

New York City Conflicts of Interest Board

Annual Report 1992

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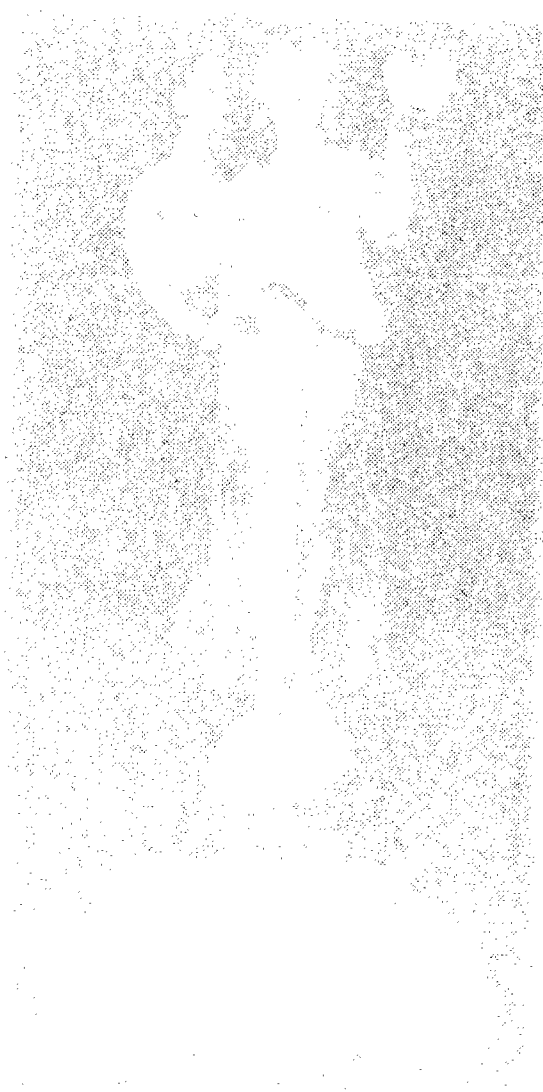


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LETTER TO THE MAYOR:

Dear Mayor Dinkins

The Conflicts of Interest Board respectfully submits this Report on the Board's work in 1992.

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 1992, great strides forward were made in each of these areas.

While the Board's accomplishments in 1992 are set out more fully in the body of this Report, a few highlights are worthy of special mention.

In 1992, the Board expanded significantly its training and education of City employees. Training programs were held for, among others, 70 chief contracting officers of City agencies, 100 agency procurement personnel at the ethics workshop at a City-wide procurement conference, 60 agency disciplinary advocates, members of Community Boards and staff of numerous City agencies, including the Mayor's Office of Operations, the Campaign Finance Board, the Department of Juvenile Justice and the Department of Consumer Affairs.

Even where a public servant has been made aware of the Charter provisions, it may be far from clear how they apply to a specific fact situation. In 1992, we received over 340 written requests for guidance as to the applicability of the conflicts law, and many times that number of telephonic requests. As appropriate, we 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 relevant legal precedents (both our own and, where applicable, those of the former Board of Ethics). We issued 38 formal advisory opinions, and such opinions were published and made available to public servants generally.

The Board has continued to give a 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 and what is impermissible 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 1992 were opinions establishing guidelines for City agencies' solicitation of gifts from the private sector in aid of agency programs — a particularly important subject in this time of fiscal austerity, with sharply reduced agency budgets. We have dealt, similarly, with a recurring problem that confronts many present and former City employees who are licensed professionals in construction-related fields, who wish to supplement their income by performing similar services in the private sector, while City employees, or to secure such employment after leaving City service. Two 1992 Board opinions addressed this issue in detail and defined the parameters to be observed by such professionals.

In the exercise of our rulemaking authority, the most important development in 1992 was our adoption, after extensive consultation with City officials and professional and public interest organizations, of a comprehensive rule defining what part-time City Planning Commissioners may and may not do in their private practice before City agencies. The rule seeks to reconcile two

important, but quite different, policies: the need to avoid conflicts of interest which might affect a Commissioner's judgment or actions, and the need to attract a wide range of talent to serve on the Commission.

In our prosecutorial function, we launched an aggressive enforcement program, initiating and pressing charges where there were violations of Chapter 68 or of the financial disclosure law.

Carrying out our responsibilities under the financial disclosure law, we received and processed over 12,000 financial disclosure statements in 1992, achieving a 98% compliance rate and vigorously proceeding against non-filers and late-filers. The more than \$40,000 in fines assessed and collected in 1992 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.

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, Priscilla Lundin, and her successor in the latter part in 1992, Mark D. Hoffer. 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.

Finally, we wish to express our deep appreciation to you, to your Counsel, Judge George B. Daniels, your Corporation Counsel, O. Peter Sherwood, and your Commissioner of Investigation, Susan E. Shepard, for the wholehearted cooperation that we have received in carrying out our obligations to enforce Chapter 68. The Board's achievements in 1992 would have been impossible without their unfailing support and aid.

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. 1992 marks the Conflicts of Interest Board's third year of operation.

The powers and responsibilities of the Board, vastly expanded by the Charter revision, include issuing advisory opinions construing and implementing Chapter 68, initiating investigations of possible violations through the Department of Investigation, promulgating rules, administering the City's financial disclosure law, enforcing the conflicts of interest and financial disclosure laws and educating and training 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 and confirmed by the City Council. Members are compensated on a per diem basis and serve for staggered six year terms. (The first members were appointed for shorter terms.) The Board meets at least once a month.

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

Sheldon Oliensis, the Board's Chair, is a partner in the law firm of Kaye, Scholer, Fierman, Hays & Handler and has served as Chair since September, 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, Professor at Brooklyn Law School, and Robert McGuire, President and Chief Operating Officer of Kroll Associates, have served on the Board since October, 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, have served since September, 1990. The original terms of Professor Jones and Ms. Siegel expired in March, 1992; both were reappointed for new six-year terms.

BUDGET AND STAFF

The Board has a full-time staff which, as of December 31, 1992, numbered 21. The staff is headed by Executive Director/Counsel, Mark D. Hoffer, who took over this post in August, 1992, succeeding Priscilla Lundin.

At the close of 1992, the Board's staff included three attorneys in addition to the Executive Director/Counsel, a Director of Communications, a Director of Administration, and financial disclosure officers, investigators and support staff. To assist in its task of processing over 12,000 financial disclosure reports annually, the Board, at peak periods, hires temporary personnel.

In Fiscal Year 1992, the Board's budget was \$914,375.

In November, 1992, the Board moved from offices on three floors at 2 Lafayette Street, in Manhattan, to newly renovated space on the tenth floor of the same building. The move allowed the Board to consolidate all staff, with sufficient storage space for current financial disclosure reports. The new space also contains a conference room that can easily be converted into a classroom arrangement for training. We wish to express our appreciation to the Department of General Services for a superb job in designing and building the new space — a job done on time and within the allowed budget.

CHAPTER 68

Charter Chapter 68 regulates the conduct of all New York City public servants, including elected officials, members of community boards and of community school boards, and advisory boards who are compensated. The Board's jurisdiction extends to all mayoral agencies, as well as to the City Council, the Board of Education, the Health and Hospitals Corporation and the Housing Authority.

The provisions of Chapter 68 are wide-reaching, regulating public servants' conduct on the job; their outside activities; their political activities; their search for and acceptance of off-hours and other employment; and their financial interests, including those of their spouses and unemancipated children.

ADVISORY OPINIONS OF THE BOARD

In 1992, the Board and its staff responded to 345 written requests by present and former public servants for opinions interpreting Chapter 68. The Board's staff also responded, in this period, to over 1,000 telephone inquiries for informal confidential advice.

During 1992, the Board issued 38 formal advisory opinions,¹ many dealing with issues of broad applicability on which the Board previously had received numerous requests for guidance from public servants.

A number of our opinions are worthy of special note.

Opinion 92-21 establishes guidelines for City agencies' solicitation of gifts from the private sector. Such gifts are now frequently solicited in support of agency programs, in an attempt to offset reductions in City funding. In our present time of fiscal austerity, this issue takes on even greater importance.

One of the agencies hardest hit by funding cuts is the Parks Department. Opinion 92-34 deals with two issues arising from activities of not-for-profit organizations which raise money for the City parks system: first, whether Parks Department employees may assist these organizations by acting as part-time paid consultants, in addition to their official duties, and, second,

¹The Board's 1992 opinions are summarized at pp. 33-73 of this Report, followed by a guide and index to the opinions by number and Charter Section.

whether these organizations may supplement the wages of Parks workers engaged in park improvement projects, thereby allowing these projects to proceed despite cutbacks in public funding for parks.

Opinions 92-32 and 92-36 deal with a recurring problem that confronts a large number of City employees who are also licensed professionals in construction-related fields: whether, and under what circumstances, a public servant or former public servant who is an architect, engineer, electrician or plumber may practice his or her profession by submitting applications, affidavits, drawings and plans to the Department of Buildings. The opinions address this issue in detail and define the parameters that the professionals must observe — aiming to balance the need to avoid conflicts of interest, or even the appearance of undue influence on the part of a public servant, with the basic right of an individual to earn a livelihood.

Finally, Opinion 92-7 addresses the frequently raised issue of whether, and under what circumstances, a City official or employee may serve on the board of directors of the cooperative in which he or she lives. As a result of the guidelines established in Opinion 92-7, such questions can now be resolved, in the vast majority of cases by agency counsel or by the employee.

All Board opinions are collected in a loose-leaf volume, updated periodically, which also includes the rules promulgated by the Board and the full text of the conflicts of interest law and the financial disclosure law. The volume has been distributed to approximately 100 agency counsel and enables them to answer many ethics questions asked by agency personnel.

Board opinions are published in the City Record and distributed to the media. The City's Law Department library has the Board's published opinions, as does the Law Department's CITY-LAW on-line computer system, which is accessible to all City agencies.

A complete set of the Board opinions and rules is also at the Municipal Reference Library, the New York City Public Library's main branch, and the libraries of the Association of the Bar of the City of New York and the New York County Lawyers Association.

RULEMAKING

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

Eight of these rules were promulgated in prior years, chiefly to comply with Charter mandates requiring the Board to adopt rules clarifying and particularizing general provisions added by the Charter revision.

In 1992, the Board completed two important projects. First, the Board addressed 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 recommended after extensive public testimony.

The Board began its study of this issue in 1991, seeking to develop a rule which reconciles two equally important but quite different policies: the need to avoid conflicts of interest which might affect a Commissioner's judgment or actions, and the need to attract a wide range of talent to serve on the Commission.

In developing this rule, we solicited advice and input from a great number of interested parties. In addition to the Planning Commissioners themselves and their counsel, we conferred with professional groups (such as the American Planning Association), civic organizations (such as The City Club), public interest organizations (such as the New York Public Interest Research

Group), and City officials (such as the Borough Presidents). The comments we received were extraordinarily helpful in shaping a fair and workable rule. We are pleased to note that The New York Times, in an editorial, commended the rule we had developed. The greater part of the Board's work on this rule, including the conduct of public hearings, was ably performed by Board member Shirley Adelson Siegel.

In March, 1992, the Board also promulgated a rule governing extensions of time for filing financial disclosure reports. The rule recognizes both the necessity for timely submission of such reports and the fact that some City workers may not be able to comply by the statutory filing date for completely legitimate reasons. It implements a procedure for requesting extensions and documenting the circumstances.²

FINANCIAL DISCLOSURE

Under Chapter 68, the Board is responsible for the administration and enforcement of the City's financial disclosure law, contained in Section 12-110 of the New York City Administrative Code. More than 12,000 public servants have filed annual disclosure reports with the Board for the 1991 calendar year.

Those required by law to file in 1992 included elected officials, agency heads, deputy and assistant agency heads, public servants earning more than \$57,650 for 1991, City employees who were 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 or zoning. Candidates for City elective office are also required to file reports with the Board when filing their petitions with the City's Board of Elections.

The task of administering the financial disclosure law is a monumental one. The Board's tasks include, among others, preparing and distributing 12,000 report forms annually, collecting and filing those reports, identifying late-filers and non-filers, considering late-filers' requests for waivers of fines, collecting fines, tracking public servants' appeals of their agency's determination that they must file, filing amendments to reports already on file, initiating enforcement proceedings against non-filers and late-filers, evaluating filers' privacy requests and responding to disclosure requests from the media and others.

The Board, working with the City Law Department and the Legal Division of the City Council, has developed a "plain language" financial disclosure report form, far easier for public servants to complete than those previously used. The changes made in the form include: drastically revised and simplified language for many of the questions, to make them easier to understand and respond to; a larger, more legible type style; a more detailed set of instructions specifying what to include and what not to include in responding (examples were given for many of the questions); and perforated instructions so the instructions can be removed from the form and referred to while answering each question. Those forms were used for the first time for reports filed in May, 1992, reporting on calendar year 1991.

In 1992, the Board began development of a computer scannable sheet to be completed by filers, enabling investigators to target reports requiring detailed examination where potential conflicts of interest might exist, such as receipt of gifts, debts incurred and business investments. These sheets will be distributed in 1993 for reports covering calendar year 1992.

²The rules adopted by the Board in 1992 are summarized, at pp 29-32, in the Summary of Rules section of this Report.

As of December 31, 1992, the compliance rate of public servants required to file reports in 1992 for the 1991 calendar year was 98.6%. The compliance rate for reports for calendar year 1990 was 98.5% and for calendar year 1989 was 98.8%.

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. In 1992, the Board received, from the media and others, more than 650 written requests for copies of financial disclosure reports filed by candidates for City office, elected officials and other public servants.

Represented by the Law Department, the Board defeated a 1992 challenge brought by 16 surgeons presently or formerly employed by the Police Department, asserting privacy claims for virtually all information in their reports. The Board had denied most of the surgeons' privacy claims, upholding only those claims as to the surgeons' residential and business addresses and certain spousal information.

The surgeons brought an Article 78 proceeding in State Supreme Court, seeking to declare the financial disclosure law unconstitutional and to overturn the Board's denial of their claims. After lengthy oral argument, the Court rejected the challenge to the law and upheld the Board's decision, stressing the strong public policy in favor of disclosure as a means of preventing corruption and conflicts of interest.

In December, 1992, the City Council passed legislation amending the financial disclosure law to permit the Board to promulgate a rule providing a more flexible and practical procedure for retaining financial disclosure reports; the prior statutory provision effectively required that they be kept forever.

ENFORCEMENT

The Board is charged with the responsibility for enforcing both Chapter 68 and the City's financial disclosure law.

Violations of both laws are misdemeanors, and the Board may, in appropriate cases, refer matters to state and federal prosecutorial authorities. The Board itself has the power to impose fines of up to \$10,000 and to recommend that the appointing authority impose disciplinary penalties, including suspension or removal from office. The Board's power extends also to former public servants. 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 addition to those matters where the Board itself initiates enforcement proceedings, the Board each year receives complaints from others of possible violations of Chapter 68, including referrals from other agencies such as the Department of Investigation. Fifty such complaints have been received since the Board's inception: 8 in 1990; 20 in 1991; and 22 in 1992. Of the 50 complaints, 24 were dismissed as unsupported by evidence or not stating a claim; one was disposed of by stipulation; 18 are under active investigation; seven are the subject of enforcement proceedings.

The Board is authorized to impose a \$100 fine on those who file their financial disclosure reports more than one week after the due date, unless the fine is waived for reasons of illness, military service or similar justification. In 1992, the Board collected \$40,400 in fines from late-filers. In the entire period since the Board assumed responsibility for financial disclosure in 1990, the Board has, thus far, collected \$65,800 in fines.

In May, 1992, the Board commenced administrative proceedings against 17 candidates in the 1991 City Council elections who had failed to file financial disclosure reports or had filed late and failed to pay late fines after having been notified to do so by the Board.

The proceedings, held before the Office of Administrative Trials and Hearings (OATH), resulted in a finding by an Administrative Law Judge that all 17 candidates had violated the financial disclosure law; fines of \$2,500 each were recommended.

As of December 31, 1992, the Board had issued formal orders to each of the 17 individuals, directing them to pay fines and file reports and had begun proceedings against five additional 1991 candidates who were still in violation of the financial disclosure law.

The Board did not, in 1992, have an attorney whose primary responsibility was litigation, to handle the enforcement caseload and, because of the hiring freeze, was unable to hire one. Subject to budgeting constraints, the Board plans, in 1993, to fill one of its existing legal vacancies with a litigation attorney, who will be responsible, first and foremost, for prosecuting the Board's enforcement proceedings.

TRAINING AND EDUCATION

Education of public servants about their responsibilities under the conflicts of interest law is not only an obligation of the Board, set forth in the City Charter, but also is considered by the Board to be a highly important part of its mission.

The Board has developed training programs about Chapter 68 targeted for specific audiences, such as City agency managers, procurement officers, agency counsel, disciplinary advocates and other groups who may either be working in sensitive areas or counselling the personnel of their agencies about City employee regulations.

In 1992, the Board presented training programs about the conflicts of interest law at two seminars for agency contracting officers, a seminar for auditors at the Mayor's Office of Operations and seminars for managers at the Mayor's Office of Operations, the Campaign Finance Board, the Department of Consumer Affairs, the Mayor's Office of Drug Policy and the Department of Juvenile Justice.

The Board also held a meeting with Manhattan Community Board 7 to discuss the specific responsibilities of community board members under the law and presented a program about the law to LaGuardia College Fellows about to graduate from their City-sponsored program of government studies.

The Board developed a presentation, as part of a Professional Development Seminar for City agency disciplinary advocates. This seminar was organized by a task force from several City agencies, including the Office of Administrative Trials and Hearings and the Mayor's Office of Operations.

During 1992, the Board also began its development of new training programs, to be launched in 1993. In December, 1992, the Board mailed invitations to a City-wide seminar, entitled Ethics in City Government, sponsored jointly by the Board and the Association of the Bar of the City of New York. The seminar will be held at the House of the Association in March, 1993, at which the Mayor and other present and former high-level City officials will speak.

In 1992, the Board's Communications Director met with a Task Force — composed of individuals from the Department of Personnel, the Procurement Policy Board and the Mayor's Office of Contracts — responsible for developing an ongoing Procurement Training Institute

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designed to train City procurement personnel in City purchasing procedures and purchasing ethics. Beginning in 1993, the Board will lead half-day workshops on the conflicts of interest law as a regular part of this program's curriculum.

The Board is organizing a series of half-day training sessions for agency counsel, to be held in 1993, that will focus on particular areas of the conflicts of interest law that are the subject of frequent inquiry by City employees to the Board or to agency counsel.

11 RULES OF THE BOARD SUMMARIES

SUMMARY OF RULES OF THE BOARD ADOPTED IN 1992

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.

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

§1-08 Procedures for Obtaining an Extension of Time Within Which to File a Financial Disclosure Report

Summary of Rule

A person required to file a financial disclosure report with the Conflicts of Interest Board, pursuant to §12-110 of the Administrative Code of the City of New York, may be granted an extension of time for filing the report upon a showing of justifiable cause or undue hardship.

A finding of justifiable cause or undue hardship shall not be based on periods of annual leave, attendance at conferences or meetings, or other pre-scheduled or voluntary absences from work.

The rule outlines the procedures for requesting an extension, including the time by which extensions are to be requested.

The rule also sets forth the time limitations for extensions and outlines the Board's action when reviewing a request for an extension.

§1-09 Prohibited Appearances Before City Agencies by City Planning Commissioners

Summary of Rule

The Conflicts of Interest Board is required by §192(b) of the City Charter to determine by rule before which City agencies, in addition to the Department of City Planning and the City Planning Commission, an appearance by a member of the City Planning Commission would create a conflict of interest with the duties and responsibilities of the member. "Appearance" in this context means any direct or indirect communication, for compensation, on other than a ministerial matter. See Charter Sections 192(b), 2601(4) and 2604(15). An indirect appearance does not include, without more, the presentation of documents bearing the Commissioner's name or seal. Rule §1-09(a)(2).

The Board's rule prohibits appearances by City Planning Commissioners before the Mayor and Deputy Mayors and their staffs; the Mayor's Office of Planning and Coordination, the offices of the Borough Presidents; the City Council; community boards; the Art Commission; the Office of Environmental Coordination; the Landmarks Preservation Commission; and the Hardship Appeals Panel.

In addition, Commissioners are not permitted to appear before the Department of Buildings on matters involving zoning and land use (except to file plans), the Board of Standards and Appeals, the Department of Consumer Affairs, the Department of Business Services or local development corporations. Also prohibited, as more specifically provided in the Rule, are appearances before any City agency concerning matters that can reasonably be expected to come before the City Planning Commission.

ADVISORY OPINIONS OF THE BOARD

SUMMARIES

OPINION SUMMARY

OPINION NO: 92-1

DATE: 1/6/92

CHARTER SECTION(S): n/a

SUBJECT(S): Advisory Board
High-Level Public Servant

OTHER OPINIONS CITED: n/a

SUMMARY: It would not be a violation of Chapter 68 for a high-level appointed official to serve without compensation as a member of a statutory advisory board which has no advisory role nor other dealings with his own agency.

OPINION SUMMARY

OPINION NO: 92-2

DATE: 1/9/92

CHARTER SECTION(S): 2604(d)(4)

FORMER CHARTER SECTION(S): 2604(h)

SUBJECT(S):
Consultant
Contracts
Post-Employment Restrictions

OTHER OPINIONS CITED: n/a

SUMMARY: A former agency head may not, for three years after leaving City employment, be a consultant to a firm with respect to its proposed purchase of a City-owned site administered by his former agency where he had in his official capacity signed the contract which authorized the firm's appraisal of the site. He had signed the contract based on staff review and without reading it; nevertheless the matter was one with which he was "directly concerned, or in which he personally participated, or which was under his active consideration" within the meaning of former section 2604(h). The post-employment restriction in former Chapter 68 applied to this former public servant because he left City government before April 1, 1990, the effective date of the post-employment restrictions in revised Chapter 68.

OPINION NO:**92-3**

DATE

1/9/92

CHARTER SECTION(S)

2604(b)(3)

SUBJECT(S):

Appearance of Impropriety
City Position, Use of

OTHER OPINIONS CITED:

Board of Ethics Opinion No. 635

SUMMARY: It would be a violation of Chapter 68 for a public servant employed by the Department of Housing Preservation and Development (HPD) to rent an apartment the availability of which he learned solely from an HPD employee whose duty it was to supervise the manager of the apartment building. The appearance would be created that he obtained a private advantage because of his official position. No such conflict would arise if the employee were applying for an apartment in such a building on exactly the same basis as other members of the public.

OPINION SUMMARY

OPINION NO: 92-4

DATE 1/9/92

CHARTER SECTION(S) 2601(5).
2604(b)(3)SUBJECT(S): Appearance of Impropriety
Family Relationships

OTHER OPINIONS CITED: n/a

SUMMARY: An agency may make occasional small purchases for its public ceremonies from a store which is owned and operated by the parents of a high-level public servant employed by the agency, inasmuch as such employee has no financial or legal relationship to his parent's store and is insulated from the agency's purchasing decisions.

OPINION NO: 92-5

DATE: 1/10/92

CHARTER SECTION(S): 2601(8), 2601(15), 2601(16),
2601(18), 2604(a)(1)(a),
2604(a)(3), 2604(a)(4),
2604(e)SUBJECT(S): Doing Business with the City
Ownership Interests
Prohibited Interests
Recusal

OTHER OPINIONS CITED: n/a

SUMMARY: Two candidates for appointment to a City commission have asked the Board whether they may serve on this commission and maintain their private professional practices. The Board determined that no conflict of interest would be created if the first candidate is appointed to the commission, provided that he recuses himself from the commission's business dealings with his firm. Such recusal requires the candidate to refrain from voting on any matters which involve his firm's business dealings with the commission, or be otherwise involved, directly or indirectly, in such business dealings.

Inasmuch as the second candidate's firm does not currently have any business dealings with the commission, he may be appointed without further action by the Board. He must, however, make an appropriate disclosure to the Board if his firm does engage in business dealings with the commission in the future.

OPINION SUMMARY

OPINION NO: 92-6

DATE: 3/4/92

CHARTER SECTION(S): 2601(16), 2601(18),
2603(c)(3), 2604(a)(1)(b),
2604(a)(3), 2604(a)(4),
2604(b)(3), 2604(e)SUBJECT(S): Appearance of Impropriety
Doing Business with the City
Ownership Interests
Prohibited Interests
Recusal
WaiverOTHER OPINIONS CITED: Board of Ethics Opinion Nos.
388, 400 and 400A.

SUMMARY: The Board determined that, under the particular circumstances and on the specific conditions described in the opinion, it would not be a violation of Chapter 68 if John D. Gilliam, a retired partner of Goldman Sachs and Co. ("Goldman"), retains his interest in Goldman after he is appointed Deputy Comptroller for Asset Management. The Board also determined that Mr. Gilliam may retain the use of his office at Goldman to handle his personal investments.

OPINION NO: 92-7

DATE 3/9/92

CHARTER SECTION(S): 2601(5), 2601(8),
2601(12), 2601(16),
2601(18), 2604(a),
2604(b)(2), 2604(b)(3),
2604(b)(6)

SUBJECT(S): Condominiums/Cooperatives
Doing Business with the City
Ownership Interests

OTHER OPINIONS CITED: Board of Ethics Opinion
Nos. 233, 255 and 425.

SUMMARY: It is not a violation of Chapter 68 for a public servant to hold an ownership interest in a cooperative corporation which owns his residence. Further, a public servant's service on the board of either a cooperative corporation or a condominium does not, in and of itself, present a conflict of interest, provided that the public servant does not communicate with his or her own agency on behalf of such corporation.

OPINION SUMMARY

OPINION NO: 92-8

DATE 3/12/92

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

SUBJECT(S): Agency Head
Not-For-Profit Organizations
Recusal
Request for Proposal

OTHER OPINIONS CITED: n/a

SUMMARY: An agency head is required to recuse himself from consideration of contract funding proposals by a not-for-profit organization which the public servant founded and headed for many years prior to his City service. Such recusal includes, but is not limited to, the agency head's participation in meetings of his agency or the inter-agency committee, discussions with public servants and others and receiving copies of relevant documents.

OPINION NO: 92-9

DATE

3/23/92

CHARTER SECTION(S):

2601(16), 2601(18),
2603(c)(3),
2604(a)(1)(b),
2604(a)(3), 2604(a)(4),
2604(e)

SUBJECT(S):

Doing Business with the City
High-Level Public Servant
Ownership Interest
Recusal
Waiver of Ownership Interests

OTHER OPINIONS CITED:

92-6
Board of Ethics Opinion
Nos. 388, 400 and 400A

SUMMARY: The Board determined that under the particular circumstances and on the specific conditions described in the opinion it would not be a violation of Chapter 68 for Barry F. Sullivan to retain his ownership interest in and positions with the First Chicago Corporation and the First National Bank of Chicago after he is appointed as Deputy Mayor for Finance and Development.

OPINION SUMMARY

OPINION NO: 92-10

DATE 4/6/92

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

SUBJECT(S): Appearance of Impropriety
City Position, Use of
Elected Officials
Gifts - Travel

OTHER OPINIONS CITED: n/a

SUMMARY: In the absence of a governmental purpose, an elected official may not accept the invitation of a firm to attend an event sponsored by the firm. Acceptance would create the appearance that the official received the invitation solely because of his official position.

OPINION NO:**92-11**

DATE

4/13/92

CHARTER SECTION(S)

2601(11), 2604(a)(1)(b),
2604(a)(3), 2604(a)(4)

SUBJECT(S)

Doing Business with the City
Ownership Interests
Prohibited Interests

OTHER OPINIONS CITED

n/a

SUMMARY: With the approval of the Board, an employee of the Department of Environmental Protection ("DEP") may sell to the City certain land owned by him and located in the City's upstate watershed area. The sale of the property to the City would be handled in the same manner as other City purchases in the upstate watershed area. DEP's Commissioner advised the Board that the City's proposed acquisition of this property is in the best interests of the City. The Board concluded that, under the circumstances described in the opinion, the proposed sale did not conflict with the proper discharge of the public servant's official duties.

OPINION SUMMARY

OPINION NO:**92-12**

DATE

4/23/92

CHARTER SECTION(S)

2604(b)(3)

SUBJECT(S)

Agency Head
City Position, Use of

OTHER OPINIONS CITED:

n/a

SUMMARY: An agency head initially asked the Board whether he could continue serving as a director of a for-profit corporation in another state, the sole purpose of which was to hold real estate investments in that state. The Board was concerned that the agency head's continued presence on the board and the corporation's use of his name may give this firm a financial advantage. Thereafter the agency head resigned from the board of the corporation with the understanding that his wife would be elected in his place. The Board approved the request of this public servant based on the particular circumstances.

OPINION NO:**92-13**

DATE

4/30/92

CHARTER SECTION(S)

2601(4)

2604(d)(3)

SUBJECT(S):

Appearance before City Agency

High-Level Public Servant

Post-Employment Restrictions

OTHER OPINIONS CITED:

91-8

SUMMARY: A former high-level public servant, whose City position fell within the category set out in Charter Section 2604(d)(3), is prohibited from communicating with City agencies in the branch of City government he served until one year has passed after the termination of his City employment. The one-year post-employment ban is waived by the Board only "where justified by compelling circumstances in a particular case." See Opinion No. 91-8.

OPINION SUMMARY

OPINION NO:**92-14**

DATE

5/20/92

CHARTER SECTION(S)

2601(5)

2604(b)(3)

SUBJECT(S)

Appearance of Impropriety
Not-For-Profit Organizations

OTHER OPINIONS CITED:

n/a

SUMMARY: The children of employees of the Fire or Police Departments may apply for merit scholarships awarded by a not-for-profit trade association whose for-profit member companies are subject to regulation by the Fire Department.

OPINION NO:**92-15**

DATE

6/29/92

CHARTER SECTION(S)

n/a

SUBJECT(S)

Agency Head
Appearance of Impropriety
Fundraising
Not-For-Profit Organizations

OTHER OPINIONS CITED:

91-10

SUMMARY: An agency head may not serve on the honorary committee for the annual benefit of a not-for-profit entity which has a contract with her agency. The combination of her fundraising role with her role in approving and supervising the contract may create an appearance that the organization is receiving preferential treatment.

OPINION SUMMARY

OPINION NO:

92-16

DATE

7/14/92

CHARTER SECTION(S)

2601(i)(1)
2604(d)(1)(ii)

SUBJECT(S)

Firm;
High-Level Public Servant
Post-Employment Restrictions

OTHER OPINIONS CITED

Board of Ethics Opinion No. 680

SUMMARY It would not be a violation of Chapter 68 for a public servant to negotiate for a position with a District Management Association which will manage a Business Improvement District (BID), although the public servant's official duties involve the same proposed BID. The Board concluded that a BID is analogous to a local development corporation and is therefore not a "firm." See Section 2601(11). Section 2604(d)(1)(ii) does not restrict a public servant's negotiations for employment with any entity which, for purposes of Chapter 68, is not a "firm."

OPINION NO: 92-17

DATE 8/3/92

CHARTER SECTION(S): 2601(4), 2601(15), 2604(d)(2),
2604(e)

SUBJECT(S): Appearance of Impropriety
Post-Employment Restrictions

OTHER OPINIONS CITED: 91-8

SUMMARY: A public servant was offered a position with a not-for-profit entity which has contracts with her agency. Such position would involve frequent appearances before her agency regarding these contracts. The agency head represented to the Board that the availability of the public servant's expertise would help remedy pending contractual disputes between the entity and the agency as well as ensure that the entity complies with detailed and complex City and State regulations, thereby making effective the entity's delivery of services to the community and preserving State funding to the City. The Board waived the one-year appearance ban.

OPINION NO.**92-18**

DATE

8/3/92

CHARTER SECTION(S)

2604(b)(7)

SUBJECT(S)

Appearances Against the City
Attorneys
Recusal

OTHER OPINIONS CITED:

n/a

SUMMARY: It would be a violation of Chapter 68 for a public servant to participate in a bar association committee's discussion regarding contemplated litigation against the City and to vote on matters pertaining to the preparation and submission of the brief.

Pursuant to the City Charter, a public servant is prohibited from appearing as attorney or counsel against the interests of the City in any litigation to which the City is a party. The Board concluded that "appear" includes participation in meetings during which a contemplated lawsuit against the City is discussed.

OPINION NO.**92-19**

DATE

8/3/92

CHARTER SECTIONS(S)

2603(c), 2604(b)(5).

RULE

§1-01

SUBJECT(S)

Gifts-Travel

OTHER OPINIONS CITED

n/a

SUMMARY: It would not be a violation of Chapter 68 for the Acting Director of Film, Theatre and Broadcasting to attend the Cannes Film Festival for the purpose of promoting film production in the City, and to have her expenses paid for by three private-sector entities, two of which have business dealings with the City.

In accordance with the Board's rule on valuable gifts, public servants may accept a valuable gift of travel-related expenses if the trip is for a City purpose; the travel arrangements are appropriate to that purpose; the trip is no longer than reasonably necessary to accomplish its purpose; and the trip and the acceptance of payment are approved in advance and in writing by the head of the appropriate agency, or if the public servant is an agency head, by a deputy mayor. The Board concluded that these requirements have been met.

OPINION SUMMARY

OPINION NO.**92-20**

DATE

7/27/92

CHARTER SECTION(S)

2604(b)(2)

SUBJECT(S)

Recusal

OTHER OPINIONS CITED

n/a

SUMMARY: It would not be a conflict of interest for City employees who work at City-owned water facilities in upstate New York to hold public office in the communities where they reside, inasmuch as the City has no taxable property in, or business dealings with, these communities.

These public servants must perform their outside duties at times when they are not required to provide services for the City.

The public servants must recuse themselves from any matters which may come before them in their elected positions which involve the City's watershed or City employees.

OPINION NO.**92-21**

DATE

7/27/92

CHARTER SECTION(S)

n/a

SUBJECT(S):

Gifts to City Agencies

OTHER OPINIONS CITED:

Board of Ethics Opinion
Nos. 100, 279, 328 and 466

SUMMARY: Two City agencies, the Department of Health (DOH) and the Human Resources Administration (HRA) requested an opinion from the Board about the propriety of soliciting or accepting gifts from the private sector to support agency programs. DOH sought the donation of condoms to its AIDS prevention program. The HRA Emergency Food Assistance Program wished to solicit funds and/or food from private individuals and corporations to support its food program.

The Board concluded that both agencies would be permitted to solicit the gifts. In reaching its conclusion, the Board stated that, in evaluating whether such gifts may be improper or have the appearance of impropriety, a number of factors must be considered.

These factors include: whether the donor has business dealings with the City; whether the donor has an interest in a matter awaiting determination by the agency; whether the donor is a sole supplier; whether the donor's contacts with the agency have been disclosed; and the extent to which the public servants accepting the gift on behalf of the agency are the same public servants who make decisions about agency contracts.

The Board stated that the integrity of the contracting process must remain intact and any appearance of partiality in selecting contractors must be avoided. It is imperative that the solicitation is not linked by the agency, explicitly or implicitly, to securing or not securing a contract with the agency.

The Board recommends that City agencies consider the creation of non-profit organizations which could solicit and receive donations with fewer ethical problems.

OPINION SUMMARY

OPINION NO.

92-22

DATE:

9/8/92

CHARTER SECTION(S):

2601(12),
2604(a), 2604(b)(1)(a),
2604(c)(6)

SUBJECT(S):

Elected Officials
Ex-Officio Board Members
Not-For-Profit Organizations

OTHER OPINIONS CITED:

n/a

SUMMARY: It would not be a conflict of interest for an elected official to serve as an ex officio member of the board of directors of a not-for-profit organization which receives funding from the City; nor for him, in his official capacity, to vote on this entity's budget or otherwise recommend allocations to it from the City's budget, as long as he has disclosed his interest to the Board and the City Council.

OPINION NO.**92-23**

DATE

9/15/92

CHARTER SECTION(S)

2604(b)(3)

SUBJECT(S):

Appearance of Impropriety
Elected Officials
Gifts

OTHER OPINIONS CITED:

92-10

SUBJECT: It would be a conflict of interest for an elected official to accept the gift of two free tickets from a common carrier for travel to a destination outside the State of New York, even though presented for use after he leaves office. The tickets were presented to the official when he was an honoree at a community event sponsored by a number of business organizations.

It is the opinion of the Board that the official's acceptance of the tickets would create the appearance that he has received a valuable gift because of his official position, and without promoting any governmental purpose.

OPINION SUMMARY

OPINION NO.**92-24**

DATE

9/28/92

CHARTER SECTION(S):

2604(c)(6)

SUBJECT(S):

Not-For-Profit Organizations

OTHER OPINIONS CITED:

n/a

SUMMARY: Based on circumstances described in the opinion, it would not be a conflict of interest for a public servant to serve without compensation as a trustee — acting in an advisory capacity — of a religious institution which has business dealings with the City.

OPINION NO.**92-25**

DATE:

10/13/92

CHARTER SECTION(S)

2604(b)(2), 2604(b)(3),
2604(b)(12), 2604(c)(6)(a)

SUBJECT(S)

Fundraising
High-Level Public Servant
Not-For-Profit Organizations
Personnel Order 88/5
Political Activities
Recusal

OTHER OPINIONS CITED:

91-10

SUMMARY: It would be a conflict of interest for a high-level, part-time City commissioner to participate in any of the following three activities:

1) Not-for-Profit Public Project

The official wanted to participate pro bono in a public project by giving uncompensated professional advice to its sponsors and by serving as an officer to a not-for-profit organization that would be formed to finance and operate the project. The project would be likely to have business dealings with the official's agency and other City agencies.

This activity would be in violation of the Charter provision that public servants may not have financial or other private interests, direct or indirect, which are in conflict with the public servants' official duties. Further, if the project ever comes before his agency for approval, the public servant should disclose his former involvement and recuse himself from any involvement from considering in or voting on the project.

2) Contract for Services on a Private Project

The official wanted to provide professional services to a private project that had come before his agency for approval, but from the consideration of which he had recused himself.

The recusal notwithstanding, the official's pre-existing involvement with the project might create the appearance that he used his City position to create a private advantage for himself or a private firm.

3) Political Action Group

The official wished to serve as director and officer of a political action group that helps raise funds for and elect candidates to elective office.

This high-level official has "substantial policy discretion"; he is thereby prohibited by the Charter from serving as the officer or board member of such a political action group. Further, he could not effectively recuse himself from the group's primary activity, which is fundraising.

OPINION NO.**92-26 Revised**

DATE:

10/13/92

CHARTER SECTION(S):

2604(b)(6)

SUBJECT(S):

High-Level Public Servant
Ownership Interests
Recusal

OTHER OPINIONS CITED:

n/a

SUMMARY: It would be a conflict of interest for an individual who owns and operates a private firm which proposes to seek City contracts which would eventually come before the prospective appointee's agency for approval, to accept an appointment as a part-time, high-level City commissioner. In this case, it would not be possible for the appointee effectively to recuse himself, because he could not be sufficiently insulated from his firm's involvement with the projects. The Board found it unnecessary to address the other question raised by the prospective appointee, which related to current City-related contracts held by his firm.

OPINION NO. 92-27

DATE 10/26/92

CHARTER SECTION(S) 2800(c)(9), 2800(f)

SUBJECT(S): Community Boards

OTHER OPINIONS CITED: 92-21

SUMMARY: A Community Board staff member has inquired whether it is permissible for the Community Board to solicit funds to hire a consultant to study waterfront-related commercial uses for a waterfront site located within its jurisdiction.

It would not be a conflict of interest for the Community Board to solicit funds for the study from entities that have no matters pending before the Board. However, any solicitation to the business that owns land located adjacent to the site to be studied must be conditioned on the following:

- (i) the corporation will have no involvement with the study or selection of the consultant;
- (ii) the Community Board will disclose funding received from the corporation in any materials concerning the study's findings and recommendations; and
- (iii) if possible, personnel involved in the solicitation of funds will be different from those expected to have dealings with the corporation if the recommendations of the study are adopted.

OPINION NO.**92-28**

DATE:

11/9/92

CHARTER SECTION(S):

2603(b)(2),
2604(b)(3), 2604(b)(6),
2604(b)(7), 2604(b)(14)

SUBJECT(S):

City Council
Financial Relationship with
Superior/Subordinate
Not-For-Profit Organizations

OTHER OPINIONS CITED:

91-7

SUMMARY: A candidate for appointment as a councilmanic aide to a City Council member has asked whether, consistent with Chapter 68 of the City Charter, he may maintain his private professional practice. He seeks to continue to represent not-for-profit corporations which occasionally receive grants and/or loans from City agencies, including the Department of Housing Preservation and Development ("HPD") and the Council, and clients who apply to the Council for the conveyance of City-owned land. He also has clients who buy property at auctions through the Division of Real Property. In addition, he seeks to continue his representation of the Council member in private matters on a pro bono basis.

The Council member for whom he would be working has no oversight responsibility for HPD or the Division of Real Property.

The Board determined that it would be a violation of the City Charter for the prospective public servant to represent clients while their land-use applications are pending before City Council.

It would not be a violation for the public servant to appear, on behalf of his private-sector clients, before HPD or the Division of Real Property so long as he complies with the guidelines of Opinion No. 91-7 concerning the private practice of law. However, if the Council member for whom he is an aide takes on responsibility for oversight of HPD or the Division of Real Property, the aide can no longer appear before such agency on behalf of his private clients.

Finally, it would be a conflict of interest for the aide to represent the Council member on private matters, pro bono, because it would create the appearance of an ongoing business relationship. The City Charter prohibits a public servant from having a financial relationship with another public servant who is a superior or a subordinate of such public servant.

OPINION NO.**92-29**

DATE

11/9/92

CHARTER SECTIONS(S)

n/a

SUBJECT(S)

Fundraising
Gifts

OTHER OPINIONS CITED

n/a

SUMMARY: It would not be a conflict of interest for an agency's employees to raise charitable funds on behalf of another employee who was involved in a serious motor vehicle accident, and to solicit contributions from firms engaged in a trade that falls within the agency's jurisdiction.

However, the funds should be raised in a manner that conceals the identities of the donors to the public servant and to other agency employees.

OPINION NO.**92-30**

DATE:

11/16/92

CHARTER SECTION(S):

2601(18),
2604(a)(1)(b),
2604(b)(2), 2604(b)(3),
2604(b)(4), 2604(e)

SUBJECT(S)

Moonlighting
Ownership Interests
Recusal

OTHER OPINIONS CITED:

90-2
91-15

SUMMARY: The Board determined that under the particular circumstances and on the conditions described in the opinion it would not be a conflict of interest for Dr. Luis Marcos, the Mayor's candidate for Commissioner of Mental Health, Retardation and Alcoholism Services ("Mental Health") to receive compensation from teaching at the NYU School of Medicine, which has business dealings with the City, but not directly with Mental Health, and to maintain a small private practice in psychiatry. Further, it would not be a conflict of interest for Dr. Marcos' wife, also a psychiatrist, to treat in-patients at Columbia Presbyterian Hospital, which has a contract with Mental Health for the provision of out-patient services, as long as Dr. Marcos recuses himself from considering any matters relating to the contract between Mental Health and the Hospital.

OPINION NO.**92-31**

DATE

11/23/92

CHARTER SECTION(S)

2601(11), 2601(12),
2604(a)(1)(a),
2604(b)(3),
2604(e)

SUBJECT(S)

Attorneys
Community Boards
Not-For-Profit Organizations

OTHER OPINIONS CITED:

n/a

SUMMARY: A Community Board wishes to retain the services of an attorney, who is also a Community Board member, to negotiate and prepare grant agreements with not-for-profit organizations that would perform community service projects which are proposed by the Community Board and approved by City and State agencies. The attorney was actively involved in negotiations over the funding of such grants and in reviewing and approving all of the grant projects approved to date. The Board determined that it would be a violation of the City Charter for the attorney to be retained under the circumstances and for the purposes described in the opinion.

OPINION SUMMARY

OPINION NO.

92-32

DATE

11/23/92

CHARTER SECTION(S):

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

SUBJECT(S):

Appearance before a City
Agency
Electrical Inspectors
Ministerial Matters
Post-Employment Restrictions

OTHER OPINIONS CITED:

n/a

OTHER STATUTE(S):

Local Law 73 of 1988

OTHER CODE(S):

New York City Electrical Code,
§27-3018(b)

SUMMARY: It would not be a conflict of interest for a former electrical inspector in the Department of Buildings (the "Department"), within one year after the termination of employment with the Department, to file applications for certificates of electrical inspection with the Department's Bureau of Electrical Control ("BEC"), and to attend inspections, by Department inspectors, of electrical work covered by such applications.

The electrical inspectors are permitted to make such "appearances" before their former agency, because the application and initial inspection are "ministerial" matters and therefore permissible under the Charter's post-employment provisions.

However, it would not be permitted for the electrical inspectors, within one year of leaving the Department, to become personally involved in appeals of violations of the Electrical Code, because such involvement would necessitate "appearances" by the electricians before the Department to discuss how the violations should be corrected.

OPINION NO.**92-33**

DATE

11/23/92

CHARTER SECTION(S)

2604(b)(3), 2604(b)(5)

RULE OF THE BOARD

Valuable Gifts §1-01(a)

SUBJECT(S)

City Position, Use of
Gifts to City Agencies
High-Level Public Servant

OTHER OPINIONS CITED:

92-21

SUMMARY: A City agency official has asked whether the agency may accept a gift, valued at \$300-500, from a donor who has business dealings with the subject agency. The gift would consist of entertainment opportunities awarded to agency employees for their outstanding job performance. The agency has offered to exclude certain employees, who are responsible for the donor's business dealings with the City, from eligibility for the gift.

In the opinion of the Board, it would be a Charter violation for the agency to accept the donor's proposed gift. Under the special circumstances of this particular case, because of the sensitive and complex nature of the donor's business negotiations with the City, the appearance of impartiality on the part of the agency's employees could be seriously compromised.

OPINION NO.**92-34**

DATE:

11/23/92

CHARTER SECTION(S):

2601(12),
2604(a)(1)(b), 2604(b)(2),
2604(b)(4), 2604(b)(13)
2604(e)

SUBJECT(S):

Moonlighting
Not-For-Profit Organizations

OTHER OPINIONS CITED:

n/a

SUMMARY: Several public servants employed by the Department of Parks and Recreation ("DPR") separately asked if they may accept consulting positions with not-for-profit organizations whose primary purpose is to provide financial assistance to the public parks system.

In addition, a public servant and a not-for-profit organization dedicated to supporting a public park have asked, separately, if such an organization may subsidize a portion of the wages or salaries of DPR employees for work performed in connection with the public parks system.

A number of high-ranking public servants, including the DPR Commissioner, serve as Board members or as officers of the not-for-profit organizations in question.

The Board determined that, with the approval of the DPR Commissioner, the consultant positions and other proposed arrangements furthered the interests of the City and did not present a conflict of interest under the Charter.

OPINION NO.**92-35**

DATE

11/23/92

CHARTER SECTION(S)

2604(a)(1)(b), 2604(a)(3),
2604(a)(4)

SUBJECT(S):

City Position, Use of
Ownership Interests

OTHER OPINIONS CITED:

n/a

SUMMARY: It would not be a conflict of interest for a public servant to maintain his ownership interest in partnerships which own buildings with apartments being rented to individuals who receive public assistance.

The Board considered the nature of the public servant's position and duties and determined that it is unlikely that the public servant would be able to use his City position to gain advantage for the partnership in its business dealings with the City. Further, there is no evidence to suggest that he used his position to procure tenants or that his position would enable him to procure tenants more easily or on more favorable terms than other owners of rental property.

OPINION NO.**92-36**

DATE

12/15/92

CHARTER SECTION(S)

2601(4), 2601(15),
2604(b)(2), 2604(b)(3),
2604(b)(4), 2604(b)(6),
2604(d)(2), 2604(d)(4)

SUBJECT(S):

Appearance before City Agency
Electrical Inspectors
Ministerial Matters
Moonlighting

OTHER OPINIONS CITED:

92-32
Board of Ethics Opinion Nos.
56 and 664

OTHER STATUTE(S):

Local Law 73 of 1988

OTHER CODE(S):

New York City Electrical Code
§27-3018(b)

SUMMARY: It would not be a conflict of interest for public servants whose official duties include maintenance and repair of electrical equipment, and who are applying for Master Electrician's Licenses, to file applications for certificates of electrical inspection with the Bureau of Electrical Control of the Department of Buildings on behalf of private-sector clients and to attend inspections of electrical work covered by such inspections. However, these public servants may not be personally involved in the appeal of any violation resulting from an electrical inspection.

The Board's opinion is based on the findings set forth in a prior opinion, 92-32, in addition to two opinions of the former Board of Ethics.

OPINION NO.**92-37**

DATE

12/15/92

CHARTER SECTION(S)

2604(d), 2604(d)(1),
2604(d)(1)(ii), 2604(d)(2),
2604(d)(4), 2604(e)

SUBJECT(S):

Appearance before City Agency
Not-For-Profit Organizations
Post-Employment Restrictions
Waivers of Post-Employment
Restrictions

OTHER OPINIONS CITED:

91-8

SUMMARY: It would not be a conflict of interest for a former deputy commissioner, who is now executive director of a not-for-profit organization, to appear before her old agency, despite the fact that the appearances would take place within one year of the termination of her City employment and would concern matters in which she was personally and substantially involved.

The Board has granted a waiver of the Charter's post-employment restrictions in this case, based on the approval of the public servant's former agency head, because the former public servant's appearances and involvement would not conflict with the purposes and interests of the City and the circumstances justifying a waiver of the post-employment prohibitions contained in Charter Sections 2604(d)(2) and (4).

The Board noted with disapproval that the former public servant did not request the Board's opinion prior to having accepted the position with the not-for-profit organization.

OPINION SUMMARY

OPINION NO.**92-38**

DATE:

12/22/92

CHARTER SECTION(S):

2601(4), 2601(15),
2604(d)(2), 2604(d)(4),
2604(d)(5)

SUBJECT(S):

Appearance before City Agency
Ministerial Matter
Post-Employment Restrictions

OTHER OPINIONS CITED:

n/a

SUMMARY: It would not be a conflict of interest for a former public servant to work at a private consulting firm on a matter with which she was involved in her City job, because her involvement while working for the City was "ministerial" in nature and not substantial.

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