



CONFLICTS OF INTEREST BOARD

NOTICE

Notice of Adoption of Amendment to Rule Determining Public Servants Charged with Substantial Policy Discretion
NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE Conflicts of Interest Board by Sections 2603(a), 2604(b)(12), and 2604(b)(15) of the New York City Charter that the Conflicts of Interest Board has adopted an amendment to its rule on public servants charged with substantial policy discretion, Section 1-02 of Title 53 of the Rules of the City of New York, authorizing agencies to make available for public inspection a copy of the agency's current list of those public servants whom the agency has

designated as having substantial policy discretion.

Pursuant to a notice published on April 4, 2001, in The City Record, a public hearing was held on May 15, 2001, at 2 Lafayette Street, Suite 1010, New York, New York. The Board received no comments on the proposed amendment. The text of the amendment is set forth below.

§ 1-02. PUBLIC SERVANTS CHARGED WITH SUBSTANTIAL POLICY DISCRETION.

(a) For purposes of Charter §2604(b)(12) and §2604(b)(15), a public servant is deemed to have substantial policy discretion if he or she has major responsibilities and exercises independent judgment in connection with determining important agency matters. Public servants with substantial policy discretion include, but are not limited to: agency heads, deputy agency heads, assistant agency heads, members of boards and commissions, and public servants in charge of any major office, division, bureau or unit of an agency. Agency heads shall:

- (a)(1) designate by title, or position, and name the public servants in their agencies who have substantial policy discretion as defined by this section;
(b)(2) file annually with the Conflicts of Interest

Board, no later than September 30 of each year, a list of such titles or positions and the names of the public servants holding them; and

(c)(3) notify these public servants in writing of the restrictions set forth in Charter § 2604(b)(12) and § 2604(b)(15) to which they are subject.

If the Conflicts of Interest Board determines that the title, position, or name of any public servant should be added to or deleted from the list supplied by an agency, the Board shall notify the head of the agency involved of that addition or deletion; the agency shall in turn promptly notify the affected public servant of the change.

(b) Each agency may make available for public inspection a copy of the most recent list filed by the agency with any additions or deletions made by the Board pursuant to subdivision (a) of this section.

STATUTORY AUTHORITY: Sections 2603(a), 2604(b)(12), and 2604(b)(15) of the New York City Charter.

STATEMENT OF BASIS OF PURPOSE OF THE AMENDMENT:

Section 2604(b) of the New York City contains two provisions

imposing restrictions on political fundraising and the holding of political party office by certain high-level public servants. Included within the restriction are enumerated officials as well as those public servants who are charged with "substantial policy discretion as defined by rule of the board." Specifically, section 2604(b)(12) provides:

12. 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 board, shall directly or indirectly request any person to make or pay any political assessment, subscription or contribution for any candidate for an elective office of the city or for any elected official who is a candidate for any elective office; provided that nothing contained in this paragraph shall be construed to prohibit such public servant from speaking on behalf of any such candidate or elected official at an occasion where a request for a political assessment, subscription or contribution may be made by others.

Section 2604(b)(15) provides:

15. No elected official, deputy mayor, deputy to a citywide or boroughwide elected official, head of an agency, or other public servant who is charged with substantial policy discretion as defined by rule of the board may be a member of the national or state committee of a political party, serve as an assembly district leader of a political party or serve as the chair or as an officer of the county committee or county executive committee of a political party, except that a member of the council may serve as an assembly district leader or hold any lesser political office as defined by rule of the board.

Pursuant to those Charter provisions, the Board adopted section 1-02 of Title 53 of the Rules of the City of New York, set forth above, defining "substantial policy discretion" and requiring each agency head to designate the public servants within the agency having such discretion, to file annually with the Board a list of those public servants, and to notify them of the restrictions set forth in Charter §§ 2604(b)(12) and 2604(b)(15). The rule further provides that the list supplied by the agency to the Board is subject to review and modification by the Board.

Although, as reflected in the Board's rule, the Charter vests in the Board the ultimate authority to determine whether any particular public servant is in fact charged with substantial policy discretion within the meaning of Chapter 68, prudent use of the Board's limited resources dictates that the Board not expend the enormous amount of staff time that would be required to review the actual duties of all higher level public servants throughout City service to determine whether the lists submitted by the agencies are accurate and complete. Instead, the Board currently reviews each list to determine whether it appears to include the types of positions required by the rule and then relies upon the public, the media, and other public servants to apprise the Board of possible errors in the lists submitted by agencies.

Thus, for example, if the media reports that a public servant, whose name does not appear on his or her agency's list, has hosted a fundraiser for a candidate for elective City office, the Board may investigate whether the duties and responsibilities of that public servant are such that he or she in fact possesses substantial policy discretion. Similarly, the Board sometimes receives a complaint that a public servant listed by his or her agency as having substantial policy discretion has acted in violation of Charter § 2604(b)(12) or § 2604(b)(15) but, upon investigation, determines that the public servant in fact possesses no such discretion and should be deleted from the agency's list.

Accordingly, in policing compliance with the requirements of Charter §§ 2604(b)(12) and 2604(b)(15), the Board must depend largely upon inquiries, reports, and complaints from the public, the media, and other public servants. Those communications, however, can prove meaningful only if the contents of the agencies' lists are available for public inspection. Therefore, the Board is amending its substantial policy discretion rule to provide for such public availability.