



**Testimony to the 2019 New York City Council
Committee on Standard and Ethics
Int. No. 735**

*Requiring the Conflicts of Interest Board to codify in rules
previously issued Advisory Opinions*

September 26, 2018

Good morning Chair Matteo. My name is Alex Camarda, and I am the Senior Policy Advisor for Reinvent Albany. Reinvent Albany advocates for transparency and accountability in State government, and are leading champions for transparency in New York City government, especially strengthening Open Data and the Freedom of Information Law.

Int. No. 735 would require COIB promulgate rules annually by May 1st for Advisory Opinions (AOs) issued in the past year that have interpretive value (meaning the AO would apply broadly to public servants). The bill clarifies AOs not promulgated as rules only apply to the public servant requesting it. The bill requires the COIB to note in its AOs that citations of past AOs only apply to public servants requesting the AO at that time.

Reinvent Albany strongly support the intent of [Int. No. 735](#). We believe:

- The Conflicts of Interest Board (COIB) should be promulgating rules for any Advisory Opinion which would apply to public servants broadly (meaning it has “interpretive value” in construing the city’s ethics laws). This is arguably already required under section 2603(a) and 2603(4) of the New York City Charter.
- The COIB should issue rules annually for Advisory Opinions from the preceding year as required by the bill, and be required to promulgate rules for *any* of the 250 Advisory Opinion COIB has issued since 1990 that have interpretative value.¹

¹ Reinvent Albany presumes the 650 AOs issued by the Board of Ethics, the predecessor to the COIB, have been already promulgated as rules if the AOs have interpretive value.

- The bill should make binding any Advisory Opinion that does not have interpretive value on its requester(s) rather than clarifying that it “applies” to the requester(s).

COIB Needs to Draw Bright Lines Regarding Ethical and Unethical Conduct

It is essential for public confidence in government that ethics policies are clear and understandable, with bright lines demarcating proper conduct from illegal behavior. The policies should be simple enough so they can easily be followed by public servants, and monitored for compliance by journalists, watchdog groups, and the general public.

We are concerned the interpretation of the city’s ethics laws is too often unclear and opaque. To fully understand what an ethics policy is, a public servant or member of the public must wade through many lengthy AOs or summaries of AOs which may or may not have interpretive value. Making matters worse, many AOs issued over years parse, slice and dice the overarching ethics policies so finely, the general principles can lose their meaning. Consequently, confusion abounds and public confidence in government is eroded.

Consider ethics policies for community boards. During the 2018 Charter Revision Commission process, numerous members of the public and community boards testified, often angrily, of community board members’ conflicts of interest. It was clear the credibility of the boards was being questioned.

After this public outcry, Reinvent Albany sought to determine exactly what the ethics policies are for community board members. We found it was very challenging to identify the policies.

We read the charter and learned appointed community board members are public servants, and therefore must follow the city’s ethics laws.² Yet appointed members can serve on boards even if they have an interest in a firm that has a matter before the board.³ However, board members must not vote on the matter if they or anybody they are associated with may personally or directly benefit economically.⁴

This conflicts of interest policy seems fairly straightforward as laid out in the charter.

² See Chapter 68, section 2601(19), definition of “public servant.”

³ See Chapter 68, section 2604a.1(a).

⁴ See Chapter 68, section 2604b.1(b).

However, the conflicts policies are further parsed by the many Advisory Opinions on community boards issued by COIB. The COIB provided Reinvent Albany with a 9-page single-spaced monograph summarizing these many Advisory Opinions. The monograph references Advisory Opinions dating back over two decades. The City Council further directed Reinvent Albany to a COIB Q&A pamphlet on community boards laying out hypothetical situations public servants may find themselves in, and answering whether they are conflicts. Reinvent Albany identified apparent ethics policies for community board members from these documents, which are listed in Appendix A of these comments. However, we do not know if the many determinations in the AOs are actually ethics policies that broadly apply to public servants because the COIB testified at the hearing on Int. No. 735 that AOs are not even binding on the requesters who ask for them.

We do not agree with several of the determinations of the Board in these AOs but the bigger issue is the policies are not easily identified and therefore need to be promulgated as rules. It's very challenging and laborious to even determine what ethics policies apply to community boards, despite the charter stating, "The board shall promulgate rules as are necessary to implement and interpret the provisions of this chapter, consistent with the goal of providing clear guidance regarding prohibited conduct."⁵ While we have not examined other areas the COIB issues AOs for, we think issuing rules is far better than issuing non-binding AOs followed by periodic summaries of those AOs. The current process provides far too much discretion to the COIB and creates too much opacity.

Beyond the reliance on AOs rather than rulemaking, other COIB practices are also concerning.

The Charter does not appear to allow the COIB to issue informal guidance (nor does it prohibit it) but COIB provides it regardless. We think the COIB should tell those requesting guidance what the law or rules are. If any guidance is more specific than repeating or explaining existing law and rules, or involves creating an exception or a new policy, a binding Advisory Opinion should be issued.

We also believe AOs should not be confidential for senior policy-making officials (division heads, Deputy Commissioners, Commissioners, etc.). People in these positions ought to be completely above reproach and not hesitant to approach the COIB for guidance, even if it is made public. AOs are already required to be made public, albeit personally identifying information can be removed.⁶

⁵ See Chapter 68, section 2603(a).

⁶ See Chapter 68, section 2603(c)(3).

Lastly, we think the Board should clarify the standards in rules by which it issues waivers for public servants holding or negotiating private jobs, or the charter should be amended accordingly.

APPENDIX A

APPARENT ETHICS POLICIES FOR COMMUNITY BOARDS FROM COIB ADVISORY OPINIONS

- A community board member cannot vote on a matter when they or somebody they are associated with may personally benefit or directly benefit economically, but they can discuss the matter after disclosing their conflict to the board. The disclosure must specify the nature of the interest the member has (AOs 91-3 and 2008-3). They also cannot chair a board committee (AOs 95-8 and 2008-2) when the matter is before the board.
- A community board member cannot represent a private client before the community board, nor can any of the member's employees or partners unless the employees or partners have a waiver from the COIB; (AO 96-4). A waiver can be provided if: 1) the community board member recuses themselves from discussing or voting on the matter at the board and does not work on the matter with their private firm either; or 2) recuses themselves from discussing or voting on the matter at the board and only works on the matter with their private firm before the City when it is not before the community board, certifies their conduct is not in conflict with the interest of the City with the COIB, and describes in detail their role in the work with their private firm (AO 98-9).
- A community board member who is an unpaid director of a public benefit or local development corporation may vote on recommendations regarding budget priorities of the corporation before the board unless they are somebody they are associated with would privately or directly benefit economically (AO 93-3).
- A community board member who owns a business in the community board district with a liquor license may vote on a matter before the board in which another business seeks a liquor license. A board member cannot, however, vote on their own business's liquor license before the board or the license of anybody with which they are associated nor can they serve as the chair of a board committee that regularly handles liquor licenses (AO 2008-2).
- A community board member with a home in the district can vote on rezoning matter before the board provided they disclose their interest on the record of the community board and to board members (AO 2005-3).
- A community board member cannot sell products or services to the board (AO 92-31).
- A community board can solicit donations from local businesses if the businesses do not have or are about to have any matters before the board, and there is not a perception of special treatment (AO 95-27); Solicitation must be done by general

appeal without targeting specific entities and contain notice that no special treatment will be granted. Donation staff must be separate from decision-making staff. Twice annual reporting of donations received must be reported to COIB revealing the donor and the amount given (AOs 92-21 and 2003-4).

- A community board member can vote on a matter before the board advancing a position of an organization (like a nonprofit) they have an interest in, provided it does not financially benefit the organization (AO 2008-2).
- A community board member cannot vote on a matter before the board if one of their superiors at work personally stands to benefit, unless their employment is not subject to review or their salary is not funded by that person (AO 2008-2).
- A community board member who is a city employee cannot vote on any matter before the board concerning their city agency, but they can participate in discussions of the matter (AO 91-3).
- A community board member who is a city employee cannot chair a board committee considering matters concerning their agency but they can sit on the committee (AO 93-2).
- Community board members cannot compel community board employees to engage in political activity (COIB pamphlet on Conflicts of Interest and Community Boards).
- Community board members may not hire their family or anybody they have a financial relationship with as community board staff (Advisory Opinion 2004-3).