

the Ethical Times

Standing on the Shoulders of Giants

Recent Changes to Chapter 68

By Gavin Kendall

Did you know that lawmaking can be described by Newton's laws of motion? It's true! By considering the rules of classical mechanics that describe the relationships between objects and the forces acting upon them, we can understand how a law changes just as sure as we can understand how an apple falls from a tree or a planet stays in orbit around its star. In this case, the "object" is [Chapter 68 of the New York City Charter](#), and the "forces" are the exterior entities vested with the power to alter that law in some way. Now join me as we journey through governmental space and time!

Newton's First Law states that **objects at rest (or constant motion) continue as they are, unless acted upon by some outside force**. So, too, with Chapter 68! Previously at rest – that is, static – it was recently subject to the "force" of the 2019 Charter Revision Commission, which debated and decided on ballot initiatives that were subsequently approved by the voters. Those changes, which took effect on January 1st, focus on two areas of the law: post-employment appearances and Board Member appointments.

Post-Employment Changes

What changes – Agency heads, the highest-ranking public servant employed by a board or commission, and any paid member of a board or commission are now prohibited from communicating with their former agen-

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cy served for two years, up from the previous one-year ban. Additionally, elected officials, deputy mayors, the Director of OMB, the Corporation Counsel, the Chair of the City Planning Commission, and the Commissioners of DCAS, DOF, and DOI are now prohibited from communicating with their former *branch* of government for two years, also up from the earlier one-year ban.

What doesn't change – By my calculations these changes affect less than 1% of the public servant population. For the rest of us, it's still just the familiar one-year ban on communicating with our former agencies. Remember, "communicating" means writing, phoning, or attending a meeting with one's former agency (or its employees) *on behalf of a private business, client or employer, for pay*. So it's fine to call up the old gang for an after-work get-together or retirement party! But if that casual friend hang is actually a sales pitch on behalf of your new gig, you 'll



be learning the laws of thermodynamics, because you're about to land in hot water.

COIB Board Member Changes

What changes – Since COIB's creation in 1989, all five COIB board members were appointed by the Mayor with the advice and consent of the City Council. Starting in January 2022, one of these members is now appointed by the Comptroller and one by the Public Advocate. Board Members now also face the same campaign contribution limitations as lobbyists and others doing business with the City, as set forth in the City's Administrative Code.

What doesn't change – Members still serve staggered six-year terms with the opportunity for one reappointment. They are still to be chosen for their independence, integrity, civic commitment, and high ethical standards, and the City Council still serves as the check via their advice and consent powers. The Mayor still designates the Board Chair, and members can still only be removed for cause. Members still may not be registered lobbyists or public employees in any jurisdiction, hold or seek any political or party office, or participate in any capacity in a campaign for Mayor, Public Advocate, Comptroller, Borough President, or City Council Member.

Newton's Second Law states that **the greater the object's mass, the more force is needed to change it**. So let us introduce another object into this heavenly system: the Board Rules. Though not a part of the City Charter, the Board Rules interpret certain aspects of, and procedures related to, Chapter 68, allowing the Board to operate consistently, fairly, and transparently. Thus, like a small moon orbiting a large planet, they have a much smaller mass and need far less force to change than the Charter itself. In this case, changes to the Board Rules are proposed by the Board, certified by the Law Department, subjected to a period of public comment and meetings open to the public,

and then voted upon by the Board. Over the last few years, the Board has been reviewing all its Advisory Opinions to identify any guidance with "interpretative value in construing provisions" of Chapter 68 and formally adopt that guidance into the Board Rules.

Changes to the Board Rules

What changes – With all respect to my fellow rulemaking process nerds (i.e., those of you still reading a 1200-word article about ethics laws as analogized by Newton's Laws of Motion), not much! As I said, these additions have mostly organized and codified longstanding guidance from the Board's Advisory Opinions: analysis that was already out there as "advice" has become "rules."

For instance, let's talk about gifts. The Board Rules now describe, in one section, whether you can accept discounts offered generally to government employees (you can), vouchers for getting bumped from flights while on official City business (you can, but only on behalf of the City, which ultimately gets the voucher), generously-offered cash to help whether a sudden emergency or illness (also fine, with certain restrictions on who can be asked, and how the money is collected and distributed), and the many other kinds of "valuable gifts" about which the Board has been asked over the past three decades of its existence. Other new or expanded sections describe fundraising on behalf of City agencies, define "other similar entities" that are so close to governmental bodies as to behave more like them than like private firms, outline recusal procedures for Community Board members, and more. The changes even go so far as cleaning up line breaks for improved readability.

What doesn't change – Again, taking gifts as our example: the \$50 "Valuable Gift Rule" still applies to all public servants (except for those fortunate enough to work at agencies with a stricter \$0 gift rule in their codes of conduct), and tips and gratuities are still prohibited outright. So public servants still

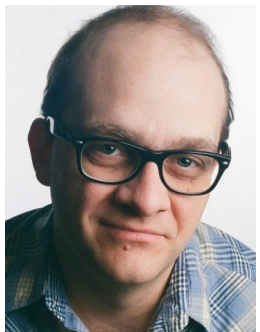
need to be just as wary as before of anything coming our way from grateful members of the public. And it's still always good policy to confer with your agency counsel regarding these and any extra rules or procedures your agency might require.

Lastly, for every rulemaking action is there an equal and opposite reaction?

Alas, this seems to be where my analogy disintegrates under its own gravitational pull. The good news is that, also unlike Newton's Laws, you don't need to do any complex mathematical equations to apply Chapter 68 to the real world. In fact, there are only ten digits you really need to keep handy: 212-442-1400. That's the phone number for our Attorney of the Day, which you can call

during business hours (or [reach out online](#) any time) to get the answer as to the direction that public servants should fall when subject to any ethics-related force.

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New "Video"

The Conflict Zone Podcast



Step into The Conflict Zone! [Roy and Gavin are back](#) with a podcast on **confidentiality**.

Will there be a second podcast episode? That, of course, is confidential.

Recent Enforcement Cases

Misuse of City Position. Between 2016 and 2019, an Assistant Director in the Medical Records Department at NYC Health + Hospitals/Elmhurst had two subordinates perform numerous personal favors for her, solicited and received three loans of \$200 to \$300 from one of those subordinates, and received a \$250 cash gift from the same subordinate. In a settlement with the Board, the Assistant Director paid a \$2,500 fine.

Post-Employment Appearances. In 2020, an Assistant Deputy Commissioner for Family Services at the NYC Department of Homeless Services (DHS) left DHS to work as Vice President of Operations at a not-for-profit organization that operates shelters for unhoused children and families. Within one year of leaving DHS, the former Assistant Deputy Commissioner twice communicated with a former DHS subordinate concerning her employer's takeover of six commercial hotels in New York City used as temporary housing for unhoused families. The former Assistant Deputy Commissioner agreed to pay a \$1,750 fine to the Board.

A [searchable index](#) of all COIB Enforcement Dispositions is available courtesy of New York Law School.

THE PUBLIC SERVICE PUZZLER

Congratulations to **Amy Hom** of DFTA, who just celebrated her 36th year as a City employee!

In the current [contest](#), we've got a dog-related caption contest. Send us your funniest caption by **Wednesday, April 13th**.

