

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON GOVERNMENTAL OPERATIONS

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January 14, 2019
Start: 10:17 a.m.
Recess: 11:21 a.m.

HELD AT: Committee Room - City Hall

B E F O R E: FERNANDO CABRERA
Chairperson

COUNCIL MEMBERS: Ben Kallos
Alan N. Maisel
Bill Perkins
Keith Powers
Ydanis A. Rodriguez
Kalman Yeger

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

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

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

2 [sound check] [pause] [gavel]

3 CHAIRPERSON CABRERA: Good morning and
4 welcome to this hearing of the Committee of
5 Governmental Operations. I'm the Chair of the
6 Committee, Council Member Fernando Cabrera, and we're
7 joined by my colleagues Council Member Kallos,
8 Powers, Yeger and Levine. Today, we will—eleven.
9 So, today we will be holding a hearing on
10 Introduction 1325 sponsored by Council Member Levin
11 in relation to authorizing the creation of legal
12 defense trust. When a New York City public official
13 is accused of a civil offense related to his or her
14 official duties, he or she is entitled under state
15 law to—public money to pay for his or her legal
16 defense. When a public official is accused of a
17 criminal—criminal offense related to his or her
18 duties, Local Law allows for the Law Department in
19 its discretion to provide public resources for his or
20 her legal defense. However, when a public official
21 or his or her staff is accused of or investigated for
22 a criminal or civil offense that is unrelated to
23 their official duty, such as in relation to a
24 political campaign, issue advocacy or certain
25 governmental or administrative issues, there is no

2 law that allows for the use of public funds to pay
3 for their legal defense or the legal defense of
4 anyone else involved in the matter. In 2017, the
5 Conflict or Interest Board known as COIB, issued an
6 advisory opinion which said that public officials
7 could not raise funds above \$50 per donor for their
8 legal defense. That opinion, however, did
9 acknowledge that occasional need for public officials
10 to raise money for legal defense just as any private
11 citizens might need, and indicated that additional
12 local legislation will be necessary for a proper
13 legal defense fund to be established in New York
14 City. This bill will establish a legal framework for
15 public officials, and non-public officials involved
16 in a matter to establish legal defense trust to fund
17 raise for their legal defense. As we all know,
18 public officials are not highly paid, and they are
19 rarely independently wealthy. They are watched very
20 closely for ethical and legal lapses. Defending
21 against allegations and investigations for alleged
22 wrongdoing can be financially devastating for someone
23 of average means. Introduction 1325 will allow public
24 officials to create a stand-alone trust to pay for
25 certain criminal and civil manners-matters. As long

2 as those expenses aren't already being paid by the
3 city, it will set a donation limit of \$5,000 per
4 donor, and will place restrictions on who could
5 donate to a legal defense trust. Lobbyists, people
6 doing business with the city, corporation and LLCs
7 will not be allowed to donate, and all donations will
8 have to be reported to COIB on a quarterly basis and
9 posted online. The bill will include an enforcement
10 mechanism, and have substantial fines for violations
11 of the law. Many other jurisdictions have recognized
12 the need for legal defense funds or trusts. I look
13 forward to this discussion whether New York City
14 should do the same. I would like to thank the sponsor
15 of this legislation Council Member Levin for
16 advancing this issue. I also want to thank our
17 committee staff: Brad Reed, Elizabeth Cronk, Emily
18 Forgione, Zach Harris as well as my own Legislative
19 Director Claire McLeveighn for their work on this
20 bill, and I invite the sponsor of this legislation to
21 make a statement.

22 COUNCIL MEMBER LEVIN: Thank you very
23 much Chair Cabrera for convening today's hearing.
24 Good morning everybody. I am eager to have this
25 discussion underway to discuss Bill Intro 1325 to

2 allow public officials to set up stand-alone legal
3 defense trusts to raise funds for legal services.

4 This bill would bring transparency and regulation to
5 a system that is in need of improvement. Legal
6 defense trusts allow for a responsible and distinct
7 system to be created in the event public officials—an
8 unfortunate event that public officials may need to
9 pay legal fees should they face an investigation.

10 All people including public officials deserve the
11 right to a fair trial and quality defense against
12 allegations of wrong doing. However, that

13 necessitates a clear and transparent system that
14 includes proper oversight, and as public officials,
15 we are subject to Conflict of Interest Law, and—and
16 we need to need to be able to do so within the

17 guidelines of Conflicts of Interest Law. Without
18 clear guidelines, gaps in our ethics in Campaign
19 Finance Laws can pose a risk of corruption or its
20 appearance. Legal defense trusts have been used by

21 federal, state and local jurisdictions to allow
22 officials to establish accounts to pay for legal
23 defense fees in a regular but transparent manner. The
24 City's Conflicts of Interest Board ruled in 2017 that
25 donations to a legal defense fund qualify as gifts

2 under the Conflicts of Interest Law, and as such,
3 must be capped at \$50 per donor. This ruling opened
4 the door for today's legislation, and the need for a
5 common sense solution to cover legal fees in a
6 regulated and clear way. I am proud to sponsor
7 today's bill, which will improve transparency and
8 allow for the creation of a system that is
9 accountable and separate from the Campaign Finance
10 system. While every public official would hope to
11 never have to set one of these up, it is important
12 that it be done in a way that is regulated and
13 accountable and not tangled up in campaign finance.
14 In effect, the legal defense trust would serve as a
15 highly regulated lockbox that allow public officials
16 to cover potential needed fees, prevent campaign
17 funds from being used improperly, and honors the
18 public's trust in responsible use of their taxpayer
19 dollars. I also want to highlight that this bill
20 includes strict requirements around the creation of a
21 trust, and were informed with the expertise of good
22 government groups. No campaign funds or public funds
23 will go into the trust, and there will be no
24 comingling of assets. This ensure campaign finance
25 limits are respected, campaign finance are allocated

2 only to campaigns, and legal defense trusts cannot be
3 used a loophole to circumvent campaign contribution
4 limits. Each trust would also be set up and overseen
5 by a trustee for maximum accountability, and there
6 are strict limits on who can donate, how much and
7 where. No lobbyists. Anyone doing business with the
8 city, corporations and LLCs are allowed to donate to
9 an LBT and contributions will be limited to \$5,000.
10 Intro 1325 provides a clear framework to set up a
11 separate account with strict regulations on usage in
12 clear and detailed recordkeeping and donations as
13 overseen as proposed in the legislation by the
14 Conflicts of Interest Board. I urge my colleagues
15 and the committee and Council to sign on to support
16 this legislation. I want to thank you all for your—I
17 want to thank the Committee staff and the chair for
18 their work on today's hearing. I'll pass it back to
19 Chair Cabrera.

20 CHAIRPERSON CABRERA: Thank you so much,
21 Council Member and I also want to acknowledge we've
22 been joined Council Member Maisel. With that, we'll
23 do the swearing in.

24 LEGAL COUNSEL: Raise your right hand.
25 Do you swear or affirm to tell the truth, the whole

2 truth, and nothing but the truth in your testimony
3 before this committee, and to respond honestly to
4 Council Member questions?

5 CAROLYN LISA MILLER: Yes.

6 LEGAL COUNSEL: Thank you.

7 CHAIRPERSON CABRERA: You may begin.

8 Thank you.

9 CAROLYN LISA MILLER: Good morning, Chair
10 Cabrera and members of the Committee on Governmental
11 Operations, and Council Member Levin. I'm Carolyn
12 Lisa Miller. I'm the Executive Director of the New
13 York City Conflicts of Interest Board. With me is
14 COIB's General Counsel Ethan A. Carrier. We are here
15 to testify about Intro 1325. In March 2017, COIB
16 issued Advisory Opinion No. 2017-2 making public
17 advice it had given to a public servant as to whether
18 that public servant may be the beneficiary of a fund
19 established to raise money to defray that public
20 servant's legal expenses. The Board concluded that
21 in the absence of specific legislation to permit
22 legal defense funds, it has no legal basis to treat
23 contributions to a legal defense fund any differently
24 than from other gifts to public servants. COIB
25 appreciates the Council's action in addressing the

2 regulatory gaps COIB identified in Advisory Opinion
3 2017-2. Intro 1325 creates the necessary framework
4 for permissible legal defense trust that manages the
5 possible conflicts of interest raised by creating
6 fundraising for and administering these funds. COIB
7 commends that the Council included in Intro 1325
8 strict limits on when a fund may be established, who
9 may donate, how much donors may give, who may solicit
10 donations and how the donations may be spent, and
11 importantly, COIB thanks the Council for providing in
12 Intro 1325 both a disclosure regime that provides
13 meaningful transparency for the public, and an
14 enforcement regime that obligates beneficiaries and
15 trustees of legal defense trusts to comply with the
16 limitations the Council has set forth. As a city
17 agency dedicated to promoting good government, COIB
18 notes for the Council's consideration one aspect of
19 Intro 1325 that intersects with the city's Campaign
20 Finance Law. Section 3-1102 F2 prohibits a fund from
21 paying "criminal fines or penalties imposed upon an
22 individual beneficiary and thus permits a fund to pay
23 civil or administrative fines, such as fines imposed
24 by the New York City Campaign Finance Board. We
25 defer to our colleagues at CFB to address how this

2 provision might impact the integrity of the city's
3 Campaign Finance Board. These new costs fit into two
4 categories: First, the initial cost to build a
5 reporting portal for use by trustees and by the
6 public, and the related recurring costs of managing
7 that portal, and second, the ongoing personnel costs
8 to hire staff to perform the law's required quarterly
9 audits. We have made an initial inquiry to a
10 software vendor within the city regulated (sic)
11 contracts to estimate the cost to build a new
12 reporting portal, and the initial estimate was
13 approximately \$40,000 in addition to subsequent
14 annual licensing costs. Second, because Intro 1325
15 requires COIB to audit each legal defense trust on a
16 quarterly basis, and because COIB currently performs
17 no auditing functions nor is certified in generally
18 accepted Government Accounting Standard, GOV-S, we
19 will also need to contract with a GAGAS certified
20 auditor, which we have been advised will cost between
21 \$5 and \$10,000 per audit. COIB has only 26 employees
22 fully staffed, and a very limited budget allocated
23 for other than personal expenses. We have no leeway
24 in our budget for the substantial new expenditures
25 that Intro 1325 would require us to make. Thus, we

2 ask for additional budget allocations to permit the
3 agency to implement and administer the Legal Defense
4 Trust Law with the speed and care it merits
5 especially in light of the fact that the law comes
6 into effect immediately upon passage and that the law
7 itself recognizes there will likely be quick demand
8 to register legal defense-defense trusts with COIB.
9 We stand ready to work with the Council, and with the
10 regulated Legal Defense Trusts to ensure the smooth
11 implementation of this law. We're happy to answer
12 any questions the Committee may have.

13 CHAIRPERSON CABRERA: Thank you so much
14 for your testimony. I really appreciate you-you
15 getting right to the point. I love it. I love those
16 types of testimony. I want to thank you both and-and
17 the Conflicts of Interest Board for all that you do.
18 I know what you do is not easy. Sometimes we have
19 gray areas in which we-we need clarification, and you
20 always seem to come through. So, I just have two
21 brief questions. One is related-I just noticed that
22 you're asking for funding. Can you estimate how much
23 funding you're going to need?

24 CAROLYN LISA MILLER: Well, we need at
25 least-we need to build out a database, which we

2 believe will be will be about \$40,000 from scratch
3 with the vendor that we're working with, and then any
4 reporting portal that you have has annual costs that
5 are required to have subscribers, which will be a
6 couple thousand dollars per year, and then we do no
7 auditing at COIB. We have no staff that does it.
8 We have no certification to do it. So, we need to
9 contract out for that work, which we understand would
10 between \$5 and \$10,000 per audit. If and audit
11 happens quarterly so every legal defense trust would
12 have four audits per year. It's hard to estimate in
13 advance how many trusts would be registering with the
14 Conflicts of Interest Board, but if it's ten per year
15 that's, you know, \$100,000. If it's, you know, more
16 than that and so on.

17 CHAIRPERSON CABRERA: Do you—do you have
18 an estimate of how many people at this point would
19 use if this law were to pass—use this opportunity?
20 So, for example, I know there—these allow for former
21 elected officials as well. Do you have like a guess
22 based on conversations that you had in the past or--?

23 CAROLYN LISA MILLER: We—we don't have a
24 guess. I mean certainly there's been widely reported
25 an elected official who might be in need of a legal

2 defense trust. So that's one, and since the law as
3 currently written provides for a legal defense fund
4 trust to pay for campaign finance penalties, we
5 understand that that's not infrequent occurrence for
6 an elected official to incur some penalties related
7 to reporting requirements of the Campaign Finance
8 Law. So could there be, you know, 50 a year? Could
9 there be more than that? But we are—I'm just
10 guessing.

11 CHAIRPERSON CABRERA: Okay, alright, I
12 want to go back to Section 3 1102-F2. Can you be a
13 little bit more specific about this section, and also
14 to the heart of my question would be why was this
15 section put in in the first place?

16 CAROLYN LISA MILLER: [interposing] Well,
17 I--

18 CHAIRPERSON CABRERA: Tell us about that.
19 Do you happen to know? Do you have the history?

20 CAROLYN LISA MILLER: I—I don't. We
21 weren't the drafters of this bill. So, that—that I
22 don't—I can't speak to why this provision is in
23 there, but the provision provides for the—prohibits
24 the payment of criminal fines or penalties. Thus, by
25 the drafting of the law permits the payment of civil

2 or administrative fines or penalties. So that the-
3 the most logical or the most obvious source of civil
4 or administrative penalties that city elected
5 officials might be subject to are the ones imposed by
6 the Campaign Finance Board.

7 CHAIRPERSON CABRERA: Uh-hm. I'd be
8 curious to know what was the context. Why was that
9 put in in the first place back then? What-what were
10 their fears? What were their concerns, but if you
11 happen to have some old-timers at the Conflicts of
12 Interest Board, we'd love to find out a little on--

13 CAROLYN LISA MILLER: [interposing] Well,
14 this-this-this law was not-this law is not something
15 that's ever existed in the context of the Conflicts
16 of Interest Board. We understand that it was drafted
17 by Council staff, and-and with consultation of other
18 people at the Mayor's Office, and so this is not a
19 bill that we created. I imagine it was created to
20 have that provision permiss-permissibility.

21 CHAIRPERSON CABRERA: Okay, thank you so
22 much. I'm going to pass it to the sponsor of the
23 bill, Council Member Levin.

24 COUNCIL MEMBER LEVIN: Thank you. Thank
25 you, Chair. Thank you all. I just want to talk a

2 little bit about the kind of general context of kind
3 of how we arrived here. So, up to this point, had
4 there ever been—had New York and COIB ever had to
5 opine on—on a legal defense fund or legal defense
6 trust before?

7 CAROLYN LISA MILLER: Before the Advisory
8 Opinion?

9 COUNCIL MEMBER LEVIN: Correct.

10 CAROLYN LISA MILLER: We—we had
11 confidentially.

12 COUNCIL MEMBER LEVIN: You had
13 confidentially. Okay, but not—not publicly?

14 CAROLYN LISA MILLER: Not publicly
15 correct.

16 COUNCIL MEMBER LEVIN: Now, can you maybe
17 provide some context about the contrast maybe, if you
18 know, with state law and how state elected officials—
19 how it's governed for state elected officials? Can
20 you speak to that at all or do you—?

21 ETHAN A. CARRIER: Well, I mean only—only
22 to say that, you know, there—there—the state law is
23 developed according to, you know, the laws that's
24 written for state employees and hear in the city
25 we're subject to Chapter 68 of the City Charter so--

2 COUNCIL MEMBER LEVIN: Uh-hm.

3 ETHAN A. CARRIER: --you know, we-we can
4 only implement the law that we have at hand--

5 COUNCIL MEMBER LEVIN: Right.

6 ETHAN A. CARRIER: --and so, you know, in
7 the-in the absence of a law like the one that we're
8 discussing today, the-the-the gifts-the gift
9 prohibitions that are in the city's Conflicts of
10 Interest Law--

11 COUNCIL MEMBER LEVIN: Uh-hm.

12 ETHAN A. CARRIER: --the Board thought
13 that there's now way to treat it any other way than
14 that. That's all the law that there is. So, this
15 provides, you know, a regulatory scheme that
16 addresses that. It provides for a possibility for a
17 possibility of having legal defense trusts and
18 regulates them in a way that really addresses the
19 kinds of conflicts issues that I think you'd be
20 concerned about in such a regime.

21 COUNCIL MEMBER LEVIN: The reason I asked
22 is that so I-my understanding is that on the-for-for
23 a state elected official, campaign funds are-can be
24 used for-for legal defense, and that's not an ideal
25 situation. It's not. In-in my opinion, it's not an

2 ideal application of campaign funds and it doesn't
3 seem to be in line with why people would be giving
4 campaign funds or donations in the first place, and
5 so, you know, I—one of the reasons why I wanted to do
6 this bill was so that we are able to kind of make a
7 clear a demarcation between campaign finance and
8 legal defense trust. Does—has COIB kind of opined on
9 the—on the wisdom of—of—of creating a separate and
10 apart system from campaign finance?

11 ETHAN A. CARRIER: It—no, it has not. I
12 mean, you know, in campaign—I mean obviously Campaign
13 Finance Law is outside of our wheelhouse.

14 COUNCIL MEMBER LEVIN: [interposing] Uh-
15 hm.

16 ETHAN A. CARRIER: That's the Campaign
17 Finance Board is—are the real experts here in the
18 city about—about that.

19 COUNCIL MEMBER LEVIN: Uh-hm.

20 ETHAN A. CARRIER: You know, the—the
21 focus of the Board's work in this area is just to say
22 that when public servants are given something of
23 value by somebody, that that has to be looked at, and
24 it's not in the realm of regulated money like the
25 Campaign Finance Board regulates that we—that the

2 Board—the Conflicts of Interest Board has to look at
3 that as a gift, but we don't, you know, Campaign
4 Finance Law is really outside of our area--

5 COUNCIL MEMBER LEVIN: [interposing]
6 Right.

7 ETHAN A. CARRIER: --of expertise.

8 COUNCIL MEMBER LEVIN: Have you looked at
9 other jurisdictions that—that have provisions for
10 legal defense trusts around the country whether it's
11 the federal government? I know that Congress has one
12 or other states or cities?

13 ETHAN A. CARRIER: Just a little bit.

14 COUNCIL MEMBER LEVIN: Are you able to
15 kind of share what you've—what you've found?

16 ETHAN A. CARRIER: Well, I can say that
17 the—the one that's being introduced today or that
18 we're discussing here today really addresses
19 conflicts of interest concerns really quite well. I
20 would say better than most of the other jurisdictions
21 I've seen. So, from the perspective—from our
22 perspective, which is the—the conflicts of interest
23 perspective, this—this bill really addresses those
24 sorts of concerns in ways that other jurisdictions I
25 feel like do not as a good a job, frankly.

2 COUNCIL MEMBER LEVIN: In terms of the
3 mechanics, you talked—you spoke in your testimony
4 about the need for additional resources at COIB
5 funding. COIB does a tremendous amount of work with
6 a very small staff right now, and—and so we
7 acknowledge that and recognize that because you are
8 receiving matters far and wide throughout city
9 government. In terms of the—the online portal and
10 ways to make it publicly accessible and outward
11 facing or publicly facing, and then obviously
12 managing disclosure statements or audits in—in a way
13 that's, you know, both user friendly and—and outward
14 facing. Is that something COIB has any experience
15 with or is that—would that be kind of new territory
16 for COIB?

17 CAROLYN LISA MILLER: Well, audits will
18 be 100% new. We—we do nothing like that. We have
19 done nothing like that.

20 COUNCIL MEMBER LEVIN: Uh-hm.

21 CAROLYN LISA MILLER: The online portal
22 we—we have a model with the Council's—what we call
23 Chapter 9, Local Law 181 of 2016, having to do with
24 the regulation of affiliated not-for-profits. So, we
25 build—we built out a portal that will have that

2 similar external facing style to it where people
3 input information and reported. It's-it's-we'd have
4 to build-have a new kind of one to function at the-
5 for these kinds of things, but we have some-some
6 modest experience with that. That database has not
7 really gone live yet because the first reporting
8 period is due on August 1st of this year.

9 COUNCIL MEMBER LEVIN: Okay, okay.
10 Obviously, there's-you know, there's a wide range
11 and-and, you know, on campaign finance both CFB and
12 State Board of Elections has-have very, you know,
13 kind of well developed outward facing disclosure
14 abilities in their systems, and so it's, you know,
15 obviously it-it can be done, but the-the resources
16 need to-to be there I agree.

17 CAROLYN LISA MILLER: Right, the Campaign
18 Finance Board's budget is-is probably five times--

19 COUNCIL MEMBER LEVIN: [interposing]
20 Right.

21 CAROLYN LISA MILLER: --and the staff is
22 five times that of the Conflicts of Interest Board,
23 and their software system is proprietary to them.
24 It's not something that we can leverage in any way.

25 COUNCIL MEMBER LEVIN: Got it.

2 CAROLYN LISA MILLER: So, we have to—we
3 have to build something from scratch.

4 COUNCIL MEMBER LEVIN: Right. Okay, and
5 then other than the [coughs] the matter that—that you
6 discussed in your—in your testimony regarding civil—
7 civil fines that intersect with campaign finance as
8 you see it, are there any other recommendations or
9 ways that you think that this bill can be
10 strengthened to allow for increased transparency and
11 accountability?

12 CAROLYN LISA MILLER: We think this is a
13 good bill. We have no—no ways that we think it could
14 be better than it is.

15 COUNCIL MEMBER LEVIN: Great. Okay, well
16 thank you very much. I appreciate your time.
17 Thanks.

18 CHAIRPERSON CABRERA: Thank you so much.
19 Let me acknowledge we were—we are joined by Council
20 Members Perkins and Rodriguez, and with that, I'm
21 going to pass it on to Council Member Powers followed
22 by Council Member Yeger.

23 CHAIRPERSON POWERS: Thank you. Good
24 morning. Thanks for being here and I want to thank
25 Council Member Levin for his—I think it's thoughtful

2 legislation to try to address a difficult topic. I
3 want to—I had a couple of questions, and the first
4 one I wanted to start just because your testimony
5 raised, which is this would—just to clarify, this
6 would allow candidates who are—or this would allow
7 elected officials to pay off their CFB fines using
8 this legal defense fund. Is that correct?

9 CAROLYN LISA MILLER: It's right. So
10 the—the—a beneficiary has to be a public—current or
11 former public servant. So, it has to be someone who
12 was either a city employee and ran for elective
13 office or one, they're elected to office, but yes, in
14 answer to your question.

15 COUNCIL MEMBER POWERS: Got it and—and do
16 you say former elected officials, too or former
17 candidates? What was the former?

18 CAROLYN LISA MILLER: Oh, no, no, no.
19 They would have to be a public servant at least so
20 currently--

21 COUNCIL MEMBER POWERS: [interposing] So,
22 they're—oh, they're governed by the COIB Law.

23 CAROLYN LISA MILLER: Right.

24 COUNCIL MEMBER POWERS: That would make
25 it former, and are there concerns around—so under

2 that scenario, I think under this current regime you
3 would pay off your CFB fines with your campaign
4 finance money, the money you raised from donors,
5 which right—is now currently capped at \$2,850 or a
6 thousand depending on which system you take with the
7 voters just voted for \$1,000 for like a Council
8 Member let's say. Under this system you get to raise
9 \$5,000 for your legal defense fund. So, I wonder if
10 you guys have any thoughts on whether there's a
11 inherent conflict or—or a thought process around
12 being able to—if you got fines for collecting over
13 the allowable amount, for instance the \$1,000 amount,
14 you could then open up a secondary account and raise
15 money at the \$5,000 level, which is five times the—
16 the amount under current law?

17 ETHAN A. CARRIER: You know, I think that
18 the—the—how this works with Campaign Finance Law is—
19 is really outside of the scope of what the Conflicts
20 of Interest Board does or is—is frankly are—out of
21 our area of expertise. This is really a question for
22 the Campaign Finance Board. We just wanted to—we
23 just wanted to flag that as a—as a thing that—that
24 should be thought about.

2 COUNCIL MEMBER POWERS: And has the CFB
3 made a comment to you about their thoughts on having
4 another fund that had different limits versus the
5 current limits?

6 ETHAN A. CARRIER: Our-we-all--CFB has
7 advised us. We-we consulted with them about GAGAS,
8 about generally accepted Government Accounting
9 Standards because they have those standards as well,
10 and we were trying to figure out how sort of
11 expensive it is to deal with those sorts of things,
12 but outside of that discussion, we-we haven't had a
13 substantive discussion with them about-about, you
14 know, the-the sort of substance of this-of this
15 legislation.

16 COUNCIL MEMBER POWERS: Okay and then on
17 the campaign contribution limits, just generally here
18 for fund contribution list, I should say \$5,000, do
19 you feel those are appropriate and comfortable and
20 maybe can you tell us what the limits are in other
21 jurisdictions?

22 ETHAN A. CARRIER: I-I don't recall
23 exactly what the limits are under other
24 jurisdictions, but I-this-this number seems like an
25 appropriate number to us particularly in light of the

2 limitations on who can contribute funds. There are
3 some strict limitations about who those people can
4 be, including they can't be people in the—doing
5 business database. It can't be subordinates of the
6 person who is soliciting the funds. Those sorts of—
7 those sorts of restrictions I think are—are quite
8 sensible and really address the primary kinds of
9 conflicts of interest that one would be concerned
10 about here, and so, you know, with that I think
11 \$5,000 for this is a—is a reasonable—a reasonable
12 number. It has to be a number that's high enough
13 that somebody can actually put forward a legal
14 defense. So, I—I think we find that to be a pretty
15 reasonable arrangement.

16 COUNCIL MEMBER POWERS: Okay, thanks very
17 much.

18 ETHAN A. CARRIER: And I'm—I'm—I'm so
19 sorry, and add also the requirement for transparency.
20 It's obviously a hugely important requirement.

21 COUNCIL MEMBER POWERS: And—and do you
22 feel like the transparency and the disclosure meets
23 your—your standards in terms of what you expect and I
24 think it's quarterly reporting right now. So, do you
25 feel like you'd rather have in time reporting to know

2 who's giving or-or do you-is-is-is quarterly a
3 recommendation from COIB or what-what do you feel
4 like is the appropriate reporting time?

5 ETHAN A. CARRIER: No, we-we haven't made
6 any recommendation about the-about the timing of the
7 reporting. Obviously, the more frequent the
8 reporting, the more expensive it is to administer.
9 You know, quarterly-quarterly reporting seems like a
10 reasonable frequency. We don't have any objection to
11 that.

12 COUNCIL MEMBER POWERS: Okay and-and-and
13 if you do receive-if you do receive CFB violations as
14 one of the categories that you have to then have
15 oversight over in terms of people setting up legal
16 defense to pay off their Campaign Finance Boards
17 (sic). That, as you noted would probably just the
18 amount of people who-who could be in it from a
19 handful today to up to 50 or perhaps if-if people
20 choose to use that as a mechanism. So, your-your
21 staffing and your resources, as I know you know, are-
22 are of concern in terms of how you administer the
23 program. So, if you have 50 people that suddenly
24 tried to take advantage of this program, do you feel
25 like outside of addition-if you-if you receive no

2 additional resources to help administer this, do you
3 feel like you can still adequately administer it?

4 ETHAN A. CARRIER: Right. We—we don't
5 have the resources to managing the auditing for a
6 single fund at this moment. So, any auditing that we
7 would have to do would have to be done with
8 additional resources.

9 COUNCIL MEMBER POWERS: Okay, thank you
10 and are there—are there ways you feel like this could
11 be made more transparent both in terms of the donors
12 to the fund and expenditures and—and yeah, the funds
13 and expenditures?

14 ETHAN A. CARRIER: No. We—we think that
15 the—the—the—the reporting and transparency piece of
16 this is—is quite robust and—and sufficient for its—
17 for its purpose.

18 COUNCIL MEMBER POWERS: Can you let us
19 know then probably states and five cities or some
20 variation of that number have and put these into
21 place? Can you tell us any—any concerns that have
22 been raised in those jurisdictions whether it is
23 about who is contributing to them, disclosure,
24 transparency limits, other concerns that have been

2 raised or issues that have come up as a result of the
3 funds?

4 ETHAN A. CARRIER: I-I-I can't-I can't
5 testify to what sorts of concerns have been raised
6 about legislation that exists in other places.
7 We've, you know, very briefly surveyed a few other
8 significant jurisdictions that have laws like these.
9 Many of them touch on some of the issues that are
10 addressed in this law. I don't think any of them
11 actually managed to touch on all o them. In that way
12 I feel like this bill is superior to the ones I've
13 seen, the laws I've seen in other jurisdictions. I
14 don't recall other jurisdictions having restrictions
15 outside of the kinds of restrictions that are in this
16 legislation.

17 COUNCIL MEMBER POWERS: Okay, and I'll
18 just ask one or two more questions in respect to-
19 respect to my client-my colleagues here. Are there-
20 what's it-what would be the timeline for you to be a-
21 I mean I know you don't-you need resources to be able
22 to administer it, but just even for-to create the
23 rules that were needed to be made here and the
24 ability to get a-a fund set up. What would be the-

2 the timing that you anticipate before somebody could
3 take advantage of it?

4 ETHAN A. CARRIER: Well, the law is
5 written to come into effect immediately, and has a
6 provision that requires the Board to accept a, you
7 know, essentially good faith submissions in-in, you
8 know, a form that sort of reasonably captures the
9 requirements of the law. So people should be able to
10 do so essentially as soon as the law—as soon as this
11 bill becomes law. You know as far as the Board
12 creating regulations to interpret and implement the
13 law, obviously that has to go through the CAPPA
14 process and so that takes some time. We would, of
15 course move that through that process as quickly as
16 possible for public comment and hearing.

17 COUNCIL MEMBER POWERS: But—and I just—
18 what happens if somebody does it tomorrow and you
19 don't have the staff or resources to administer?

20 ETHAN A. CARRIER: Well, we would—we'd
21 certainly be able to accept submissions that—that our
22 Legal Defense Trust made and we would be able to
23 provide guidance to legal defense trust that we're
24 seeking guidance about this law. The—the—we would
25 not have the—you know, the online database in order

2 to be able to easily collect this information, make
3 it public. People would not—you know, the—the sort
4 of details about what they need to submit in order to
5 be in compliance with the law wouldn't be necessarily
6 readily obvious to—to people who are setting up a
7 trust, but we could, you know, essentially take what
8 we are given and make it publicly available as close
9 to the law as is required. The thing we would most
10 notably not be able to do is perform the quarterly
11 audits of these—of these trusts.

12 COUNCIL MEMBER POWERS: Okay.

13 CAROLYN LISA MILLER: Right, without the
14 money, we couldn't build a database. So, we—the—the
15 public version of these reports would be the most
16 rudimentary forms, scanned documents put on the
17 website with any ability to look at the data or work
18 with it in a meaningful way, and without it, then
19 certainly we have no money to—for an auditing and at
20 all.

21 COUNCIL MEMBER POWERS: I'm not sure if
22 this is necessary or not, but have you considered any
23 sort of limit at the high end of how much you could
24 raise in total for a fund?

2 CAROLYN LISA MILLER: Again, this—this
3 wasn't a bill that we proposed or were—

4 COUNCIL MEMBER POWERS: [interposing] Or
5 recommendations?

6 CAROLYN LISA MILLER: We don't—we don't
7 see one. We think there's—there's going to be some
8 natural limitations based on, you know, who's able to
9 donate, and the timeframe for paying these costs.

10 COUNCIL MEMBER POWERS: Can you—it's
11 just—it's—it's—Oh, got ahead sir.

12 ETHAN A. CARRIER: I'm sorry. I was just
13 going to add to that, that because there are
14 limitations on what the money can be used for, I—you
15 know, the—there's—there's not a lot of incentive to
16 raise money beyond what's useful for that purpose.

17 COUNCIL MEMBER POWERS: Got it, and you
18 raise a good—a—a point, which is about limitations on
19 how you can raise—how much you can raise because of
20 who is willing to give to the fund. So, who—who are
21 the expected people to give to a legal defense fund?

22 CAROLYN LISA MILLER: I mean our best
23 guess are the—I mean it's because it's more
24 restrictive than the kind of people you can go to,
25 it's sort of—I mean you would know as elected

2 officials probably better than we do. We do no
3 funding raising. So, people who are in the social
4 group of a—of a person who needs a legal defense
5 fund, associates of some kind. You know, community
6 members, things like that.

7 COUNCIL MEMBER POWERS: Can family
8 members give to an elected official? I don't—I
9 should know this, but can—can family members give to
10 elected officials for the legal defense fund? I'm
11 sorry, absent a legal defense fund, can family
12 members contribute to a—a family member to help them
13 pay for legal expenses?

14 CAROLYN LISA MILLER: Yes.

15 COUNCIL MEMBER POWERS: Without a fund?
16 Just today.

17 CAROLYN LISA MILLER: Right.

18 COUNCIL MEMBER POWERS: Who else can give
19 to a—a-somebody that's a pre-existing relationship I
20 guess would be the other answer? Who—who can give to
21 somebody right now to pay help pay legal—legal
22 defense?

23 ETHAN A. CARRIER: Right, so, you know,
24 it depends—it depends a little bit on sort of what
25 position you have in the city government, but

2 generally speaking, if you're, you know, if you're an
3 elected official, the--the Conflicts of Interest Law
4 prohibits you from accepting gifts with a value of
5 \$50 or more that are given to you because of your
6 city position and so that, you know, that means that
7 there's--a sort of category of people who have
8 interests in the--in the city and who, you know, would
9 be motivated to give money to an elected official or
10 a city official because of that who would be limited
11 to that--that, you know, de minimis 50--less than \$50
12 sort of amount, but--but as generally your--your--you
13 know, your family members can give to you and--and
14 whatever amount they want and--and people with whom
15 you have had a very long, you know, personal
16 friendship that's where it's entirely clear that that
17 friendship is what's motivating the gift and not city
18 position. So, people who don't have matters, you
19 know, pending in the city and that sort of thing, I
20 think that those--those people are permissible under
21 the--the city's Conflicts of Interest Law. Those
22 would be examples of people who could--who could give
23 money.

24 COUNCIL MEMBER POWERS: Got it and I
25 recognize the complexity of this to date and the

2 necessity and I-I do commend Council Member Levin for
3 putting forth the bill. I think it addresses many
4 issues and models itself after I think. One concern
5 I do have is that point is that who then becomes
6 motivated beyond the allowable category of people to
7 be able to give to a legal defense fund and what is
8 the-the motivation to do so, but recognizing that
9 that is a-one consideration we have to take into with
10 all the other considerations and those who may want
11 to set up a legal defense fund, but I-I wanted to
12 just say thank you for answering the questions. I
13 may have more, but I think I'm done there. I know
14 others probably have questions as well. So, thank
15 you, and thank you to the chair.

16 CHAIRPERSON CABRERA: Thank you so much.
17 Council Member Yeger.

18 COUNCIL MEMBER YEGER: Thank you, Mr.
19 Chairman. Good morning. Just to-to piggyback on my
20 colleague Councilman Powers' quest and answer from
21 you. If-if a person who was in need of such a fund
22 wanted to ask family members to give or close
23 personal friends who don't have business dealings,
24 they wouldn't need a fund right? I could just get a
25 check from my family member?

2 CAROLYN LISA MILLER: Under the current-
3 under the city's Conflicts of Interest Law, you can
4 take a gift from a family member.

5 COUNCIL MEMBER YEGER: Without a
6 specialized account and a trustee and-and EPPO fund
7 or anything like that?

8 CAROLYN LISA MILLER: No.

9 COUNCIL MEMBER YEGER: Right.

10 CAROLYN LISA MILLER: Right.

11 COUNCIL MEMBER YEGER: Yes.

12 CAROLYN LISA MILLER: That's correct.

13 COUNCIL MEMBER YEGER: Okay.

14 CAROLYN LISA MILLER: You are correct.

15 COUNCIL MEMBER YEGER: I just wanted to
16 clarify that. On the-on the reporting tool that you
17 say may cost approximately \$40,000, and as we know,
18 nothing in government costs the low number. So, if
19 the number is 40, it's always going to be more. Have
20 you had a conversation with CFB about somehow
21 rejiggering of figuring out a buildout of their
22 reporting tool? They have a robust reporting tool
23 for reporting contributions and expenditures and it's
24 electronically submitted. It's-it's really a-a high
25 version of a Quickbooks and it allows people to run

2 an entire account through a reporting system. Have
3 you spoken with them about whether or not you can
4 benefit by having them do a little buildout using the
5 folks internally that they have?

6 CAROLYN LISA MILLER: We have and they--
7 it's proprietary to them. That's not something that
8 they'll--they would build out for us.

9 COUNCIL MEMBER YEGER: But proprietary to
10 the conflicts of interest--to the Campaign Finance
11 Board--

12 CAROLYN LISA MILLER: Right.

13 COUNCIL MEMBER YEGER: --which is
14 therefore not available to the Conflicts of Interest
15 Board.

16 CAROLYN LISA MILLER: That's correct.

17 COUNCIL MEMBER YEGER: They--they get city
18 checks to your knowledge as part of their pay?

19 CAROLYN LISA MILLER: That--that's not my--
20 [laughs]

21 COUNCIL MEMBER YEGER: [interposing] Are
22 you aware of--are you aware--

23 CAROLYN LISA MILLER: --are of expertise.

24 COUNCIL MEMBER YEGER: Are you aware if
25 they are city employees?

2 CAROLYN LISA MILLER: They are city
3 employees.

4 COUNCIL MEMBER YEGER: Okay and so
5 they're not willing as city employees to share the
6 information that is paid for by I presume the
7 taxpayers with your good agency, which is also a city
8 agency, and you, too, are paid by the taxpayers.

9 CAROLYN LISA MILLER: That's—that's our
10 understanding. Correct.

11 COUNCIL MEMBER YEGER: Well, now it's
12 ours, too. Okay. The—you said—you indicated that—
13 you said you provided confidential advice in the past
14 regarding legal defense funds, and without giving us
15 any confidential information about the requester,
16 obviously, there an anonymity attached to that, but
17 are you able to give us some kind of indication of
18 what advice you've given in the past prior to
19 Advisory Opinion 2 of 2017?

20 CAROLYN LISA MILLER: We can't. The
21 confidentiality restrictions--

22 COUNCIL MEMBER YEGER: [interposing]
23 Fair—fair enough. I wasn't sure how that worked.
24 Okay.

25 CAROLYN LISA MILLER: Yep.

2 COUNCIL MEMBER YEGER: The—so, in my
3 estimation, the reason that we're here today is that
4 the Board whether rightfully or wrongly, we'll leave
5 that maybe to a different time, but determined that
6 if a candidate—well not candidate because you're not
7 the Campaign Finance Board, but if a public servant
8 or elected official were to receive a contribution
9 towards paying a legal expense, that is a gift
10 although the board doesn't consider campaign
11 contributions to be gifts. So, in your estimation,
12 if a candidate were to raise funds in a campaign type
13 account to pay for legal expenses, which is
14 permissible under New York State and New York City
15 law, that would not be a gift, right?

16 CAROLYN LISA MILLER: That's right.

17 COUNCIL MEMBER YEGER: Okay. So, the
18 only reason that—that we have this bill and that
19 it's—it's necessary for us to engage in this endeavor
20 is if somebody wishes to pay for legal expenses using
21 this trust form out or a legal defense fund outside
22 the—the—I guess the—the four corners of the Campaign
23 Committee?

24 CAROLYN LISA MILLER: Correct.

2 COUNCIL MEMBER YEGER: Okay. So, in your
3 estimation, would it be better for some people simply
4 to use the campaign committees to pay these expenses?
5 I mean you call—I know you don't—you don't opine on
6 campaign law, but as a practical matter, you're an
7 attorney and I don't know if you are or not, but you
8 are, right?

9 CAROLYN LISA MILLER: I am.

10 COUNCIL MEMBER YEGER: Okay. So, you've
11 been doing this for a long time.

12 CAROLYN LISA MILLER: Yes.

13 COUNCIL MEMBER YEGER: What's the—I mean
14 wouldn't it be better to—you have—you have a campaign
15 committee that's governed by New York State law. It's
16 governed by New York City law. We have a robust
17 reporting system. Wouldn't it be better to just
18 simply raise into the committee, pay your expenses
19 and carry on with your day?

20 CAROLYN LISA MILLER: Well, this—this law
21 provides for more than just the campaign finance
22 related legal defense issues.

23 COUNCIL MEMBER YEGER: What?

24 CAROLYN LISA MILLER: Well, it has to do
25 with electioneering and other things. So, the—it

2 doesn't only have to do with fines that are paid,
3 would be arguably paid for by the Campaign Finance
4 Board. I mean that--

5 COUNCIL MEMBER YEGER: [interposing] Not
6 just fines. I'm saying legal--this is a legal defense
7 fund, it's--the purpose of which is to pay for lawyers
8 and possibly non-criminal penalties?

9 CAROLYN LISA MILLER: Right.

10 COUNCIL MEMBER YEGER: Okay, so--and
11 nothing else?

12 CAROLYN LISA MILLER: Correct.

13 COUNCIL MEMBER YEGER: So, if a candidate
14 wished to use--if a candidate who was a public servant
15 wished to use a campaign account to pay for legal
16 expenses and non-criminal penalties, they could use
17 the campaign account, right?

18 CAROLYN LISA MILLER: For certain kinds
19 of expenditures. I mean the--

20 COUNCIL MEMBER YEGER: [interposing]
21 What--what can it be?

22 CAROLYN LISA MILLER: Well, if it was a--
23 there--there are--I mean the most widely reported
24 person who needs a campaign who would need this kind

2 of legal defense fund are not penalties that are owed
3 to the Campaign Finance Board, and I--

4 COUNCIL MEMBER YEGER: [interposing] It's
5 not--but it's not just for penalties. It's also for
6 legal defense--

7 CAROLYN LISA MILLER: Or for the lawyer.

8 COUNCIL MEMBER YEGER: --for paying
9 lawyers.

10 CAROLYN LISA MILLER: Right.

11 COUNCIL MEMBER YEGER: And--and is there
12 any reason why legal fees of that nature can't be
13 paid for with the campaign fund?

14 CAROLYN LISA MILLER: I believe that they
15 can't.

16 COUNCIL MEMBER YEGER: They can't?

17 CAROLYN LISA MILLER: I can't--can't
18 speak--

19 COUNCIL MEMBER YEGER: [interposing]
20 Okay.

21 CAROLYN LISA MILLER: -- authoritatively
22 on that topic.

23 COUNCIL MEMBER YEGER: They--so they can,
24 and--and I think we're here today because---because
25 and for good reason because I--I actually do believe

2 that public servants who are—who are faced with
3 circumstances such as some of the people we've heard
4 about do have—have the ability to—you know, people
5 who go into public service are not often rich, are
6 often not rich and when they have an investigation or
7 an inquiry of such, they can easily—it can easily
8 turn into the kind of fees that we've heard about in
9 the press and they can easily bankrupt somebody.

10 Realistically speaking, candidates who face inquiry
11 by the Campaign Finance Board can also spend tens of
12 thousands of dollars on lawyers, legal fees,
13 accountants, auditors, and whatnot, and but for the
14 structure of having a campaign account would also be
15 bankrupted. But my point is that but for the fact
16 that the Board itself—the Board not the other one—had
17 determined that—that contributions to paying legal
18 fees are necessarily gifts versus run-of-the mill
19 campaign contributions, that's why we have to create
20 this new structure and I don't know that, you know,
21 recognizing—sorry—this Isis and that, you know, you
22 have—you issue and advisory opinion and it should
23 remain the advice that is available to the public
24 and—and we actually have—have—we enacted a bill last
25 year that requires that your advisory opinions after

2 a year be promulgated by rule and—and have the weight
3 of enforcement. Otherwise, they kind of go bye-bye,
4 but I'm wondering if there's an opportunity for you
5 to go back to your advisory opinion and—and look at
6 it in another way, and through the light of that
7 there is an actual existing infrastructure under the
8 State Election Law and under the city Administrative
9 Code for candidates to raise—again, I'm sorry there's
10 no more candidates, but for public servants and
11 elected officials in particular. Perhaps not public
12 servants because they don't have campaign accounts,
13 but elected officials in particular, and that really
14 is who we're always talking about when it comes to
15 these things. You don't see the guy at the
16 Sanitation Department opening up legal defense fund.
17 I think that you have an opportunity to go back and
18 look at that advisory opinion today through a
19 different light, and see if maybe you can give some
20 different not better, not worse, but different advice
21 as to whether or not there's just a better way.

22 CAROLYN LISA MILLER: Council Member
23 just—just to clarify, the—the Advisory Opinion spoke
24 not at all to any contribution to a campaign fund.
25 So, the—the board never has—has exempted itself from

2 any opinion including today about the operation of
3 the Campaign Finance Law.

4 COUNCIL MEMBER YEGER: [interposing] No.

5 CAROLYN LISA MILLER: [interposing] So
6 contributions to a campaign—to a campaign that could
7 be used to pay campaign fees or anything like that,
8 the board did not in that Advisory Opinion say those
9 were gifts. The only arena that the Board opined on
10 in that Advisory Opinion and the advice it gave to
11 the public servant who was asking was an independent
12 legal defense fund that had nothing to do with the
13 Campaign Finance Board, would those contributions be
14 gifts, and the Board to that said all we have is the
15 Conflicts of Interest Law. That's all we have to
16 interpret. If a public servant gets money from
17 someone because of their city position, that's a
18 gift.

19 COUNCIL MEMBER YEGER: Okay. [pause] I
20 mean you have a line in here that the Board considers
21 contributions to such legal defense funds as it would
22 any gifts to the public servant personally, and I
23 recognize that, but again, there is a—there is a math
24 in that—a method and a mechanism by which to
25 establish a version of a legal defense fund using the

2 election law and the Campaign Finance Act versus kind
3 of having this, you know, this--this no man's land the
4 trust that's really governing, governed under the
5 EPP0, and--and our own Conflicts Law, and the only
6 reason it's governed under our Conflicts Law is
7 because we are deeming a contribution to a fund to be
8 gift, but my point is that since legal fees can't be
9 paid from--from campaign accounts, they don't need to
10 be deemed gifts and the Board has obviously, as is
11 law gifts to candidates that are put into a campaign
12 account are not gifts, they're contributions. I also
13 wanted to talk about the auditing and--and I recognize
14 you're one of the smallest agencies in the city and--
15 and with--with that tiny bureaucracy, it's not really
16 a bureaucracy, it's just a small office, and you do a
17 lot because you receive all the reports from all the
18 people around the city who have to file reports.
19 It's many, many people. The public officials and
20 elected officials who file you have to have a tool
21 that puts that out there almost immediately. I know
22 it's done within a couple of weeks. I think you make
23 it public. You put it on the website, and so I
24 recognize that--that you do have very deliberate
25 obligations and don't have auditors on staff.

2 However, \$10,000—5—between \$5 and \$10,000 per audit
3 I just want to clarify what we're talking about here.
4 We're talking about a fund that raises money and
5 basically pays one vendor, maybe two vendors, right.
6 Who are the vendors? The lawyers. Occasionally,
7 maybe a fundraiser to raise the money for the
8 lawyers, but then so it's three vendors. It's not
9 the kind of, you know, great deep dive audit that
10 should entail a \$5 to \$10,000 audit expense, and I'm
11 wondering if you've again just for cost saving
12 measures, we have a lot of auditors who work for the
13 city and Department of Finance, the Comptroller's
14 Office, other agencies. Have you inquired whether or
15 not it's necessary to kind of outsource—it would
16 between \$5 and \$10,000 in audit. That's a lot of
17 money.

18 CAROLYN LISA MILLER: There's many city
19 agencies that contract for auditors. We looked at
20 some of those contracts and that's where those
21 figures come from. The documents that are being
22 review are confidential documents based on the
23 legislation some of them are in terms of the
24 expenditures and legal fees and things like that.
25 These are not the kinds of documents that another

2 city agency should be entitled to look at. I imagine
3 some of the detailed legal billing wouldn't be
4 something that should be public or would anyone who
5 is a recipient or beneficiary of a trust would want
6 to be public. So that needs to be done separately.
7 Additionally, the bill requires a certain kind of
8 auditor to do these audits. So, that's something we
9 need to have a specific person, a contracted auditor.
10 We'd be delighted if these auditing functions will be
11 done at a lower cost. Certainly our agency has a
12 long track record of doing a lot with very little,
13 and we'd hope to be able to bring that same principle
14 of efficiency--

15 COUNCIL MEMBER YEGER: [interposing]

16 Well, I'm thinking can---

17 CAROLYN LISA MILLER: --and we're just
18 saying--

19 COUNCIL MEMBER YEGER: --just hire one
20 guy?

21 CAROLYN LISA MILLER: We—we—we need—we—
22 the government, the fact that the bill requires the
23 GAGAS Standard. That's a certification that the
24 agency doesn't have. It would cost a lot for the
25 agency—time and money for the agency to get that kind

2 of certification. It would be more efficient for us
3 to hire an external auditor who already has that kind
4 of certification to do these audits on a quarterly
5 basis particularly given what Council Member Powers
6 raised about how it could be one fund. It could be
7 50 funds. So, that kind of flexibility would enable
8 with a contract rather than having a full-time staff
9 person or multiple staff people dedicated to that
10 role.

11 COUNCIL MEMBER YEGER: If the-if-if-the-
12 the requirements of-of the GAGAS certified auditor is
13 such that your agency actually has to be audited
14 versus the actual-certified versus the actual
15 individual having to be certified?

16 CAROLYN LISA MILLER: That's our
17 understanding and the agency would need to be itself
18 audited every three years in order to maintain that
19 certification.

20 COUNCIL MEMBER YEGER: Okay.

21 CAROLYN LISA MILLER: So, it's a-we have
22 learned as-as Ethan Carrier mentioned that it's a
23 cumbersome process, and it took even the Campaign
24 Finance Board with a staff of 100 a long time to
25 achieve that level of certification.

2 COUNCIL MEMBER YEGER: Yeah, I don't
3 think—I still don't think they have it, but I—I would
4 encourage you. I wasn't aware that—that—that the
5 agency itself needed to be certified. I thought that
6 it was kind of a license like you have a license,
7 too.

8 CAROLYN LISA MILLER: Yeah, that's not my
9 understanding Council Member.

10 COUNCIL MEMBER YEGER: Okay. I—I mean
11 that I would just say that, you know, GAGAS or not,
12 an audit of—of a—of a filing of three months for a
13 legal defense fund shouldn't take more than, you
14 know, two or three hours max. It's not a lot of—it
15 shouldn't take a lot of money. So--

16 CAROLYN LISA MILLER: [interposing] I
17 hope you're right.

18 COUNCIL MEMBER YEGER: I'm just—I'm just
19 looking at some of the—some of the conundra that's
20 being thrown at you and I do recognize that you
21 didn't draft the bill. You didn't have a hand in
22 drafting the bill. It's, you know, you're coming
23 here to provide your expert opinion on something that
24 you did not have your hand in. Councilman Powers
25 asked if you're comfortable with the—the—the limits

2 of the amount you would—I'm not going to ask you to
3 go back into thank and I understand, and I agree with
4 you, by the way that the—that when you're talking
5 about a legal defense fund you really can't just kind
6 of go out there and raise it at \$5 clips. It's not a
7 campaign. It's—it's a bill. It's due. It needs to
8 be paid, and you have to go and raise the money to do
9 it, because people sign contracts and are expected to
10 be paid for services rendered, and where is that? You
11 know, we expect to be paid when we're done with the
12 job, but I'm wondering if you have a concern about in
13 effect double dipping where a candidate for public
14 officer can be raising money for his campaign
15 committee at the same time as raising money for the
16 is entity, which is not necessarily a campaign
17 committee, but you're essentially going to the same
18 people. So, Councilman Harris (sic) mentioned, you
19 know, the limit is—I don't even know what the current
20 limit is. It's \$2,850. It changes every day now
21 here, but you know, you go to the person and you say
22 can you write me a check for \$2,850. Hey and also
23 can you write me a \$5,000 check for my Legal Defense
24 Fund? I don't envision that necessarily being a
25 problem because I tend to think that those who have

2 to raise money from legal defense funds tend to not
3 be soliciting kind of campaign contributions any
4 more, but in the case where they are, are you
5 concerned about that?

6 CAROLYN LISA MILLER: I think Council
7 Member your point here--

8 COUNCIL MEMBER YEGER: [interposing] From
9 an ethical--from an ethical point of view. Not from a
10 practical point of view.

11 CAROLYN LISA MILLER: Right, right as a--
12 well, as a practical matter, I think the point that
13 you raised is probably right. Because of the process
14 for establishing a fund, they have to actually have a
15 cognizable action. They have to go to the Law
16 Department and get a letter denying representation.
17 So, it--it seems like it would--it would as a practical
18 matter be beyond the time that you're raising funds
19 for the campaign. The campaign is concluded. If
20 it's in that context at least fines have been imposed
21 and a legal defense needs to be instituted for that
22 particular thing. So, it seems like it would
23 unlikely as a practical matter be simultaneous. The
24 issue that you raised if for some reason it happened

2 to be simultaneous maybe that that the--that the--the
3 fines--

4 COUNCIL MEMBER YEGER: [interposing] We
5 will actually

6 CAROLYN LISA MILLER: --were champed
7 (sic) the first term or coming up during the second
8 term fundraising. Yeah, that's---it's a--it's
9 certainly an issue. We're not--we're not as Mr.
10 Carrier mentioned, we're not the best people or the
11 right people to be answering those kinds of
12 questions. There's the experts in the and they can--

13 COUNCIL MEMBER YEGER: [interposing]
14 They're the best people just not the right people.
15 I--I will conclude with this: It's a statement not a
16 question, but since you're there and I only get the
17 microphone a little bit. They bring me out with a
18 cane at some point, but I--I will say that I agree
19 with my colleagues who have said this earlier that
20 there does need to be a mechanism by which a public
21 servant doesn't have an enormity of legal experience
22 that's hanging over their head and it's--and it's not
23 just the name that's--that's in the paper most
24 recently but there have been others who--who were
25 certain--certainly entitled to have this removed from

2 them, and the truth is that I—I read your emails that
3 you send out every two weeks of people who have
4 almost—in almost every case undeliberately, just not
5 deliberately broken the Campaign Finance—the
6 Conflicts of Interest Law, and I imagine that those
7 who don't have—who aren't members of unions do have
8 to undergo personal expense, and they don't often
9 have it, and if maybe they need to set up a little
10 thing where they ask people for money. So, this is—
11 this is possibly something that is necessary and I do
12 want to say that in my—my questions and the reason I
13 made that little spiel was to make sure that it's
14 indicated in public that my questions are not—are not
15 to be viewed as—as a negative on the concept, but
16 simply that I think that the mechanism can be better,
17 and I think that they're in—they're in the process of
18 deliberation after this hearing. Before it moves
19 forward, I hope that the Council and the
20 Administration and the Conflicts of Interest Board
21 and the Campaign Finance Board can get together to
22 try to figure out a way that we could do some of
23 these things a little bit better, particularly the
24 first topic that we spoke about the notion that we
25 have city employees a couple hundred yards away from

2 here who won't share information with you. I'm
3 shocked to hear that. I'm sure that anybody who's
4 sitting and listening to this, I know that they're
5 not here today, would be shocked to learn that the
6 Campaign Finance Board, which is always so excited to
7 put out information in the public is not willing to
8 share with the good people of the Conflicts of
9 Interest Board their very proprietary tool that I
10 paid for with my tax dollars, and thank you very much
11 for being here today.

12 CHAIRPERSON CABRERA: Thank you so much
13 Council Member. I'm just—I'm just curious. Did they
14 give you a rationale why they wouldn't share it with
15 you?

16 CAROLYN LISA MILLER: Just that it's
17 their proprietary. I mean they don't—they would—we
18 have no—also again, we're tiny. We have an IT—one IT
19 person. We have no IT staff. The only thing that
20 would be useful for us is if they built the database
21 for us. We need someone to build it for us. They
22 have an IT staff of, you know, dozens, very large so
23 that it's not—they can—they have talked to us many
24 times about the process that they built their
25 database. It took them many people and many years to

2 build the system they have and to maintain it. So,
3 information about the system they've been willing to
4 share. Whether they can give us a fully built tool
5 that they—that they're not willing to do.

6 CHAIRPERSON CABRERA: And so, to the line
7 of question that my colleague was making it—let me
8 get to the heart of it. It's frankly in a perfect
9 world if you had a choice is this something that that
10 you want to minister, or would you prefer for CFB to
11 do it?

12 CAROLYN LISA MILLER: [laughs] In a
13 perfect world?

14 CHAIRPERSON CABRERA: Right.

15 ETHAN A. CARRIER: Well, I mean, you
16 know, they—CFB has a couple of advantages over the
17 Conflicts of Interest Board here, one of which is as
18 we've been discussing the—the—have a robust in-house
19 staff of people who build reporting systems like the
20 one that is set forth in this legislation. The
21 second thing that they have is that they do GAGAS
22 auditing. So, they—they have experience with that.
23 We are informed by them that that took many years and
24 a lot of resources for them to get together and—and—
25 and really operating well for them, but they've got

2 that going now. So, those--those are two--two big
3 advantages that they have.

4 CHAIRPERSON CABRERA: So, I agree with
5 you. I mean it's cost-effective. They already have
6 the expertise. We don't have to reinvent the wheel
7 because basically that's what we're being asked to do
8 here. So, I'm a little baffled why put it on you?
9 You have to now start from scratch rather than as my
10 colleague was pointing out give it to the people who
11 already on--so you will be--you will concur there will
12 be--you--you wouldn't have hard feelings if it ends up
13 at CFB right?

14 ETHAN A. CARRIER: Well, I--I--wait, I mean
15 they--they--they have many--they have many advantages
16 for--for handling something like this. This is--this
17 is in many way similar to what they do already.

18 CHAIRPERSON CABRERA: Okay, I'll take
19 that as a yes. [laughs]

20 CAROLYN LISA MILLER: Yeah, no hard
21 feelings. No hard feelings.

22 CHAIRPERSON CABRERA: I need to--

23 COUNCIL MEMBER YEGER: [interposing]

24 Chair, just--just to clarify

2 CHAIRPERSON CABRERA: [interposing] Yes,
3 please.

4 COUNCIL MEMBER YEGER: --I'm-I'm not
5 suggesting that the Campaign Finance Board have-have-
6 have another thing yet to claim that politicians are
7 crooks. So, maybe we don't give them the task, but
8 perhaps we can amend the legislation to require the
9 CFB since they are happy to take taxpayers dollars
10 every single week and put it in their pockets as
11 employees of this government to do their job, and we
12 assigned them the task of building this database,
13 building this reporting tool for the fine people over
14 at the Conflicts of Interest Board. I think that
15 would be something that we can make them do. It may
16 not be bigger office space, but it will be a little
17 something.

18 CHAIRPERSON CABRERA: It's something to
19 look at-I'm-my thoughts were since they're already--

20 COUNCIL MEMBER LEVIN: So chair, can just
21 a--

22 CHAIRPERSON CABRERA: Absolutely. I love
23 this. We're finally having you come on.

24 COUNCIL MEMBER LEVIN: I-perhaps you can
25 look at it in terms of the tool. I'm wary of-and I

2 think that the bill was designed to—to avoid or to be
3 able to separate out legal defense trust from the
4 campaign finance system entirely, and so by bringing
5 it into—we're governed by—by CFB it brings it closer
6 to the campaign finance system instead of—instead of
7 further away.

8 COUNCIL MEMBER YEGER: I—I agree
9 Councilman. I—I don't want them to—to administer
10 fund. I simply want them to—or administer the
11 reporting. I simply want them to build the—the tool.
12 It's really just—I mean I'm not a computer guy at
13 all, but they have the tools. They could build it
14 out. They build it—they build it out all the time.
15 It's going down on Wednesday for a couple of hours
16 and then they can do repairs to it. They—they can
17 simply build it out, get a reporting tool. It will
18 cost them nothing. They have like a thousand people
19 who work there really doing nothing all day, and just
20 waiting for this project.

21 CHAIRPERSON CABRERA: I almost got you
22 off the hook. [laughter] Yeah, absolutely. Let me—let
23 me just as this question before I go to Council
24 Member Powers real quick. I am concerned that
25 possibly we're not giving you enough time to be set

2 up to do this correctly. So, would be July that you
3 will be fully ready because you will be fully funded?

4 CAROLYN LISA MILLER: July is ambitious,
5 but probably more realistic. We need-again, we have
6 zero money to do it. So, we'd need an allocation of
7 funds. We need to go to a vendor and get the
8 database built out. I think six months is a
9 reasonable amount of time for us to get a database
10 built, and for us to do-to get at least the wheels
11 moving on rule making. It took us-for the last time
12 we did a real comprehensive rule making for the
13 affiliated not-for-profits and that took us almost a
14 full year to do it, but we've-we go that muscle
15 working now. So, I think we'd be able to do it a
16 little more quickly for this.

17 CHAIRPERSON CABRERA: So, it would be
18 helpful if we were move the date to six months from
19 now?

20 CAROLYN LISA MILLER: Yes.

21 CHAIRPERSON CABRERA: Is that what I hear
22 you saying. Okay, thank you so much. Council Member
23 Powers.

24 COUNCIL MEMBER POWERS: Just one other
25 question. Sorry to come back is the-with the-we've

2 been talking about the Campaign Finance Board, I was
3 thinking about the ways that you can raise money in
4 the city in terms of what method—what method you can
5 use to raise money and it's just pretty much all
6 available methods. But do you have recommendations
7 in terms of how these funds should be able to accept
8 money whether it's from—by check, credit card, cash,
9 money order? Are there things that you believe
10 should be restricted or limited in terms of what
11 forms of payment?

12 ETHAN A. CARRIER: As long as it—you know
13 as long as it's in a form that can be reasonably
14 audited. I don't know that the requirements are
15 under the GAGAS Auditing Standards, but it just needs
16 to be in some form that can be tracked.

17 COUNCIL MEMBER POWERS: I think under
18 the—the Kalman rule it's important—I think \$100 cash
19 is the limitation around that and the state law, and—
20 and there's like all the restrictions of how—what
21 information needs to be set (sic). So, at least the
22 minimum I think we should look—there should be some
23 evaluation of what CFB allows versus what the fund
24 will allow in terms of forms of payment allowed—
25 accepted and what disclosures are required when you

2 give them to make sure that we're sort of a hearing
3 for things that can go wrong and deliberated about
4 what can get in trouble or not. So I just wanted to--
5 so thank you.

6 CHAIRPERSON CABRERA: I want to thank you
7 so much for all your testimony today and--and for the
8 information you provided, and with that, I want to
9 thank also the staff and my colleagues for staying
10 all the way through. Thank you so much.

11 CAROLYN LISA MILLER: Thank you.

12 [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 January 30, 2019