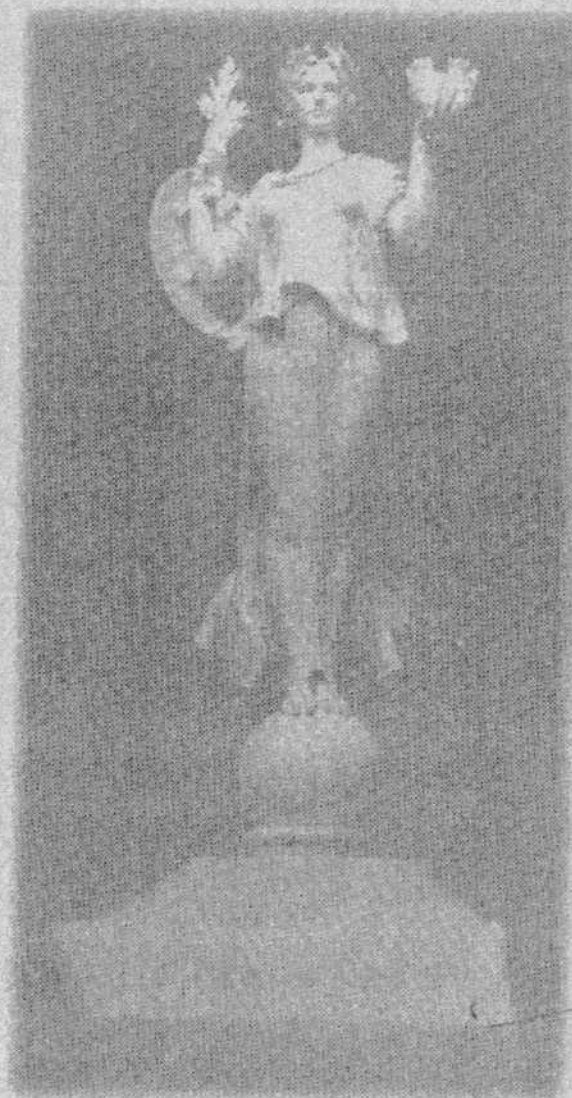


# *New York City Conflicts of Interest Board*

## *Annual Report 1993*

*Sheldon Oliensis  
Benjamin Gim  
Beryl R. Jones  
Robert J. McGuire  
Shirley Adelson Siegel  
Members*

*Mark D. Hoffer  
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## **TABLE OF CONTENTS**

<i>Letter to the Mayor</i>	1
<i>Introduction</i>	3
<i>Members of the Conflicts of Interest Board</i>	3
<i>Budget and Staff</i>	4
<i>Advisory Opinions of the Board</i>	4
<i>Rulemaking</i>	5
<i>Education</i>	5
<i>Financial Disclosure</i>	7
<i>Enforcement</i>	8
<i>Summary of Board Opinions</i>	9
<i>Advisory Opinion Guide by Charter Sections</i>	42
<i>Index to Advisory Opinions</i>	46
<i>Acknowledgements</i>	49

# LETTER TO THE MAYOR

Dear Mr. Mayor:

The Conflicts of Interest Board respectfully submits this report on the Board's work in 1993.

Under the Charter Revision, which became effective January 1, 1990, the Board's responsibilities now include the educational function of making public servants aware of the law's requirements and how to comply with them; 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 rulemaking function, to refine and clarify the provisions of the Charter; and the prosecutorial function of pressing charges where there have been violations of Chapter 68. In addition, the Board is charged with responsibility for administering and enforcing the City's financial disclosure law. In 1993, great strides forward were made in each of these areas.

While the Board's accomplishments in 1993 are set out more fully in the body of this Report, a few highlights are worthy of special mention.

In 1993, the Board expanded significantly its training and education of City employees. In March, the Board, in conjunction with the Association of the Bar of the City of New York, held a City-wide seminar on Ethics in City Government, attended by some 300 agency heads, agency counsel, inspectors general, disciplinary advocates and other key agency staff members involved in the field of government ethics. The keynote address was given by the Mayor; other speakers included Dean John D. Feerick, President of the City Bar, Sheldon Oliensis, Chair of the Board, and Mark D. Hoffer, the Board's Executive Director. The plenary session was followed by workshops analyzing Charter provisions applicable to gifts, outside activities and post-employment restrictions. The seminar was an outstanding success, and we plan another such program in 1994.

In addition, because of the imminent change in City administrations, a special forum was held in December, to advise departing City officials and employees of the post-employment restrictions with which they must comply.

During 1993, the Board conducted 16 seminars aimed at targeted audiences of public servants, selected as participants because they provide ethics advice to other employees of their agencies, or because they are in sensitive positions where possible conflicts of interest are most likely to arise. Training programs were held for, among others, contracting officers of City agencies, agency procurement personnel, members of community boards and staff of numerous City agencies.

Even where a public servant has been made aware of the Charter's ethics provisions, it may be far from clear how they apply to a specific fact situation. In 1993, we received over 400 written requests for guidance as to the applicability of the conflicts law, and more than a thousand telephonic requests. As appropriate, we responded to these requests and provided practical guidance after carefully reviewing applicable Charter provisions, the legislative history reflected in the Charter Revision Commission's proceedings, and relevant legal precedents (both our own and, where applicable, those of the former Board of Ethics). We issued 32 formal advisory opinions, which were published and made available to public servants generally.

The Board has continued to give high priority to advisory opinions dealing with issues of broad applicability where, in the past, we have received numerous requests for guidance. Our objective, which, in these areas, has been largely realized, is to provide a body of law which will furnish quite precise guidelines to City officials and employees as to what is permissible under Chapter 68, and thus obviate the need for many individual requests to the Board in such areas. Among the most important of these in 1993 were opinions dealing with political and non-political fundraising—including a comprehensive analysis of the permissible scope of City Council member's fundraising on behalf of their constituents and the extent to which the Brooklyn District Attorney's

office could solicit funds to support the District Attorney's social and education programs—post-employment restrictions (particularly important in a year when many City officials and employees left as a result of the change in administrations), and the extent to which public servants may properly engage in political activities.

In our prosecutorial function, we conducted an aggressive enforcement program, initiating and pressing charges where there were violations of Chapter 68 or of the financial disclosure law. The Board received 29 complaints in 1993, including allegations concerning the 1993 election impropriety in contract procurement, improper solicitation for employment and improper financial relationships between public servants. In 1993, the Board was able to add an additional lawyer to its staff to handle its prosecutorial functions, permitting it to expand and accelerate its enforcement activities.

Carrying out our responsibilities under the financial disclosure law, we received and processed close to 12,000 financial disclosure statements in 1993, achieving a 99% compliance rate, and proceeded vigorously against non-filers and late-filers. The more than \$35,000 in fines assessed and collected in 1993—for a total, since the inception of our responsibility in 1990, of over \$100,000—will, we believe, bring home to those required to file the necessity of timely and complete compliance with the law and, in succeeding years, reduce the number of late-filers and non-filers.

To assist in our review of financial disclosure forms, this year, for the first time, the Board required filers to complete a computer-scannable form enabling us to target those financial disclosure reports requiring the most comprehensive review.

In 1993, we worked closely with agency heads, forwarding lists of non-filers and late filers of 1992 reports, and requesting the agency's assistance in securing compliance. Through the excellent cooperation we received, almost without exception, from agency heads, added to our own enforcement efforts, we are now able to report that not a single active employee has failed to file financial disclosure reports for the years through 1991, and only six had failed to file for 1992; enforcement proceedings have been instituted against those six.

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. 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, Mark D. Hoffer. Much to the great regret of the Board, Mr. Hoffer submitted his resignation in late 1993 to accept a private sector position with financial provisions the Board could not match. Our staff has 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

1993 marks the Conflicts of Interest Board's third year of operation. In 1988, New York City voters approved revisions to the City Charter that led to the development of a new and stronger City ethics law and to the creation of the independent Board that would administer and enforce that law. In January 1990, the "conflicts of interest" law, Chapter 68 of the new City Charter, took effect, and the Conflicts of Interest Board began its operations.

### **Charter Chapter 68**

Chapter 68 governs the ethical conduct of all New York City's public servants, regardless of salary or rank — including City agency employees, elected officials, members of community boards, members of community school boards, and compensated members of advisory boards. The law covers the City's mayoral agencies, as well as the City Council, the Board of Education, the Health and Hospitals Corporation, the New York City Housing Authority, the School Construction Authority, and the Board of Elections.

Chapter 68 contains a number of provisions designed to ensure that the City's interests are protected from judgments that may be affected by the personal needs of its employees. The law includes provisions regulating public servants' private financial interests — including those of their family members — and provides certain restrictions on outside activities, such as moonlighting jobs, unpaid work for not-for-profit organizations, political activities, and fundraising. It also imposes restrictions on seeking and accepting jobs in the private sector.

### **Powers and Responsibilities of the Board**

Chapter 68 gives the Board its powers and responsibilities. These include educating public servants about their obligations under the law, issuing advisory opinions concerning individual public servants' proposed future conduct, promulgating rules interpreting the law, initiating investigations of possible violations of the law, administering the City's financial disclosure law, and enforcing the conflicts of interest and financial disclosure laws.

## MEMBERS OF THE CONFLICTS OF INTEREST BOARD

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

The Board's five members are appointed by the Mayor and confirmed by the City Council to serve six-year terms, although, to permit the terms to be staggered, some of the original members were appointed for less than six years. The Board meets a minimum of once each month. Members are compensated on a *per diem* basis at the rate of \$275 for the Chair and \$250 for the other members.

### **Members of the Board**

Sheldon Oliensis, the Board's Chair, was appointed in September 1990. He is Special Counsel to the law firm of Kaye, Scholer, Fierman, Hays & Handler.

Benjamin Gim, a partner in the law firm of Gim & Wong, P.C., has also served on the Board since September 1990.

Beryl R. Jones, a professor of law at the Brooklyn Law School, has served on the Conflicts Board since October 1989. When her original term expired in March 1992, she was reappointed for a full six-year term.

Robert J. McGuire, President and Chief Operating Officer of Kroll Associates, has also served on the Conflicts Board since October 1989.

Shirley Adelson Siegel, an Adjunct Professor of Urban Planning at Columbia University, has served on the Board since September 1990. Her original term expired in March 1992, and she was reappointed for a full six-year term.

## BUDGET AND STAFF

At the close of 1993, the Board had a full-time staff of 22, headed by Mark D. Hoffer, who resigned in September, 1992. Deputy Counsel Jo-Ann Frey, served as Acting Executive Director/Counsel until the end of the year.

At year end, the staff included four attorneys in addition to the Acting Director, as well as a Director of Communications, a Financial Disclosure Director and Deputy Director, financial disclosure investigators, and support staff. To assist in the task of processing the nearly 12,000 financial disclosure reports that are filed annually, the Board — at peak periods — also hires temporary personnel.

In Fiscal Year 1993, the Board's budget was \$1,072,421.

## ADVISORY OPINIONS OF THE BOARD

In 1993, the Board received 381 written requests by present and former public servants for opinions interpreting Chapter 68. The Board issued 32 formal advisory opinions and 279 staff letters. Staff also responded to over 1,000 inquiries by telephone for information and confidential advice.

It is the Board's aim to issue opinions of broad application which provide interpretation and clarification of Chapter 68 and the Board's rules. A summary of each of the advisory opinions issued by the Board in 1993 is set forth at the conclusion of this report. However, several of those opinions deserve special note.

### **Political Fundraising**

Three notable advisory opinions addressed the issue of political fundraising. Opinion 93-15 delineated the scope of City Council members' fundraising on behalf of constituents. The opinion examined a broad spectrum of fundraising situations and should provide guidance for Council members and other elected officials.

In Advisory Opinion 93-6, the Board found that an elected official did not violate the City Charter in holding a fundraising event at a time when the official was not an active candidate for re-election, and that it was not improper to list the names of several appointed City officials on the invitation to the event.

In Opinion 93-24, the Board advised two public servants that they could serve as paid consultants to a campaign organization supporting a candidate for City elective office, provided they observed restrictions on fundraising activities and did not allow consulting activities to interfere with their official duties.

### **Fundraising to support City programs**

In an opinion on non-political fundraising, 93-26, the Board determined that it was not a conflict of interest for the Brooklyn District Attorney and his employees, subject to certain restrictions, to engage in activities involving solicitations and fundraising on behalf of a not-for-profit corporation that raises funds to support the DA's social service and educational programs.

### **Post-employment Restrictions**

During 1993, the Board issued a number of opinions governing post-employment activities. In Opinion 93-11, the Board determined that a former public servant's law firm could appear before the former public servant's former agency and use its stationery containing his name within one year after the termination of his employment, although the public servant himself was barred from such appearances.

In Advisory Opinion 93-12, the Board found that a former City employee could, under specified circumstances, enter into a consulting contract with his former agency and, because of the government-to-government exception in the Charter, appear before the agency in performing his duties under that contract.

## **RULEMAKING**

To date, the Board has issued ten rules interpreting provisions of the conflicts of interest law. The complete text of all Board rules is contained in Volume 12 of The Official Compilation of the Rules of the City of New York.

## **EDUCATION**

Education of public servants constitutes one of the most important activities of the Board. In 1993, the Board held a series of seminars for public servants who either advise other employees in their agencies about the City's ethics law or who themselves are likely to encounter possible conflicts of interest situations.

### **Ethics in City Government Seminar**

In March, in co-sponsorship with the Association of the Bar of the City of New York, the Board held a day-long forum about the City's ethics law attended by some 300 City agency heads, counsel, inspectors general, disciplinary advocates, and other key agency staff members.

The seminar opened with keynote addresses by Mayor Dinkins and remarks by Dean John D. Feerick, President of the Association and former Chairman of the State Commission on Government Integrity. Sheldon Oliensis, Chair of the Board and Mark D. Hoffer, Executive Director/Counsel.



*Sheldon Oliensis, left, Chair of the Conflicts of Interest Board, introduces Mayor Dinkins at the ETHICS IN CITY GOVERNMENT Seminar. Mark D. Hoffer, the Board's Executive Director/Counsel, is pictured at right.*

Following the plenary session, a series of workshops addressed the City ethics regulations on acceptance of gifts, public servants' outside activities, and post-employment. Co-presented by a number of current and former City officials and Conflicts of Interest Board staff attorneys, each workshop included a lecture on provisions of the ethics law and discussions of hypothetical conflicts of interest situations.

#### **Procurement Training Institute**

During 1993, the Board became affiliated with the Procurement Training Institute, a program of the Department of Personnel, the Mayor's Office of Contracts, and the Procurement Policy Board, for the purpose of training contracting officers in the City's procurement procedures. This training now includes a half-day workshop. It is led each month by the Conflicts of Interest Board and is devoted to the conflicts of interest law as it applies to the area of purchasing.

#### **Briefings for Agency Counsel**

In June, in conjunction with the Law Department and the Office of the Mayor, the Board held a briefing for agency counsel from throughout the City on permitted and prohibited political activities of City employees.

In November, with the impending change in the administration, the Board conducted a briefing for agency counsel on the law's post-employment restrictions.

#### **Community Board Briefings**

In the autumn of 1993, the Board began a series of briefings about the ethics law's provisions, as they apply to Community Board members, at borough-wide meetings of Community Board Chairs, Committee Chairs, and District Managers. Borough-wide meetings were held in the Bronx, Manhattan, Queens, and Staten Island. A Brooklyn meeting is scheduled for January 1994.

#### **Other Education Programs**

In October, the Board held a formal presentation at the New York City Chapter of the National Association of Purchasing Management. In November, the Board participated in a seminar organized by the Office of the Mayor for departing high-level appointed officials. The Board provided information about the post-employment restrictions and the requirement to file a 1993 financial disclosure report with the Board.

#### **Responding to Requests for Information**

In 1993, the Board responded on a daily basis to media requests for information concerning the conflicts of interest law, opinions and rules of the Board, and other aspects of the Board's activities, to the extent the Board is permitted by law to comment on those activities.



## FINANCIAL DISCLOSURE

### Who Is Required to File

Public servants required to file reports include elected officials, agency heads, deputy and assistant agency heads, public servants who earned more than \$61,000 in 1992, City employees who are members of the management pay plan, members of any board or commission who received compensation, and public servants in sensitive areas such as procurement, contract negotiation, licensing, and zoning.

Candidates for City elective office are also required to file reports with the Conflicts of Interest Board when filing their petitions with the City's Board of Elections.

Approximately 12,000 individuals are required to file reports with the Conflicts of Interest Board each year.

### Administration of the Financial Disclosure Law

Administering the financial disclosure law is a monumental task, which includes preparing and distributing approximately 12,000 report forms each year, collecting and filing the reports, identifying late-filers and non-filers, considering late-filers' requests for waivers of fines, collecting the fines, notifying filers of incomplete reports, processing requests for amendments to the reports, initiating enforcement proceedings against non-filers and late-filers, evaluating filers' privacy requests, responding to disclosure requests from the media and other members of the public, and, in particular, carefully reviewing financial disclosure reports for violations of the ethics laws.

### Compliance

The Board has been able to achieve an excellent compliance record on the part of public servants who must file the reports. At the close of 1993 — for reports covering calendar year 1992 that were required to be filed May 1, 1993 — the Board received 11,920 reports, reflecting a compliance rate of 99%.

### Candidates for Election

Before each local election, the Board undertakes an active education program to notify candidates of the requirement to file their reports in a timely manner.

Before the City's primary elections in 1993, the Board obtained lists of potential candidates from the City's Board of Elections and the Campaign Finance Board. Those lists were used to launch a direct-mail campaign notifying candidates of the filing requirement.

The Board's staff also mailed notices of the filing requirement to all county chairs and district leaders and distributed press releases to The Chief-Leader and other local media.

In advance of the elections, the Board published notices in The City Record and sent press releases to the local media, listing the names of candidates who had filed their reports late or not at all.

As a result of this effort, by the close of 1993, only three of 207 candidates who had run in the general election had not filed their financial disclosure reports. Enforcement proceedings have since been commenced against these individuals.

In anticipation of the special election held in February 1993 for the 4th Councilmanic District, the Board worked with the Board of Elections to ensure that all candidates would be

notified of their requirement to file disclosure reports. All nine candidates who ran in that election filed their reports on time.

### **Review of Disclosure Reports**

In 1993, the Board's financial disclosure staff reviewed all of the 1992 reports for completeness. Approximately 7% of the reports were found to be incomplete. The filers of those reports were required to complete them.

More significantly, in 1993, the Board added a computer-scannable sheet, which was completed by each filer and which enabled Board investigators to target reports requiring detailed examination because of potential conflicts of interest. Such areas of potential conflict of interest included business investments, outside income (non-City income), debts, and receipt of gifts from entities doing business with the City.

The Board was thus able to target 1,000 financial disclosure reports for detailed review. Board investigators then contacted filers to explain any apparent problems. Possible conflicts of interest were referred for enforcement.

### **Requests for Inspection of the Reports**

During 1993, the Board received and filled more than 720 written requests for inspection of disclosure reports filed by elected City officials, candidates for office, and other public servants. Of those requests, 313 were from the media.

## **ENFORCEMENT**

In 1993, the Board was able to hire a litigation attorney, who joined the Board's staff in March. The presence of this attorney enabled the Board to expand and accelerate its enforcement activities.

### **Enforcement of Charter Chapter 68**

The Board received 29 complaints in 1993 of alleged violations of the City's ethics law, Charter Chapter 68. These complaints included, for example, allegations concerning the 1993 election, impropriety in contract procurement, improper solicitation for employment, and improper financial relationships between public servants.

By the end of calendar year 1993, the Board had referred 19 enforcement cases for investigation, in preparation for litigation; disposed of two complaints by stipulation; and dismissed 36 complaints for failure to state a violation or for insufficient evidence to warrant proceedings.

### **Enforcement of the Financial Disclosure Law**

By the end of 1993, only six active public servants had not filed their 1992 reports with the Board. Enforcement proceedings have been commenced against all of these individuals.

During 1993, the Board issued probable cause letters to 232 former public servants, and four candidates, who had not filed their reports. Since its inception, the Board has initiated 564 financial disclosure report actions.

Since the Board assumed responsibility for financial disclosure in 1990, the Board has collected \$101,853 in fines, \$36,051 of which were collected during calendar year 1993.

9

**ADVISORY OPINIONS OF  
THE BOARD  
SUMMARIES**

## OPINION SUMMARY

**OPINION NO:** 93-1

**DATE:** 1/5/93

**CHARTER SECTION(S) INTERPRETED:** 2601(11),  
2604(b)(2),(b)(3)

**SUBJECT(S):** Interest  
Local Development Corporation  
Not-for-Profit Organization  
Position with a Firm  
Recusal

**OTHER OPINIONS CITED:** 92-5 and 92-16; Board of  
Ethics Opinion Nos. 584, 641,  
and 653

**SUMMARY:** A part-time Councilmanic Aide requested an opinion as to whether he may maintain his position as founder and President of a not-for-profit local development corporation, which might appear before the Council on general business matters and which might have specific business considered by a Council committee chaired by the Aide's Council Member. The Board determined that it is not a violation of Chapter 68 for the Councilmanic Aide to maintain his position, inasmuch as Charter § 2601(11) excludes a local development corporation from its definition of a "firm." Further, the Aide will recuse himself from any involvement with the Council Member vis à vis his duties as Chair of the Committee, thereby eliminating any potential influence by the Aide over decisions of the Council which might impact on the local development corporation.

OPINION SUMMARY

OPINION NO: 93-2

DATE: 1/18/93

CHARTER SECTION(S) INTERPRETED: 2604(a)(1)(a)  
2604(b)(1)(b)

SUBJECT(S): Community Board Member  
School Board Member  
Chairing Committee which  
Affects City Agency  
Employing the Community  
Board Member

OTHER OPINIONS CITED: 91-3; Board of Ethics Opinion Nos. 359-A and 571

SUMMARY: A community board member who is also employed by the local community school board may not chair the Youth Services Committee of his community board, whereby the Committee's primary function is to consider matters which come or may come before the member's employing City agency, the School Board. The Board determined that chairing such a committee is analogous to voting on these matters, in light of the potentially extensive influence a committee's chair has over its agenda, and therefore a violation of Charter § 2604(b)(1)(b).

OPINION SUMMARY

**OPINION NO: 93-3**

DATE: 1/18/93

CHARTER SECTION(S) INTERPRETED: 2601(11), 2601(12)  
2604(a)(1)(a)  
2604(b)(1)(b)

SUBJECT(S): Board of Directors  
Community Board Member  
Economic Gain  
Firm  
Interest  
Local Development Corporation

OTHER OPINIONS CITED: n/a

SUMMARY: A community board member may serve as an unpaid director of a local development corporation, and may vote on a matter affecting the corporation, unless the facts and circumstances indicate that such a vote would result in a personal and direct economic gain to the member or to someone with whom the member is associated.

## OPINION SUMMARY

**OPINION NO:** 93-4

**DATE:** 1/20/93

**CHARTER SECTION(S) INTERPRETED:** 2604(a)(1)(b)  
2604(b)(3)  
2604(e)

**SUBJECT(S):** Interest  
Moonlighting  
Not-For-Profit Organization  
Position  
Recusal  
Regular Employee

**OTHER OPINIONS CITED:** 92-9

**SUMMARY:** A high-ranking public servant may retain his position as Executive Director of a not-for-profit ("NFP1") organization provided that another not-for-profit organization ("NFP2") assumes the administration of any NFP1's existing City contracts, the public servant agrees to have no relationship with NFP2, and the public servant's agency head approves the public servant's retention of his position with NFP1.

## OPINION SUMMARY

**OPINION NO:** 93-5

**DATE:** 1/20/94

**CHARTER SECTION(S) INTERPRETED:** 2601(11), 2601(18),  
2604(b)(2)  
2604(e)

**SUBJECT(S):** Board of Directors  
Moonlighting

**OTHER OPINIONS CITED:** 92-7

**SUMMARY:** A Deputy Commissioner of a City agency may not accept a position as a member of the Board of Directors of a publicly-held, for profit business corporation, while continuing to serve as a Deputy Commissioner. A position on the Board of Directors of a large corporation which is in the midst of financial reorganization, and the obligations incurred therefrom, could compromise his commitment to City business, which would, in turn, interfere with the proper discharge of his official duties.



## OPINION SUMMARY

**OPINION NO:** 93-6

**DATE:** 2/1/93

**CHARTER SECTION(S) INTERPRETED:** 2604(b)(12)

**SUBJECT(S):** Elected Official  
Fundraising  
Political Contributions  
Substantial Policy Discretion

**OTHER OPINIONS CITED:** 91-10

**SUMMARY:** An elected official did not violate the provisions of Chapter 68 by holding a fundraising event during the official's term of office at a time when the official was not an active candidate for reelection. Furthermore, under the facts of this case, it was not a violation of Chapter 68 for two other public servants to be listed on the invitation to the above event, despite the fact that they were charged with "substantial policy discretion."

## OPINION SUMMARY

**OPINION NO:** 93-7

**DATE:** 2/11/93

**CHARTER SECTION(S) INTERPRETED:** 2601(8), (12), (16), (18), (19), (20)  
2604(a)(1)(a), (a)(3), (a)(4)  
2604(e)

**SUBJECT(S):** Bidding on Contracts  
Prohibited Interests  
Recusal

**OTHER OPINIONS CITED:** 92-5

**SUMMARY:** The Board has determined that a firm, in which an appointed member of a City Commission (the "Commission") is a principal, may bid on a City project, inasmuch as the project is being administered by another City agency, separate and distinct from the Commission. Furthermore, the member, as a practicing professional, may participate in the project if his firm is awarded the contract, provided that he recuses himself from any matters related to the project which come before the Commission.

**OPINION NO: 93-8**

DATE: 4/30/93

CHARTER SECTION(S) INTERPRETED: 2601(17)  
2604(d)(1), (d)(2), (d)(4), (d)(5)

SUBJECT(S): Post-Employment Restrictions

OTHER OPINIONS CITED: n/a

SUMMARY: It would not violate Chapter 68 for a public servant to solicit, negotiate for, and accept a position with a private corporation (the "Corporation"), which has contracts with the City to provide certain services, since the public servant is not actively considering or personally participating in a particular matter involving the Corporation. If he accepts employment at the Corporation, he is obligated to abide by the post-employment restrictions set forth in Charter Sections 2604(d)(2), (d)(4) and (d)(5).

OPINION SUMMARY

**OPINION NO: 93-9**

DATE: 2/17/93

CHARTER SECTION(S) INTERPRETED: 2604(b)(2), (b)(3)  
2604(c)(6)

SUBJECT(S): Doing Business with the City  
Not-For-Profit Organizations  
Use of City Position

OTHER OPINIONS CITED: n/a

SUMMARY: The Board has determined that a District Manager for a community board may maintain his position on the board of directors of a not-for-profit organization, which has no business dealings with the community board. The Board has also ruled that it would be a violation of Chapter 68 for the public servant to continue serving on the board of directors of another not-for-profit organization, which has business dealings with the community board, for the following reasons: (1) the public servant's continued relationship with this entity could prevent him from performing his duties objectively; (2) his dual role could create the appearance that he is using his official position to obtain an advantage for a private party; and (3) he would not be able to effectively insulate himself from the business dealings which this organization has with the community board.

**OPINION NO: 93-10 (REVISED)**

DATE: 1/31/94

CHARTER SECTION(S) INTERPRETED: 2601(19)  
2604(a)(1)(a), (a)(1)(b)  
2604(b)(3), (b)(4), (b)(5),  
(b)(6), (b)(7)  
2604(c)  
2604(d)(2), (d)(4)

SUBJECT(S): Administrative Law Judges  
Regular Employees

OTHER OPINIONS CITED: Board of Ethics Opinion  
Nos. 639, 659

SUMMARY: It is the opinion of the Board that administrative law judges employed by the Parking Violations Bureau are "public servants" within the meaning of Chapter 68 of the City Charter. Moreover, those administrative law judges who are regularly scheduled to work more than 20 hours per week are "regular employees" of the City and, as such, they are subject to those provisions which apply to "regular employees."

## OPINION SUMMARY

**OPINION NO: 93-11**

DATE: 3/15/93

CHARTER SECTION(S) INTERPRETED: 2601(2), (3),  
2604(d)(2), (d)(4),  
(d)(5), (d)(7)

SUBJECT(S): Post-Employment Restrictions

OTHER OPINIONS CITED: 93-8

SUMMARY: It would violate Chapter 68 for a former public servant, who formerly served as the Chief Counsel of the enforcement unit of a City agency, to appear before the hearing unit of that agency less than one year after leaving City service, inasmuch as the hearing unit is a division within the agency once served by the former public servant. However, it would not be a violation of Chapter 68 for another attorney in the former public servant's law firm to appear before the agency within one year after the former public servant's termination from City service and to utilize the firm's stationery, provided that the former public servant himself does not appear before the agency in connection with the matter at issue. Moreover, it would not violate Chapter 68 for the public servant to share in the proceeds of an appearance by another attorney at his firm, before the agency, within one year after the former public servant's separation from City service, provided that he does not thereby receive compensation for services rendered on a particular matter falling within the scope of Charter Section 2604(d)(4).

OPINION SUMMARY

OPINION NO: 93-12

DATE: 4/20/93

CHARTER SECTION(S) INTERPRETED: 2601(4), (15), (17)  
2604(b)(2), (b)(3)  
2604(d)(2), (d)(4), (d)(6)

SUBJECT(S): Contracting with Former Agency  
Post-Employment Restrictions

OTHER OPINIONS CITED: 93-8

SUMMARY: It would not violate Chapter 68 for a former employee to enter into a consulting contract with his former agency, where the former employee was one of two principal co-authors of a comprehensive City-wide plan (the "Plan") intended to address a critical issue facing City government. While the post-employment restrictions of Chapter 68 would appear to prohibit the former employee from providing services under the consulting contract and from communicating with his former agency or other agencies with respect to the Plan, Charter Section 2604(d)(6) permits former public servants to accept positions with any local, state or federal agency. Accordingly, the Board has determined that it would not violate Chapter 68 for the former employee to appear before his former agency and other City agencies in performing his duties pursuant to the consulting contract.

## OPINION SUMMARY

**OPINION NO:****93-13**

DATE:

5/17/93

CHARTER SECTION(S) INTERPRETED:

2604(d), (d)(6)

SUBJECT(S):

Former Public Servant  
Local Development Corporation  
Post-Employment Restrictions

OTHER OPINIONS CITED:

n/a

SUMMARY: A former public servant may continue to serve a local development corporation as its general counsel, inasmuch as the local development corporation is an arm of local government for purposes of Chapter 68. The Board determines whether a local development corporation is an arm of local government on a case-by-case basis considering, among others, the following factors: (1) the manner in which the corporation was formed; (2) the degree to which the corporation is controlled by government officials; and (3) the purpose of the corporation.



## OPINION SUMMARY

**OPINION NO:** 93-14

DATE: 5/17/93

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

SUBJECT(S): Appearance of Impropriety  
Board of Directors  
Outside Employment

OTHER OPINIONS CITED: n/a

SUMMARY: A public servant from a regulatory City agency may not continue serving on the board of directors of a not-for-profit real estate development and management corporation (the "Corporation"), if the Corporation acquires property subject to the jurisdiction of the public servant's agency.

**OPINION NO:** 93-15

**DATE:** 5/20/93

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

**SUBJECT(S):** Elected Officials  
Fundraising

**OTHER OPINIONS CITED:** 91-10, 92-33, 93-6 and 93-9

**SUMMARY:** The Board affirmed and clarified the fundraising guidelines established in Advisory Opinion 91-10. Elected officials may not engage in fundraising if their actions could create the appearance that they are using the power of public office to pressure others into contributing, taking official action on the basis of whether a contribution has been made, or allowing contributors to have access to City government in a manner not enjoyed by the general public. Thus, for example, targeting a specific class of constituents for solicitations could be viewed as pressure to contribute and, therefore, be prohibited under Chapter 68. Any fundraising which would create such an appearance would be prohibited. In contrast, more passive fundraising, such as being listed as a member of an honorary committee for a fundraising event, is permissible. This form of conduct is unlikely to involve, or be perceived as, a misuse of public office or as a suggestion that those who choose not to contribute will risk official disfavor.

OPINION SUMMARY

**OPINION NO: 93-16**

DATE: 5/20/93

CHARTER SECTION(S) INTERPRETED: 2601(18)  
2604(a)(1)(b)  
2604(b)(2), (b)(3), (b)(4)

SUBJECT(S): Business Dealings with the City  
Ownership Interests  
Real Property  
Tax Assessors

OTHER OPINIONS CITED: 91-18; Board of Ethics Opinion  
Nos. 53 and 663

SUMMARY: The Board was asked whether Board of Ethics Opinion Nos. 53 and 663, which prohibit tax assessors from owning real property for investment purposes in the City, continue to have interpretive value under revised Chapter 68 of the City Charter. The Board concluded that the broad prohibition against a City tax assessor's ownership of real property held for investment, as set forth in Board of Ethics Opinion Nos. 53 and 663, is not mandated by current Chapter 68. The propriety of these ownership interests should be determined on a case-by-case basis employing the factors set forth in the opinion.

## OPINION SUMMARY

**OPINION NO:** 93-17

**DATE:** 6/9/93

**CHARTER SECTION(S) INTERPRETED:** 2601(11), 2601(12),  
2601(16), 2601(18)  
2604(a)(1)(a)  
2604(b)(2)

**SUBJECT(S):** Firm  
Public Benefit Corporation  
Recusal

**OTHER OPINIONS CITED:** 92-5, 92-33, 93-9 and 93-15

**SUMMARY:** A public servant asked the Board whether, as a member of a City Commission (the "Commission"), he may accept a position with a state public benefit corporation (the "Corporation"). The Board concluded that it would not violate Chapter 68 for the public servant to accept the position with the Corporation, provided that he recuses himself from involvement in, or consideration of, any Corporation matters that are brought before the Commission.

## OPINION SUMMARY

**OPINION NO:** 93-18

**DATE:** 6/22/93

**CHARTER SECTION(S) INTERPRETED:** 2601(4)  
2604(d)(1), (d)(2)  
2604(e)

**SUBJECT(S):** Former Public Servant  
Post-Employment Restrictions

**OTHER OPINIONS CITED:** 91-8, 92-17 and 93-8

**SUMMARY:** A former public servant requested a waiver of the post-employment restrictions contained in Charter Section 2604(d)(2), which would allow him to appear before his former City agency within one year after his separation from City service. In Advisory Opinion 91-8, the Board concluded that waivers should be granted "sparingly, and only in exigent cases" where justified "by compelling circumstances." The Board determined that, inasmuch as these waivers are only granted sparingly, in exigent cases, the facts and circumstances of this case did not warrant the granting of a waiver.

**OPINION NO: 93-19**

DATE: 6/22/93

CHARTER SECTION(S) INTERPRETED: 2601(3)  
2604(a)(1)(a)  
2604(b)(2), (b)(3)

SUBJECT(S): Agency Served  
Consultant  
Recusal

BOARD RULE(S) CITED: §1-06

OTHER OPINIONS CITED: 92-5 and 93-17

SUMMARY: An appointee (the "Appointee") to the Environmental Control Board (the "ECB") asked the Board: (1) whether, for purposes of Chapter 68, the agency served by mayoral appointees to the ECB is the ECB itself or the Department of Environmental Protection; and (2) whether the Appointee may continue his current consulting work for a research foundation and a private firm, if his appointment to the ECB is approved. Based on Charter Section 2601(3), the Board considered the following factors: (1) who appoints the public servant; (2) to whom the public servant reports; and (3) what agency pays the public servant. After considering these factors, the Board determined that the agency "served" by the Appointee is the ECB. The Board further determined that the Appointee may continue his consulting work after his appointment to the ECB, provided that he recuses himself from any consideration of, or involvement in, any matter before the ECB which relates to or may affect any research project in which he is involved, and any matter in which the private firm appears before the ECB.

**OPINION****93-20**

DATE: 7/12/93

CHARTER SECTION(S) INTERPRETED: 2604(a)(1)(b)  
2604(b)(15)  
2604(e)

SUBJECT(S): Political Activities  
Teaching

OTHER OPINIONS CITED: n/a

SUMMARY: Counsel to an elected City official was advised that he could not continue to serve as an officer of the county committee of a political party and as a member of that party's State executive committee because, as a public servant charged with substantial policy discretion, he was prohibited by Charter Section 2604(b)(15) from serving in these positions. Additionally, the Board advised the public servant that, under the particular circumstances of the case, it would not conflict with the purposes and interests of the City for him to serve as an adjunct professor at two local law schools which have business dealings with the City.

## OPINION SUMMARY

**OPINION NO. 93-21**

DATE: 7/12/93

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

SUBJECT(S): Elected Officials  
Family Relationships

OTHER OPINIONS CITED: 90-6

SUMMARY: The Board advised a public servant that it would be a violation of Chapter 68 for a member of the City Council to nominate a family member for appointment to a community board because it could create an appearance that the Council Member was securing a private advantage for someone with whom he or she was associated. Additionally, it was the opinion of the Board that nominations of employees of other Council Members would be considered on a case-by-case basis because in certain circumstances such nominations could create an appearance that the Council Member was securing a private advantage for someone with whom he or she was associated.



## OPINION SUMMARY

**OPINION NO. 93-22**

DATE: 7/13/93

CHARTER SECTION(S) INTERPRETED: 2601(12), (16), (18)  
2604(a)(1)(a), 2604(a)(3), (a)(4)  
2604(e)SUBJECT(S): Ownership Interests  
Position  
Waiver

OTHER OPINIONS CITED: 93-17, 93-19

SUMMARY: It was the opinion of the Board that it would be a violation of Chapter 68 for a member of a City commission who maintains a private consulting firm to participate in a joint venture with another private concern to bid on a project sponsored by a City agency other than the commission, in light of the fact that the project would eventually come before the commission for review and approval. Although the public servant had offered to recuse herself from commission business pertaining to any aspect of the project, the Board advised that under the particular circumstances of the case and in light of the strong public policy against the appearance of impropriety, the public servant could not offer her services as a consultant on the project.

OPINION SUMMARY

**OPINION NO.**

**93-23**

DATE:

7/13/93

CHARTER SECTION(S) INTERPRETED:

2604(b)(3), (b)(7)

SUBJECT(S):

Use of City Position

OTHER OPINIONS CITED:

91-7, 93-21

SUMMARY: A public servant who is licensed to practice law and who, in his official capacity is deemed a police officer, was advised that it would be a violation of Chapter 68 for him to represent defendants who have been charged with criminal offenses in the City's criminal court system. The Board noted that, by virtue of his official position as a police officer, the public servant's conduct could create the perception that he was capitalizing on his official position in order to secure preferential treatment for his clients.

## OPINION SUMMARY

**OPINION NO. 93-24**

DATE: 8/6/93

CHARTER SECTION(S) INTERPRETED: 2604(b)(2), (b)(3), (b)(4),  
(b)(9), (b)(11), (b)(12)

SUBJECT(S): Political Activities

OTHER OPINIONS CITED: n/a

SUMMARY: Two public servants were advised that they could serve as paid consultants to campaign organizations supporting candidates for City elective offices, provided that they perform such services on their own time, they do not use their official positions for themselves or the campaigns, and they do not disclose any confidential information concerning the City. The Board further advised that the public servants must abide by the general restrictions imposed by Chapter 68 on the political activities of City employees, which are discussed in the opinion.

## OPINION SUMMARY

**OPINION NO. 93-25**

DATE: 8/20/93

CHARTER SECTION(S) INTERPRETED: 2604(b)(2), (b)(3), (b)(4), (b)(13)

SUBJECT(S): Publishing Books

OTHER OPINIONS CITED: n/a

SUMMARY: A public servant was advised that it would not be a violation of Chapter 68 for her to publish a book and accept royalties derived from the sale of the book under the particular circumstances of the case. The Board advised generally that current public servants may publish a book or article, and accept compensation for the publication of the completed work, provided (i) that the book or article is written on the public servant's own time and not when he or she is required to perform services for the City; (ii) that the public servant does not utilize City facilities, supplies or equipment in writing the book or article; (iii) that the book or article does not disclose any information which is confidential to the City and is not otherwise a matter of public record; (iv) that the book contains a disclaimer that the views expressed therein are those of the public servant alone, and are not necessarily the views of his or her agency, or of the City; and (v) that no other facts or circumstances are presented which suggest that the publication of the book or article would result in a conflict of interest proscribed by Chapter 68.

## OPINION SUMMARY

**OPINION NO:** 93-26

**DATE:** 11/15/93

**CHARTER SECTION(S) INTERPRETED:** 2604(b)(2), (b)(3), (b)(4)  
2604(c)(6)  
2604(e)

**SUBJECT(S):** Fundraising for a Not-For-  
Profit Organization

**OTHER OPINIONS CITED:** 91-10, 92-21

**SUMMARY:** The District Attorney of Kings County and his employees may engage in activities involving solicitations and fundraising on behalf of a not-for-profit corporation which raises funds for the support of social and educational programs of the District Attorney's Office, provided that safeguards and limitations described in the opinion are observed.

OPINION SUMMARY

**OPINION NO: 93-27**

DATE: 10/12/93

CHARTER SECTION(S) INTERPRETED: 2604(a)(1)(b), 2604(a)(3), (a)(4)  
2604(e)

SUBJECT(S): Prohibited Ownership Interest  
Prohibited Position

OTHER OPINIONS CITED: n/a

SUMMARY: The Board determined that a public servant could retain his ownership interest in and his position as Secretary/Treasurer with a private, for-profit corporation which intends to solicit contracts with City agencies other than that served by the public servant because the ownership interest would not conflict with the proper discharge of the public servant's duties and the position would not conflict with the purposes and interests of the City.

OPINION SUMMARY

**OPINION NO: 93-28**

DATE: 11/30/93

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

SUBJECT(S): Public Servant's Spouse  
Appearing Before Her Agency

OTHER OPINIONS CITED: n/a

SUMMARY: A public servant may serve as a manager in charge of a particular branch office of a City agency, notwithstanding that her spouse occasionally appears before her agency, provided that the public servant's spouse only appears in other branch offices where the public servant has no supervisory authority; agency employees are instructed not to bring to the attention of the public servant any matter involving her spouse; and the public servant does not discuss any cases involving her agency with her spouse.

## OPINION SUMMARY

**OPINION NO: 93-29**

DATE: 11/30/93

CHARTER SECTION(S) INTERPRETED: 2601(12), 2601(18), 2601(19)  
2604(a)(1)(a)

SUBJECT: Public Servant and Spouse  
Working on Proposal For a  
City Program

OTHER OPINIONS CITED: n/a

SUMMARY: A public servant who is not a regular, full-time employee of the City may participate in developing a proposal for the implementation of a City program to resolve a class of claims against the City, inasmuch as the program does not involve business dealings with the public servant's agency. Furthermore, since neither the public servant nor her spouse have an ownership interest in the program, the public servant's spouse may work on the program.



## OPINION SUMMARY

**OPINION NO:** 93-30

**DATE:** 12/29/93

**CHARTER SECTION(S) INTERPRETED:** 2604(d)(2), (d)(4), (d)(5)  
2604(e)

**SUBJECT(S):** Post-Employment Restrictions  
Waiver

**OTHER OPINIONS CITED:** 91-8, 93-18

**SUMMARY:** A former public servant who was involved at his former City agency in underwriting loans and preparing loan documents and who now works for a private company which, among other things, underwrites and coordinates projects in which his former City agency is involved, may not appear before his former agency within one year of the termination of his City employment, in the absence of compelling circumstances which would warrant the granting of a waiver of the post-employment restrictions contained in Chapter 68.

## OPINION SUMMARY

**OPINION NO:****93-31**

DATE:

12/30/93

CHARTER SECTION(S) INTERPRETED:

2604(b)(2), (b)(3), (b)(4)  
2604(d)(1), (d)(2), (d)(4), (d)(6)

SUBJECT(S):

Negotiating for and Accepting  
a Position with a State Agency  
Post-Employment Restrictions

OTHER OPINIONS CITED:

n/a

SUMMARY: Dr. Billy E. Jones, President of the Health and Hospitals Corporation ("HHC"), may negotiate for the position of President of the State University of New York/Health Science Center ("SUNY"), provided that he recuses himself from any HHC matters involving SUNY and acts in accordance with Charter Sections 2604(b)(2), (3) and (4). Furthermore, if Dr. Jones is offered and accepts the position with SUNY, the post-employment restrictions of Charter Section 2604(d) will not apply to him because SUNY is a State agency.

OPINION SUMMARY

OPINION NO: 93-32

DATE: 12/30/93

CHARTER SECTION(S) INTERPRETED: 2604(a)(1)(a)  
2604(b)(2), (b)(3), (b)(4), (b)(6)

SUBJECT(S): A City Planning Commissioner  
Listing His Private Firm with  
the Department of General  
Services as a Qualified  
Contractor

OTHER OPINIONS CITED: n/a

SUMMARY: A member of the City Planning Commission may have his professional firm listed with the Department of General Services as a qualified contractor for possible City contracts, provided that he and his firm act in accordance with the requirements imposed by the City Charter and the City Planning Commission rule (Board Rules Section 1-07), which prohibits City Planning Commissioners from appearing before certain City officials or City agencies which have shared oversight responsibilities with the City Planning Commission.

<u>Charter Section</u>	<u>Opinion #</u>
2601(2)	93-11
2601(3)	93-11 93-19
2601(4)	93-12 93-18
2601(5)	93-21
2601(8)	93-7
2601(11)	93-1 93-3 93-5 93-17
2601(12)	93-3 93-7 93-17 93-22 93-29
2601(15)	93-12
2601(16)	93-7 93-17 93-22
2601(17)	93-8 93-12
2601(18)	93-5 93-7 93-16 93-17 93-22 93-29
2601(19)	93-7 93-10 93-19
2601(20)	93-7

2604 (a)(1)(a)	93-2 93-3 93-7 93-10 93-17 93-19 93-22 93-29 93-32
2604(a)(1)(b)	93-10 93-16 93-20 93-27
2604(a)(3)	93-7 93-22 93-27
2604(a)(4)	93-7 93-22 93-27
2604(b)(1)(b)	93-2 93-3
2604(b)(2)	93-1 93-5 93-9 93-12 93-15 93-16 93-17 93-19 93-21 93-24 93-25 93-26 93-28 93-31 93-32

2604(b)(3)	93-1 93-4 93-9 93-10 93-12 93-14 93-16 93-19 93-21 93-23 93-24 93-25 93-26 93-28 93-31 93-32
2604(b)(4)	93-10 93-16 93-25 93-26 93-28 93-31 93-32
2604(b)(5)	93-10
2604(b)(6)	93-10 93-32
2604(b)(7)	93-10 93-23
2604(b)(9)	93-24
2604(b)(11)	93-24
2604(b)(12)	93-6 93-24
2604(b)(13)	93-25
2604(b)(15)	93-20
2604(c)	93-10
2604(c)(6)	93-9 93-26
2604(d)	93-13
2604(d)(1)	93-8 93-18 93-31

2604(d)(2)

93-8  
93-10  
93-11  
93-12  
93-18  
93-30  
93-31

2604(d)(4)

93-8  
93-10  
93-11  
93-12  
93-30  
93-31

2604(d)(5)

93-8  
93-11  
93-30

2604(d)(6)

93-12  
93-13  
93-31

2604(d)(7)

93-11

2604(e)

93-4  
93-5  
93-7  
93-18  
93-20  
93-22  
93-26  
93-27  
93-30

## ADVISORY OPINION INDEX

<u>Subjects</u>	<u>Opinion #</u>
Administrative Law Judges	93-10
Agency Served	93-19
Appearance of Impropriety	93-14
Bidding on Contracts	93-7
Board of Directors	93-3 93-5 93-14
Business Dealings with the City	93-9 93-16
City Position, Use of	93-23
City Planning Commissioners	93-32
Chairing a Committee which Affects a City Agency	93-2
Community Boards	93-2 93-3
Consultant	93-19
Contracting with Former Agency	93-12
Economic Gain	93-3
Elected Officials	93-6 93-15 93-21
Family Relationships	93-21
Firm	93-3 93-17
Former Public Servant	93-13 93-18
Fundraising	93-6 93-15 93-26
Local Development Corporation	93-1 93-3 93-13



Moonlighting	93-4 93-5
Not-For-Profit Organization	93-1 93-4 93-9 93-26
Ownership Interests	93-16 93-22 93-27
Political Activities	93-20 93-24
Political Contributions	93-6
Position with a Firm	93-1
Post-Employment Restrictions	93-8 93-11 93-12 93-13 93-18 93-30 93-31
Prohibited Interests	93-7
Prohibited Positions	93-27
Public Benefit Corporation	93-17
Publishing Books	93-25
Real Property	93-16
Recusal	93-1 93-4 93-7 93-17 93-19
Regular Employees	93-10
School Boards	93-2
Spouse of a Public Servant Appearing Before Public Servant's Agency	93-28
Spouse of a Public Servant and Public Servant Working on Proposal for a City Program	93-29

State Agency, Position with	93-31
Substantial Policy Discretion	93-6
Tax Assessors	93-16
Teaching	93-20
Waiver	93-22 93-30

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