



Legislation Text

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A Local Law to amend the administrative code of the city of New York, in relation to authorizing the creation of legal defense trusts

Be it enacted by the Council as follows:

Section 1. Title 3 of the administrative code of the city of New York is amended by adding a new chapter 11 to read as follows:

Chapter 11. Legal Defense Trusts

§ 3-1101 Definitions.

§ 3-1102 Establishment and management of legal defense trusts.

§ 3-1103 Reporting and disclosure by legal defense trusts.

§ 3-1104 Dissolution of legal defense trusts.

§ 3-1105 Enforcement.

§ 3-1106 Rulemaking.

§ 3-1107 Penalties.

§ 3-1101 Definitions. As used in this chapter, the following terms have the following meanings:

Appear. The term “appear” has the same meaning as set forth in subdivision 4 of section 2601 of the charter.

Associated. The term “associated” has the same meaning as set forth in subdivision 5 of section 2601 of the charter.

Beneficiary. The term “beneficiary” means (1) an individual who is or has been a city elected official or public servant who incurs expenses in relation to a governmental, administrative, criminal or civil investigation , audit, or action, or an entity, agent or other person acting on behalf of such elected official or public servant in relation to the underlying matter, for whom or which a legal defense trust spends money or (2) an individual who is not a city elected official or public servant and who incurs expenses in relation to such investigation, audit, or action.

Business dealings with the city. The term “person having business dealings with the city” means any person on the database established pursuant to section 3-702 including, but not limited to, a lobbyist as defined in section 3-211, and the domestic partner, spouse, or unemancipated child of a person listed in such database.

Donation. The term “donation” means any contribution from a non-governmental source, including an in-kind donation, pro bono assistance, loan, advance or deposit of money, or anything of value.

Legal defense trust. The term “legal defense trust” means a trust created pursuant to and in accordance with the New York estates, powers and trusts law for the benefit of a beneficiary as provided in this chapter.

Ministerial matter. The term “ministerial matter” has the same meaning as set forth in subdivision 15 of section 2601 of the charter.

Principal committees and political committees, as those terms are defined in section 3-702, shall not be deemed legal defense trusts as defined in this section.

Public servant. The term “public servant” has the same meaning as set forth in subdivision 19 of section 2601 of the charter.

§ 3-1102. Establishment and management of legal defense trusts.

a. Requirements for establishment. A legal defense trust may be established pursuant to this section only if the following conditions are met:

(1) (a) Each beneficiary has received a statement in writing from the corporation counsel stating that the corporation counsel has not represented and will not be representing such beneficiary in any applicable governmental, administrative, criminal or civil investigation, audit or action, or portion thereof, pursuant to section 50-k of the general municipal law or section 7-109;

(b) Where a legal defense trust has been established, if thereafter the essential nature of an investigation, audit or action changes so significantly that it can be deemed a new or different investigation, audit or action, the beneficiary of such trust shall obtain a new written statement from the corporation counsel asserting that the conditions set forth in subparagraph (a) of this paragraph have been met.

(2) At least one beneficiary is or was an elected official or public servant, as such term “beneficiary” is defined in section 3-1101 of this chapter, who incurs expenses in relation to the governmental, administrative, criminal or civil investigations, audits or actions for which a statement was received pursuant to paragraph (1) of this subdivision.

b. Statement of organization. The trustee of a legal defense trust shall file a statement of organization with the conflicts of interest board, in such form as specified by the board by rule, within 10 days after the earlier of the date the trust first receives a donation or first makes an expenditure. A

statement of organization required by this subdivision shall include the following information and documentation:

(1) The name, street address, and telephone number of the legal defense trust and its trustee(s). The name of such trust shall include the words "legal defense trust".

(2) The full name of, and position held, if any, by each beneficiary of the legal defense trust.

(3) The name and address of the financial institution in which the funds of the legal defense trust are, or are intended to be, deposited.

(4) A description of the governmental, administrative, criminal or civil investigations, audits or actions in connection with which the legal defense trust was established and the purpose for which such trust was created.

(5) The statement described in subparagraph (a) of paragraph (1) of subdivision a of this section for each beneficiary of the legal defense trust.

(6) A copy of the executed trust agreement establishing the legal defense trust.

(7) A sworn statement by each beneficiary of the legal defense trust that he or she will comply with the provisions of this chapter and that the trustee is responsible for the proper administration of the trust.

c. Within 10 days of any material change in the information and documentation submitted in accordance with paragraphs (1) through (7) of this subdivision, the trustee shall submit a revised report to the conflicts of interest board identifying such changes. If the purpose for which the trust was created, as required to be identified by paragraph (4) of this section, is materially changed, the trustee shall

submit such information to the board; provided, however, that any such changed purpose must be consistent with the requirements of this chapter.

d. Trustee.

(1) There shall be one or more trustees, who shall not be a city elected official or public servant, a beneficiary, or a subordinate of or person associated with a beneficiary. The trustee(s) shall be responsible for authorizing expenditures and disbursements from the trust, the filing of quarterly reports required by section 3-1103, and the performance of tasks incidental to the administration of the trust.

(2) The trustee(s) shall be responsible for a legal defense trust's financial administration as required by this chapter. Such trustee(s) shall establish an account, separate from any other bank account held by the trustee or any beneficiary of the trust, at a bank or other financial institution with an office or branch in the city of New York, for the deposit and expenditure of the trust's moneys.

(3) Where there is more than one beneficiary of a legal defense trust, the trustee(s) may, in their discretion, allocate donations and expenditures attributable to trust administration in accordance with their fiduciary duties to the trust.

(4) Trustee(s) appointed pursuant to this section may be suspended or removed in accordance with the provisions of section 7-2.6 of the estates, powers and trusts law.

e. Donations.

(1) A legal defense trust shall not accept a donation, and a city elected official or public servant may not raise funds for a legal defense trust, in an amount greater than \$5,000 per donor.

(2) A legal defense trust shall not accept a donation, and a city elected official or public servant

may not solicit a donation, of any amount from (a) any person who is a subordinate of such city elected official or public servant, or any person who is a subordinate of the city elected official or public servant for whose benefit the trust was established; (b) any person such trust knows or should know is a person with business dealings with the city as of the date of such donation or solicitation; (c) any person who as of the date of such donation or solicitation is appearing before or otherwise has a non-ministerial matter pending with the city; (d) a corporation, limited liability company, limited liability partnership or partnership; (e) any anonymous source; or (f) any source that fails to submit the disclosure document required pursuant to paragraph (3) of this subdivision.

(3) Whenever a donation is made to a legal defense trust, the donor shall submit a signed disclosure document to such trust, in such form as specified by the conflicts of interest board by rule, stating that such donor (a) is not a subordinate of the city elected official or public servant for whose benefit the trust was established, nor is a subordinate of the city elected official or public servant who solicited such donation, if applicable; (b) is not a person currently having business dealings with the city of New York; (c) is not appearing before the city; (d) has no non-ministerial matter with the city; and (e) has acknowledged that such donation will not affect any future business dealings with or the disposition of other matters with the city.

(4) For purposes of this subdivision, a solicitation for, or a donation to, a legal defense trust permitted by this subdivision shall be presumed not to be made because of a solicitor's or beneficiary's city position.

(5) No public servant shall solicit a donation to a legal defense trust (a) in his or her official capacity or (b) in an amount or from a source that is not permitted by this subdivision.

(6) No public servant, other than an elected official, who is a deputy mayor, or head of an agency or who is charged with substantial policy discretion as defined by rule of the conflicts of interest board, shall directly or indirectly request any person to make a donation to a legal defense trust, except for a legal defense trust of which such public servant is a beneficiary; provided that nothing contained in this paragraph shall be construed to prohibit such public servant from speaking on behalf of any beneficiary of a legal defense trust at an occasion where a solicitation for a donation to a legal defense trust may be made by others.

(7) No public servant shall, directly or indirectly (a) compel, induce or request any person to make a donation to a legal defense trust, under threat of prejudice to or promise of or to secure advantage in rank, compensation or other job-related status or function; or (b) make or promise to make a donation to a legal defense trust in consideration of having been or being nominated, elected or employed as such public servant or to secure advantage in rank, compensation or other job-related status or function.

f. Expenditures.

(1) The funds of a legal defense trust may be used only to defray (a) legal expenses in connection with a governmental, administrative, criminal or civil investigation, audit or action described in a statement of organization filed pursuant to section 3-1102 that is related to (i) a political campaign; (ii) issue advocacy; or (iii) the holding of a civil office or appointment, public office or political party position, and (b) costs reasonably incurred in administering the trust, including but not limited to costs incident to the solicitation of donations, the hiring of service professionals, bank fees, and the creation and operation of the trust.

(2) The funds of a legal defense trust shall not be used for advertising expenses, political

consultants, the payment of criminal fines or penalties imposed upon an individual beneficiary, or communications involving election or campaign activities.

(3) The funds of a legal defense trust shall not be used for the personal use of the trustee or beneficiary unrelated to the purposes of the trust.

(4) The funds of a legal defense trust shall not be used to defray legal expenses that have been paid for by the city. If the city pays any part of the legal expenses of a beneficiary after such beneficiary has received from the corporation counsel the letter required by subparagraph (a) of paragraph (1) of subdivision a of section 3-1102, such funds must be returned to the trust.

g. Nothing in this chapter shall be construed to prohibit or limit expenditures by a political committee related to a campaign audit from being considered expenditures in furtherance of a political campaign for elective office pursuant to chapter 7 of title 3 of this code.

§ 3-1103 Reporting and disclosure by legal defense trusts.

a. Legal defense trusts shall report to the conflicts of interest board, in a manner specified by the board by rule, the following information:

(1) The names and addresses of all persons that made a donation having a reasonable value of \$100 or more to the trust during the previous quarter, if any; the dates of donation; and the value of any such donation.

(2) An itemized accounting of each expenditure made during the previous quarter, including the name and address of each payee and the amount and the purpose of the expenditure, in a manner and form determined by the conflicts of interest board.

(3) The reports required to be filed by this section shall be filed no later than April 15 for the accounting period beginning January 1 and ending March 31; no later than July 15 for the accounting period beginning April 1 and ending June 30; no later than October 15 for the accounting period beginning July 1 and ending September 30; and no later than January 15 of the following calendar year, for the accounting period beginning October 1 and ending December 31.

b. The conflicts of interest board shall maintain on its website and regularly update a list of all legal defense trusts that reported, and shall post on such website, in a machine readable format that permits automated processing, all information disclosed to the board pursuant to this section; provided, however, that the board shall maintain the confidentiality of all information it receives pursuant to this section where required by applicable law.

c. Donor written disclosure submissions received by the legal defense trust pursuant to paragraph (3) of subdivision e of section 3-1102 shall be retained by the trust for at least three years from the date of receipt.

§ 3-1104. Dissolution of the legal defense trust.

a. The legal defense trust shall be terminated within 90 days of the date the last expenditure is made in relation to the governmental administrative, criminal or civil investigations, audits or actions, for which the trust is established.

b. Funds remaining in the legal defense trust account following payment of all attorney's fees and other related legal costs for which the trust was established shall be distributed in the following manner:

(1) returned to the donors on a last in, first out basis or in accordance with another reasonable

method as determined by the trustee(s); or

(2) transferred to a charitable organization having tax exempt status under section 501(c)(3) of the internal revenue code, as determined by the trustee(s), or to the general fund of the city of New York; provided, however, that such funds shall not be transferred to an organization with which the trustee or a beneficiary is associated.

§ 3-1105 Enforcement.

a. The conflicts of interest board shall conduct semiannual reviews, biennial audits and a final audit upon dissolution of any legal defense trust established pursuant to this chapter. Such audits shall be conducted in accordance with generally accepted government auditing standards. The board shall promulgate rules regarding what documentation is sufficient for demonstrating financial activities of each such trust.

b. Complaints alleging violations of this chapter shall be made, received, investigated and adjudicated in a manner consistent with the procedures relating to investigations and adjudications of allegations of conflicts of interest as set forth in chapters 34 and 68 of the charter.

§ 3-1106 Rulemaking. The conflicts of interest board shall promulgate such rules as are necessary to ensure the implementation of this chapter.

§ 3-1107 Penalties.

a. Any legal defense trust required to file a statement of organization with the conflicts of interest board pursuant to the provisions of subdivision b of section 3-1102 that has not so filed at the end of one week after the date required for filing shall be subject to a civil penalty of not less than \$250 or more than

\$10,000.

b. (1) Any legal defense trust that violates the provisions of paragraphs 1, 2, 5, 6 or 7 of subdivision e of section 3-1102 shall be required to return any donations and shall be subject to a civil penalty, which for the first offense shall be not more than \$5,000, for the second offense not more than \$15,000, and for the third and subsequent offenses not more than \$30,000.

(2) No violation shall issue and no penalty shall be imposed where any donation made pursuant to this subdivision is refunded within 20 days of receipt by the legal defense trust.

c. Any legal defense trust that violates any of the provisions of subdivision f of section 3-1102 shall be subject to a civil penalty, which for the first offense shall be not more than \$1,000, and for the second and subsequent offenses not more than \$10,000.

d. Any legal defense trust that violates the provisions of subdivision a of section 3-1103, relating to the reporting of donations and expenditures, shall be subject to a civil penalty of not less than \$250 or more than \$10,000.

e. Any legal defense trust that violates the provisions of section 3-1104, relating to the dissolution of such trust, shall be subject to a civil penalty of not less than \$250 nor more than \$10,000.

f. The conflicts of interest board may hold a trustee or beneficiary jointly and severally liable for any of the foregoing penalties if such person knew or reasonably should have known of the violation.

§ 2. The provisions of this local law shall be applicable to any legal defense trust, as defined in section 3-1101 of chapter 11 of the administrative code of the city of New York, as added by this local law, established and in operation on and after the date of its enactment, including such trusts as may have

been established prior to such date of enactment.

§ 3. Prior to the adoption of rules promulgated by the conflicts of interest board with respect to forms required pursuant to sections 3-1102 and 3-1103 of chapter 11 of the administrative code of the city of New York, as added by this local law, the board shall accept on an interim basis information and documents that are submitted in a form reflecting compliance with such provisions of such local law, on behalf of any legal defense trust as defined in section 3-1101 of such chapter.

§ 4. This local law takes effect immediately.