

AGENCY RULES

CONFLICTS OF INTEREST BOARD

■ NOTICE

CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

Notice of Adoption of Amendment to Rule on Public Servants Charged with Substantial Policy Discretion

NOTICE IS HEREBY GIVEN THAT, pursuant to the authority vested in the Conflicts of Interest Board by Sections 2603(a), 2604(b)(12), and 2604(b)(15) of the New York City Charter, the Conflicts of Interest Board has adopted an amendment to its rule on public servants charged with substantial policy discretion, Section 1-02 of Title 53 of the Rules of the City of New York, (1) making explicit that members of boards and commissions fall within the rule, that the agency-prepared lists of titles or positions of persons charged with substantial policy discretion must also set forth their names, that the determination of which public servants fall within the rule ultimately lies with the Board, and (2) deleting the requirement that agency heads update the list within 30 days of every change in it and requiring instead only an annual update. Pursuant to a notice published on July 24, 1997, in *The City Record*, a public hearing on the proposed amendment was held on August 28, 1997, at 2 Lafayette Street, Suite 1010, New York, New York. The Board received no comments on the proposed amendment and adopted the proposed amendment as final. The text of the amendment is set out below.

§ 1-02 Public Servants Charged with Substantial Policy Discretion.

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

(a) designate by title, or position, and name the public servants in their agencies who have substantial policy discretion as defined by this section;

(b) file annually with the Conflicts of Interest Board, no later than September 30 of each year, a list of such titles or positions and the names of the public servants holding them [with the Conflicts of Interest Board no later than September 30, 1990]; and

(c) notify these public servants in writing of the restrictions set forth in Charter §2604(b)(12) and §2604(b)(15) to which they are subject. [Agency heads shall update the filing within 30 days of the creation or elimination of any title or position which involves the exercise of substantial policy discretion.]

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

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

STATEMENT OF BASIS AND PURPOSE OF THE PROPOSED AMENDMENT:

Charter § 2604(b)(12) prohibits certain public servants, including those charged with "substantial policy discretion as defined by rule of the board," from soliciting political contributions for candidates for elective City office or for City elected officials who are running for any elective office. Charter § 2604(b)(15) prohibits certain public servants, including those charged with "substantial policy discretion as defined by rule of the board," from holding certain political party positions.

Section 1-02 of the Board's rules sets forth the Board's definition of "substantial policy discretion" for purposes of those Charter provisions. While that rule has worked reasonably well in practice, one aspect of the rule has proven impractical and unnecessarily burdensome on agency heads: the requirement that agency heads update their list of substantial policy discretion titles or positions within 30 days of any change in the list. The Board has thus decided to require only an annual update.

In addition, the Board has consistently interpreted its substantial policy discretion rule (1) to apply to members of boards and commissions, (2) to require that the agency's list include not only the titles or positions but also the names of the employees who, in the opinion of the agency head, fall within the rule, and (3) to recognize that the Charter vests in the Board the ultimate authority to determine whether any particular title, position, or person is in fact charged with substantial policy discretion within the meaning of Chapter 68. The Board, however, believes that these interpretations of the substantial policy discretion rule should be made explicit in the text of the rule itself to prevent any misunderstandings by public servants or political party leaders. In regard to the inclusion of members of boards and committees, it should be noted that the rule does not apply to unpaid members of advisory committees - that is, to members of advisory committees who are not entitled to receive per diem or other compensation - since such members are not subject to Chapter 68. See Charter §5 2601(1), (19).

TUESDAY, SEPTEMBER 23, 1997

THE CITY RECORD