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On May 7, 2025, Mayor Josh Cohn attempted to direct the Council’s attention to the need to review our Code of Ethics in light of the January letter of the general counsel of the New York Conference of Mayors (NYCOM)). The NYCOM letter is being disregarded by the majority of the City Council.

Following the May 8 introduction and the May 7 message itself (delivered in Agenda Item 8, Old Business, at approx. meeting minute 58) are several exhibits illustrating how the general statements of the NYCOM letter (included, on letterhead) conflict with the actions of the Rye Board of Ethics in February 2023. Following those exhibits are:

-June 11, 2025 Council Meeting – Agenda Item 12 - proposed resolution to hire the expert recommended by the NYCOM general counsel to review Rye’s Code of Ethics – prepared remarks and abstract. (Council majority refused to respond.)

-July 16, 2025 Council Meeting – Agenda Item 6 – slides intended to elicit discussion and approval of the hiring of the expert. (Council majority rejected silently, except for Councilmember Jensen, whose remarks were rebutted by me in part and in full at the next meeting.)

-August 8, 2025 Council Meeting – Agenda Item 17, Old Business (at approx. meeting minute 2:33) – prepared remarks rebutting in full Councilmember Jensen’s previously stated reasons not to hire the expert (including email exchange with NYCOM’s general counsel).

For a complete understanding of this matter, please watch the meeting videos, available on [Ryeny.gov](http://Ryeny.gov) by clicking on Government, City Council and Meeting Videos.

## Mayor's Message of 5/7/25 on Board of Ethics

The following message was presented in the Old Business/New Business item of the May 7, 2025 public City Council meeting. I promised to post the message with numbered critical paragraphs corresponding to numerical annotations in the NYCOM opinion of January 29, 2025. Hearing two of my Council colleagues insist at the meeting that the NYCOM opinion revealed "nothing wrong" with the Rye Board of Ethics opinion of February 13, 2023, I realized I needed to extend the numerical annotations to email correspondence with the attorney for the Board of Ethics and to the Board's February 13, 2023 opinion, and that material is included here.

In the case of the Board of Ethics opinion, it is difficult to mark the location of *what is not there*. So, for instance, the poor, politicized one-sided quality of investigation is marked with "1" and "3," but there is no way to mark on the opinion the truth that the "facts" recited by the Board were compiled without input from those accused. Nor is there a place to mark the legal conclusion, that is, the Board exceeded its authority and its opinion is of no force or effect. Please see "1" and "2" in the NYCOM opinion for that.

With respect to the legal authority question ("1" and "2"), section 15-13 of the Rye City Code establishes the Board as what the NYCOM opinion ("1") characterizes as a General Municipal Law section 808 board. I have confirmed with the City's attorney that there is no additional local law or rule granting the Board investigative powers or the ability to go beyond answering only questions asked of it with respect to the conduct of the officials asking the questions.

I have not delivered here the factual retelling that should convince a reasonable and impartial person that, even beyond the Board of Ethics' nullifying failures enumerated above, there simply was no basis for the wrong the Board inflicted on four volunteer officials. For now, the attached material seems sufficient.

Mayor Josh Cohn, May 8, 2025.



Mayor Josh Cohn

Mayor's Message

May 7, 2025

This is a brief Mayor's Message pursuant to City Charter. Our Board of Ethics needs attention.

As you may remember, in February 2023, the Rye City Board of Ethics alleged an appearance of impropriety in the actions of Councilmembers Carolina Johnson, Julie Souza and Ben Stacks and perhaps me. That story continues. Three months ago, the General Counsel of the New York Conference of Mayors, or NYCOM, sent the City an opinion contrary to the Board's actions. This opinion supports our position that the Board of Ethics operated outside the law to reach its erroneous conclusions.

As a reminder, Johnson, Souza and Stacks were faulted by the Board for duly noticing, attending and voting at an emergency Council meeting on tree-cutting. I was faulted for unrecusing and attending and voting at the same meeting *after* the trees on the lot near my home were destroyed in a massive clear-cut.

NYCOM provides advocacy, advisory and training resources, including with respect to municipal ethics, to virtually all the cities and villages in New York State. NYCOM provides opinions but will not review a specific municipal decision or opine on a municipality's specific laws. It did provide general recommendations, however, that in our case are readily applicable to the conduct of our Board of Ethics.

I am at risk of burying the lead. Simply put, Rye's Board of Ethics is authorized only to respond to questions raised by officials as to their own conduct. This is not what it did. We have been misadvised in thinking that it has investigative authority or competence. It is not by law, nor is it capable of being, the ethics police some may wish it to be.

Here are eight conclusions with respect to our Ethics Board's performance that follow from the NYCOM opinion. I have numbered them and put the same numbers in the margin of the copy of the NYCOM opinion that I will make public, showing NYCOM's relevant text:

- 1. Rye's Board of Ethics unlawfully exceeded its authority in raising the question of appearance of impropriety on its own and conducting an investigation, however poorly.**
- 2. Rye's Board of Ethics exceeded its authority, and its unlawfully-arrived-at opinion is of no force or effect.**
- 3. Rye's Board of Ethics' one-sided unlawful activity sacrificed its needed neutrality and politicized the Board.**
- 4. Rye's Board of Ethics gave no notice to the elected officials it was investigating (a first, to my knowledge), and refused our request to be heard, once we learned of its opinion (another first, to my knowledge). The Board not only conducted an unlawful investigation, but it did so without the slightest attempt at due process, a.k.a. fairness. In short, this was an ethics lynching in absentia.**
- 5. Rye's Board of Ethics conducted an incomplete and unfair investigation under a vague Code provision and arrived at a conclusion that, if given effect, would have forced the recusal of enough of the Council to defeat a quorum, depriving concerned residents of recourse.**
- 6. Rye's Board of Ethics unlawfully exercised the legislative power by instructing several City Council members on how they could vote on a given issue.**
- 7. Rye's Board of Ethics wrongly and illogically claimed that a meeting should not have been held because it was originally called for a purpose that the Board regarded as tainted by an appearance of impropriety -- even though the cause of the alleged taint had disappeared prior to the meeting and the obviously valid purpose remained.**
- 8. Similarly, Rye's Board of Ethics appeared to fault me, with no basis in law or logic, for un-recusing myself from the meeting in question once the reason for my recusal no longer existed, thereby eliminating any possible conflict of interest on my part.**

The Board of Ethics opinion was issued on February 13, 2023. Why does it matter now? First, this opinion and the surrounding facts (which I won't retell right now) was an example of the kind of risk that stops capable and well-meaning individuals from taking on local office. Second, this opinion denies relief to the neighbors of a local public official who discovers something major amiss near his home and theirs and properly recuses – it says the local government cannot act, despite that recusal. It tells local government officials to stay mum about trouble near their own homes. Third, our Board of Ethics has had three months to consider the NYCOM opinion and has exhibited no acknowledgment or signified awareness of a problem. Finally, it appears that the Board of Ethics met in May 2024 and failed to publish the redacted record required under our Code of Ethics or the minutes required by City policy, indicating it is still adrift.

Rye's Board of Ethics is not some lofty body with municipal ethics expertise as our local paper once said. It is a volunteer board composed of Rye residents from various walks of life. They render opinions without benefit of training or guidelines. I'm sure they do their best to be fair. At this point though, our Board has been demonstrably *unfair* and is showing no impulse to make amends. It has not withdrawn its opinion even despite the advice from NYCOM. Its intention to maintain its unlawful actions now seems apparent. This may be inconsistent with its members' oaths of office. The Board appears to be steering by stars visible to it alone, if it is steering at all.

In the months after the Board of Ethics' opinion, we provided some of the facts backing our position and the advice of the former Executive Director of the New York State Ethics Commission, Karl Sleight. In addition, we pointed out that the US Courts and US Department of Justice assert that concerns of appearance of impropriety require reasonable factual investigation (which our Board cannot and did not do).<sup>\*</sup> Despite this, and our offers to negotiate, mediate or work together on an ethics code review, our Board stuck to its flawed opinion, as it is doing now. Perhaps the Board's remaining members from 2023 think something bad will happen if they open up. It won't.

The impropriety of the Board's conduct would have been clear to the entire City Council in 2023. It is sad that we are well into 2025, three-months past delivery of the NYCOM opinion, and the two continuing Council members who precipitated and supported the Board's mistaken process and findings have not come forward and acknowledged that the Board and our Code of Ethics need review. It is more than two years since this Board of Ethics failure and this Council has not yet recovered. It would be irresponsible to continue sweeping this under the rug.

A fundamental question is whether we want to turn our Board of Ethics into an investigative board, an ethics complaint bureau. Having lived through the misadvised misadventures of our Board, I do not think that our City can maintain the body of knowledge and skill needed to assure responsible behavior of an investigative board.

In any case, Rye at least needs to provide guidelines to our Board of Ethics and a refresh to our Code of Ethics to ensure that nothing like this happens again. I have from NYCOM a recommendation of a law firm competent to help us. I in turn recommend we take that recommendation.

\*Source: Code of Conduct for United States Judges, Canon 2A; United States Department of Justice Ethics Handbook for On and Off-Duty Conduct, General Principle 14.

January 29, 2025

Mayor Josh Cohn  
1051 Boston Post Road  
Rye, New York 10580

Re: Powers and Procedure for a Local Board of Ethics

Dear Mayor Cohn:

I am writing in response to your inquiry regarding the powers and procedure of local boards of ethics and ethical standards. Due to the volume of requests, NYCOM will only respond in writing to those facts and questions presented in writing. It is the policy of the NYCOM Executive Committee that a copy of all written staff responses to member inquiries be provided to the mayor and the attorney of the inquiring municipality. Please note that NYCOM attorneys do not maintain an attorney-client relationship with NYCOM members or their employees or officers. This letter is an opinion of the NYCOM legal staff and is not legally binding.

As previously noted, NYCOM will only respond in writing to the facts and questions presented in writing. Your inquiry involves myriad issues related to the City of Rye's board of ethics, including its powers and procedures. Due to the extensive nature of your request, this opinion is a response to the heart of your inquiries and does not address each specific issue and question raised. You inquire as to the authority of boards of ethics to conduct investigations, the process for noticing meetings of public bodies, applicable ethical standards, the process of an official recusing themselves from participating on a matter, and access to a board of ethics' records and opinions, including the confidentiality of a board of ethics' opinions and communications. While this opinion of the NYCOM staff will discuss general recommendations regarding board of ethics' powers and procedures, it will not provide interpretations of the City's specific code provisions nor will it weigh-in on specific findings or determinations of the City of Rye's board of ethics as the NYCOM staff is not privy to all of the proceedings of such board which led to any decision.

### **Boards of Ethics – Powers and Procedures**

By default, local boards of ethics are governed by General Municipal Law § 808, which authorizes their creation and establishes their default powers and procedure. Unlike the adoption of a local code of ethics, state law does not require municipalities to establish a local board of ethics. Pursuant to General Municipal Law § 808, the local government's governing body appoints members of its local ethics board, which must consist of at least three members. While a majority of a local ethics board's members may not be officers or employees of the subject municipality, any ethics boards created pursuant to Section 808 must include at least one member who is an elected or appointed municipal officer or employee of the municipality. While state law requires at least one elected or appointed municipal officer or employee of the municipality to serve on the board, municipalities should be mindful that certain municipal officers and employees should not be appointed to the board of ethics as it would be impracticable since they would potentially have to recuse themselves from participating on the board in

many if not most sessions. Two such positions are the municipality's top official responsible for overseeing and directing all subordinate officers and employees and the municipal attorney. While NYCOM does not recommend making the city attorney a member of the city's board of ethics, the board of ethics may seek advice from the city attorney or retain its own counsel to the extent that the city council has made appropriations available for such expense.

If a municipality has adopted a local board of ethics pursuant to General Municipal Law § 808, such board may only render advisory opinions to the officers and employees of the municipality that established the board. Moreover, local boards of ethics operating solely pursuant to General Municipal Law § 808 have no authority to conduct investigations (e.g., accept charges or complaints of unethical conduct, subpoena witnesses and records, conduct hearings and take testimony and evidence regarding alleged unethical conduct, and make findings) (see 1991 N.Y. Op. Atty. Gen. (Inf.) 1135), to prohibit a local legislator from voting on a matter properly before the legislative body or to remove a local legislator from office (see Opns St Comp, 1981 No. 81-216), or to subpoena municipal employees and contractors (see 1964 N.Y. Op. Atty. Gen. No. 141). 1 6

Notwithstanding General Municipal Law § 808, a local government may adopt a local law that creates a local board of ethics that has powers that go beyond those set forth in General Municipal Law § 808. The Office of the New York State Attorney General has opined that local governments may, by enacting a local law, grant to their local board of ethics the authority to receive complaints alleging violations of ethics regulations, to investigate these complaints, and to conduct investigations on its own initiative as to whether violations of ethics standards have occurred. (1991 N.Y. Op. Atty. Gen. (Inf.) 1135). Additionally, the Attorney General has opined that a municipality may enact a local law establishing a local board of ethics whose composition differs from what is authorized by General Municipal Law § 803(3).<sup>1</sup> In no instance may a board of ethics be empowered to direct a member of a local legislative body on how to vote on a matter before the legislative body. 1 6

A city board of ethics that has been adopted solely pursuant to General Municipal Law § 808 is only authorized to issue advisory opinions to a city officer and employee in response to a written request from such officer or employee. While the language in Section 808 does not expressly address the extent or nature of the advisory opinion that can be sought or given, generally, Section 808 has generally been interpreted as authorizing local officials or employees to request advisory opinions relating to their own conduct or situation. In other words, Section 808 has been interpreted as a means of local officials and employees obtaining ethical guidance for their own behavior but not for the behavior or conduct of other officials. If a local government authorizes its board of ethics to conduct investigations of individuals at the request of other officials, employees or individuals, the local law authorizing the board of ethics should clearly set forth the extent of such powers held by the board of ethics. 1

If a local law has not been enacted granting a board of ethics broader powers than what are set forth in General Municipal Law § 808, then the ethics board should not take up issues that were not specifically asked in the request for an opinion put to such board. 1

A board of ethics that exceeds its statutory authority is acting in an ultra vires manner and such actions have no force or effect. Moreover, such ultra vires actions risk politicizing the board, which should strive to remain neutral and keep an appearance of impartiality. Finally, if a board of ethics intentionally exceeds the scope of its authority, such action could be considered a violation of the individual board member's oath of office. 2,3

Finally, you inquire about the propriety of a board noticing a meeting for one stated purpose but then conducting the meeting for a different purpose. Regarding this issue, State law imposes only minimum requirements for conducting meetings. Specifically, the NYS Open Meetings Law only requires public 7

bodies to provide notice of the name of the public body meeting, and the date, time, and location of the meeting. In other words, a public body may conduct a meeting for any reason so long as it complies with the timing requirements and gives the date, time, and location the public body is meeting. If a public body decides to conduct a meeting for one purpose but then decides to add something to the agenda or change the agenda entirely, it may do so.

### **Due Process in Ethics Investigations**

As a general rule, government actions which would deprive an individual of a property interest or a right would be subject to procedural due process requirements, meaning that (1) the individual should be notified of the proceeding and (2) given an opportunity to hear the charges and claims against them and respond to them.<sup>2</sup> Assuming *arguendo* that the City of Rye's board of ethics has been authorized by a City of Rye local law to conduct ethics investigations of individuals (as opposed to simply providing advisory opinions to individuals regarding their own conduct and circumstance), any investigatory activities should provide each subject of an investigation procedural due process.<sup>3</sup> This practice of (1) notifying individuals of ethics investigations and (2) giving them an opportunity to hear the charges and claims against them and to respond to such charges should be complied with even if the ethics board does not have any power or authority to discipline the official or employee because of the potential stigma that could result from such ethics board decisions.<sup>4</sup> Finally, a local official who is the subject of an investigation must be allowed to represent themselves or be represented by someone else during the hearing. 4

### **Appearance of Impropriety Standard**

You also inquire about an ethical standard in the City's code of ethics. Specifically, Section 15-10(b), which provides as follows:

An officer or employee of the City should not by his/her conduct give reasonable basis for the impression that any person can unduly influence him/her or improperly enjoy his/her favor in the performance of his/her official duties or that he/she is affected by the kinship, rank, position or influence of any party or person.

Specifically, you inquire whether such provision functions as an "appearance of impropriety" standard. First, it must be noted that the appearance of impropriety standard is a court made standard that is the common law definition of what most lay people would consider a conflict of interest. Second, the State's "appearance of impropriety" standard is not entirely a clear, bright line test. Consequently, it can be difficult to ascertain when a local official has violated the standard or should recuse themselves from deliberating or acting on a matter before them. Additionally, local governments should be careful about crafting their own ethical codes that impose standards that are too vague or broad. It is not uncommon for local officials, in the interest of enacting local ethics codes to bolster the public's faith and confidence in their government officials and institutions, to create standards so restrictive that local officials are constantly having to recuse themselves. Such results can have negative unintended consequences, primarily paralyzing local governments and public bodies while at the same time disenfranchising the individuals who put the officials into office, as those members of the public who voted for the recusing official lose their voice. Local officials are strongly encouraged not to craft overly broad or vague ethical standards, but in the alternative, to allow disclosure of interests and the ballot box to serve as the check on conduct. 5

Finally, it must be noted that if a public official recuses themselves from participating in a specific matter and the reason for the recusal ceases to exist, the official may withdraw their recusal and resume participating in the matter before the board. 8

## **Records of Boards of Ethics**

Another issue that you inquire about are records generated by or provided to the board of ethics. Records of local boards of ethics are subject to the same laws and must be handled in the same manner as local government records generally.

### ***The NYS Freedom of Information Law***

The Freedom of Information Law (FOIL)<sup>5</sup> sets forth the guidelines for public access to municipal records. FOIL requires that all agency records be made available for public inspection or reproduction unless a record falls under a specifically designated exception to disclosure.

The NYS Committee on Open Government was established within the New York State Department of State as mandated by FOIL. The Committee provides individuals with advice in response to written or telephone inquiries and provides written opinions to written requests. The Committee can be contacted at: Committee on Open Government, NYS Department of State, One Commerce Plaza, 99 Washington Avenue, Suite 650, Albany, NY 12231; Ph (518) 474-2518; <https://opengovernment.ny.gov/>.

### **Who is Subject to FOIL?**

Agencies are subject to FOIL's disclosure requirements. The Public Officers Law defines an agency as any state or municipal department, board, bureau, division, or committee or any governmental entity performing a governmental or proprietary function for the state or a municipality.<sup>6</sup> This includes villages, towns, counties, cities, school districts and special districts. In a city, this includes all separately created boards, including a board of ethics.<sup>7</sup>

### **Records Available Under FOIL**

A record is considered any information available in physical form.<sup>8</sup> This definition includes photographs, designs, maps, microfilms, and records maintained electronically. It includes all records pertaining to city business regardless of where the record is kept. This would include city records that may not be physically located in the city clerk's office, such as a letter addressed to the city, which the mayor may have at his or her home, or records pertaining to city business even though they may be kept in the city attorney's office.

Audio and video recordings are available under FOIL. Therefore, if the city clerk or an elected official records a meeting, the audio or video recording is subject to disclosure under FOIL.

The city's records access officer, as designated by the city council, is legally empowered to process requests for records under FOIL. The records access officer is responsible for coordinating the city's response to FOIL requests. All requests for city records, including records of the board of ethics, should be forwarded to the records access officer. To avoid confusion as to the application and requirements of FOIL, other employees of the city should not disclose city records unless specifically authorized to do so.

City officials cannot prevent disclosure of a record by defining a record as "confidential" or promising someone else that the record will remain confidential. The record would still be available unless it fell within one of the statutory exceptions to disclosure that are enumerated in Public Offices Law § 87(2).<sup>9</sup> Regarding records of boards of ethics, there are three possible grounds for withholding a record: (1) if the record is made confidential by state or federal law, (2) if disclosure of the record would result in an unwarranted invasion of personal privacy, or (3) if the record is "inter-agency or intra-agency materials" which are not (a) statistical or factual tabulations or data; (b) instructions to staff that affect the public; (c) final agency policy or determinations; or (d) external audits.

Regarding this issue, the Committee on Open Government has issued a lengthy opinion on the subject of board of ethics records. In lieu of citing large sections of the opinion herein, I will refer you to that opinion (FOIL-AO-f8922), which is available online at <https://docs.dos.ny.gov/coog/ftext/f8922.htm>.

### **Confidentiality of Board of Ethics Communications and Records**

Finally, you inquire about the confidentiality of board of ethics records, including communications to and from the board and any opinions or findings issued by the board. First, a board of ethics has no authority or power to make or designate records it generates or that are within its custody and control as confidential. Moreover, a board of ethics labeling a record as "confidential" has no force and effect. Rather, the ability to make records confidential resides solely with the State of New York and the federal government. Stated differently, unless a specific provision of state or federal law makes a record confidential, local governments and their agencies must handle such records pursuant to FOIL and the State's records management laws as non-confidential records, and a board of ethics may not simply clothe communications or its records in confidentiality by proclamation. As the Committee on Open Government has opined:

[A]n assertion or claim of confidentiality, unless it is based upon a [federal or State] statute, is likely meaningless. When confidentiality is conferred by a statute, records fall outside the scope of rights of access pursuant to §87(2)(a) of the Freedom of Information Law, which states that an agency may withhold records that "are specifically exempted from disclosure by state or federal statute". If there is no statute upon which an agency can rely to characterize records as "confidential" or "exempted from disclosure", the records are subject to whatever rights of access exist under the Freedom of Information Law [see Doolan v. BOCES, 48 NY 2d 341 (1979); Washington Post v. Insurance Department, 61 NY 2d 557 (1984); Gannett News Service, Inc. v. State Office of Alcoholism and Substance Abuse, 415 NYS 2d 780 (1979)]. As such, an assertion of confidentiality without more, would not in my opinion guarantee or require confidentiality.<sup>10</sup>

I hope that this opinion is helpful. If you have any questions or would like to discuss this issue further (or any issue for that matter), do not hesitate to contact me at (518) 463-1185 or by email at [wade@nycom.org](mailto:wade@nycom.org).

Respectfully,

*Wade Beltramo*

Wade Beltramo  
NYCOM General Counsel

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<sup>1</sup> Op. Atty. Gen. 86-44.

<sup>2</sup> See Thomas v. Held, 941 F. Supp. 444 (S.D.N.Y. 1996).

<sup>3</sup> See Lee TT. v. Dowling, 87 N.Y.2d 699 (1996).

<sup>4</sup> Id.

<sup>5</sup> Public Officers Law, Article 6.

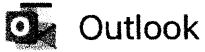
<sup>6</sup> Public Officers Law § 86(3).

<sup>7</sup> See FOIL-AO-14371, available online at <https://docs.dos.ny.gov/coog/ftext/f14371.htm>.

<sup>8</sup> Public Officers Law § 86(4).

<sup>9</sup> Public Officers Law § 87(2).

<sup>10</sup> FOIL-AO-f8922, available online at <https://docs.dos.ny.gov/coog/ftext/f8922.htm>.



February 13th Advisory Opinion

From Cohn, Josh <jcohn@ryeny.gov>

Date Tue 2/21/2023 5:02 PM

To Beth Griffin <bgm22@optonline.net>; edward30dunn@gmail.com <edward30dunn@gmail.com>; Ted Stein <tedstein01@gmail.com>

Beth, Ted and Ted:

3,4

I was out of the country last week and was distressed to hear of the BoE position on the recent Council special meeting. I now have had the chance to read the BoE opinion in full and talk to my colleagues, and my distress has only increased.

I have learned, and it is clear from the opinion, that you did not speak to the Council members who called the meeting. Nor did you speak with me. As a result, the BoE process lacked 3,4 fundamental fairness.

The factual summary in the opinion is plagued by misstatement and omission. The opinion lacks 1 important context.

The conclusion robs my independent and hard-working Council colleagues of the respect their autonomy deserves. Even worse, the conclusion robs my neighbors of their right to timely Council action on issues that they may share with me. 5

All this despite the fact that I voluntarily recused before any Council action, including the call to meeting, was taken. 8

I understand that the effort by my colleagues to call a special meeting has been deemed 5 extraordinary (and damning) by the BoE. The only thing extraordinary in this situation was the rare opportunity for Council action prior to a quarter-acre clear cut.

Would you please withdraw the opinion (the confidentiality of which has been violated) and hear 4 Council Members Johnson, Souza and Stacks, and me?

Thank you,

Josh

Response ->

 Outlook

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**Rye Board of Ethics**


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**From** Mark Blanchard <mblanchard@blanchardwilson.com>

**Date** Wed 2/22/2023 12:46 PM

**To** Cohn, Josh <jcohn@ryeny.gov>; Souza, Julie A. <jsouza@ryeny.gov>; Johnson, Carolina J. <cjohnson@ryeny.gov>; Stacks, Benjamin M. <bstacks@ryeny.gov>; Henderson, William T. <whenderson@ryeny.gov>; Nathan, Josh C. <jnathan@ryeny.gov>; Fontanes, Lori M. <lfontanes@ryeny.gov>

Good afternoon Mayor Cohn and members of the Rye City Council,

The Rye Board of Ethics ("Board") has now received emails from the Mayor and the three <sup>3</sup> other Councilmembers who did not request an opinion from the Board. As you are aware, on Monday, February 13, the Board issued a confidential advisory opinion ("Opinion"), which was given only to the Councilmembers who requested it.

Upon my advice as special counsel to the Board on this issue, the Board has been advised <sup>4</sup> not to engage in any further discussions relating to the Opinion.

Best,  
Mark

Mark W. Blanchard  
Blanchard & Wilson, LLP  
235 Mamaroneck Avenue, Suite 401  
White Plains, NY 10605  
Office: (914) 461-0280  
Mobile: (914) 582-7809

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## CITY OF RYE

CITY HALL • RYE, NEW YORK 10580  
TELEPHONE (914) 967-5400

### CONFIDENTIAL ADVISORY OPINION

To: Councilmembers William Henderson, Josh Nathan and Lori Fontanes

From: Board of Ethics Chairperson Beth Griffin Matthews and Members Edward B. Dunn and Edward J. Stein.

Date: February 13, 2023

Re: Joint Request for Confidential Advisory Opinion related to participation in council actions regarding the proposed tree moratorium

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Dear Councilmembers Henderson, Nathan and Fontanes,

We refer to your requests on February 8, 2023 (from Councilmember Henderson) and February 10, 2023 (from Councilmember Nathan) for advisory opinions and Councilmember Fontanes' verbal inquiry on February 10 shortly before the Board meeting. Due to the similarities between the questions raised and in the efficiency of time, we have asked for your consent to provide a single opinion to all of you. All three of you have consented. The threshold question asked is "Whether it is appropriate for a councilmember to attend and vote on actions pertaining to the proposed tree moratorium at the upcoming February 15, 2023, council meeting?"

On February 10, 2023, the fully constituted Board of Ethics convened. Both Greg Usry and Kristen Wilson, Esq. recused themselves as a voting member of the Board. In Attorney Wilson's stead, Mark W. Blanchard, Esq. sat in as limited special counsel to the Board.

While a detailed history is not necessary here, several events we believe are pertinent to our ultimate findings. The pertinent facts as we know them are summarized as follows:

- On Thursday February 2, 2023, Mayor Josh Cohn, presenting himself as a "resident" and therefore not in his Mayoral capacity, inquired with Christian Miller about the property located directly behind his home on Turf Avenue and what the City's regulations permitted regarding tree removal. The Mayor, again presenting himself as a resident, also spoke with Corporation Counsel Kristen Wilson about what, if anything, could be done to stop the

1

clear cutting of the Turf Avenue property. Corporation Counsel mentioned there is always the option of a moratorium or, for more immediate relief, one could seek a temporary restraining order in court. In response to questions from the Mayor regarding pursuing the option for enacting a moratorium, Corporation Counsel explained the timeframes that would be necessary to notice a special meeting and then schedule a public hearing prior to adoption. The Mayor, so informed, then indicated that he would have to hand this issue off to the Deputy Mayor as he would be directly impacted by any decisions and therefore stated his recusal. 1

- On the evening of Thursday February 2, 2023, Councilmembers Bill Henderson, Josh Nathan and Lori Fontanes received a text from another Councilmember asking for their availability to attend a Special City Council meeting to occur on Monday February 6, 2023 for the purposes of starting the process to pass an emergency moratorium on "clear cutting" of trees on property in former councilmember Emily Hurd's neighborhood. The Councilmember stated that Emily Hurd and their neighbors were "beside themselves as a developer is looking to chop down a whole lot" in their neighborhood. 1 3
- Shortly thereafter, Councilmembers Henderson, Nathan and Fontanes learned that the property where trees were to be chopped down on Turf Avenue abutted the Mayor's property. 3
- On Friday, all three inquiring councilmembers (Henderson, Nathan and Fontanes) contacted the Councilmember who had requested a Special City Council meeting and advised her that they were concerned about the appearance of impropriety, due to the fact that this type of tree clearing activity had been going on for years and now they were being asked to take the emergency step of calling a special meeting to hurriedly pass a moratorium to stop an action that could and would be seen by many as the Council taking special or extraordinary action that benefitted the Mayor personally. 1 3
- As of Friday, February 3, Councilmembers Henderson, Nathan and Fontanes all indicated that they would not be attending and understood that the Mayor was going to recuse himself due to the proximity to his property. 1, 3
- On Friday, February 3, Corporation Counsel corresponded with the six councilmembers (not the Mayor) addressing the concerns regarding the appearance of a conflict raised by some councilmembers and the Code of Ethics. She also mentioned in an email that Mayor Cohn's complaint was the only complaint she had heard relating to the clear cutting of the Turf Avenue property, in contrast to the broader public outcry that led to the initiation of the legislative process in connection with other recently adopted moratoria. 1 3
- Shortly after Corporation Counsel's email, concerned residents began emailing City staff highlighting the purported concern for the Turf Avenue property.
- On Friday February 3, 2023, the Special Meeting was publicly noticed because three Councilmembers called for it.
- On Saturday February 4, 2023, many trees on the Turf Avenue lot were lawfully cut down.
- The emergency meeting took place on Monday February 6, 2023, with three Councilpersons and the Mayor attending; due to the events on February 4, the Mayor no longer believed he had an actual conflict or that there was an appearance of a conflict.

**Findings and Advisory Opinion**

It is our conclusion that any action taken by any of the Councilmembers in furtherance of the tree moratorium at the February 15, 2023, meeting would be cloaked with an appearance of a conflict or an impression of impropriety that would violate Section 15-10(B) of the City’s Code of Ethics, which states:

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An officer or employee of the City shall not by his/her conduct give reasonable basis for the impression that any person can unduly influence him/her or improperly enjoy his/her favor in the performance of his/her official duties or that he/she is affected by the kinship, rank, position or influence of any party or person.

Although not raised as a question by Councilmembers Henderson, Nathan and Fontanes, we find that the actions taken by the City Council leading up to the emergency meeting on February 6, 2023, did violate Rye City Code Section 15-10(B), because it appears that the primary reason the emergency meeting was called was to protect the trees on Turf Avenue immediately adjacent to the Mayor’s property. We find that the extraordinary rush to call the meeting gives a “reasonable basis for the impression” that the Councilmembers who attended and voted at the February 6 meeting were influenced to take such action because of the proximity to the Mayor’s property and to protect the Mayor’s property and therefore to provide an elected official with a personal benefit. Moreover, we do not find that the clear cutting of the Turf property erases or negates any conflict or appearance of a conflict going forward with respect to the timing of City Council action relating to a tree cutting moratorium.

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As such, we do believe that under these circumstances, an elected official could vote “no” or “abstain” on any actions relating to the February 15 public hearing without violating the City’s Code of Ethics. Accompanying the “no” vote or abstention, the elected official could explain that it is not the substantive issue regarding trees that given rise to concern, but rather, the extraordinarily expedited process that led to calling for this emergency meeting and the setting of the public hearing that are the basis for the declination to vote in favor of an otherwise worthy legislative action. To remove the potential cloud of impropriety yet advance the substantive issue, the Council could simply re-commence the process with a newly called hearing on either a moratorium or on the proposed amendments to City Code Chapter 187 (“Trees”).

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We believe that the above opinion encompasses the primary questions as it relates to the Code of Ethics that all three of you have raised. Councilmember Nathan raised additional questions that have been referred to the Corporation Counsel for a response as the Code of Ethics is not implicated.

Respectfully submitted,

/s/

Beth Griffin Matthews, Edward B. Dunn, Edward J. Stein

June 11, 2025 Council Meeting – Item 12 – Resolution to authorize the hiring of Steven G. Leventhal for legal assistance in reviewing the City Code of Ethics

Note please that my prepared remarks ended with my invitation to others to speak. I have provided a bullet point abstract of what happened after that, but suggest the reader watch the very short video on the City website (City Council videos) for full perspective.

Mayor Josh Cohn

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### Prepared Remarks

Some have asked me why should we review our Code of Ethics and the mandate of our Board of Ethics? Most importantly, because an unguided Board of Ethics and an ambiguous Code of Ethics is a threat to anyone who takes on an official role in the City of Rye. And you would be mistaken if you think this threat has not been noticed by qualified individuals who have declined to volunteer for roles in our largely volunteer government.

At our meeting a month ago, I spoke about the opinion that I had obtained from the New York Conference of Mayors at the end of January. The NYCOM opinion responds to generic questions and speaks in general terms but read fairly it provides a scathing critique of the Rye Board of Ethics Opinion of February 2023d. I recommended that this Council use the ethics lawyer recommended to me by the general counsel of NYCOM to review on a forward-looking basis (not looking back at the past) our Code of Ethics. My colleagues indicated they needed to think about it.

I posted on the City website a full set of documents for people to reference. They are numerically annotated so that you can follow some of the important points right through the set. The documents can be found if you go to the City website, click on the three little bars at the top left of the home page, click on government, click on Mayor and then open the May 7 message.

In any case, I heard nothing from my colleagues between then and the time I put on the agenda this item for tonight. The only reason I heard anything is that I called some of them for their views.

I would like now to ask each Council member to speak to the point. Should we hire Mr. Leventhal, who among his many other credentials, is chair of the New York Bar Association Local and State Government Ethics and Professional Conduct Committee to review our Code of Ethics ((without reference to our Board of Ethics February 2023 opinion) and why or why not? I welcome views from my colleagues.

#### Abstract

- Councilmember Souza spoke in favor.
- No other councilmember spoke.
- I re-emphasized the forward-looking only nature of the proposed review and that Leventhal offered to do it in a private Council session.
- I characterized it as hard to credit reasons not to do the review and that it showed a remarkable lack on the part of the group of 5 unwilling to speak.
- Councilman Henderson interrupted to say the group of 5 was willing to vote.
- I tabled the matter to provide the group of 5 more time for thought and offered that their silence was not a good look.

July 16, 2025

# Proposal to Hire Steven Leventhal, Esq.

Municipal Ethics Lawyer Recommended by NYCOM

# Leventhal's Qualifications

- ❖ Leventhal was recommended by the General Counsel of the New York Conference of Mayors (NYCOM). (Rye regularly follows NYCOM advice.)
- ❖ Leventhal is co-chair of the NYS Bar Association's Local and State Government Section Committee on Ethics and Professionalism and is immediate past-chair of the Local and Government Section.

# Leventhal's Qualifications (cont.)

- ❖ Leventhal is a sitting Village Justice.
- ❖ Leventhal regularly advises numerous municipal ethics boards.

# Reasons to Review Our Code of Ethics

- ❖ Most of our Code of Ethics dates without amendment from 1966, including the provision authorizing the Board of Ethics and the provision the Board has most recently relied on.
- ❖ Disagreement about what constitutes ethical behavior of elected officials and our Board of Ethics has harmed the functioning of our government for the last two years. It is time to get the guidance we need to prevent this.

# Reasons to Review Our Code of Ethics (cont.)

- ❖ The January 29, 2025 letter of the General Counsel of NYCOM at the very least raises serious questions as to our Code of Ethics and Board.
- ❖ In recent years, we have reviewed and amended many City Code provisions, for example the tree law, zoning law (flag lots and steep slopes), Board of Architectural Review mandate, wireless law, and rock chipping and blasting laws. We are on our second review of the leaf blower law:  
**WHY WOULD WE NOT REVIEW OUR ETHICS CODE?**

# What Leventhal Would Do:

- ❖ Review our Ethics Code and our absence of guidelines or rules for our Board of Ethics – this without reference to past events, as stipulated by Councilmembers Nathan and Henderson.
- ❖ Deliver his review in private session with the City Council.

# What Leventhal Would Do (cont.):

- ❖ Propose amendment and guidelines.
- ❖ Charge \$10,000 or less.

# May 7 Council Meeting – Old Business/New Business

- ❖ Mayor Cohn publicly presented the NYCOM letter on board of ethics practice and procedure that the Council has had since early February.
- ❖ At that presentation, at least four Councilmembers appeared to be for a review of our Ethics Code.

# May 7 Council Meeting – Old Business/New Business (cont.)

- ❖ Councilmember Nathan, as reported in the Rye Record, was open to a review that did not re-open the past.
- ❖ Councilmember Henderson said that “we would all be agreeable” to a review of the process of the Board of Ethics moving forward.

# Four Simple Examples of Conflict Between the NYCOM Letter and Rye Board of Ethics February 2023 Opinion

❖ The NYCOM letter provides general statements regarding the powers and procedures of local boards of ethics and ethical standards. NYCOM typically speaks in this fashion. Rye is typically able to understand NYCOM statements and typically follows NYCOM advice. Applying NYCOM's views to Rye's Board of Ethics practice is not complex. Four examples follow:

# Four Simple Examples of Conflict Between the NYCOM Letter and Rye Board of Ethics February 2023 Opinion

- ❖ **Example 1**- Ours is a basic board of ethics. NYCOM says that **basic boards can provide only advisory (non-binding) opinions *and only* in response to questions in writing from a public official about his/her own conduct** (NYCOM Letter page 2, third full paragraph). **These boards cannot raise questions of their own** (NYCOM Letter page 2, fourth full paragraph).
- ❖ But Rye’s Board of Ethics stated, “Although not raised as a question by Councilmembers Nathan, Henderson and Fontanes...,” and then gave its answer to the question it alone asked about the conduct of other officials completely unaware of the Board’s activity (Feb. Opinion page 3, lines 8-18).

# Conflict Between the NYCOM Letter and Rye Board of Ethics February 2023 Opinion (cont.)

- ❖ **Example 2** – NYCOM says that a basic board has no investigative authority (for example, to take testimony and make findings) (NYCOM Letter page 2, lines 6-11).
- ❖ But Rye’s Board of Ethics took witness accounts (testimony) and documented what it called “pertinent facts,” (Feb. Opinion pages 1-2) and made “findings (Feb. Opinion page 3), however poorly and one-sidedly.

# Conflict Between the NYCOM Letter and Rye Board of Ethics February 2023 Opinion (cont.)

- ❖ **Example 3** - NYCOM says that a municipal public body can notice (call for) a meeting for one stated purpose but then conduct the meeting for a different purpose without new notice (NYCOM Letter page 2-3 carryover).
- ❖ But Rye's Board said that a meeting noticed for a purpose that it regarded as flawed would be unethical without new notice, even though it acknowledged that the alleged flaw in purpose disappeared before the meeting (Feb. Opinion page 3, line 16).

# Conflict Between the NYCOM Letter and Rye Board of Ethics February 2023 Opinion (cont.)

- ❖ **Example 4** – NYCOM says that if a public official recuses from a matter and the reason for the recusal ceases to exist, the official may unrecuse and resume participation (NYCOM Letter page 3, last paragraph). The Mayor recused before the meeting was called and returned to participate in the meeting as soon as the basis for recusal passed.
- ❖ But the Mayor was still criticized by the Board, as were the Councilmembers who had not recused and as to whom any basis for recusal also was gone. (Feb. Opinion page 3, lines 16-18).

# Conclusion

- ❖ Rye's Ethics Code has been largely unreviewed for sixty years and there has been to say the least disagreement about the performance of the Board of Ethics under the Code.

# Conclusion (cont.)

- ❖ Rye's Ethics Code and Rye's Board of Ethics are important to the lawful and orderly functioning of our government.

## Conclusion (cont.)

- ❖ The present situation presents litigation risk and threatens volunteer participation in our heavily volunteer government.
- ❖ The forward-looking review expert Leventhal has offered will allow the Council needed insight.

# Note

- ❖ A further process critique may be found on [ryeny.gov](http://ryeny.gov) by clicking on the three dashes at the top left of home page, clicking on “Government,” then “Mayor,” then May 7 statement.
- ❖ Consistent with Councilmember Nathan and Henderson’s wishes not to look back, factual refutation of the February Opinion is not included in this slide deck.

## August 6, 2025 Rebuttal of Jensen's July 16 Comments

At the last Council meeting, the Council majority again stonewalled against the hiring of attorney Steven Leventhal to provide us with a badly needed review of the City's Code of Ethics. Only Councilmember Jensen spoke against the hiring. I would like to crystallize her objections before rebutting them.

One objection was that I chose Leventhal and Jensen knows nothing about him. The other is that any review should be after those mistreated by our Board of Ethics have retired from the Council.

In response to Jensen objection one - as I said at the last meeting, Leventhal was the sole recommendation of NYCOM, or better said, the sole recommendation of NYCOM's General Counsel, Wade Beltramo. I promised at our May 7 meeting to pursue NYCOM's recommendation and at the time that seemed satisfactory to this Council. But for some reason it is not now. For absolute clarity, I have had an email exchange with General Counsel Beltramo that I will read aloud for the record and post with the other materials on this matter. [Attached email exchanges was read aloud and greater weight of personal, as opposed to institutional, recommendation observed.]

As for not knowing who Leventhal is, this Council has had his resume literally for months. He is present co-chair of the NYS Bar Association's Local and State Government Section Committee on Ethics and Professionalism, a sitting Village Justice and his resume shows a prodigious experience in local government ethics work. Conversationally, General Counsel Beltramo used the term "preeminent" with respect to Leventhal in our recent exchange.

Objection two - an ethics code review should happen next year when Council personnel have changed. But, the only Council personnel changes next year that are certain are that Councilmember Souza and I will retire. So, the proposition is that the two now remaining officials critical of our Board of Ethics performance need to be gone while those supporting the Board despite

painfully clear evidence to the contrary are left to theoretically carry out a review. This seems inappropriate to me.

If any of the public care to read up on this, please go to the City website homepage, click on the three menu dashes at the top left, click on Government, then Mayor, then May 7 message.

Thanks

**From:** Cohn, Josh <[jcohn@ryeny.gov](mailto:jcohn@ryeny.gov)>  
**Sent:** Monday, August 4, 2025 12:32 PM  
**To:** [wade@nycom.org](mailto:wade@nycom.org)  
**Subject:** Potential Counsel

Wade -

Below is the recap that I shared with you on the phone:

After delivery of your January opinion, I asked you for recommendations of counsel who might review Rye's code of ethics and board of ethics process. I also raised the thought that faculty at a law school, like Albany Law's Government Law Center, might be interested, perhaps to make it into a seminar project. You recommended Steven Leventhal as an individual attorney and also said you would reach out to the Government Law Center.

You returned with the news that the Government Law Center was not able to help. I suggested that I could reach out to Patricia Salkin, former director of the Government Law Center, to see if she might see an interest in her current position as provost of Touro University. I returned to you reporting a negative response. Steven Leventhal remained your recommendation. To offer a choice, I suggested Mark Davies and you noted Davies' retirement.

Please confirm that this is an accurate summary of our conversation.

Thank you,

Josh

**Josh Cohn**

Mayor

Email: [jcohn@ryeny.gov](mailto:jcohn@ryeny.gov)

City Hall

1051 Boston Post Road

Rye, NY 10580



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**RE: Potential Counsel**

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From Wade Beltramo <wade@nycom.org>

Date Mon 8/4/2025 12:38 PM

To Cohn, Josh <jcohn@ryeny.gov>

Mayor Cohn,

Yes. That accurately reflects our correspondence.

Please note, however, that, as I mentioned in our previous correspondence, my recommendation of Steven Leventhal is my personal recommendation based on my experience with him. NYCOM does not, as a general rule, endorse the services of specific firms, and does not as an organization take any position with respect to the City of Rye's potential hiring of Mr. Leventhal in this instance.

I hope that this is helpful. If you have any questions or would like to discuss this matter further, do not hesitate to drop me an email or give me a call.

Wade Beltramo  
General Counsel  
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