

Running a Local Municipal Ethics Board: Glossary of Municipal Ethics Terms

By Steven G. Leventhal

Local municipal ethics boards typically are composed of public-minded citizens who donate their services to help promote integrity in the operation of their local governments. Often, they are non-lawyers, with no government experience. Yet, in performing their official duties, they must interpret confusing combinations of legal and government terms. This Glossary was compiled to assist the members of local ethics boards in piecing together the puzzle of municipal ethics terminology.

Some of these terms are defined in Article 18 of New York State's General Municipal Law; others may be defined in your local code of ethics. This glossary should be used as a quick reference. It is not a substitute for the statutory definitions in particular cases where those definitions apply.

Advisory Opinion

Confidential ethics advice available to municipal officers and employees from their local boards of ethics, or from the New York State Attorney General. In order to provide guidance to other public officials, advisory opinions may sometimes be released to the public in a version that does not reveal the identity of the inquiring municipal officer or employee.

Annual Financial Disclosure¹

Written statement of personal financial information filed by policymakers and other specified officers and employees in municipalities having populations of 50,000 or more, or as otherwise required by local law. Intended as a check on transactional disclosure and as a reminder to the officials of where their potential conflicts of interest lie.

"Appear" or "Appear Before"²

Communication in any form, including, personally, through another person, by letter, telephone, or otherwise.

Appearance of Impropriety³

Conduct that violates the spirit and intent of ethics regulations, even where no specific statute is violated.

Applicant Disclosure⁴

Written statement filed by applicants in land use matters in which a municipal officer or employee, or a relative of the municipal officer or employee, has an interest in the application, is the applicant, works for the applicant, has stock in the applicant, is a partner or associate of the applicant, or has an agreement with the applicant to receive any benefit if the application is approved.

Board of Ethics⁵

Municipal board established to administer the local government ethics program by providing training and confidential ethics advice to municipal officers and employees, investigating complaints, imposing sanctions, and administering the annual financial disclosure program.

"Case Law" or "Common Law"

Law made by judges in their published opinions.

Code of Ethics⁶

Standards of conduct set forth in Article 18 of the General Municipal Law, and in laws adopted by municipalities in local laws (in counties, cities, towns or villages) or in resolutions (in other municipalities). Intended to foster integrity in government, promote public confidence, and help municipal officers and employees to discharge their official duties without fear of unwarranted accusations of unethical conduct.

Confidential Information

Information in any format that is either: (i) prohibited by federal or state law from disclosure to the public; or (ii) prohibited from disclosure by local law, ordinance, or resolution of the municipality, and exempt from mandatory disclosure under the New York State Freedom of Information Law ("FOIL") and the New York State Open Meetings Law.

Conflict of Interest

An actual or potential conflict between the private interests of a municipal officer or employee, and his or her public duties, either by virtue of his or her

official job description, or by virtue of the powers and duties he or she actually performs, if different.

Contingency Fee

A fee for services that is based on the outcome of the engagement, rather than on the value of the services rendered.

“Contract” With The Municipality⁷

Any claim, account or demand against the municipality, or any agreement with the municipality, whether express or implied.

“Control” over a Contract with the Municipality⁸

The power or duty, either as an individual or as a member of a board, to negotiate, prepare, or approve the contract, or to approve payment or audit bills under the contract, or to appoint anyone who does.

Freedom of Information Law (“FOIL”)⁹

New York State law enacted to promote transparency in government by providing the public with a right of access to most government documents.

General Municipal Law, Article 18

New York State law pertaining to conflicts of interest of municipal officers and employees.

“Gift” or “Financial Benefit”¹⁰

Money, services, licenses, permits, contracts, authorizations, loans, travel, entertainment, hospitality, gratuity, or any promise thereof received by a municipal officer or employee on terms that are not available to the general public, including any gain or advantage to a third person at the request or with the consent of the municipal officer or employee.

“Incompatible” Offices¹¹

Two public offices that may not be held by the same municipal officer or employee because: (i) holding the two particular offices is prohibited by the constitution or by statute, (ii) one office is subordinate to the other, or (iii) the respective duties of the two offices are inherently inconsistent.

“Interest” in a Contract with the Municipality¹²

Direct or indirect financial benefit, or other material benefit accruing to a municipal officer or

employee, as the result of a contract with the municipality, or accruing to his or her spouse, minor child, dependent, outside business or employer, or to a corporation in which the municipal officer or employee owns more than five percent of the corporate stock.

Lawyer-Client Privilege¹³

Legal doctrine developed to promote freedom of consultation between a client and his or her attorney by protecting some, but not all, of their confidential communications from disclosure.

Ministerial Act¹⁴

An action performed in a prescribed manner without the exercise of substantial independent judgment by the municipal officer or employee.

Municipal Officer or Employee¹⁵

An officer or employee of a municipality, whether paid or unpaid, including members of any administrative board, commission, or other municipal agency.

Open Meetings Law¹⁶

New York State law enacted to promote transparency in government by providing the public with a right of access to most meetings of public bodies.

Outside Employer or Business¹⁷

Any compensated activity, other than service to the municipality; any entity, other than the municipality, from which the municipal officer or employee receives compensation for services rendered or goods sold; or any entity in which the municipal officer or employee has an ownership interest, except a corporation of which the municipal officer or employee owns less than five percent of the outstanding stock.

Policy Maker¹⁸

A person who either by virtue of his or her official job description, or by virtue of the powers and duties he or she actually performs if different, exercises responsibility of a broad scope in the formulation of plans for the implementation of goals or policy for a local agency or acts as an advisor to an individual in such a position.

Recusal

Abstention from deliberating, deciding, or participating in an official matter in which the municipal officer or employee may have a conflict of interest. An abstention from voting will normally function as

a “nay” vote since under New York law a municipal body must usually take action by an affirmative vote of a majority of the entire body, including absent members, abstentions, and vacancies.¹⁹

Relative²⁰

A spouse, child, step-child, sibling, or parent of the municipal officer or employee, or a person claimed as a dependent on his or her latest individual state income tax return.

Sanctions

The penalties that a board of ethics may be authorized to impose upon a municipal officer or employee, or other individual or firm, upon a finding that the code of ethics was violated, including fines, restitution, disgorgement of profits, or debarment from doing further business with the municipality.

Statute

A law enacted by the federal, state or local legislature.

Transactional Disclosure²¹

Written statement filed by a municipal officer or employee to record a conflict of interest when it arises; usually accompanied by his or her recusal.

Waiver

Exercise of discretion by a board of ethics, where authorized by local law, to waive application of the local code of ethics in particular cases where its application would frustrate rather than advance the interests of the municipality.

Endnotes

1. See Gen. Mun. Law § 812.
2. See Program Bill #29, An Act To Amend The General Municipal Law, In Relation to Municipal Ethics, March 29, 1999 (“Program Bill”) § 804-A-1.
3. See, e.g., *Tuxedo Conservation & Taxpayer Assoc. v. Town Bd. of Tuxedo*, 69 A.D.2d 320, 418 N.Y.S.2d 638 (2d Dep’t 1979).
4. See Gen. Mun. Law § 809.
5. See Gen. Mun. Law § 808.
6. See Gen. Mun. Law §§ 800–805-b.
7. See Gen. Mun. Law §§ 800-2, 802.
8. See Gen. Mun. Law § 801.
9. Pub. Off. Law, Art. 6.
10. See Gen. Mun. Law § 805-a; Program Bill § 804-A-5.
11. See *People ex rel. Ryan v. Green*, 58 N.Y. 295 (1874), and its progeny.
12. See Gen. Mun. Law § 800-3.
13. See Salkin, *The Erosion of Government Lawyer-Client Confidentiality*, *The Urban Lawyer*, Spring 2003; *In re Grand Jury Investigation v. John Doe*, 399 F.3d 527 (2d Cir. 2005).
14. See Program Bill § 804-A-8.
15. See Gen. Mun. Law § 800-5.
16. NY Pub. Off. Law, Art. 7.
17. See Program Bill § 804-A-13.
18. See “Guidelines for Determination of Persons in Policymaking Positions,” promulgated by the Temporary State Commission on Local Government Ethics, reproduced in Mark Davies, *1987 Ethics in Government Act: Financial Disclosure Provisions for Municipal Officials and Proposals for Reform*, 11 Pace L. Rev. 243, 273 (1991).
19. See Gen. Construction Law § 41.
20. See Program Bill § 804-A-15.
21. See Gen. Mun. Law § 803.

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