

New York City Conflicts of Interest Board

Annual Report 1990-1991

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Letter to the Mayor

Dear Mayor Dinkins:

The Conflicts of Interest Board respectfully submits this Report on the Board's crucial first two years of operation: 1990 and 1991. Having been appointed to the Board in September, 1990, I have been privileged to serve as the Board's Chair for a substantial portion of that period. The Board — and all citizens of New York City — owe a special debt of gratitude to my predecessor, Merrell E. Clark, Jr., who, after long service on the Board of Ethics, initiated the work of the new Board under the 1989 Charter revision, organized it and successfully carried it forward.

The 1989 Charter revision significantly expanded the duties and responsibilities of the Board over those of its predecessor agency - the Board of Ethics. In addition to the judicial function of construing Chapter 68 (the City's Conflicts of Interest Law), and issuing opinions for the guidance of present and former public servants, the Board has now been entrusted with major new responsibilities in vital areas: the educational function of making public servants aware of the law's requirements and how to comply with them; the legislative function of rule-making to refine and clarify the provisions of the Charter; and the prosecutorial function of pressing charges where there have been violations of Chapter 68. Finally, we have been charged with responsibility for administering and enforcing the City's financial disclosure law.

In fulfilling its responsibilities, the Board is always cognizant of, and endeavors to carefully balance, two competing objectives embodied within the conflicts of interest law: the need for vigorous enforcement of the law, to prevent corruption and reinforce public confidence in the integrity of City government; and the need to insure that any restrictions imposed are practical, and permit public servants to continue to serve, or enter into the service of, the City without undue burdens.

While the Board's accomplishments are set out more fully in the body of this Report, a few highlights should be mentioned. The vast majority of New York City's officials and employees are dedicated public servants who wish to comply fully with the law, and the necessary predicate to our job is to make sure that they are alerted to the law's requirements. A major contribution to that effort was the publication, in cooperation with the Department of Personnel and the Department of Investigation, of a plain-language guide to Chapter 68, translating the legalese of Chapter 68 into simple, readily understandable language. That guide has been distributed to all employees of Mayoral agencies and will be distributed as well to non-Mayoral agencies and the offices of elected officials.

Even where a public servant is aware of the Charter provisions, it may be far from clear how they apply to a specific fact situation. In the two years covered by this Report, we received over 1,000 written requests for guidance as to the applicability of the conflicts law, and many times that number of telephonic requests. As appropriate, we have responded to these requests and provided practical guidance after carefully reviewing the applicable Charter provisions, the legislative history reflected in the Charter Revision Commission's proceedings, and related legal precedents (both our own and, where applicable, those of the Board of Ethics). We issued 29 formal advisory opinions on issues of broad applicability, and such opinions were published and made available to public servants generally.

In our prosecutorial function, we have formulated comprehensive hearing rules to govern the trial of alleged violations, and have issued initial findings of probable cause. We plan an aggressive enforcement program where we find Charter violations.

Finally, under our new obligation to administer and enforce the City's financial disclosure law — again, a responsibility which the old Board of Ethics did not have — over 24,000 financial disclosure statements were filed with us in the two year period covered by this Report. While the compliance rate has exceeded 95%, we have undertaken and will continue to undertake vigorous efforts to assure that any person required to comply with the law in fact does so. We have imposed fines on late filers and non-filers, and in the years covered by this Report, we received some \$25,000 in such fines.

The Board, like every other City agency, has suffered severe financial constraints because of the City's economic condition. Throughout this period, we had far fewer attorneys and support staff than were required to do the job and, indeed, far fewer than our authorized personnel roster. Our ability to keep up as well as we have with the demands placed upon us is due in no small measure to the dedication of our staff, under the leadership of our Executive Director/Counsel, Priscilla Lundin. They have worked long and hard to give the Board a sound foundation for the future, and we owe them an enormous debt of gratitude.

I am also profoundly grateful to my fellow Board members who, in addition to their many other heavy responsibilities, cheerfully and effectively assumed the additional burdens of Board service and have been tireless in their dedication and support.

Respectfully submitted,

Sheldon Oliensis
Chair

Introduction

On November 8, 1988, New York City voters overwhelmingly approved five ballot questions proposing broad revisions to the City Charter, New York's basic governing document. These provisions had been recommended after extensive research and public hearings by the Charter Revision Commission, chaired by Richard Ravitch and, subsequently, by Frederick A.O. Schwarz, Jr. The resulting changes in City government included a strengthened conflicts of interest law, contained in revised Chapter 68 of the Charter, to be administered and enforced by a new, independent and empowered City agency called the New York City Conflicts of Interest Board, which replaced the Board of Ethics that had been in operation since 1959.

The name of this new board reflects the Charter Revision Commission's view that Chapter 68 does not deal with ethical questions in the abstract, but focusses on drawing the line where private interests conflict with the performance of official duties.

Under Chapter 68, the Board has the authority to issue advisory opinions interpreting the statute and to use the Department of Investigation to conduct investigations concerning possible conflicts of interest. The Board also has the authority to promulgate rules, administer the City's financial disclosure law, enforce the conflict of interest and financial disclosure laws and conduct education and training programs for public servants about their obligations under Chapter 68.

Members of the Conflicts of Interest Board

The five members of the Board are appointed by the Mayor with the advice and consent of the City Council. The Mayor designates the Chair. Members are compensated on a per diem basis and serve for staggered six-year terms, except that the first members were appointed for shorter terms.

The City Charter provides that members are to be chosen for their "independence, integrity, civic commitment and high ethical standards," and may not, while serving on the Board, hold public or political office.

Sheldon Oliensis, the Board's Chair, is a partner in the law firm of Kaye, Scholer, Fierman, Hays & Handler. He was confirmed by the City Council on September 6, 1990, succeeding the Board's first Chair, Merrell E. Clark Jr., a partner in the law firm of Winthrop, Stimson, Putnam & Roberts and a former member of the Board of Ethics.

Members Beryl R. Jones, a Professor at the Brooklyn Law School, and Robert J. McGuire, President and Chief Operating Officer of Kroll Associates, were confirmed on October 4, 1989. Benjamin Gim, a partner in the law firm of Gim & Wong, P.C., and Shirley Adelson Siegel, an Adjunct Professor of Urban Planning at Columbia University, were confirmed on September 6, 1990.

Budget and Staff

The Board employs a full-time staff which, when the Board came into being on October 3, 1989, consisted of an Executive Director/Counsel, a Deputy Counsel and another attorney and three support staff. A Director of Administration was hired in July 1990, and a Director of Communications and a Senior Financial Disclosure Investigator joined the Board's staff in November 1990.

In Fiscal Year 1990, the Board's budget was \$530,645, which was increased to \$876,840 in FY 1991 and \$914,375 in FY 1992. As of December 31, 1991, the Board had a staff of 21, including 3 more attorneys and 5 more financial investigators. The Board also hires temporary personnel to assist in the annual collection of over 12,000 financial disclosure reports which are filed with the Board every May 1.

The Board's offices are located on the 14th floor of 2 Lafayette Street in Manhattan and have expanded over the past two years to include space on two other floors of this building. It is anticipated that by September 1992, the Board's offices will be consolidated in a space renovated by the Department of General Services on the tenth floor of 2 Lafayette Street.

Chapter 68

Chapter 68 regulates the conduct of all New York City public servants — elected officials, all officers and employees of the City, members of community boards and paid members of advisory committees. The Board's jurisdiction extends not only to Mayoral agencies, but also to the City Council, the Board of Education, the Health and Hospitals Corporation, the Housing Authority, community boards and community school boards.

The prohibitions in Chapter 68 regulate what public servants may do on the job; their non-City positions; the financial interests which public servants, their spouses and unemancipated children may own in firms doing business with the City; their off-hours political activities; and former public servants' work in the private sector which directly concerns their former official duties. Most of the provisions of revised Chapter 68 became effective on January 1, 1990, except that by local law, stricter post-employment provisions designed to curb "revolving door" abuses became effective on April 1, 1990.

Underlying all of the standards of conduct set forth in Chapter 68 is the premise that public servants have a duty of undivided loyalty to the interests of the City such that their official actions should always further the public interest, not the interests of private gain. Charter Section 2600, the preamble to revised Chapter 68, provides that "Public service is a public trust," continuing: "These prohibitions on the conduct of public servants are enacted to preserve the trust placed in the public servants of the city, to promote public confidence in government, to protect the integrity of government decision making and to enhance government efficiency."

Advisory Opinions of the Board

In 1990, the Board and its staff responded in writing to 458 requests by public servants and former public servants for opinions interpreting Chapter 68. In 1991, 358 such requests were answered. The Board's legal staff also responded to numerous telephone inquiries for informal confidential advice during this period.

The Board's caseload in 1990 was unusually high because the revision of Chapter 68 created many statutory questions of first impression and, in addition, the change in the Mayoralty resulted in numerous requests to the Board from public servants concerning post-employment restrictions.

By the end of 1991, the Conflicts of Interest Board had published 29 formal advisory opinions concerning conflicts of interest issues, many dealing with issues of broad applicability. For instance, Opinion No. 91-7 describes the circumstances under which City employees who are attorneys may and may not engage in the private practice of law. Opinion 91-10 deals with the precautions that elected and high-level appointed officials should take when engaged in charitable fund-raising.

As required by Chapter 68, the Board's published advisory opinions do not disclose the identities of the public servants involved, except under special circumstances. In the Board's Opinion Nos. 90-4 and 90-5, for example, the Board respectively advised Mayor David N. Dinkins and City Council President Andrew Stein, who had agreed to make public the Board's opinions, that they should recuse themselves from the Board of Estimate's consideration of the renewal of Time Warner's cable franchise in Manhattan.

The Board's advisory opinions are summarized in this report, followed by a guide and an index to these opinions by number and Charter Section.

The Board's opinions are published in the City Record and circulated to the press. The New York City Law Department Library has the Board's published opinions and, in addition, the full text is available through the Law Department's CITY-LAW on-line computer system, which is accessible to all New York City agencies. The Board's opinions are also available to those authorized to use the libraries of the Association of the Bar of the City of New York and the New York County Lawyers Association. The Board makes copies of its Opinions available to each City agency.

In issuing its opinions, the Conflicts of Interest Board reviews the relevant opinions of the Board of Ethics interpreting former Chapter 68 of the Charter.

Rulemaking

Consistent with the goal of providing clear guidance regarding prohibited conduct, the Conflicts of Interest Board has authority under revised Chapter 68 to issue rules. A summary of the rules issued by the Board in 1990 and 1991 are contained in this report. The complete texts can be found in Volume 12 of The Official Compilation of the Rules of the City of New York.

The majority of these rules were essential to the implementation of the new provisions of Chapter 68, such as the rule defining a "valuable gift," which is a prerequisite to the enforcement of Charter Section 2604(b)(5). This restriction prohibits a public servant from accepting a gift from a person or firm which the public servant knows is doing business with the City or is interested in getting City business.

Another important rule defined the category of public servants charged with "substantial policy discretion" for the purposes of Chapter 68, since Charter Section 2604(b)(12) imposes additional restrictions on the political activities of high-ranking officials. For example, they may not directly or indirectly request anyone to contribute to candidates for City elective office or to any elected official who is a candidate for any elective office. In addition, Charter Section 2604(b)(15) prohibits public officials with substantial policy discretion from simultaneously holding certain leadership positions in their political parties.

One of the Board's major rulemaking initiatives in 1991 involved a study of the complex question of when City Planning Commissioners — who work for the City on a part-time basis — may appear before City agencies on behalf of their private clients. The Board was mandated to consider this issue by Charter Section 192(b), which the Charter Revision Commission, then headed by Frederick A. O. Schwarz, Jr., recommended after extensive public testimony. In the course of drafting this rule, which will not be finalized until after a public hearing in 1992, the Board solicited the views of the City Planning Commission, the New York City Law Department, good government groups and experts in the planning field.

Another key rulemaking initiative involved the Board's development of its procedural rule for hearings, which are essential to the enforcement process. The Board's hearing rules were issued in 1991.

Financial Disclosure

Under Chapter 68, the Conflicts of Interest Board has the responsibility of administering and enforcing the City's financial disclosure law, contained in Section 12-110 of the New York City Administrative Code. Pursuant to this statute, more than 12,000 public servants file an annual disclosure report with the Board for the previous calendar year every May 1.

Those required by law to file include all elected officials, agency heads, public servants who earn over \$57,650 and public servants who have duties in politically sensitive areas such as contract negotiations and zoning. Candidates for City elective office are also required to file disclosure reports with the Board when they file petitions with the Board of Elections.

The City's financial disclosure law was amended by Local Law 84, which was enacted in December 1990, to comply with the State Ethics in Government Law. This State law required the City to adopt, by January 1, 1991, a form of annual statement of financial disclosure for municipal officers and employees at least as strict as the State law. The City's new financial disclosure law complies with this requirement and also requires the disclosure of financial information over and above what is called for by the State's reporting procedures.

The financial disclosure form used in 1991 for calendar year 1990 incorporated much of this statutory language, which the Board found to be overly complex. In the Fall of 1991, the Board produced a "plain language" financial disclosure report form in consultation with the New York City Law Department and the Legal Division of the City Council. This new form was designed to promote compliance with the financial disclosure law, by making the form "user friendly" both for filers and for those seeking to understand the information disclosed in these reports.

In 1991, the Board received, from the media and others, more than 1100 written requests for copies of financial disclosure reports filed by candidates for City office, elected officials and other public servants. The financial disclosure law requires the Board to make these reports available for public inspection, except for information which concerns only the filer's spouse and information which is the subject of a filer's privacy request that the Board has approved in accordance with the statutory requirements.

An analysis of financial disclosure reports as of December 31, 1991, shows a compliance rate of 97.3% for reports covering calendar year 1989, with 11,843 public servants filing of the 12,171 required to file. For reports covering calendar year 1990, 95.5% of those required to file had done so by December 31, 1991, representing 12,212 filers.

The financial disclosure law authorizes the Board to impose a \$100 fine on someone who files a financial disclosure report more than one week after the due date. As of December 31, 1991, the Conflicts of Interest Board had collected \$25,385 in fines from late filers of financial disclosure reports for calendar years 1989 and 1990. The Board also initiated 109 enforcement proceedings in 1991 against persons required to file financial disclosure reports with the Board who had failed to file.

Investigation and Enforcement of Alleged Violations of Chapter 68

The Conflicts of Interest Board has the authority under Chapter 68 to take action with respect to alleged violations of the conflicts of interest law, and can initiate its own enforcement proceedings.

By statute, the Board is required to handle complaints in one of the following ways:

- dismissal, if no further action of the Board is required;
- referral to the Department of Investigation, the Board's investigatory arm, if an investigation or more information is necessary;
- referral to the public servant's agency head, if the Board considers the alleged violation to be minor or if related disciplinary charges are pending; or
- an initial determination that there is probable cause to believe that the public servant has violated a provision of Chapter 68.

An initial determination of probable cause, based on a complaint, investigation or other information, starts an enforcement process pursuant to the Board's comprehensive procedural rules for hearings which went into effect in September 1991. These hearings, conducted by the Board or at the Board's direction by the Office of Administrative Trials and Hearings, include provisions for dispositions by agreement in which case as with a hearing the penalties imposed by the Board are to be made public.

The penalties provided for under Chapter 68 include fines of up to \$10,000 and the recommendation to the appointing authority of disciplinary penalties, including a public servant's suspension or removal from office. The Board may impose penalties on former public servants for their violations of the law. With respect to Members of the City Council or public servants employed by the Council, the Board's authority is limited to recommending penalties to the Council.

In 1990, the Board reviewed eight matters involving possible Charter violations which, as of December 31, 1991, had resulted in: three initial determinations of probable cause in enforcement proceedings currently pending; two dismissals; three requests to DOI for further investigation; and two referrals to the public servants' agencies.

In 1991, the Board reviewed 26 matters involving possible Charter violations which, as of December 31, 1991, had resulted in: two initial determinations of probable cause in enforcement proceedings currently pending; nine requests to DOI for further investigation; six dismissals; three referrals to the public servants' agencies; and six complaints to be reviewed for further disposition.

Ethics Training and Education

The responsibility of informing public servants about how to recognize, and avoid, a conflict of interest with their official duties is in the Board's view one of its most important new responsibilities.

As the New York State Commission on Government Integrity, chaired by Fordham Law School Dean John D. Feerick, recognized in its 1990 report Raising Our Sights: The Need for Ethics Training in Government: "Employees at all levels of government need clear guidelines explaining in plain language how to comply with existing 'conflicts of interest' and 'ethics in government' laws."

To that end, the Conflicts of Interest Board worked with the New York City Department of Investigation and the Department of Personnel to produce a booklet published in December 1991, entitled, What You Should Know: The Plain Language Guide to New York City Employee Ethics and Conflicts of Interest Rules. This 14 page pocket-sized guide provides general information and guidance to City employees about the conduct necessary, in the performance of their official duties, to give the public confidence that their official actions both appear to be and are in fact fair and impartial.

What You Should Know highlights areas where potential ethical problems for City employees commonly occur, including the acceptance of gifts, meals and travel, the personal use of City property, the misuse of confidential information, limitations on personal financial interests and non-City employment and restrictions on dealing with the City after leaving government service. Also included is information about the obligation of all public servants to report misconduct involving City employees and the protection afforded by law to whistleblowers. This practical guide also makes the important point that since the standards of conduct in Chapter 68 represent minimums, public servants should also be sensitive to their broader, affirmative ethical obligations.

Training concerning Chapter 68 given in 1990 included two meetings at the New York City Law Department with City agency counsels to review Chapter 68's new post-employment restrictions and prohibitions concerning financial interests in firms doing business with the City.

Training in 1991 included presentations to the following groups: a forum of 60 City training directors; interns in the LaGuardia Fellows Program; community boards and Inspectors General of the Department of Investigation. In developing the Board's training programs, staff has consulted with the Ohio Ethics Commission, the Massachusetts Ethics Commission, the New York State Ethics Commission and representatives of The New York Public Interest Research Group.

The Board has also sought to further its mission of ethics education in many other ways. In 1991, Board members or staff attended meetings of the League of Women Voters, the City Planning Commission, the Special Committee on Government Ethics of the Association of the Bar of the City of New York, the State Temporary Commission on Local Government Ethics and the Procurement Policy Board, as well as meetings of small groups of agency counsels. The Board also participated in the planning of an ethics forum for high-level City managers sponsored by the Department of Personnel and was part of a task force with the Procurement Policy Board and the Mayor's Office of Contracts concerning ethics training programs for City procurement personnel.

RULES OF THE BOARD

SUMMARIES

SUMMARY OF RULES OF THE BOARD ADOPTED IN 1990-1991

Rules of the Conflicts of Interest Board are published in The Official Compilation of the Rules of the City of New York Volume 12, Title 53, Chapter 1

Conflicts of Interest

Public servants are advised to consult the full text of the rules, available from agency counsel, rather than rely on the summaries below.

§1-01 Valuable Gifts

Summary of Rule

The Board's rule defining valuable gifts concerns gifts from any person or firm who the public servant knows, or should know, is or intends to become engaged in business dealings with the City.

A "valuable gift" is any gift to a public servant which has a value of \$50.00 or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form.

When a public servant has received two or more gifts from any one source within a calendar year which, in the aggregate, exceed the value of \$50.00, the public servant must disclose the gifts in writing to his or her agency head.

A public servant may accept gifts that are customary on family or social occasions from a family member or close personal friend when the personal relationship, rather than business dealings with the City, is the controlling factor.

Under certain circumstances, a public servant may accept awards and plaques. Under certain circumstances, a public servant may accept free meals or refreshments in the course of conducting City business, or when acting as a speaker or panelist at a professional or education program.

Under some circumstances, a public servant may accept travel-related expenses from a private entity for a trip on behalf of the City. However, to avoid an appearance of impropriety, a public servant should receive approval, in writing, from his or her agency head.

City agencies are encouraged to establish rules concerning gifts for their own employees which may not be less restrictive than those set forth in the City Charter, as interpreted by the Board's rule on valuable gifts.

§1-02 Public Servants Charged with Substantial Policy Discretion

Summary of Rule

A public servant is deemed to have substantial policy discretion if he or she has major responsibilities and exercises independent judgment in determining important agency matters. Public servants with substantial policy discretion include, but are not limited to: agency heads, deputy agency heads, assistant agency heads and public servants in charge of any major office, division, bureau or unit of an agency.

§1-03 Lesser Political Office Than That of Assembly District Leader Which May be Held by Members of the City Council

Summary of Rule

A political office which is a "lesser political office" than that of assembly district leader includes: membership on a county committee; membership on a county executive committee and membership on a state committee.

§1-04 Definition of a Firm Whose Shares are Publicly Traded**Summary of Rule**

"A firm whose shares are publicly traded" means a firm which offers or sells its shares to the public and is listed and registered with Securities exchanges or over-the-counter markets.

§1-05 Definition of Blind Trust**Summary of Rule**

The term "blind trust" means a trust in which a public servant, or his or her spouse or unemancipated child, has "...beneficial interest...without knowledge of..." the public servant or his or her spouse and unemancipated child.

The trust must be under the management and control of a trustee who meets requirements as defined by the rule of the Board.

The public servant may not receive information concerning the blind trust, except information required for filing of a personal tax return or periodic reports with respect to the total cash value of the trust or the net income or loss of the trust.

§1-06 Definition of Primary Employment with the City**Summary of Rule**

"Primary employment with the City" means the employment of public servants who receive compensation from the City and are employed on a full-time basis or the equivalent, or who are regularly scheduled to work the equivalent of 20 or more hours per week.

The definition of "primary employment with the City" does not apply to: members of the City Planning Commission, except for the Chair; interns working in connection with an educational institution or who are full-time students; persons employed for a period of less than six consecutive months; persons employed for special programs in excess of six months but of limited duration, as determined by the Board.

§1-07 Definition of Agency Served by a Former Public Servant**Summary of Rule**

When a former public servant has served more than one agency within one year prior to the termination of such person's service with the City, the former public servant shall not appear before each such City agency for a period of one year after the termination of service from each such agency.

§§2-01 - 2-05 Procedural Rules for Hearings of the Board**Summary of Rules**

The rules define the procedures to be followed by the Board when a hearing is to be held concerning a probable violation by a public servant of Charter Chapter 68 (the "conflicts of interest law") or §12-110 of the City's Administrative Code (the "financial disclosure law.")

The rules include:

§2-01 Initial Determination**§2-02 Commencement of Formal Proceedings and Pleadings****§2-03 Hearing****§2-04 Concluding Procedures****§2-05 Confidentiality**

ADVISORY OPINIONS OF THE BOARD

SUMMARIES

OPINION SUMMARY

OPINION NO: 90-1

DATE: 2/16/90

CHARTER SECTION(S): 2601(8), 2601(11), 2601(16),
2604(a)(1)SUBJECT: Doing Business with the City
Family Relationships
Prohibited Interests

OTHER OPINIONS CITED: n/a

SUMMARY: It would be a violation of Chapter 68 for the spouse of an employee of the Department of Buildings to start a business to assist private contractors in expediting that agency's approval of building permits, because a public servant's spouse may not have an interest in a firm of \$25,000 or more or an interest in excess of he or she knows is engaged in business dealings with his agency. Pursuant to Charter Section 2601(16), an "interest" in a firm includes an interest held by the public servant's spouse which exceeds 5% of the firm or an investment of \$25,000.

OPINION SUMMARY

OPINION NO: 90-2

DATE: 4/3/90

CHARTER SECTION(S): 2601(2), 2601(8), 2601(12),
2603(c), 2604(a)(1)(b), 2604(b)(2),
2604(e)FORMER CHARTER SECTION(S): 1100, 2604(b)(2),
2604(f)(2)(c)SUBJECT: Agency Heads
Doing Business with the City
Moonlighting
Prohibited Interests
Teaching
Waiver

OTHER OPINIONS CITED: Board of Ethics Opinion No. 685

SUMMARY: The Board determined that it would not conflict with the purposes and interests of the City for two agency heads — having received the Mayor's written approval — to hold teaching positions with educational institutions which have business dealings with the City. The Board also determined that Board of Ethics Opinion No. 685 is inconsistent with revised Chapter 68.

OPINION SUMMARY

OPINION NO: 90-3

DATE: 4/4/90

CHARTER SECTION(S): 2601(8)
2604(b)(5)SUBJECT: Appearance of Impropriety
Doing Business with the City
Elected Officials
Gifts - Travel

OTHER OPINIONS CITED: n/a

SUMMARY: An elected official was advised that it would not be a Charter violation to accept the gift of a trip to a foreign country that would involve a program of briefings by prominent government officials. The organization offering the trip does not have business dealings with the City agency. However, the Board expressed concerns about the elected official's acceptance of this trip.

OPINION SUMMARY

OPINION NO: 90-4

DATE: 4/16/90

CHARTER SECTION(S): 2601(5), 2604(b)(2), 2604(b)(3)

FORMER CHARTER SECTION: 2604(c)(2)

SUBJECT: Appearance of Impropriety
Elected Officials
Family Relationships
Franchises
Mayor
Recusal

OTHER OPINIONS CITED: Board of Ethics Opinion No. 686

SUMMARY: Based on circumstances as described in the opinion, the Mayor was advised to recuse himself from matters before the Board of Estimate concerning the renewal of two Manhattan cable franchises in which Time Warner, Inc. has an interest.

OPINION SUMMARY

OPINION NO:**90-5**

DATE:

4/16/90

CHARTER SECTION(S):

2601(5), 2604(b)(2), 2604(b)(3)

SUBJECT:

Appearance of Impropriety
Elected Officials
Family Relationships
Franchises
Recusal

OTHER OPINIONS CITED:

Board of Ethics Opinion
Nos. 620, 651 and 686.

SUMMARY: Based on circumstances as described in the opinion, the City Council President was advised to recuse himself from matters before the Board of Estimate involving the renewal of two cable franchises in which Time Warner, Inc. had an interest.

OPINION SUMMARY

OPINION NO: 90-6**DATE:** 5/23/90**CHARTER SECTION(S):** 2601(5)
2604(b)(3)
2604(c)(1)**SUBJECT:** City Position, Use of
Elected Officials
Family Relationships**OTHER OPINIONS CITED:** n/a

SUMMARY: It is a violation of Chapter 68 for an elected official to refer the resume of a family member for City employment, but it would not be a conflict of interest for the official to refer the resume of a constituent for City employment. Charter Chapter 68 permits elected officials to appear without compensation before any City agency on behalf of constituents.

OPINION SUMMARY

OPINION NO: 90-7

DATE: 7/5/90

CHARTER SECTION(S): 2601(3), 2601(19),
2604(b)(2), 2604(b)(7)SUBJECT: Attorneys
Community Boards

OTHER OPINIONS CITED: n/a

SUMMARY: It would be a violation of Chapter 68 for an attorney who is a community school board member to appear as an attorney or counsel against the interests of the City in any litigation, action or proceeding to which either the member's community school board or the Board of Education is a party.

OPINION SUMMARY

OPINION NO: 90-8

DATE: 7/25/90

CHARTER SECTION(S): 2601(3), 2604(d),
2604(d)(2), 2604(d)(4)SUBJECT: Appearances
Appearance of Impropriety
Attorneys
Post-Employment Restrictions

OTHER OPINIONS CITED: n/a

SUMMARY: A Mayoral appointee to the Civilian Complaint Review Board may, within one year after leaving the CCRB, represent police officers in the Police Department trial room on particular matters with which he had not personally and substantially participated in his official capacity. Such public servant may not represent police officers concerning any matter pending before the CCRB during his tenure there, even if he or she had not personally participated in such matter.

OPINION SUMMARY

OPINION NO: 90-9

DATE: 12/3/90

CHARTER SECTION(S): 2604(b)(3)

SUBJECT: Advisory Board
Agency Head
City Title, Use of
Letterhead

OTHER OPINIONS CITED: n/a

SUMMARY: An agency head may not use his official City title on the letterhead of an advisory board of a for-profit trade association, which may create an advantage for the for-profit organization by implying an endorsement of its activities.

OPINION SUMMARY

OPINION NO: 91-1

DATE: 2/8/91

CHARTER SECTION(S): 2604(b)(2)
2604(b)(3)SUBJECT: Appearance of Impropriety
City Title, Use of

OTHER OPINIONS CITED: n/a

SUMMARY: The use of a high-level public servant's likeness and City title in a print advertisement, which promotes only the interests of a for-profit entity, presents a significant risk of creating an appearance that the public servant's position is being used to advance a private interest, despite the fact that public servant would donate to charity the compensation received for appearing in the advertisement. Such use under such circumstances would also be in conflict with the proper discharge of the public servant's official duties.

OPINION SUMMARY

OPINION NO:

91-2

DATE:

2/8/91

CHARTER SECTION(S):

2601(11), 2601(16), 2601(19),
2604(a)(1)(a), 2604(a)

SUBJECT:

Contracts
Family Relationships
Managers
Ownership Interests
Part-time Employee

OTHER OPINIONS CITED:

n/a

SUMMARY: Two public servants requested opinions as to whether it would be a conflict of interest for a City agency to award contracts to perform legal services to law firms with which their spouses are associated. For the reasons set forth in the opinion, the Board determined that it would be a conflict of interest to award the contract to one public servant but that it would not be a conflict of interest to award the contract in the second case.

OPINION SUMMARY

OPINION NO: 91-3

DATE: 5/7/91

CHARTER SECTION(S): 2601(2), 2601(5) and 2601(19),
2800, 2604(a)(1)(a), 2604(b)(1)(b)
2604(b)(2)

SUBJECT: Community Boards

OTHER OPINIONS CITED: Board of Ethics Opinion Nos.
229, 305, and 359-A

SUMMARY: It would be a conflict of interest for a community board member to vote on a matter before his or her community board with which the member, or anyone with whom the member is "associated," has a personal and direct economic interest has been or may be considered by a City agency employing the member. It would also be a conflict of interest for the community board member to vote in a matter concerning a City agency where he or she is employed.

A community board member may participate in the board's discussion of such matters, however, provided that, before participating, the member discloses to the other members of the community board the nature and extent of his or her private interest. This opinion supersedes Board of Ethics Opinion No. 305 and confirms Board of Ethics Opinion No. 359-A as being consistent with revised Chapter 68.

OPINION SUMMARY

OPINION NO:

91-4

DATE:

7/18/91

CHARTER SECTION(S):

2604(b)(2)
2604(b)(3)

SUBJECT:

Appearance of Impropriety
Doing Business with the City
Honoraria

OTHER OPINIONS CITED:

n/a

SUMMARY: The elected official should not accept an honorarium to avoid creating the appearance that the honorarium was offered as a quid pro quo in return for the firm's getting City business.

OPINION SUMMARY

OPINION NO: 91-5

DATE: 7/29/91

CHARTER SECTION(S): 2604(b)(2)
2604(b)(3)SUBJECT: Appearance of Impropriety
Teaching

OTHER OPINIONS CITED: n/a

SUMMARY: It would be a conflict of interest for the public servant to teach a course, for compensation, concerning a subject matter which directly involved his official duties, since this private employment would be in conflict with the proper discharge of his official duties. Moreover, the use of an official position to obtain a personal financial gain is prohibited by Charter Section 2604(b)(3).

OPINION SUMMARY

OPINION NO: 91-6

DATE: 7/29/91

CHARTER SECTION(S): 2604(b)(2)
2604(b)(3)SUBJECT: Honoraria
Lectures

OTHER OPINIONS CITED: n/a

SUMMARY: It would not be a conflict of interest for a public servant at the managerial level to accept an honorarium for delivering a lecture to a college class which was not part of his official duties. The college has no business dealings with the public servant's agency, and the public servant's agency head approved his acceptance of the honorarium.

OPINION SUMMARY

OPINION NO: 91-7

DATE: 8/12/91

CHARTER SECTION(S): 2604(a)(1)(b), 2604(b)(2), 2604(b)(3), 2604(b)(6),
2604(b)(7), 2604(b)(8)SUBJECT: Appearance of Impropriety
Attorneys
Dual Employment
Representing Private Interests

OTHER OPINIONS CITED: Board of Ethics Opinion No. 578

SUMMARY: The Board received several requests from public servants who are attorneys requesting a determination as to whether it would be a conflict of interest for them to engage in the private practice of law. The Board determined that public servants who are attorneys may engage in the private practice of law during their off-duty hours, provided that they do not use City office space or equipment and that their practices are conducted in compliance with Chapter 68 and with agency approval. This opinion supersedes Board of Ethics Opinion No. 578.

OPINION SUMMARY

OPINION NO:

91-8

DATE:

8/12/91

CHARTER SECTION(S):

2601(4), 2601(15), 2604(d)(2), 2604(e)

SUBJECT:

Appearance before City Agency
Former City Employee
Post-Employment Restrictions
Waivers

OTHER OPINIONS CITED:

n/a

SUMMARY: The Board received requests from two former public servants for waivers of the prohibition in Charter Section 2604(d)(2). The Board interprets Charter Section 2604(e) to permit a waiver of the one-year appearance ban in Charter Section 2604(d)(2), when justified by compelling circumstances in a particular case. The first request is denied because granting a waiver under the circumstances therein would seriously dilute the post-employment restriction and run counter to the Charter Revision Commission's intent. The second request should be granted because the availability of the former public servant's expertise as an employee of the firm would materially help the agency's efforts to meet certain court-imposed deadlines.

OPINION SUMMARY

OPINION NO: 91-9

DATE: 9/26/91

CHARTER SECTION(S): n/a

SUBJECT: Consultant
Expert Witness

OTHER OPINIONS CITED: n/a

SUMMARY: It would not be a conflict of interest for a public servant to be retained by a municipality outside of New York State as a consultant to evaluate a lawsuit and to serve as an expert witness.

The public servant did not solicit the proposed work, which he would perform on his own time. The subject matter directly involves his official duties. His agency head submitted a written approval which stated that this proposed activity would enhance the agency's reputation.

OPINION SUMMARY

OPINION NO: 91-10

DATE: 11/18/91

CHARTER SECTION(S): 2604(b)(2)

FORMER CHARTER SECTION: 2604(c)(1)

SUBJECT: Appearance of Impropriety
City Position, Use of
City Title, Use of
Doing Business with the City
Elected Officials
Fundraising
Not-for-Profit Corporations

OTHER OPINIONS CITED: Board of Ethics Opinion Nos.
185, 348 and 688, which this
Opinion supersedes

SUMMARY: While it is commendable for elected officials and high-level appointed public servants to give of their private time and/or personal financial support to charitable and other non-profit organizations, an appearance of impropriety may be created if the nature of their involvement in such activities is perceived to be coercive or provides an inappropriate opportunity for access to such official.

Elected officials and appointed officials identified in the public mind as spokespersons for such officials should refrain from "active" fundraising for a charitable group by, for example, making phone calls, signing letters or requesting contributions.

Senior appointed officials should also not engage in "active" fundraising from those likely to come before their agencies or be affected by their official actions.

It is not improper for elected and high-level appointed officials to have a "passive" role clearly insulated from the direct solicitation of funds by, for example, chairing an honorary committee, when the involvement is limited to attending the event and having their names listed on invitations.

OPINION SUMMARY

OPINION NO: 91-11

DATE: 11/18/91

CHARTER SECTION(S): 2604(b)(2), 2604(b)(3)
2604(b)(4)

SUBJECT: Attorneys
Code of Professional Responsibility
Courts

OTHER OPINIONS CITED: n/a

SUMMARY: While it would not be a conflict of interest for a candidate for appointment to a City commission, which meets monthly, to continue to serve full-time as the law assistant to a state court judge, there may be circumstances when the candidate's work for the court may interfere with the proper discharge of her duties for the commission. For example, she should recuse herself from any matter involving the commission which comes before the court and should not disclose any confidential information concerning the City which is obtained as the result of her official duties. The Board also recommended that the candidate consult the Code of Professional Responsibility.

OPINION SUMMARY

OPINION NO: 91-12

DATE: 11/19/91

CHARTER SECTION(S): 2601(2), 2601(19), 2601(20),
2604(b)(12), 2604(b)(15),
2800(d)(7), 2800(f)SUBJECT: Community Boards
District Manager
Personnel Order 88/5
Political Activities

OTHER OPINIONS CITED: n/a

SUMMARY: It is not a violation of Chapter 68 for chairs of community boards and community board district managers to hold the political party offices cited in Charter Section 2604(b)(15), and are, therefore, not subject to that Charter Section, inasmuch as they are not charged with substantial policy discretion, as defined by the Board's rule. District managers at the managerial level may not hold such offices, however, pursuant to Mayoral Personnel Order No. 88/5.

OPINION SUMMARY

OPINION NO: 91-13

DATE: 11/19/91

CHARTER SECTION(S): n/a

SUBJECT: Agency Head
Moonlighting

OTHER OPINIONS CITED: n/a

SUMMARY: It would not be a violation of Chapter 68 for an agency head to continue as the president of a dormant, for-profit corporation, located outside of New York State, which has transacted no business since he became a public servant and from which he has received no compensation. The agency head represented that he continue as the president of this firm for the sole purpose of preserving the corporation's name so that it may become active after he leaves City employment. The agency head was advised to contact the Board again if these circumstances change.

OPINION SUMMARY

OPINION NO: 91-14

DATE: 11/19/91

CHARTER SECTION(S): 2601(3), 2601(18),
2604(a)(1), 2604(a)(5)(b)SUBJECT: High-Level Public Servant
Substantial Policy Discretion

OTHER OPINIONS CITED: n/a

SUMMARY: A public servant whose primary employment is not with the City, who is "charged with substantial policy discretion involving City-wide policy" and is therefore deemed to serve the executive branch of the City, may accept a position with a firm which has business dealings with the City but not with the executive branch of City government.

OPINION SUMMARY

OPINION NO: 91-15

DATE: 11/19/91

CHARTER SECTION(S): 2601(5)
2604(b)(3)SUBJECT: Appearance of Impropriety
City Position, Use of
Contracts
High-Level Public Servant
Family Relationships

OTHER OPINIONS CITED: n/a

SUMMARY: A high-level public servant may work on behalf of her agency with educational institutions developing programs for City employees, when such programs may be funded by her agency in the future. She should play no role, however, in determining whether or not her agency should enter into any contracts with an educational institution employing her spouse in a high-level position or be involved in negotiating the terms of any contracts with such institution.

OPINION SUMMARY

OPINION NO: 91-16

DATE: 11/19/91

CHARTER SECTION(S): 2604(b)(2)
2604(b)(3)

SUBJECT: Consultants
Moonlighting

OTHER OPINIONS CITED: 91-5

SUMMARY: A public servant was advised that he should not be a consultant to a not-for-profit organization when his work would involve assisting the same constituency which he serves in his official capacity. The similarities of this organization's objectives to the mission of the public servant's agency could create an appearance that the public servant was earning income from a private firm for performing services which he is already obligated to perform for the City as part of his official duties. Such proposed employment could also cause confusion as to whether the public servant was working for the City or his private employer at any given time.

OPINION SUMMARY

OPINION NO: 91-17

DATE: 12/5/91

CHARTER SECTION(S): 2604(b)(15)

SUBJECT: Political Activities
Substantial Policy Discretion

OTHER OPINIONS CITED: n/a

SUMMARY: A public servant "charged with substantial policy discretion," as defined by rule of the Board, may serve as a member of a political party committee, since this is not prohibited by Charter Section 2604(b)(15), which would, however, prohibit him from serving as the chair or officer of such committee.

OPINION SUMMARY

OPINION NO: 91-18

DATE: 12/26/91

CHARTER SECTION(S): 2604(b)(2), 2604(b)(3),
2604(c)(7)SUBJECT: Appearance of Impropriety
Auctions
City Position, Use of

OTHER OPINIONS CITED: n/a

SUMMARY: It would be a violation of Chapter 68 for public servants employed by an agency to participate in auctions conducted by such agency to purchase vehicles or other property which is vouchered by employees of that agency. While Chapter 68 does not similarly prohibit public servants not employed by the agency from participating in such auctions, the Board encourages agency policy that goes beyond Chapter 68, when, in the agency's discretion, such policy is appropriate.

OPINION SUMMARY

OPINION NO: 91-19

DATE: 12/26/91

CHARTER SECTION(S): 2604(d)(2)

SUBJECT: Freedom of Information Law
Post-Employment Restrictions

OTHER OPINIONS CITED: n/a

SUMMARY: It would not be a violation of Chapter 68 for a public servant to make a Freedom of Information Law ("FOIL") request to his former agency within a year after the termination of his City service, provided that he does not bypass FOIL procedures at the agency by, for example, going directly to the party having the records he seeks. It is also important that the public servant neither requests nor receives treatment that is in any way different from anyone else who makes a FOIL request to the agency.

OPINION SUMMARY

OPINION NO: 91-20

DATE: 12/31/91

CHARTER SECTION(S): n/a

SUBJECT: Gifts

OTHER OPINIONS CITED: n/a

SUMMARY: A public servant was advised that it was not a conflict of interest for him to accept the grand prize of a contest sponsored by another City agency with which he has official dealings, which is valued at more than \$500, under the circumstances described in the opinion.

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