

New York Conference of Mayors and Municipal Officials Ethics Guidance, August 2, 2023

[The New York State Conference of Mayors and Municipal Officials (NYCOM) is an association of, and for, cities and villages in New York. Through the active participation of its membership, more than 12 million New Yorkers are represented. The association is a readily accessible source of practical information touching upon every area of municipal activity, and is also a leader in the on-going training and education of local officials.]

-Board of Ethics mandates like Rye's, which follow General Municipal Law section 808, do not provide any investigative authority (including the ability to call witnesses). Such a Board's mandate is only to respond to written questions, typically about the activities or proposed activities of the person submitting the questions. This mandate creates an advisory body, not an investigative body intended to consider third party conduct.

-Boards of Ethics may be given investigative powers by local law, however, those powers must be used according to well-considered rules and with regard to procedural due process requirements (notably notice and hearing) when appropriate. Notice and hearing should also be used as warranted to assure gathering a complete set of facts and to demonstrate fairness.

-There is no reason why a Board of Ethics in the course of preparing its advice or after completing its advice should avoid dialog with those who are the subject of its advice.

-Appearance/impression of impropriety provisions are not found in modern codes due to their subjective "hair trigger" basis. Appearance/impression of impropriety allegations must be thoroughly investigated and any findings must have a firm factual basis. Misuse or careless use of appearance/impression of impropriety provisions may chill the proper functioning of government, discourage government service (particularly among volunteers) and disenfranchise citizens.

-Recusal of an official is an extreme remedy that, particularly in small municipal settings, may interfere with government functioning and leave citizens unrepresented. Disclosure of potential conflicts is preferred to recusal because disclosure may better preserve the ability of governing panels to function and serve their constituents.

-Recusal should not be required when it would prohibit a majority of a decisional panel from acting.

A Code of Ethics should not be construed as prohibiting a municipal officer or employee from representing himself or herself, or his or her spouse or minor children before the municipality.