of fewer than twenty full-time public servants, eight of whom are attorneys. The staff is comprised of four operating units: financial disclosure, training and education, legal advice, and enforcement. The financial disclosure unit accepts financial disclosure reports from approximately 13,000 high-level officials, as well as from employees with contracting authority, and makes those reports available to members of the public, including the press, who search for possible conflicts of interest. The training and education unit provides training sessions to employees in agencies throughout the city and handles the agency's publications. The goal of that unit is to get out the message about government ethics to those who are covered by the law.

Roughly half of the staff attorneys provide legal advice to public servants who are seeking to understand the ethics law and determine how it applies to them. These attorneys provide legal advice only *prospectively*. All written requests for advice receive a formal written reply from a staff attorney or a response from either the Chair of the Board or the full Board, depending on the circumstances. Most importantly, all requests for advice are strictly confidential. Only waiver letters and orders (permitting otherwise prohibited ownership interests), which are issued by either the Chair or the full Board, are made public. For example, a public servant may have an outside teaching position and need to know whether the law prohibits such a position. If that public servant teaches for a university that does business with the city, such as Columbia University or New York University, he or she would require a waiver of the law. Staff and the Board, in determining whether to issue the waiver, will consider whether that public servant has any official responsibilities in his or her city job that relate to that university. Once the Chair signs the waiver letter, which provides for appropriate recusal requiring that the public servant stay out of all city matters pertaining to the university, it will then become a matter of public record.

Past conduct by public servants is largely the domain of the other half of the Board's staff attorneys, who work in the enforcement unit. Those attorneys prosecute cases against public servants who violate the conflicts of interest law. The enforcement attorneys generally learn of violations of the conflicts law when a concerned citizen or an aggrieved co-worker forwards a complaint to the Board. In addition,

by law, city agencies, in particular the Department of Investigation (DOI), must inform the Board when they learn of a possible ethics violation by a public servant. The enforcement attorneys will typically send the allegations to the Board's investigators at DOI so that the Board can determine if a violation has occurred. Once the case has been investigated, the Board will determine whether there is probable cause to believe that the law has been violated and then will notify the public servant of this finding. The public servant then has the opportunity to respond and may choose either to settle the case or to dispute it in an official proceeding at the Office of Administrative Trials and Hearings, which issues a confidential non-binding recommendation to the Board. If the Board finds that the public servant violated the ethics law, or if the public servant settles the case and admits a violation, then he or she usually will be required to pay a fine, and the disposition, by law, will be made public. If, on the other hand, there is insufficient proof, the case will be dismissed, and the matter will remain confidential. The Board's enforcement decisions are widely disseminated and are used for training purposes so that other public servants will avoid taking any such actions in the future. For example, the former city sheriff, who ran, out of his public office, a private law practice, even using his subordinates, paid the Board's largest fine—\$84,000.

How Can Other Municipal Governments Get Started?

The most important element in a municipal ethics scheme is a clear, easily understandable code of ethics, which must be tailored to the size, structure, and location of the municipality. Ideally, the legislation should establish an independent board that is charged with interpreting, administering, and enforcing the law. That agency must provide quick and confidential advice, training and education, public disclosure of the private interests of public servants, and reasonable enforcement where there have been violations of the law.

Endnote

1. N.Y.C. Charter, sec. 2602(b).

Ms. Greenball is Special Counsel to the New York City Conflicts of Interest Board.