

9-29-1987

Confidential Memorandum from Linda Gibbs Re: Summary of the Private Hearing on Ethics

Linda Gibbs
New York City Charter Revision Commission

Follow this and additional works at: <https://brooklynworks.brooklaw.edu/trager>

Recommended Citation

Gibbs, Linda, "Confidential Memorandum from Linda Gibbs Re: Summary of the Private Hearing on Ethics" (1987). *David G. Trager Papers from the NYC Charter Revision Commissions: Dec. 1986-Nov. 1988 & Dec. 1988-Nov. 1989*. 26.
<https://brooklynworks.brooklaw.edu/trager/26>

This Article is brought to you for free and open access by the Special Collections at BrooklynWorks. It has been accepted for inclusion in David G. Trager Papers from the NYC Charter Revision Commissions: Dec. 1986-Nov. 1988 & Dec. 1988-Nov. 1989 by an authorized administrator of BrooklynWorks.



NEW YORK CITY
CHARTER
REVISION
COMMISSION

- CONFIDENTIAL -

TO: File
FROM: Linda Gibbs
RE: Summary of the Private Hearing on Ethics
DATE: September 29, 1987

Richard Ravitch
Chairman

Harriet R. Michel
Vice Chairman

Nathan Leventhal
Secretary

Aida Alvarez
Amalia V. Betanzos
Fred W. Friendly
Judah Gribetz
Frank J. Macchiarola
Therese M. Molloy
Patrick J. Murphy
Archibald R. Murray
Joseph A. O'Hare, S.J.
W. Bernard Richland
David G. Trager
Robert F. Wagner

Present at the hearing on Tuesday, September 22, 1987 were Commissioners Ravitch, Friendly, Richland, Gribetz, Murphy, Macchiorola, O'Hare and Murray, and from the Commission staff Lane, Mauro, Dykstra, Sullivan and myself. Testifying were Powell Pierpoint, Chair of the Board of Ethics who spoke first and Kenneth Conboy,, Commissioner of Investigation. Conboy was accompanied by Patrick Hoey of Department of Investigation.

Questions and Answers

Eric Lane
Counsel/Executive Director

A. Powell Pierpoint, Chair of the Board of Ethics
Pierpoint did not make any opening comments. He mentioned that the revised code which has been submitted to the Commission has been sent to the three past Corporation Counsels-Norman Redlich, Alan Schwartz and F.A.O. Schwartz. While he has not heard from Redlich, both F.A.O. and Alan Schwartz have responded to him in agreement with these proposals.

1. Should the Board of Ethics have jurisdiction over all elected officials?

The Board of Ethics does and should have jurisdiction over all elected officials. Under the former leadership of the City Council, an agreement had been made by Council leadership, with the Board of Ethics and the Corporation Council that the Council's Committee on Standard and Ethics would issue opinions for Council members and the Board of Ethics and Corporation Counsel would review them and either approve or disapprove. One such opinion was received which was approved. The current Council leadership does not recognize this agreement.

Suite 1616
11 Park Place
New York, NY 10007
(212) 766-2200

2. Is the current structure of the Board appropriate if all elected officials are subject to its jurisdiction?

- It would be a mistake to do away in the membership of Corporation Counsel and Director of Personnel (as recommended by Sovern Commission).

- The Commissioner of Investigation should be subjected to the advice and consent of the Council.

- You are not going to solve the issue of corruption by restructuring the Board of Ethics. " The Board of Ethics basically is there to give comfort to the many honest people in government."

- There are already enough investigative bodies in the City.

3. What is the subject-matter jurisdiction of the Board of Ethics?

The jurisdiction of the Board of Ethics is listed in 2602(a). The power to request DOI to undertake investigations for the Board includes all matters within their 2602(a) jurisdiction.

4. What is the rationale behind the proposed three-tier categorization of employees, with increased behavioral restrictions as the categories increase? (Three-tiers are: (1) all employees, (2) "regular" employees -- those who receive sick and annual leave benefits, and (3) "regular" employees who are decision-makers).

- The Purpose is to ease the standards that presently apply to the lowest tier of employees so that prohibitions based purely on loyalty to the city would not apply.

- Conflicts of interest only would continue to be prohibited for this lowest tier of employees. Current application is ludicrous in its results. (Gave example of school teacher who was prohibited from acting a life guard for a contractor who ran a city pool, because it would constitute "doing business" with another city agency.)

- Decision-makers," for the purpose of applying the third tier of employees, proposed code to should be identified by the agency head, but if there is a

dispute on this issue, then the Board of Ethics should do it.

5. Wouldn't the loosening of standards on the lowest tier open the door to influence peddling (i.e., moonlighting attorney who is a member of the Queens Democratic club would then be allowed to represent private interests before another city agency whose employees also might include club members)?

The concern is to avoid the silliness of the current application. But, you can have these situations, which would be very serious questions.

6. Does the Commissioner of Investigation have the duty to report ethical violations to the appropriate district attorney?

The Board of Ethics interprets the Code of Ethics; the Commissioner of Investigation does not. The Commissioner of Investigation just finds facts. Requests for findings to the Board of Ethics are satisfied on the representations made to the Board. If there are any further questions, the Board asks DOI to find out.

7. What is the meaning of "advisory opinions"? Do they have any affect?

They clearly became a defense in any criminal action against the official.

8. Is the code of ethics in any way so restrictive as to discourage persons from accepting public employment?

- This is a substantial concern of the Board. If you make standards too tough (particularly regarding financial disclosure and what employees are allowed to do when they leave city employment) you'll lose them.

- Little benefit will result from strengthening the disclosure requirements. Not a bit of corruption was revealed by the financial disclosure by officials. The benefits of it now are that (1) it focuses the attention of the honest employees on what might be a conflict of interest, and (2) for the dishonest employees, it gives the prosecutors another basis for conviction.

- Only charges recommended are (1) for a flat prohibition against former officials doing

business within the agency they served for one year after leaving city service. (Currently applies only in respect to matters the official had personal dealings with), and (2) to consider how the city can control the activities of political party leaders. The revised code submitted deals with this in a modest way. The city should be able to go beyond this, to say who the city's employees should be allowed to listen to.

B. Kenneth Conboy, Commissioner of Investigation.

Conboy read to the commission his prepared remarks (copy attached). He followed these remarks by listing the names of 16 individuals whose activities are "examples of problematic behavior" which have occurred during the past 20 months, commenting that none of them have been charged with any wrongdoing. He alleges this is because under the current code of ethics it is impossible to determine what is ethical and what is unethical additionally, the current practices of the Board of Ethics give no coherent or sensible guidance on a statutes which is hopelessly ambiguous.

1. What is the purpose of having a code of ethics which is a list of do's and dont's, rather than generally stated standards?

Interpretation of the general standard becomes muddled and it is difficult to understand how it will apply. A code should not tolerate any conflicts of interest. It should be a series of bright-line rules which make very, very clear what the prohibitions are.

2. It seems the Board of Ethics exists to inform, protect and caution employees about behavior entered into. Isn't this role undermined if the Board becomes an investigatory body?

- The Board of Ethics performs both advisory and investigatory functions. Currently, in practice, only two alternatives exist for employees who enter into unethical behavior: either the employee is fired by the Mayor for purely political reasons as there is an indictment and the person is charge with a crime. Most cases fall in between these processes. It is necessary to create a forum for someone, by objective review (preferably by a Board or Commission rather than internally by each agency) to make a judgement regarding these persons' behavior, and to impose some penalty by less than a criminal standard. There is a need for an adjudicative process in a non-criminal forum.

- If the code were to become a clearly stated bright-line rule, then the Board of Ethics could continue to issue interpretative findings but it would additionally and primarily become a fact-finding body which would fit behavior into the prohibitions of the statute. There would quickly develop a body of precedent which would be cognizable, raise consciousness and accountability.

- Currently, it is impossible to prosecute under the code. At least 12 cases have been sent to Morgenthau, who has said it is impossible to prosecute. As a minimum, you should eliminate ignorance of the law as a defense.

- The Board of Ethics currently has the authority to make referrals to agency heads, but it does not do so. It can't, because it doesn't have the facts or the basis to make a factual judgement. There are no penalties at the agency level.

3. If the Board holds both advisory and investigatory powers, what should its membership be?

Haven't considered this.

4. Should the Board have power over those beyond the executive branch?

A difficult separation of powers issue. (No recommendation.)

5. Should there be a forum where questions regarding conflicts of interest for elected officials can be litigated publicly?

It would be useful, but there is a constitutional issue. It would be meddlesome to subject elected officials to such a non-conventional forum.

6. A current charter provision which automatically terminates a person's city employment if they pleaded the 5th is unconstitutional. Courts have held public officers have no diminished rights under the 5th Amendment (Gary v. NJ., Broderick v. Gardner, Sanitation Assoc. v. NJ).

7. The Board of Ethics has recommended a revised code with increase behavioral restrictions on classes of employees as their status increase. Any response?

It is a mistake to fragment power embodied in law for particular groups or categories of individuals. Having three categories with separate standards in unwise.

The difference between salaried and unsalaried for the purpose of applying standards is not convincing; the issue is power.

8. How often has the Board of Ethics requested you to undertake investigations?

In my 1-1/2 year tenure as commissioner, only once have I made an investigation for the Board of Ethics; in that case I learned of a request for an opinion, which they were to issue. I knew that information presented to them in the matter was incomplete and that additional information showed that there was a real conflict of interest. I called the Board and suggested they send the information to me. Without the call, the information would not have been considered by the Board and they would have issued a clean bill of health. The facts upon which each advisory opinion of the Board is based should be investigated, at least the big-ticket items, not the mundane little things.