

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON STANDARDS AND ETHICS

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May 2, 2018
Start: 10:35 a.m.
Recess: 11:46 a.m.

HELD AT: 250 Broadway - Committee Rm.
16th Fl.

B E F O R E: STEVEN MATTEO
Chairperson

COUNCIL MEMBERS: Margaret S. Chin
Vanessa L. Gibson
Karen Koslowitz
Stephen T. Levin

A P P E A R A N C E S (CONTINUED)

Carolyn Miller, Executive Director
New York City Conflicts of Interest Board, COIB

Ethan Carrier, General Counsel Ethan Carrier
New York City Conflicts of Interest Board, COIB

2 [sound check] [pause] [gavel]

3 CHAIRPERSON MATTEO: Good morning
4 everyone. Sorry for being a few minutes late. We
5 were at a leadership meeting at city hall. My name
6 is Steve Matteo. I am chair of the Committee on
7 Standards and Ethics. I am joined today by members
8 of this committee. We have Karen Koslowitz, Vanessa
9 Gibson, and Margaret Chin. We are also joined by
10 Committee Counsel Serena Longley, and we're here
11 today--the Committee on Standards and Ethics is
12 meeting today regarding two items. First, there's an
13 open matter involving a violation of Section 10.80 of
14 the Council Rules by Council Member Andy King.
15 Second, the Committee will hear a bill, Intro 735 in
16 relation to advisory opinions of the Conflicts of
17 Interest Board. For the first matter, it is
18 necessary for the members to review and discuss
19 confidential personal-personnel issues. Therefore, I
20 believe this committee should move into Executive
21 Session to proceed. With that said, I make a motion
22 to move into Executive Session pursuant to Article 7
23 of the Public Officers Law. Do I have a second?

24 COUNCIL MEMBER KOSLOWITZ: [off mic] I
25 second it.

2 CHAIRPERSON MATTEO: Second by Karen
3 Koslowitz. A motion has been made, and we're going
4 to move in Executive Session. All those in favor say
5 aye.

6 COUNCIL MEMBERS: [in unison] Aye.

7 CHAIRPERSON MATTEO: And the ayes have
8 it. We're going to do it different today. We're
9 going to—Executive Session is going to remain here.
10 So, we're just going to ask everyone to please step
11 out while we go into Executive Session, and then we
12 will call you back in once Executive Session is
13 complete. [Committee in Executive Session] Okay,
14 thank you and thank you for your patience. Executive
15 Session is closed. We're now back into the public
16 portion of the hearing, and I'm going to read a
17 statement. In December 2017 after receiving
18 allegations that Council Member Andy King violated
19 the Council's Anti-Harassment and Discrimination
20 Policy, this committee voted unanimous--unanimously
21 to open the matter. After conducting—conducting a
22 preliminary inquiry hearing from Council Member King
23 and deliberating, the committee found based on a
24 preponderance of the evidence that Council Member
25 King violated Council policy. The committee then

2 voted to require Council Member King to complete
3 Ethics Training with the Council's Office of the
4 General Counsel and complete and pass sensitivity
5 training with a trainer approved by the Chair of the
6 Committee. In light of Council Member King
7 voluntarily agreeing to complete the required
8 training, the committee voted to hold the matter in
9 abeyance pending his satisfaction of the agreement.
10 Council Member King has completed the required Ethics
11 Training and passed the Specialized Sensitivity
12 Training Course, which included reading, a self-
13 assessment, a full day of one-on-one specialized in-
14 person training and a follow-up phone call. In light
15 of Council Member King completing and passing the
16 training as required by this committee, we have voted
17 close the matter. So, with that, we are going to
18 close this matter. We are going to recess for a few
19 minutes before we hear testimony on Intro 735. Thank
20 you. [pause for recess] Okay, thank you, everybody
21 for your patience. We are about set to start the
22 second portion of our hearing. Today, we'll be
23 holding the first hearing on Intro 735 sponsored by
24 myself in relation to the advisory opinions of the
25 Conflicts of Interest Board. Under the City Charter,

2 the Conflicts of Interest Board or COIB has two
3 relevant powers, the power to issue rules and the
4 power to issue advisory opinions. The Charter states
5 that rules power should be used to implement and
6 interpret the Conflicts of Interest Law. In contrast,
7 advisory opinions are only supposed to be issued on
8 the request of a public servant and apply only to
9 such public servant. In other words, when
10 interpreting the Conflicts of Interest Law generally
11 or applying interpret-interpretation broadly, a rule
12 should be issued. When applying the Conflicts of
13 Interest Law to the specific situation of one person,
14 and advisory opinion can be issued. Yet, for at least
15 the past decade that is not how these powers have
16 been used. Between 1990 and 2007 COIB promulgated a
17 little over 40 rule changes. In the decade since
18 2007, there have only been five rule changes at least
19 four of which were directly required by the charter
20 or local Law. Meanwhile, COIB has continued to
21 issues advisory opinions with regularity. There have
22 been 35 advisory opinions since 2007, and 250 issued
23 overall since 1990. A review of the advisory
24 opinions issued since 2007 has raised a number of
25 concerns. First, at least some of these opinions

2 sound like interpretations of the Conflicts of
3 Interest Law, and therefore, should have been
4 codified by the COIB into a rule. For example, an
5 advisory opinion from 2013 on gifts between city
6 employees set forth standards by which gifts between
7 employ-employees would be evaluated including an
8 interpretation of the superior/subordinate
9 relationship, all of which appear to be broadly
10 applicable interpretations that belong in COIB's
11 rules rather than just an advisory opinion. Second
12 despite the Charter requiring that advisory opinions
13 be issued in response to requests from a public
14 servant, at least some of them were issued to provide
15 guidance or because COIB anticipated questions in the
16 future. Finally, the language used in some advisory
17 opinions may be considered misleading, and it seems
18 to refer to early opinions as setting precedent.
19 There are many benefits to interpreting the law
20 through rules rather than advisory opinions. Rules
21 require a public hearing and acceptance of public
22 feedback before they are finalized. Rules are also
23 easy to read and find rather than searching and ever-
24 growing back catalog of hundreds of advisory
25 opinions, which only grow with time. The bill being

2 heard today Introduction No. 735 would address the
3 above concerns by requiring COIB to review their
4 advisory opinions annually to identify those that
5 have interpretive value and to codify those into
6 rules. I want to thank the members of the committee
7 for working together on these issues. I want to
8 thank the staff who worked today's hearing together,
9 Serena Longley, Deputy General Counsel, Brad Reed,
10 Senior Legislative Counsel, Elizabeth Cronk, Policy
11 Analyst, and Rob Newman Special Counsel. Finally, I
12 want to thank the Conflicts of Interest Board for
13 joining us today, Carolyn Miller and Ethan Carrier.
14 We will not administer the oath, and accept testimony
15 on this bill.

16 LEGAL COUNSEL: Raise your right hand. Do
17 you affirm to tell the truth, the whole truth and
18 nothing but the truth in your testimony before this
19 committee, and to respond honestly to Council Member
20 questions?

21 DIRECTOR CAROLYN MILLER: Yes.

22 ETHAN CARRIER: I do.

23 LEGAL COUNSEL: Thank you.

24 CAROLYN MILLER: Good morning, Chair

25 Matteo and members of the Committee on Standards and

2 Ethics. I am Carolyn Miller, the Executive Director
3 of the New York City Conflicts of Interest Board, and
4 with me is the Board's General Counsel Ethan Carrier.
5 We are here on behalf of COIB to offer testimony on
6 Intro 735. The Core mission of COIB is to educate
7 public servants about their obligation under the
8 City's Conflicts of Interest Law in order to fulfill
9 the vision set forth in Chapter 68 of the New York
10 City Charter, the chapter entitled *Conflicts of*
11 *Interest*. The preamble to Chapter 68 reminds us that
12 "public service is a public trust" and that the
13 purpose of the municipal Conflicts of Interest Law,
14 is to "promote public integrity in government, and
15 protect the integrity of government decision making."
16 The board's educational mission is fulfilled in part
17 by its advisory opinions. Advisory opinions are the
18 public documents that came—contain anonymized
19 versions of the confidential advice given to
20 individual public servants, sometimes one, sometimes
21 many in order to shed light on how the board
22 interprets the provision of Chapter 68. The board
23 seeks through its advisory opinions to enable public
24 servants through the lens of the specific set of
25 facts and circumstances to understand how the legal

2 requirements of the Conflicts of Interest Law might
3 apply to them. Advisory opinions also lay out
4 factors that the board may consider in evaluating
5 future requests involving similar issues. By publicly
6 articulating the factors the Boards—the Board
7 considers in a particular case, the Board hopes to
8 encourage public servants to reflect on their own
9 actions and seek advice if their circumstances
10 present new or different considerations. COIB
11 recognizes the Council's concerns about the process
12 by which the board reaches its conclusions in the
13 advisory opinions. Molded by—motivated by these
14 concerns, the Council seeks to replace Section 2603
15 (c) (4) of the City Charter with a mandate that
16 certain advisory opinions be subject to the rule
17 making process that would include as required by the
18 City's Administrative Procedures Act or CAPA a public
19 comment period. COIB welcomes additional public
20 engagement with and public discussion about its
21 advisory opinions, but the Board disagrees that a
22 CAPA structured rule making process is the best way
23 to accomplish that goal. COIB would like to offer an
24 ~~eternal—alternative—excuse me—to~~ the current version
25 of the Intro 735 that we hope the Council will

2 consider, which we have provided with copies of our
3 testimony. COIB's proposal would require that the
4 board have a period for public comment, and a public
5 hearing for every advisory opinion, and that the
6 board consider those comments before issuing a final
7 version of the opinion. COI believes that—COIB
8 believes that its proposal would accomplish both the
9 Council's stated goal of allowing for public comment
10 on the Board's advisory opinions, and the Board's
11 goal of maintaining it's capacity to utilize advisory
12 opinions to provide guidance to all public servants
13 on the meaning and application of the Conflicts of
14 Interest Law all while preserving the Board's
15 essential independence. By way of background, the
16 issuance of advisory opinions has been the central,
17 if not the primary function of the City's Ethics
18 Agency since its inception. In 1959, the City
19 Council created COIB's predecessor agency, the Board
20 of Ethics making New York City a leader in the United
21 States for Municipal Government Ethics
22 Administration. The original Board of Ethics had only
23 one power, to issue advisory opinions. In
24 recommending the establishment of a board of ethics
25 whose sole purpose would be to render advisory

2 opinions, the Council's Special Committee on Ethics
3 and Standards stated in its report and I quote,
4 "Impartial and objective opinions rendered by a Board
5 of Ethics composed of outstanding citizens will have
6 public value. In effect, such decisions will be
7 comparable to those rendered by the Committees on
8 Ethics of professional associations. In this way,
9 officers and employees who wish to obtain impartial
10 and objective advice will be able to do so. No
11 public officer or employee need be uninformed on any
12 ethical problem. With the passage of time, advisory
13 opinions will furnish valuable guides in addition to
14 being the source of reference for all persons
15 concerned, and will contribute to a proper
16 understanding of the code. These opinions will
17 reflect the practical operation of the code, and will
18 be of value to those who pass—must pass upon
19 recommendations concerning its modification or
20 amplification. The Board of Ethics robustly
21 fulfilled this vision issuing 688 such opinions
22 during its 30-year history. During the Charter
23 Vision process of 1986 through 1988, the Conflicts of
24 Interest Board was established in its existing form,
25 with its powers expanded in a number of important

ways. Most significantly it was given the power to impose penalties for violations of the Conflicts of Interest Law. The Board's power to issue advisory opinions remained with a caveat. Section 2603(3)(4) unchanged since it was amended in 1998 to become effective in '99 gave the Conflicts-99 date, gave the Conflicts—the new Conflicts of Interest Board until September 1990 to review those 688 Board of Ethics opinions and initiative rulemaking for whichever of those opinions the new Conflicts of Interest Board determined to have interpretive value for the new Conflicts of Interest Law. No such rulemaking took place. Instead the new Conflicts of Interest Board sought to quickly provide as much guidance as it could to Public servants on the practical application of the statutory provisions of the revised Chapter 68. Notably, in this re-codified Chapter 68, the power to issue advisory opinions remained solely and exclusively the province of the board itself. The staff of the board cannot issue advisory opinions. As City Charter Section 2602(g) states, Neither the Council nor any other officer, employer, consultant of the Board shall be authorized to issue advisory opinions. The board remains the final arbiter of the

2 interpretation of the law it is entrusted to
3 administer. As to Intro 735, COIB recognizes that the
4 Council's primary goal in introducing this bill is to
5 allow public comment on the Board's advisory
6 opinions. At the hearing of the Council Committee on
7 Rules, Privileges and Elections held on March 7,
8 2018, concerning among other things the reappointment
9 of two current members of the Conflicts of Interest
10 Board, the Chair of this Committee Council Member
11 Matteo ask the nominees a series of questions about
12 the value and functionality of incorporating a public
13 hearing component into the Board's advisory opinion
14 process. The Board has heard and reflected upon that
15 line of inquiry by Chair Matteo and comes before the
16 committee today with the proposal to implement that
17 goal. COIB's proposal in contract to Intro 735 would
18 allow for public comment in a way that preserves the
19 board's independence as envisioned by the City
20 Charter, and would maintain the integrity of the tool
21 of advisory opinions as a process separate from rule
22 making. We offer this alternative because we have
23 four main concerns about how Intro 735 would
24 negatively impact the Board's independence and
25 ability to provide education and guidance to public

servants. First, Intro 735 would undermine the board's essential independence. Intro 735 would require that that board initiate rulemaking for all of its advisory opinions, which the board determined to have interpretive value in pursuing the provisions of the charter that is almost all advisory opinions. All city rule making by statute requires the review and approval of both the city's Law Department and the Mayor's Office of Operations. Thus, the Council's bill would effectively remove the board from its independent judgment about the interpretation and application of the Conflicts of Interest Law and place that into the hands of mayoral agencies. When the board seeks to codify the confidential advice provided to individual public servants, the Law Department, and the Mayor's Office of Operations would have the power to decline to certify, that is approve that rule.

Second, Intro 735 would conflate two separate board powers. Chapter 68 of the City Charter was carefully drafted to give the new board two distinct powers: Rulemaking as codified in Section 2603 and the issue of a—the issues of advisory opinions codified in Section 2603 (c). The

2 first responsibility, rule making, helps to implement
3 the law. The second responsibility the issuance of
4 advisory opinions explains the law that already
5 exists. A public servant cannot be punished for
6 "violating an advisory opinion because it is only a
7 document that provides guidance about what the law
8 already requires. If a public servant is charged by
9 the board with violating anything, it will be the
10 charter itself or a formally promulgated rule.

11 Third, Intro 735 would make it harder for
12 the Board to provide effective guidance to public
13 servants. Rules are a blunt instrument for educating
14 people about their obligations under the Conflicts of
15 Interest Law. Rules are required by both the
16 language of the Charter and the requirements of CAPA
17 to be mandatory, uniform and universally applicable.
18 The Board's advisory opinions generally speaking are
19 not that. Rather, its advisory opinions are guide
20 posts for how the Board is thinking about the
21 Conflicts of Interest Law, and the factors the Board
22 is considering in applying this law to specific
23 questions. Advisory opinions provide color and
24 context for how a certain provision or an existing
25 board rule would apply in the variety of everyday

2 situations in which real public servants find
3 themselves. Advisory opinions help public servants
4 understand how to comply with the law and alert them
5 to when they might need to ask for their own
6 individualized advice.

7 Fourth, the disclaimer requirement of
8 Intro 735 would cause city employees to miss the
9 educational value of the advisory opinions. Intro
10 735 would require for any citation to a previously
11 issued advisory opinion of the Board a statement that
12 the guidance of that opinion applies only to the
13 public servant who asked for that opinion. The
14 primary purpose of the Conflicts of Interest Board is
15 to help public servants understand what they need to
16 do in order to comply with and avoid violations of
17 the Conflicts of Interest Law, and those requirements
18 should apply the same to ever single public servant
19 whether or not he or she requested an advisory
20 opinion from the Board. To require this limiting
21 statement in every future advisory opinion, would
22 create the mistaken impression for future public
23 servants that the law applies differently to the
24 person who asked for he guidance than it would to
25 them. It would also undermine the goal of ensuring

2 that the Board's interpretation and application of
3 the law whether public or private is uniform and
4 universal. In conclusion COIB supports the Council's
5 efforts to implement a mechanism to allow for public
6 comment on the Board's advisory opinions. This
7 effort aligns with the Board's core mission of
8 increasing public servants' engagement with and
9 understanding of the Conflicts of Interest Law. The
10 Board's disagreement is with the use of mandatory
11 rulemaking as the structure for that public comment
12 because in the board's view, such rulemaking will
13 ultimately undermine both the independence of the
14 Board and the Board's ability to provide clear
15 comprehensive guidance to the thousands of public
16 servants who rely on its work. COIB believes its
17 proposal for Revised Section 2603(c)(4), which
18 provides for a public comment within the public
19 comment period within advisory opinion process is a
20 better approach. We would welcome the opportunity to
21 work with the Council to help craft legislation that
22 effectively advances the goals that we share. Thank
23 you.

24 CHAIRPERSON MATTEO: Thank you.

25 Certainly you went-covered a lot in-in your

2 testimony. I appreciate that. I appreciate your
3 willingness to want to work with us, we obviously
4 understand our differences, but that's why we're here
5 to talk. So, I'm going to bring back a bit because
6 you did mention a lot, and I think there's a lot of
7 confusion between the advisory opinions and rules.
8 So, I think I'm just going to—you said a lot in your
9 testimony, but I'm going to ask you some questions
10 just to clarify things, because I think, you know,
11 part of this issue is—is understanding actually the
12 advisory opinion and what it does, where it came
13 from. The same thing with the rules, and then we can
14 go over it. The first thing I just want to—I just
15 want to clarify for my own, I think in your testimony
16 you said something there was 688 opinions that—I just
17 want to clarify that's the Board of Ethics? That's
18 not including the 250 that the—that COIB has, right?

19 CAROLYN MILLER: You're exactly right.

20 CHAIRPERSON MATTEO: Okay.

21 CAROLYN MILLER: That's the—that's the
22 first iteration of the board, the Board of Ethic 688
23 and then you were correct in your opening statements
24 that it's 250 since 1992.

2 CHAIRPERSON MATTEO: And 35 since 2007?

3 Do you think that's-

4 ETHAN CARRIER: That sound about right.

5 CHAIRPERSON MILLER: Right.

6 CHAIRPERSON MATTEO: Okay, okay. So,
7 seriously, like I said, I'm just going to-I'm just
8 going to take it back. So, can you in simplistic
9 forms explain the difference between advisory opinion
10 and rule and a rule?

11 ETHAN CARRIER: Sure, a-a rule is a-is a
12 statement of general applicability that-that, you
13 know, covers a wide group of people about a wide
14 group of circumstances, and ad advisory opinion is a-
15 is a specific application of that rule to a set of
16 facts at the request of-so it's a public servant.

17 CHAIRPERSON MATTEO: So, what's the
18 process-what is the process of getting and advisory
19 opinion? Are you asked or this is coming towards you
20 and the same thing towards-the same question for a
21 rule?

22 ETHAN CARRIER: Yeah, well, we are asked
23 for an advisory opinion. I believe that there is a
24 mechanism by which the Board could be asked to
25 promulgate a rule, but-but it can also initiate a

2 rule making sua sponte based on someone's question.

3 I—I think it can initiate a rule making to, you know,

4 to—for any sort of part of Chapter 68 within its—

5 within its authority to do so here.

6 CHAIRPERSON MATTEO: And when we say

7 anyone, who specifically? Who—who's asking when—when

8 you come to us for an advisory opinion on a rule.

9 ETHAN CARRIER: Well, public servants,

10 elected officials. For, yeah for an advisory

11 opinions, it's any public servants.

12 CHAIRPERSON MATTEO: So, from what—what—

13 what we gather here is an advisory opinion is

14 supposed to impact the person who is asking, but

15 that—

16 CAROLYN MILLER: The—the advisory opinion

17 by the language of the Charter, you're exactly right,

18 is designed to—is—is for—to answer the question of

19 the requesting public servant, but the Board gives

20 hundreds if not thousands of pieces of confidential

21 advice all the time. What it chooses to make public

22 in an advisory opinion is something that—that the

23 Board believes would be useful to other public

24 servants to learn the advice given to the request of

25 the advisory opinion.

2 CHAIRPERSON MATTEO: Okay. So, I guess
3 that's where I guess my first confusion comes in.
4 Why not make that a rule if it's going to impact more
5 than one person? So, if I'm asking you a question
6 that says can--can I attend an event this week, and
7 you say no, you can't. I would assume that that's
8 for the rest of my--my--my 50 colleagues as well if I'm
9 asking for it in my role as a Council Member. So,
10 would answer an advisory opinion, or would you--would
11 you look to make that a rule? And--and don't it
12 Friday because maybe it's not the time, but if I
13 asked you two months in advance in that event--

14 CAROLYN MILLER: No, no, I--

15 CHAIRPERSON MATTEO: --and you had enough
16 time--

17 CAROLYN MILLER: Right, right, I
18 appreciate that.

19 CHAIRPERSON MATTEO: --why--why--why would
20 it be an advisory opinion because then I think the
21 argument could be made that that would only apply to
22 me because I asked and my colleagues would say well
23 that should only apply to Council Member Matteo
24 because he's the one who asked, and it's an advisory
25 opinion. If it was going to impact all of us and

2 tell us yes or no we—we can go to that event, it
3 should be a rule.

4 CHAIRPERSON MILLER: Well, I—I—I—it's an—
5 it's an interesting example. So, that—right what—I
6 might—I might try to draw the line as little bit
7 different between advisory opinions and rules, which
8 is that a rule creates a new legal obligation and an
9 advisory opinion describes based on a specific set of
10 facts a pre-existing legal obligation based on the
11 law that already exists. So, when—when a Council
12 Member comes to the board and says, can I attend this
13 specific event, the Board or Board staff looks to the
14 law that already exists, City Charter Section 2604
15 (b) (5) the Board relating to this, and applies that
16 law to your—to the circumstances articulated by the
17 Council Member. To have—so that's based on facts.
18 There is no new law being created in the answer tot
19 hat question. If there was a need for an additional
20 law that was expending in some ways what the
21 requirements are, that would be the purpose of a
22 rule. That advisory opinions is distinct from that.

23 CHAIRPERSON MATTEO: Yeah, I—I and I
24 understand your—your answer. I just—I guess I'm
25 confused because it—the language of it is saying only

2 one person is—is impacted by that advisory opinion.

3 So, I guess my point is shouldn't that be a rule, and
4 shouldn't go through the rule making process then if
5 it's going to impact a bunch of people.

6 ETHAN CARRIER: Well, so—so it—to take—to
7 take your example about receipt about seeking and
8 receiving advice about attending an event, the—the
9 board actually has promulgated some rules and that
10 are exceptions to the gift—General Gift Prohibition.
11 That deal with public servants attending events, and
12 those are, you know, 101-S and 101-G for elected
13 officials, and—and, you know, those rules
14 essentially—essentially focus on the question of is
15 there a city purpose of for attending that event?
16 Right? I mean there are a variety of different ways
17 in which the rule that's already been promulgated
18 kind of gets at that question, but at the end of the
19 day there's a specific set of fact that are about
20 what the event is, where it's being held and so
21 forth, and some sort of judgment has to be made. Does
22 the rule, you know, what does the rule say about that
23 specific set of facts? The—the concern about issuing
24 a rule every time somebody wants to go to an event
25 is—is that you would end up having, you know,

2 thousands if not tens of thousands of rules where
3 each one was sort of governing a single event where
4 there is already a rule that governs that. You just
5 have to apply that rule to the specific facts of that
6 public servant's circumstances.

7 CHAIRPERSON MATTEO: Dan you just tell me
8 how one finds an advisory opinion from the general
9 public website and an rule?

10 ETHAN CARRIER: Yeah, they're—they're on
11 our—they're all on our website.

12 CHAIRPERSON MATTEO: And the website? The
13 link is just Conflict of Interest from the nyc.gov

14 ETHAN CARRIER: Yeah, I think it's—I
15 think it's the—

16 CHAIRPERSON MATTEO: And all of them are
17 listed?

18 ETHAN CARRIER: Yes.

19 CHAIRPERSON MATTEO: Okay. So, and just
20 like [coughs] that rule says a general application
21 and I believe you all had testified that AOs should
22 not be limited to apply to a public servant who asks
23 for that opinion. To me it seems to be a blurred
24 line between advisory opinion and a rule, and I think
25 that's what I'm trying to—trying go get at.

2 ETHAN CARRIER: Sure, that's

3 CHAIRPERSON MATTEO: Yeah, that-it--what--
4 what's the--?

5 ETHAN CARRIER: Well, I think it, right,
6 the-the-the advisory opinions are only binding on the
7 public servant who requested the opinion, but
8 certainly the Board wants to be consistent in the way
9 that it applies the law, and so, that's--the whole
10 point of having advisory opinions be public
11 documents is that they have an educational value.
12 Public servants including public servants who are not
13 the person who asked for this specific advice have
14 the opportunity to see what the board has advised a
15 public servant about that subject, and how the Board
16 went about thinking about that process that is, you
17 know, when the Board was-had-it lays out a set of
18 facts, and applies Chapter 68 and the-and the Board
19 Rules that have been promulgated to that specific set
20 of facts. You can see how the Board thinks about how
21 that application works.

22 CHAIRPERSON MATTEO: So, if you put out
23 an advisory opinion that says so and so can't go to
24 this event and they go, what's the-what's the
25 realistic repercussion there?

2 ETHAN CARRIER: Well, the Board is going
3 to—the advisory opinion is going to be applying some
4 section of Chapter 68 or the Board Rules to that
5 circumstance. So that public servant would be
6 potentially subject to enforcement action for
7 violating Chapter 68.

8 CHAIRPERSON MATTEO: So, and—and I'm not
9 saying that, your advisory opinion maybe wouldn't be
10 correct in saying you shouldn't go to that event.
11 I'm just saying I think that there's confusion in
12 understanding, you know, who it applies to even if
13 it's out there, and that it should be a rule to go
14 through that process of public comment and hearing
15 from the public and hearing from maybe those who—who
16 may be impacted to get to the right role. I think
17 that's—for me, that's where I'm headed. Are you also
18 testifying that COIB can make a new law by a rule?

19 ETHAN CARRIER: Well, I mean no. I mean—

20 CHAIRPERSON MATTEO: Okay.

21 ETHAN CARRIER: --not—not as—not as
22 probably you intend that. I mean rules are
23 technically a kind of law, and that are—that are
24 promulgated through the capital process, but they're
25

2 not, you know, they're not Admin Code or City
3 Charter. They're—they're regulations.

4 CHAIRPERSON MATTEO: So, when you're
5 preparing these advisory opinions, can you just walk
6 us through that process and are you—are you seeking
7 input from the person who asked or maybe others in
8 the same situation?

9 CHAIRPERSON MILLER: Well, just—right,
10 every advisory opinion was at least—was started out
11 as an individual request for advice, and just—often
12 times multiple public servants have asked similar
13 question, and based on the kinds of questions the
14 board is seeking because it's always the goal to
15 educate people. So, people want—we want people to
16 have the opportunity like—like your example from
17 before about whether or not a Council member can
18 attend particular even, the more information the
19 Board puts out there about what kinds of events our
20 city officials can attend, and the requirements, and
21 things like that, the—the more power each individual
22 public servant has to make—to make judgments, to know
23 when to ask questions. So, the advisory opinion is
24 first an individual request for advice. So, there's
25 a communication with an individual public servant

2 about an event or whatever other conduct they are
3 concerned about. That person gets an answer. We're
4 always in communication with people individually.
5 Arguably, the person could disagree with the answer
6 and come back to the board and provide additional
7 facts. Once there's a conclusion on what the answer
8 is, the Board decides could other people learn from
9 this? Would this be useful as an educational tool?
10 And then to decides to anonymize it, and create an
11 advisory opinion.

12 CHAIRPERSON MATTEO: Has--[coughs]-excuse
13 me. Has COIB ever amended a-a previous advisory
14 based on public appearing-public testimony or-or
15 maybe that-the person who asked talking after you've
16 issue the advisory opinion? Like if you have an
17 amended advisory opinion based on continuing
18 discussions with the person who asked or-or public
19 sentiment or--?

20 ETHAN CARRIER: I-I believe there have
21 been three advisory opinions that have been revised.

22 CHAIRPERSON MATTEO: Three, you said?

23 ETHAN CARRIER: Three I believe.

24 CHAIRPERSON MATTEO: Do you know why?
25

2 ETHAN CARRIER: I don't know about the-
3 two of them were-are-are fairly older opinions. I'm
4 not actually sure what the-what the reason for that
5 was, and then one was recently-one in 2017 was
6 recently amended in response to comments the Board
7 received subsequent to the issuance of the opinion.

8 CHAIRPERSON MATTEO: Okay. In the past
9 few days, COIB put out its Regulatory Agenda for the
10 upcoming fiscal year. In the agenda you state that
11 you're considering amending your rules regarding
12 valuable gifts and gifts from lobbyists. In light of
13 your experience in advising and enforcing the current
14 gift rules, can you just explain why you've chosen to
15 do this through rules rather than advisory opinions?

16 ETHAN CARRIER: Oh, because there are a
17 number of sort of small technical issues and things
18 that the board has learned over the 28 years. It's-
19 it's actually not any one thing. There are probably
20 a couple of dozen tiny little things that could be
21 sort of tidied up. You know, when those-when those-
22 those rules were issued early on in the Board's
23 history, I think and-and the Board has just learned a
24 lot in apply those rules about how they could be done
25 I'm going to say better.

2 CHAIRPERSON MATTEO: So, you have
3 concerns about the Law Department, right? The role
4 of the Law Department. In—in your—I believe your
5 testimony talked about their role. So, can you
6 explain those concerns and the genesis of it?

7 CAROLYN MILLER: Well, the—the Board is—
8 they're, you know, always concerned about its
9 independence. That's the way we can serve ever
10 single public servant both in the Executive branch,
11 the Legislative branch, and Mayoral and non-mayoral
12 agencies, and we—you know we—and the process of
13 interacting through the rule making process with the
14 Law Department essentially gives the final say to the
15 Law Department in what rule promulgation consists of.
16 The Board recently engaged in various hefty rule
17 making, for lack of a better word, and as required by
18 the Council's Legislation related to not-for-profits
19 affiliated with elected officials and their agents
20 some very comprehensive rules. Those were, you know,
21 the—the interactions with the Law Department made it
22 clear that their certification process was a critical
23 sort of an inflexible component of that, and so
24 essentially instead of the Board being the ultimate
25 decision maker on how the law should applied, it

2 ended up being sort of a final say by the Law
3 Department in that regard.

4 CHAIRPERSON MATTEO: And you believe that
5 the Law Department's role changes the substance of
6 the final rule?

7 CAROLYN MILLER: Well, they're making
8 legal judgments about—they're not just, you know,
9 adding a comma. They're making legal judgments about
10 what's appropriate. So, arguably, yes, they—they
11 make judgments about what the law can be, what the
12 rule can be. Excuse me.

13 CHAIRPERSON MATTEO: So, you—you said—you
14 just talked about some of the rules, right. So, in
15 total about 41 rules from 1990 to '07. Since '07,
16 COIB promulgated five rules, four which you were
17 required to do by, which we just spoke about. So,
18 why—why is the sudden stop in rules it seems since
19 '07 aside from the laws that are—that are mandated?

20 CAROLYN MILLER: I mean I—I guess I
21 would—I would answer that question, it's a—and it's--
22 in two ways. I think that's a useful observation
23 about how the Conflicts of Interest Board. Much of
24 the rulemaking was done by Board in its infancy.
25 Just sort of set up a structure. The gifts rules,

2 the use of city resources. Many of those rules can
3 date into the '90s and—and much less thereafter where
4 the Board is just seeking to help people understand
5 what their legal obligations already are. We didn't—
6 because the Board views rules as adding additional
7 legal obligations on public servants, the spirit has
8 not been at the board to add additional legal
9 obligations to public servants, but make sure that
10 everyone understand what the existing legal
11 obligations are. The—that being said, the board as—
12 as the Chair noted in your reference to our
13 legislative agenda, we like to return to thinking
14 about how rules are a component of what the Board
15 does. That's a discussion that we've been having
16 internally in advance of—of the Council's proposal.
17 So, we're—we're sort of thinking about the same
18 things in that regard. We just would go about it
19 differently.

20 CHAIRPERSON MATTEO: Yeah, I mean,
21 listen, for me I always believed that going through
22 the process, the—the public testimony, you know,
23 hearing things that [coughs] we may not be seeing.
24 You know, I'm one when we look to pass legislation,
25 you know, I'm always asking what's the unintended

2 consequences. Sometimes it's great to hear from the
3 people who will--will have the impact, where the rule
4 will impact to understand that there, you know, and
5 unintended consequences or intended consequences for
6 that matter. So, just walk me through. If--if you're
7 going--if you're going to make a rule, what's the
8 public--the public comment is what? Just written? Do
9 you do forums? Do you do hearings? What's the
10 notice?

11 CAROLYN MILLER: Yeah what's required by,
12 you know, the Board--

13 CHAIRPERSON MATTEO: [interposing] The
14 same?

15 CAROLYN MILLER: --City Administrative
16 Procedure Act, which, you know, we're required to--we
17 have the Board's deliberation. Usually, the Board's
18 deliberations are confidential. As required by the
19 charter, the board would meet in an open meeting to
20 discuss the proposed rules, which would be on notice
21 so people can attend that open meeting. All the
22 documents relate that the Board would receive would
23 publicly available. Then we'd have a formal public
24 hearing as required by Cap 1 (sic). So the process
25 had been completed with the Law--approved by Law

2 Department, approved by the Mayor's Office of
3 Operations. We take those written testimony and all
4 testimony both as people would see fit, and then, you
5 know, would--would be available as the decision maker
6 on that.

7 CHAIRPERSON MATTEO: Okay. So, do you
8 ever review all of the advisory opinions? Just, you
9 know, the Board itself?

10 ETHAN CARRIER: You mean just--you mean by
11 just go through methodically? You mean--? No, I
12 mean, you know, each opinion because it's applying to
13 the--the circumstances of that--of that moment. The
14 board has--doesn't, you know, go back. It's not
15 intended to--they're not intended to have presidential
16 value.

17 CHAIRPERSON MATTEO: Do you have the
18 process if you want to amend or track an advisory
19 opinion?

20 ETHAN CARRIER: The--the board has--the
21 board has the authority to do that, but--

22 CHAIRPERSON MATTEO: [interposing] So,
23 would you--would you review them aside from any
24 legislative in probe, would you review them if

2 someone asked you to re-look at an advisory opinion
3 to focus on this--

4 ETHAN CARRIER: [interposing] Well, we
5 have--

6 CHAIRPERSON MATTEO: --or would you--would
7 you--if someone asked you to say look at the advisory
8 opinion from 2009 No. 42, what--would you--would you
9 review it based on someone's question or would you
10 just look to move forward on--on an issue?

11 ETHAN CARRIER: Generally, the board has
12 just looked forward.

13 CHAIRPERSON MATTEO: So, we've never
14 looked back on an advisory opinion to amend or--ore
15 retract?

16 ETHAN CARRIER: It has--it has not.

17 CHAIRPERSON MATTEO: Do--do you have any
18 rules that the Board currently disagrees with?

19 ETHAN CARRIER: Any of the--any of the
20 rules that the--

21 CHAIRPERSON MATTEO: [interposing] Yeah.

22 ETHAN CARRIER: --that the Board has
23 promulgated, not--not to my knowledge. I mean, you
24 know there are always-- You know, the definition of

2 a term would be helpful or a little tweak here would
3 be helpful, but not—nothing—nothing substantive.

4 CHAIRPERSON MATTEO: And AOs?

5 ETHAN CARRIER: That I don't have.

6 CHAIRPERSON MATTEO: Okay. So, you know,
7 we've—we've talked about this, and that is my
8 question but, you know, it seems several revised
9 opinions have been issued without having been
10 requested by a public as required by the Charter.
11 This includes the AO in the 2013 I guess between city
12 employees. That was issued to summarize the Board
13 responses, and an AO in 2012 on post-employment
14 restrictions that was issued to provide guidance to
15 public servants as well as others. Was that a
16 correct exercise of the Charter power for advisory
17 opinions if you weren't asked?

18 CAROLYN MILLER: Well, the—you're
19 pointing out two interesting different types of
20 advisory opinions. The one about gifts between city
21 employees is the result of many, many questions the
22 Board has received about gifts between city employees
23 were asked. Every holiday season we—we were asked by
24 a specific public servant related to a significant
25 life event in advance of that particular advisory

2 opinion. So, that advisory opinion is among the more
3 traditional advisory opinions. The Board advisory-
4 the-the other one that you noted about the Post-
5 Employment Rules is to-to-basically to explain the
6 Board's thinking because again the Board is asked
7 regularly for waivers or other kinds of post-
8 employment advice, and again to provide the greatest
9 educational value so that-so that the city agencies
10 who seek and city agency counsel who seek to obtain
11 waivers for former employees to communicate with
12 their former agencies, to give them the information
13 that they need about what---the process the Board
14 goes through to consider those requests for-for a
15 waiver. So, the Board thinks that the educational
16 value of that particular type of guidance is-is great
17 because we want to give people the tools to
18 understand how the Board works.

19 CHAIRPERSON MATTEO: You know, I-I think
20 just simplistically when-when someone is looking at
21 the advisory opinions, I-I do believe that they
22 believe it carries the weight of a rule, and for me
23 those should be going through the rule making
24 process. So, you know, I think we're going, you
25 know, we're-we're going-I-I understand where you're

2 coming from. I think you understand where the
3 Council is coming from. So, I-I think it's just so
4 important to-to understand that for me personally and
5 the Council and this committee believes that the-the
6 advisory opinions, you know, if you just read what it
7 says, it's supposed to impact one person, the person
8 who's asked, and it just doesn't seem to be doing
9 that, and then-So, we believe that these should be
10 really going through the rule making process, and it
11 may wind up that we get to the same result of the
12 advisory opinion, but I think we're missing out on
13 that-on that rule making process. Does the Conflicts
14 of Interest Board ever cite advisory opinions in
15 external or internal depositions, reports, press
16 releases, enforcement actions or other communications
17 as part of the determination of a possible violation?

18 CAROLYN MILLER: The-again because the
19 advisory opinions are educational tools, they are
20 referenced to-because it's a description of what the
21 Board think, but it's certainly never a predicate for
22 an enforcement case because every single enforcement
23 case is based on the violation of either the City
24 Charter or-or the existing Board rule. No one is
25 prosecuted for violating an advisory opinion.

2 CHAIRPERSON MATTEO: So, well, how come
3 the Board doesn't conduct an open meeting, and then
4 if there's something confidential go into like
5 executive session.

6 CAROLYN MILLER: For the issuance of an
7 advisory opinion?

8 CHAIRPERSON MATTEO: Uh-hm.

9 CAROLYN MILLER: That's just not the
10 Board's process but--

11 CHAIRPERSON MATTEO: [interposing] Well,
12 then anything then added to it. (sic)

13 CAROLYN MILLER: Oh, because the Board--
14 one of the basic foundational structures of the
15 Conflicts of Interest Board is confidentiality. So,
16 that every single public servant is entitled to
17 receive confidential advice from the Board. Those
18 discussions, the board's meetings are confidential to
19 preserve the ability for everybody to--

20 CHAIRPERSON MATTEO: [interposing] Uh-hm.

21 CAROLYN MILLER: --ask a question, and
22 not have anyone know why they're asking or what
23 they're asking about.

24 CHAIRPERSON MATTEO: Well, you clocked out
25 of the Open Meetings Law, then?

2 CAROLYN MILLER: It's-it's-the open
3 meetings don't apply to the confidential Board
4 proceedings. Only specific Board proceedings are
5 subject to the Open Meetings Law.

6 CHAIRPERSON MATTEO: But then you can't
7 an open meeting, though, but you would have to,
8 again, go into some sort of executive session? Kind
9 of like what we had to do today?

10 CAROLYN MILLER: When we-we-we have open
11 meetings when we're required to by law. For example,
12 if we did rule making, when we do rule making, we
13 have open meetings.

14 CHAIRPERSON MATTEO: And not-you're not
15 required by law for advisory opinions?

16 CAROLYN MILLER: No.

17 ETHAN CARRIER: In fact the 2603(c)
18 requires that the identity of the public servant that
19 is requesting it, the advisory opinions can be
20 removed from-from it just any identifying information
21 about that person.

22 CHAIRPERSON MATTEO: Right. In 2016 COIB
23 issued an advisory opinions on legal defense funds,
24 and they where-where even your AO said that there was
25 an absence of specific legislation on the subject.

2 So, you interpreted the existing gifts as applying to
3 Legal Defense Fund contributions. Why would you make
4 such an interpretation through an AO but to this date
5 not a rule?

6 ETHAN CARRIER: The point varies that the
7 existing law did address the question of what happens
8 when somebody is offering something of value to a
9 public servant, and that is that that something is a-
10 is a gift, and so the absence of law-is an absence of
11 law to say that it's something else. So, for
12 example, with Conflicts of Interest Law it does not
13 treat campaign donations that are regulated by the
14 Conflicts of Interest Board as gifts because there is
15 a set of law that regulates what those are that
16 essentially says they're not gifts. They're
17 donations to-donations to a campaign regulated by the
18 Conflicts of Interest Board. All the Board was
19 saying is in the absence of a-of a, you know, legal
20 defense fund law that specifically says these
21 donations are not gifts. They're something else that
22 the-the plain language of the gift prohibition would
23 apply.

24 CHAIRPERSON MATTEO: So, I just guess
25 that my ongoing confusion of this is so I believe the

2 Mayor said that he didn't ask for it. So, it goes
3 back to technically under the Charter the AO doesn't
4 apply to him because he didn't ask for it, and how
5 then should he have acted in response to the advisory
6 opinion if technically it didn't—legally it didn't
7 apply to him because he didn't ask for it.

8 ETHAN CARRIER: Right, it—it is only
9 going to be binding on the public servant who
10 requested such an opinion, but it's certainly
11 educational to other public servants. The—the
12 Conflicts of Interest Board wants to be consistent
13 about the way that it applies the existing law so,
14 you know, I think other public servants would be able
15 to learn from that—from that opinion.

16 CHAIRPERSON MATTEO: So, the—the public
17 servant requests that one?

18 ETHAN CARRIER: A public servant requests
19 it, yes.

20 CHAIRPERSON MATTEO: Yeah, the one I just
21 spoke of in the legal sense?

22 ETHAN CARRIER: Yeah.

23 CHAIRPERSON MATTEO: Okay, but just like
24 in the event it would—it would—it would apply to that
25 person who asked?

2 ETHAN CARRIER: It would be binding on
3 the person who asked. Yes.

4 CHAIRPERSON MATTEO: Okay, so let's—let's
5 talk—let's, and again, I thank you. We've covered a
6 lot of information today, and I appreciate your
7 cooperation with questions. So, you—you talked about
8 your—that you would like the Council to consider
9 going—your—your point of going back, right to—to look
10 at the advisory opinions, and—and—and—and how you
11 think the legislation could be better. So, just go—
12 could you just explain a little bit more on yours?

13 CAROLYN MILLER: Sure. Thank you for the
14 opportunity. We—we recognize basically everything
15 that—that you said do far about the need and the
16 value of having public comment. We—the—the Board's
17 proposal would create a structure within the advisory
18 opinion process rather than requiring a separate rule
19 making process. So, the Board's proposal would be
20 the confidential issuance of advisory opinion and it
21 would become public. Within 60 days the Board would
22 notice the hearing. We would publish the Advisory
23 Opinion in its original form in the city record. The
24 Board would have hearing, accept written testimony
25 and accept oral testimony about the advisory opinions

2 from whomever, and then after that comment, the Board
3 would consider the comments that it had received,
4 either withdraw the advisory opinion, modify it or
5 reissue it in a final form.

6 CHAIRPERSON MATTEO: So, I just want—a
7 few more questions. There are approximately 28 AOs
8 on post-employment restrictions, and everything from
9 when the one-year clock starts to run to when waivers
10 will be granted. Some of these AOs establish tests
11 such as the Exigent Circumstances Test only for the
12 later AOs to explain the factors that make up that
13 test. Only for still later, AOs to explain
14 exceptions to that test, or a different test should
15 be applied. The advisory opinions legally speaking
16 do not have precedential value if they are being
17 built upon years (sic) that they did. Much of the
18 series of court decision—court decisions would. If a
19 person was to find and read only one of—one or two or
20 the early advisory opinions in this chain, do you
21 believe they might have a mistaken impression on
22 what's allowable for post-employment restrictions?

23 CAROLYN MILLER: Well, the—the City
24 Charter is clear about what's—what's required under
25 the Post-Employment Rules. You cannot communicate

2 with your former agency for one year on behalf of—in
3 a compensated communication. So, the restriction is—
4 is clear. The—all the advisory opinions talk about
5 is the way in which the Board might think about
6 exercising its power to waive that restriction under
7 very particular circumstances. All those waiver
8 documents are public documents, are available to the
9 public, but the Board doesn't want sort of the more—
10 more narrow view that individual case wants to make
11 sure that people understand if an agency were to seek
12 a waiver on behalf of one of its employees, what
13 kinds of facts would it need to show? What are the
14 circumstances when such a waiver might be
15 appropriate?

16 CHAIRPERSON MATTEO: So, I—I guess for
17 me, for the average person, I think it would be
18 easier if they just would be able to read and
19 understand, you know, the Post-Employment
20 Restrictions by—by line rule instead of going through
21 the series of them. Would you agree? I mean I
22 think—I think that's—that's confusing just on someone
23 who is trying to find out what the Post-Employment
24 Restrictions are, and—and I think a lot of us have,
25 you know, we've run into people who are confused.

2 ETHAN CARRIER: And, I—I think that the
3 advisory opinions that you're talking about are by
4 and large not about what the restriction is, but
5 rather about what kinds of criteria the Board has
6 considered in—in granting waivers to the Post-
7 Employment Law, and it's over time looked at a
8 variety of different things, and sort of an
9 increasing number of them and, you know, I think
10 tried to sort of explain what the kinds of things are
11 that its looked at, why it thinks those things are
12 important. But that's all for the purpose of looking
13 at what all the—what all the reasons are that the
14 Board might think are appropriate reasons for
15 granting the waiver to the Post-Employment
16 Restrictions. They are not, you know, expansions of
17 the restriction itself. So, the restriction is a—is
18 a fairly clear law that's—I mean it's—that it's
19 pretty clear in the City Charter what the restriction
20 is. It's just these are the factors that the Board
21 has looked at in the past in trying to decide when
22 it's appropriate to waive that restriction.

23 CHAIRPERSON MATTEO: Okay, thank you.
24 We've been joined by Council Member Yeger, and I
25 think he has a few questions.

2 COUNCIL MEMBER YEGER: Thank you very
3 much, Mr. Chairman and thank you for your indulgence.
4 As I'm not a member of this committee, I appreciate
5 you allowing me to crash today. Good morning.

6 ETHAN CARRIER: Good morning.

7 COUNCIL MEMBER YEGER: Your testimony—and
8 I missed the verbal part of it, but I did read it—
9 indicates that your position is that 735 would
10 undermine the Board's essential independence, and I
11 don't think that's really necessarily the case, and I
12 don't want to reiterate things that my colleagues
13 have indicated earlier during this hearing because
14 that would be wasteful of your time, and theirs, but
15 I—I want to just talk about something specific. You—
16 you note that a public servant cannot be punished for
17 violating—and you put it in quotes—an advisory
18 opinion because it is only a document that provides
19 guidance about what the law already requires. The
20 fact is that if you were charge a public servant with
21 violating provision of the Charter, it would be based
22 upon your interpretation of what the Charter says,
23 sand that interpretation is guided by your advisory
24 opinion, which is not challengeable by anybody
25 because it's not a rule, and so it's not subject to

2 for example, a challenge to whether or not you've
3 exceeded your authority under the enabling statute to
4 enact such a rule because it's not rule. So, it
5 can't be challenge. Let me give you a real live
6 example. You've issued an advisory opinion about a
7 year or two ago regarding public servants' use of
8 Internet in public buildings, and the Advisory
9 Opinions as I understand it says essentially that if
10 I had my own laptop and I'm in a public building, and
11 I utilize the government provided Internet for a non-
12 government purpose, I would be violating the Charter.
13 Am I correct on that? You—are you familiar with
14 that?

15 ETHAN CARRIER: There's—there is a
16 promulgated rule that says that.

17 COUNCIL MEMBER YEGER: Okay. It's not—
18 it's not a promulgated rule that says that. It's the
19 advisory opinions that interprets the promulgated
20 rule about I'm obviously not allowed to use Internet,
21 but what you've indicated in your advisory opinion is
22 that if it's a publicly accessible Internet wired-
23 Wi-Fi in a public building, and a public servant were
24 to use that frame for a non-public purpose, that
25 would be a violation of the Charter?

2 ETHAN CARRIER: Well, that advisory. So,
3 first of all, there's a--there's a Board Rule that--
4 that was promulgated that implements a City Charter
5 section that says that no city resources will be used
6 for non-city purposes, and the Board said in response
7 to your question about whether that applied to
8 certain kinds of Wi-Fi that's being operated by the
9 city, that that applies to Wi-Fi that's being
10 operated by the city when it is in a public building,
11 but not generally accessible by the public.

12 COUNCIL MEMBER YEGER: Okay, so let me
13 give you an example. Here in the Council we have a
14 Wi-Fi. I believe there's a--there's an indication
15 there. I engaged in this debate with one of the
16 counsel to the City Council during new Council Member
17 School, which we're required to attend, and he told
18 me that he's a better lawyer than I am, and I believe
19 him, and the--the live--the real live example that I
20 gave is that if I were to want to put out a press
21 release saying that I'm a great Council Member and
22 everybody should vote for me. I can't do that using
23 that publicly accessible Wi-Fi, and there's a member
24 of the press here who wants to run against me and say
25 Yeger is a bum and vote for me instead, he can do it.

2 I can't put out a press release immediately after
3 that using that Wi-Fi saying, you know, that member
4 of the press who issued that press release is a bum.
5 Don't vote for him. So, there's two sets of rules,
6 right. One is that any member of the public can come
7 into our building, access the publicly paid for—the
8 taxpayers pay for it. I don't pay for it, the Wi-Fi,
9 and use it—use it for what would in your
10 interpretation, which I believe is in error would in
11 violation of the City Charter. We're using that not
12 to beat you up about a particular advisory opinion,
13 but I'm using that to echo what I believe the
14 Chairman has indicated, you know, in—in his
15 introduction of this bill, which is that the—as we
16 know, because were are lawyers, we—we give notice to
17 people about—about the laws that we expect them to
18 follow, and there can be no punishment without
19 notice, and notices contained in statutes, and the
20 rules promulgated pursuant to those statutes. We
21 can't ask the public be they regular people from the
22 public, or be they those of us regular people who got
23 here on this side of the table to take notice of all
24 the advisory opinions issued by an agency, and say
25 don't violate any of these. So, what the Chair has

2 indicated in his bill, which I believe is a wise
3 bill, and I—and I do hope that it passes this Council
4 is that we're asking the COIB to simply take the
5 rules that you've—take the advisory opinions that
6 you've issued, which you yourself require that
7 everybody take note of and make those into rules.
8 The reason that's important in my estimation is
9 because when—if you should issue a rule that exceeds
10 your enabling authority under the statute, under the
11 Charter, we have checks on that. We have the
12 Corporation Council. We have I believe it's MOCS,
13 and I'm not even sure where else it is, but it gets
14 checked a couple of times to make sure that you're
15 not exceeding your authority, and I don't believe
16 that you ever exceed your authority, of course, but I
17 believe that it's important to give to note to the
18 people who have to follow the rules, what the rules
19 are. Your website, your printed trainings, all the
20 things that you put out there for us to know and—and
21 the several hundred thousand public servants who work
22 for the city of New York, you do—you—you have all
23 these wonderful—I mean they are. They're wonderful
24 guiding documents. They—they have, you know, plain
25 language documents that are very easy for people to

2 understand. If you can't ask, you know, a guy who
3 works at the Sanitation Department to take note of
4 all the various advisory opinions, and I think that,
5 you know, when—and I'm not really talking about
6 elected officials, because we're surrounded by
7 lawyers, and we have people who work for us, and tell
8 us what we should and shouldn't be doing, and, you
9 know, if we have a question, we call you. You've
10 given me advice already, and I've only been here for,
11 you know, 110 days. Our Counsel here at Council
12 tells us what's allowed and what's not allowed. If I
13 have any questions, I go to you, Carolyn. But my
14 point is that you—you do have the ability to
15 promulgate these advisory opinions, and to have them
16 checked, and that's not to take away your authority.
17 It's not to conflate two separate board powers. It's
18 not to make it harder for the Board to provide
19 effective guidance to public servants because it's
20 not what we're doing. We can still issue you
21 advisory opinions, and it's surely, surely not to
22 undermine the Board's essential independence, but
23 what we're asking is give us the rules. Tell us what
24 we can and can't do so that we can comply on that.
25 Nobody, not us because we'll be okay, but no guy

2 whose job it is everyday to go and pick up for
3 Sanitation can somehow bet caught up in a violation
4 of the rule because he doesn't realize that an
5 advisory opinion was issued in 1997, and that was
6 never actually converted to a real rule, and that's
7 all we're asking you to do. And I recognize that
8 you've come back to the Council with some ideas, but
9 I'm hopeful that, you know, between your wise ideas
10 and the chair's wise bill that there be an
11 understanding of what it is that we're trying to
12 accomplish. We're not trying to accomplish a
13 situation where you can't enforce. You're
14 independent. You have the right to do that. I think
15 you're doing a fine job. I—I do believe that the
16 questions regarding the Legal Defense Fund, you know,
17 whether or not that actually applies to anybody who
18 is getting actually asked for the advice including
19 possibly the Mayor, is—is a very, very broad question
20 that has to be answered. We haven't really answered
21 that. Like what happens to the next guy who wants to
22 do this. So, I would just ask you to take that under
23 advisement. I really do believe you will, and I am
24 grateful that you gave me the chance to—to speak with
25 you today. Thank you.

2 CHAIRPERSON MATTEO: Thank you, Council
3 Member Yeger. So, [coughs] you know, I think he-
4 Council Member Yeger talks about the frustration
5 that, you know, he's right. It's not just us, and
6 we'll—we'll get the answer. It's—it's those who
7 don't know that advisory opinion, and like you said,
8 ten years ago may not—may have been there is really
9 another advisory opinion that talked, that says
10 something different from the advisory opinions that
11 was implemented then. So, it's confusion. Then the
12 last question I have is when—when you talk about new
13 technology, and you talk about social media, and—and
14 how it's supposed to be used, shouldn't that go
15 through a rule making process to understand the
16 impacts and—and hear from everyone what—what the
17 rules, you know, are in the case there is an advisory
18 opinion, how it's going to impact. And maybe here to
19 make it better so we could all probably get on the
20 same page to make a clarifying rule that everyone
21 knows what you can and can't do instead of saying
22 well, you know, it's an advisory opinion. Who is it—
23 who is it affecting? Who is it impacting? Is it
24 just impacting the one person who asked for it or is

2 it everybody. So, just to close with I guess that
3 final questions and thoughts on your end.

4 CAROLYN MILLER: I-I guess the-the-I mean
5 I appreciate the concerns of the Council. For us,
6 the-the rule-it always goes back to what the rules
7 already say, and there's a rule that talks about, you
8 know, not using city resources for a non-city
9 purpose. All we do all day is help people understand
10 how that rule applies to them. That's-that's-to have
11 addition-the rules that already exist is-is enough
12 regulation to help people understand what their
13 obligations are under the Conflicts of Interest Law,
14 and everything else we do is trying to apply those
15 rules to ever-changing circumstances, and that's
16 really what the core of the Board is. And to put
17 those advisory opinions into the public it's a tool.
18 We certainly are not asking every city employee to
19 read every single advisory opinion. They can all us,
20 but it's a tool. There is every single possible way
21 we can put our understanding of the law into the
22 universe to give people plain language guides, to
23 give people classes. Advisory opinions are just a
24 part of that.

2 CHAIRPERSON MATTEO: You know, I-I
3 appreciate the response. I hope you can appreciate
4 our frustration about the confusion of advisory
5 opinions and rules and why we think that we really
6 need to get to a place where we're implementing rules
7 that go through the public process that take into
8 consideration testimony of those it can impact.
9 Understanding the intended and unintended
10 consequences of an opinion that could be a rule. So,
11 we do look forward to working with you, and I
12 appreciate you coming in, and answering our
13 questions, offering your own suggestions. We will
14 certainly follow up with the discussion. I want to
15 thank you colleagues. Thank you Council Member Yeger
16 for-for coming, for-for your thoughts and comments,
17 and seeing that there's no one else, we're going to
18 adjourn this meeting. So, thank you everyone.

19 CAROLYN MILLER: Thank you

20 ETHAN CARRIER: Thank you.

21 [gavel]

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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date May 31, 2018