

# *New York City Conflicts of Interest Board*

## *Annual Report 1995*

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## LETTER TO THE MAYOR

Honorable Rudolph W. Giuliani  
Mayor of the City of New York

Dear Mayor Giuliani:

On behalf of the Conflicts of Interest Board, I am pleased to submit this report of the Board's work in 1995.

As a result of a number of new initiatives, including a significant reorganization of the Board's staff, the Board was able to expand its programs and services in 1995, despite a reduced staff and increasingly severe fiscal restraints. These initiatives and accomplishments spanned the breadth of the Board's responsibilities, including training and education, legal guidance and advisory opinions, enforcement, and financial disclosure. While the Board's activities in 1995 are set out more fully in the body of this report, the following highlights deserve special mention.

### **Training and Education**

The touchstone of the Board's training and education philosophy lies in the Board's belief that it is better to prevent violations of the conflicts of interest law than to punish violations after they occur. For that reason, the Board believes it essential to expand its services in this area.

As a result of budget cuts, however, the Board was unable to conduct a Citywide seminar in 1995 for elected officials, agency heads, agency counsel, inspectors general, and disciplinary advocates. This loss was a major blow to the Board's training and education effort, as our 1993 and 1994 seminars proved highly effective in making City officers and employees more sensitive to conflicts of interest issues and more knowledgeable about the City's conflicts of interest law.

Board staff was able to conduct 24 small training sessions, targeted at public servants who either advise other employees about Chapter 68 or who are themselves likely to encounter potential conflicts of interest situations. Unfortunately, such sessions can reach only a tiny fraction of the City's 200,000 workers. To fulfill its Charter mandate to provide ethics training of all City employees, the Board has therefore undertaken two major training initiatives: (1) a train the trainer program; and (2) mandated ethics training and the appointment of ethics officers in every City agency.

In March 1995, Board staff conducted three "Train the Trainer" workshops for fifty-one training directors from 29 City agencies. These classes demonstrated how City agencies can develop their own employee education programs about Chapter 68, using the Board's videotapes and printed materials. During 1995 the Board worked closely with the Office of Operations and the City's Law Department on a proposed directive from the First Deputy Mayor mandating ethics training and the appointment of an ethics officer in every Mayoral agency. We are hopeful that this directive will be issued early in 1996.

During 1995 the Board developed new educational materials. In particular, the Board co-produced with Crosswalks Television a second videotape, "It's a Question of Ethics: The Game Show," featuring Finance Commissioner Fred Cerullo as the "host" and three New York City employees as "contestants" who answer questions about various ethics provisions. Originally aired on Cable Channel 74 over a three-month period in the summer of 1995, this videotape forms the centerpiece of the Board's training and education program and has shown itself to be a highly effective means of reaching large numbers of City employees at a small price (the videotape cost the Board only \$3,000). In addition, the portable set that was developed for the taping of the game show is being used with great success in classes about Chapter 68. Unfortunately, proposed budget cuts

will likely prevent the Board from producing additional videotapes, including 30-second cable TV ethics spots that had been planned by the Board.

During 1995 the Board developed a variety of printed educational materials about Chapter 68 and the financial disclosure law. The Board also continues to publish in *The Chief-Leader* the well-received "Myth of the Month" column on various aspects of Chapter 68 and in 1995 published two front page articles in the *New York Law Journal* and a lead article in *CityLaw*. The Board now distributes to City officers and employees over a dozen different publications on the conflicts of interest and financial disclosure laws.

### **Advisory Opinions, Rules, and Requests for Guidance**

The Board's issuance of advisory opinions and rules performs both an adjudicatory and an educational function. The opinions provide guidance not only to the individual public servants who request them but also to many other public servants with similar problems. These opinions also enable the Board staff, through staff letters, to give expeditious responses on the broad range of matters covered by these opinions, without the necessity of formal Board action. Finally, as the advisory opinions are brought to public servants' attention through the Board's education program, City employees will come to a fuller understanding of the requirements of Chapter 68.

In 1995, the Board issued 246 staff letters, 60 waiver letters, 5 orders, and 29 advisory opinions. (Some advisory opinions also include orders.) Several advisory opinions deserve special comment, including those addressing City employees' using their official positions for non-City purposes, City employees' pursuing private work which might require appearances before the City, the propriety of City employees' contracting with their own or other City agencies to perform part-time work in addition to their regular City employment, community board fundraising, and voter registration drives. Annexed to this annual report is a summary of all of the advisory opinions issued by the Board in 1995. Also included, for the first time, is a cumulative index of the Board's opinions from 1990 to date.

In its rulemaking capacity, the Board held a public hearing in December on proposed amendments to the Board's procedures for conducting enforcement hearings. Those amendments, which should be promulgated in early 1996, should significantly streamline the enforcement process and enable the Board to prosecute more cases with greater efficiency, without impairing due process rights of respondents.

To make its opinions and rules more accessible to public servants, agency counsel, and private attorneys, the Board has arranged for on-line access to its opinions through Westlaw, a commercial legal research data base subscribed to by tens of thousands of lawyers worldwide, and the Law Department's computerized City Law Legal Research System.

One of the Board's major accomplishments in 1995 was the elimination of its lengthy backlog of requests for advisory opinions. As of December 31, 1995, the oldest request pending before the Board was less than six weeks old. As summarized in Table 2 to the annual report, from December 31, 1993, to December 31, 1995, the Board reduced the pending number of requests from 105 to 13, or 88%, and the average age of requests from more than 10 months to less than 3 weeks, an improvement of 95%.

### **Enforcement**

The Board bears responsibility for enforcing both Chapter 68 and the City's financial disclosure law. During 1995 the enforcement unit set up a computerized tracking system showing the status of all 103 of the Board's Chapter 68 enforcement cases.

In 1995, the Board received 29 new complaints, as compared with 31 in 1994, 29 in 1993, 22 in 1992, 20 in 1991, and 8 in 1990. (These figures do not reflect those complaints received which, while requiring staff time and attention, were legally insufficient to merit the formal opening of a case.) In 1995, the Board disposed of 33 complaints and was thus able to keep up with new filings. Of these dispositions, five were disposed of by stipulation, in which the respondents either admitted or did not contest that they had violated Chapter 68; in three of these five cases respondents paid a fine.

In the financial disclosure area, the Board's enforcement unit in 1995 brought 108 cases of late filers and non-filers to OATH, 84 of which were settled or withdrawn and 24 of which resulted in Board orders. During 1995 the Board collected more than \$46,000 in cases that did not require complete Board proceedings. In December 1995 the Board referred to the Law Department for collection 28 Board orders in enforcement actions commenced in prior years, with a face value of over \$200,000.

The Board made great strides in 1995 in clearing its financial disclosure backlog and brought formal proceedings in all but four of the financial disclosure enforcement cases for the years 1990-1992. During the summer of 1995, the Board's enforcement attorney ran a clinic for two volunteer law students, from Cardozo and Brooklyn Law Schools, to train the students to prepare and present financial disclosure enforcement cases to OATH.

During 1995 the Board also made significant strides in co-operating regularly with other law enforcement agencies and assisted in two criminal prosecutions resulting in a jury verdict and a guilty plea for violations of Chapter 68.

### **Financial Disclosure**

In 1995 the Board maintained its record of obtaining excellent compliance with the City's financial disclosure law. As of December 31, 1995, there were no active City employees who had not filed financial disclosure reports for calendar years 1989 through 1993. For calendar year 1994 reports - required to be filed in May 1995 - as of December 31, 1995, only 19 active public servants had failed to file their reports with the Board. The cases of former City employees who failed to file their reports, or failed to pay late fines, for calendar years 1990-1993 have either been adjudicated or, by year end, were being adjudicated.

Of the 11,689 1994 reports received by the Board in 1995, 795 - roughly 7% - were filed after the May 1, 1995, deadline and are therefore considered late. During 1995 the Board collected late fines from 331 of those late filers, totalling \$33,100. In the entire period since the Board assumed responsibility for financial disclosure in 1990, the Board has collected \$192,863 in fines.

To reduce the enormous burden of administering the financial disclosure system, and thereby to enable the Board's staff to spend more time on substantive reviews of financial disclosure reports and Chapter 68 enforcement, the Board has undertaken three new initiatives. The first, directed at active City employees, is a directive from the First Deputy Mayor to agency heads, issued at the request of the Board, asking that they ensure their employees' compliance with the financial disclosure law. As a result, as noted above, all active City employees required to file financial disclosure reports have done so for calendar years 1989 through 1993.

The second initiative is a proposed Mayoral Directive that would withhold final lump sum/salary payments from departing employees who are required to file a disclosure report until they have fully complied with their financial disclosure obligations. Since over 90% of the Board's financial disclosure enforcement actions involve former employees, this Directive would save the Board significant time and effort.

The third initiative is the proposed electronic filing of financial disclosure reports. The Office of Operations has calculated that this initiative would reduce the per copy cost of administering the financial disclosure system by almost 50%. More importantly, electronic filing would permit the Board to conduct more effective substantive reviews of disclosure reports for possible conflicts of interest.

The Board hopes that these initiatives will be implemented in 1996.

### **Conclusion**

In 1995, as a result of the restructuring of the Board's staff, the streamlining of its operations, and the implementation of a number of new initiatives, the Board significantly increased its productivity, expanded its programs, and improved its delivery of services to City employees, despite a 35% cut in its budgeted staff and a 41% cut in its other than personal services budget. The Board is now viewed as an innovative leader in the restructuring of government, willing and able to develop and implement bold new initiatives. However, the Board remains critically understaffed and severely underfunded in the areas of education and enforcement. In these areas restructuring, streamlining, and reinventing cannot offset the drastic staff and budget cuts. Increase in staff and budget is essential if we are to accomplish our mission in these areas.

In conclusion, may I express my profound gratitude to my fellow Board members for their dedication and support. On behalf of the Board, may I also express our appreciation to you, to your First Deputy Mayor, Peter J. Powers, your counsel, Dennison Young, your Corporation Counsel, Paul A. Crotty, and your Commissioner of Investigation, Howard Wilson, for the cooperation and assistance they have provided us. Finally, I would be remiss if I did not acknowledge with gratitude the efforts of the Office of Operations, especially those of Donna Lynne, Tyra Liebman, and Robert Fodera, in furthering the Board's initiatives.

Respectfully submitted,

Sheldon Oliensis

Chair

## INTRODUCTION

This year, 1995, marks the sixth year in the life of the Conflicts of Interest Board, which was created by the revised City Charter that took effect in January 1990. Charter Chapter 68 has vested the Board with broad responsibilities, including the education of City officials and employees about Chapter 68's ethical standards, the interpretation of Chapter 68 through the issuance of advisory opinions and the promulgation of rules, the response to requests from current and former public servants for advice and guidance, the prosecution of Chapter 68 violations in administrative proceedings, and the administration and enforcement of the City's financial disclosure law. This annual report addresses the activities during the past year in each of these areas.

## MEMBERS AND STAFF OF THE CONFLICTS OF INTEREST BOARD

Appointed by the Mayor and confirmed by the City Council, the Board's five members serve six-year staggered terms. Under the Charter, the members must be selected on the basis of their "independence, integrity, civic commitment and high ethical standards." They may not hold public office or political party office while serving on the Board.

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

Bruce A. Green, a professor at Fordham University School of Law, was appointed to the Board in November 1995. He replaced Beryl R. Jones, a professor of law at Brooklyn Law School, who had served on the Board since October 1989.

Jane W. Parver, a partner at Kaye, Scholer, Fierman, Hays & Handler, was appointed to the Board in August 1994.

Benito Romano, a partner in the law firm of Willkie, Farr & Gallagher, was also appointed to the Board in August 1994.

Shirley Adelson Siegel, an Adjunct Professor of Urban Planning at Columbia University, has served as a Board member since September 1990. She was reappointed for a six-year term after her first term expired in March 1992.

The Board's 17-member staff is divided into five units: Training and Education, Legal, Enforcement, Financial Disclosure, and Administrative. The staff is headed by the Executive Director/Counsel, Mark Davies.

## EDUCATION

Believing that it is better to prevent violations of the conflicts of interest law than to punish violations after they occur, the Board regards training and education as one of its most vital functions. Unfortunately, a 41% cut in the Board's other than personal services (OTPS) budget has threatened to cripple the Board's training and education program. Only through significant increases in productivity and numerous innovations was the Board able to maintain a training program, although far less than the Board had planned.

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### Citywide Seminar

In 1993 and 1994, the Board co-presented, with the Association of the Bar of the City of New York, two highly successful Ethics in City Government Seminars. These events included keynote addresses by the Mayor and the Council Speaker, workshops on Chapter 68, and, in 1994, a panel discussion analyzing and evaluating the City's ethics laws.

Attended by City elected officials, agency heads, agency counsel, inspectors general, disciplinary counsel, and interested members of the Bar, these annual ethics seminars helped make City officers and employees more sensitive to conflicts issues and more knowledgeable about Chapter 68, and also helped familiarize officials with the legal and educational resources of the Conflicts of Interest Board.

Unfortunately, the 41% cut in the Board's OTPS budget prevented the Board from holding a Citywide seminar in 1995. To permit the Board to hold an annual seminar in 1996, the Board is seeking other sources outside the Board's budget to cover the \$15,000 cost of the seminar.

### The Board's 1995 Education Programs

#### Training Seminars, Agency Counsel Briefings, and Workshops

During 1995 the Board's staff conducted 24 training sessions, targeted at public servants who either advise other employees about Chapter 68 or who are themselves likely to encounter potential conflicts of interest situations. Most training sessions are organized and taught by the Board's Director of Training and Education. Briefing sessions and workshops for agency counsel and disciplinary officers are led by a member of the Board's legal staff.

These training sessions were as follows:

- Seven half-day workshops for the Procurement Training Institute, including one specially-requested workshop for procurement staff of the Department of Homeless Services.

These workshops are part of an ongoing series of ethics classes held for the Institute by the Board. The conflicts of interest class is tied to the Institute's City-specific contracting course. To receive credit for taking the City-specific course, students must take the conflicts of interest law training.

- A workshop for the New York City Police Department's Disciplinary Assessment Unit on Chapter 68 and the Board's enforcement program.

Workshops, such as this, that include a discussion of the Board's enforcement procedures incorporate a presentation by the Board's Director of Enforcement. In 1995, for the first time, the Conflicts of Interest Board began to work with the Police Department, both in the education and the enforcement areas.

- A seminar for Field Supervisors of the Department of Transportation.
- Three seminars for agency counsel and the Special Prosecutions Bureau of the Manhattan District Attorney's Office on the Board's enforcement program and procedures.
- Two workshops for agency counsel on the moonlighting provisions of the conflicts of interest law.
- Three seminars at the Department of Employment: one for top agency officials, one for procurement staff, and one for compliance auditing managers.



- Two seminars about Chapter 68 for students at New York Law School and Benjamin N. Cardozo School of Law.
- Three Train the Trainer workshops, discussed below
- Two workshops for financial disclosure liaisons.

The Board's conflicts of interest seminars, briefings, and workshops for City employees routinely include the following elements:

- (1) A brief lecture on Chapter 68;
- (2) The screening of one of the Board's two educational videotapes;
- (3) A new interactive ethics game;
- (4) Role-playing;
- (5) Discussion of hypotheticals;
- (6) A true/false quiz;
- (7) A question and answer period; and
- (8) The distribution of educational literature on Chapter 68 and the Conflicts of Interest Board.

### **Conflicts of Interest Training Programs within City Agencies**

While successful, well-attended, and popular, the Board's training sessions will, unfortunately, reach only a tiny fraction of the City's 200,000 workers. The Board has therefore undertaken two major training initiatives: (1) a Train the Trainer program; and (2) mandated ethics training and the appointment of ethics officers in every City agency to fulfill the Charter mandate for ethics training of all City employees.

### **The Train the Trainer Program**

In March 1995, Board staff conducted three "Train the Trainer" workshops for 51 training directors from 29 City agencies. These classes demonstrated how City agencies can develop their own employee education programs about Chapter 68, using the Board's videotapes and printed materials. The Board also offers individual assistance to any agency that undertakes to develop such a program.

During these sessions, the Board learned that the majority of trainers are convinced of the need for conflicts of interest training but that agencies tend to restrict training to mandated training or training required for employees to perform their jobs. It has therefore become clear that the majority of City personnel will not receive ethics training unless it is mandated.

### **Ethics Officers and Mandated Ethics Training**

During 1995 the Board worked closely with the Office of Operations and the City's Law Department on a proposed directive from the First Deputy Mayor mandating conflicts of interest training and the appointment of an ethics officer in every Mayoral agency.

Under this directive, the agency ethics officer, who will be an attorney, will assist public servants within the agency in addressing conflicts of interest matters and will be responsible for making information on Chapter 68 widely accessible to the agency's employees.

Each agency will also be required to establish a schedule for mandatory conflicts of interest training for all agency employees within a reasonable time. Each agency's training program -- which will be developed with the assistance of the Board -- must include, at a minimum: an overview of the conflicts of interest law; the screening of one of the Board's educational videotapes; the distribution of printed materials; the introduction of the agency's ethics officer; a discussion of the role of the Conflicts of Interest Board; and a description of the Board's educational and legal resources available to City employees. Each agency will also be required to designate training personnel to attend briefing sessions given by the Conflicts of Interest Board and to act as ethics training liaisons with the Board.

This initiative represents a major step toward ensuring that *every* City employee, at least in Mayoral agencies, is educated about Chapter 68. However, one should note that, while some City agencies have already developed their own ethics training programs, many, if not most, City agencies will require substantial help from the Board in establishing agency ethics training programs. These agencies will need not only training for their own ethics trainers but also detailed training manuals and ethics compliance programs. The Board's training and education staff, which currently consists of one half-time employee, must be expanded if this need is to be met.

The Board has been looking at creative ways to accomplish this goal, for example, by using staff attorneys to a greater extent in training and education, by obtaining interns and *pro bono* assistance, and by relieving the Board's training and education director of her media responsibilities. Nevertheless, the Board desperately needs more staff for training and education, if violations of the conflicts of interest law are to be prevented from occurring.

### **Other Board Training Programs**

Training and education is not confined to the Board's training and education unit. During 1995 the Board's financial disclosure unit organized and presented two seminars for financial disclosure liaisons of City agencies about the Board's procedures for administration of the financial disclosure law.

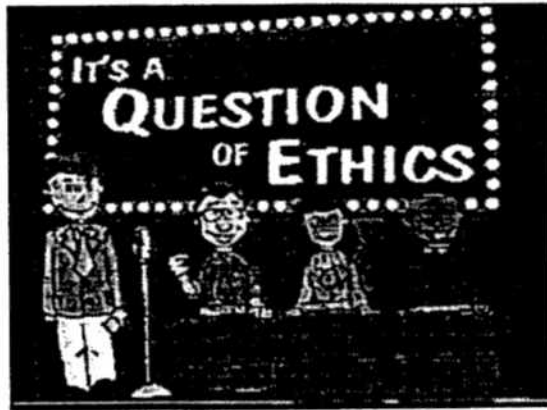
In addition, enforcement -- teaching by adverse example -- may be viewed as part of the Board's educational function. The Board's Director of Enforcement has therefore been active in spreading the word about the enforcement program of the Board and its enforcement actions. The Board is also hoping to use volunteers to initiate a small community outreach program, particularly in those segments of the community that, because of educational or language barriers, may be especially vulnerable to unethical actions by a City employee, such as requests to pay for a free City service.

## **Educational Materials**

### **New Videotape**

**I**n 1995 the Board co-produced with Crosswalks Television, the City's cable television station, a second videotape, "It's a Question of Ethics: The Game Show," which was co-authored by members of the Board's training and enforcement units and Crosswalks staff, with Board member Shirley Adelson Siegel acting as legal consultant. Originally aired on Cable Channel 74 over a three-month period in the summer of 1995, this videotape supplements the Board's original "It's a Question of Ethics" videotape, which the Board co-produced with Crosswalks in 1994.

The Board's ethics game show features Finance Commissioner and former Council member Fred Cerullo as the "host" and three New York City employees as "contestants" who answer questions about Chapter 68 provisions on acceptance of gifts, moonlighting jobs, post-employment restrictions, volunteer work, and other matters concerning public servants' official duties and outside activities. Also featured on the videotape is the Board's Director of Enforcement, who appears as legal commentator.



From the educational videotape "IT'S A Question OF ETHICS: THE GAME SHOW," co-produced by the Conflicts of Interest Board and Crosswalks Television.



A demonstration of the Board's interactive ethics game show at the COGEL conference in Washington D.C.

City employees have responded enthusiastically to this videotape, which demonstrates that ethics training does not have to be boring. The Board was also pleased to receive some significant and positive media coverage for the videotape, which Crosswalks Television has submitted for a local EMMY award in the educational films category.

The Board is currently discussing with Crosswalks the possibility of producing a series of 30-second ethics spots, perhaps shot on location around New York City and using take-offs on various film genres. Each spot would highlight a particular conflicts of interest issue, not so much to teach City employees the law as to increase their awareness of potential ethics problems.

### **Live, Interactive Game Show**

The Board's ethics game show board can travel to City agencies "live" as well as on tape. The Board has been able to make use of the portable set that was developed for the taping of the game show as the centerpiece of an "ethics quiz show game," which the Board's training and education director has used with great success in classes about Chapter 68.

### **Printed Materials**

During 1995 the Board continued to develop a variety of printed educational materials about Chapter 68 and the financial disclosure law, materials that the Board uses in educational seminars for City employees and distributes to agency counsel, personnel officers, training staffs, and financial disclosure liaisons of City agencies; public servants who contact the Board with questions about Chapter 68; professional associations; good government groups; the media; private law firms and attorneys; law schools; government ethics agencies throughout New York State and around the country; and individual members of the public. A current list of the Board's publications is set out in Table 1 at the conclusion of this report.

Its OTPS budget permitting, the Board is planning additional publications for 1996, which should be of substantial assistance to City employees. These proposed materials include:

- Ethics advisories on individual topics of interest;
- One-page, plain language summaries of selected provisions of the conflicts of interest law, such as gifts, moonlighting, post-employment restrictions, and political activities;
- A one-page "red-flags" memorandum that warns City employees, in simple language, about common situations that should raise red flags in their minds about possible conflicts of interest violations, such as accepting a gift from someone who has business with the City;
- A series of brochures, each of which would review the relevant Chapter 68 provisions and advisory opinions on a specific conflicts of interest issue;
- A series of leaflets on Chapter 68 guidelines for the private sector and for City employees holding various positions, such as agency contracting officers, and
- A Conflicts of Interest Board newsletter.

## Articles

### "Ethics Myth of the Month" Column

During 1995 the Board continued to work with *The Chief-Leader*, the City's civil service newspaper, to educate the City's public servants about the provisions of the conflicts of interest law and about the Board's programs and procedures. Once each month, since May of 1994, *The Chief* has published a column written by a member of the Board's staff correcting a popular misconception that City employees have about the ethics law or explaining the procedures and services of the Board. The response to these columns has been excellent, and the Board has reproduced them as hand-outs at Board training programs.

### Other Articles

Board Member Shirley Adelson Siegel and a member of the legal staff wrote an article about the conflicts of interest law, as it pertains to City Planning Commissioners, which article appeared on the front page of the *New York Law Journal* in February 1995. Another front page article, authored by the Board's Director of Enforcement, about the Board's enforcement of Chapter 68 and the financial disclosure law appeared in the *Law Journal* in May 1995.

The Board's Deputy Director wrote a lengthy article about the post-employment restrictions of Chapter 68 for the April 1995 issue of *CityLaw*, the publication of New York Law School's Center for New York City Law. An article, by the Board's Deputy Counsel, on moonlighting and part-time jobs is scheduled to appear in *CityLaw* in February 1996.

## Evaluations

To enable the Board to assess more objectively which of its various programs and publications prove most effective, the Board has begun exploring ways to evaluate the effectiveness of its training and educational program and materials and, thereby, to improve them. A handful of ethics agencies around the country, including the federal Office of Government Ethics and the Indiana State Ethics Commission, have developed evaluation paradigms. Board staff will be working with those agencies, and others, to develop a similar paradigm for the Conflicts of Interest Board.

## COGEL

During 1995 the Board made substantial efforts to make its programs known beyond the confines of New York City and to obtain innovative ideas from other ethics agencies around the country. In September, the Board presented a seminar in Washington, D.C. at the annual conference of the Council on Government Ethics Laws ("COGEL"), the international organization of governmental ethics agencies.

The Board's presentation at a plenary session of the conference included a debate about ethics laws between the Board's Executive Director, Mark Davies, and Gene Russianoff, Senior Attorney of NYPIRG. The discussion was moderated by Fordham Law School Dean John D. Feerick.

This debate was staged at the request of COGEL to follow-up on a panel discussion that Mr. Davies conducted at the December 1994 COGEL conference in Honolulu. While the participants differed on many points, they wholeheartedly agreed on one: that training and education is perhaps the most valuable service a government ethics board can provide.

Following the debate, the Board's Director of Training and Education, using volunteers from the audience, demonstrated the Board's new ethics game show. As a result of this demonstration, ethics agencies across the country have asked the Board for copies of the videotape and for back-up information about the Board's education program.

The Board intends to continue its work with COGEL in 1996. The Board's Director of Training and Education has enlisted the help of the staff from the King County (Washington) Board of Ethics and the Indiana State Ethics Commission to conduct a panel on ethics training at the 1996 COGEL conference in Philadelphia. The Board's Director of Enforcement will be working with the California Fair Political Practices Commission to present a mock trial of an enforcement case at the 1996 conference.

## ADVISORY OPINIONS AND RULES

The Board's issuance of advisory opinions and rules performs both an adjudicatory and an educational function. The opinions provide guidance not only to the individual public servants who request them but also to many other public servants with similar problems. These opinions are written so that they provide a basis for agency counsel to give informed guidance to agency employees, without the necessity of bringing each individual matter to the Board. They also enable the Board's staff, through staff letters, to give expeditious responses on the broad range of matters covered by these opinions, without the necessity of formal Board action. Finally, as the advisory opinions are brought to public servants' attention through the Board's education program, City employees will come to a fuller understanding of the requirements of Chapter 68.

Opinions issued in 1995 worthy of special comment include those addressing City employees' using their official positions for non-City purposes, City employees' pursuing private work which might require appearances before the City, the propriety of City employees' contracting with their own or other City agencies to perform part-time work in addition to their regular City employment, community board fundraising, and voter registration drives.

The main thrust of the Board's opinions is not to prohibit City employees from having outside or non-City interests, often essential to supplement limited City salaries. Rather, the Board wishes to encourage City employees to act, with respect to these private interests, in a manner consistent with the conflicts of interest law. Furthermore, the Board is cognizant of the ever-growing spirit of cooperation between the public and private sectors and, partly through its advisory opinions, the Board helps assure that such cooperation is carried out without conflicts of interest or the appearance of conflicts.

In 1995, the Board addressed several situations which involved public servants' attempted use of their City positions for some private purpose. For example, in Advisory Opinion No. 95-2, the Board advised a high-level public servant that he could not use his City title to endorse a book published by a private educational institution. In Advisory Opinion No. 95-5, the Board determined that a fraternal association whose membership consisted solely of employees of one City agency could not approach various business owners to solicit discounts for the association's members. These and other opinions have been useful in helping City employees understand that their City positions and titles are to be used only for City, not private, purposes.

The Board has also issued opinions dealing with outside activities. In one case, Advisory Opinion No. 95-6, the Board determined that architects and engineers who are City employees could, in the course of their private practices, place their professional stamp on architectural plans and file the plans with the City's Department of Buildings, since that would be a routine, ministerial matter; however, the Board cautioned, any further personal involvement by these individuals could have been "appearances" before the City, in violation of Chapter 68. City employees were further advised that they could retain expeditors to deal with

the Department of Buildings, so long as the employees have no personal involvement in such dealings.

Other 1995 opinions have addressed the growing phenomenon of City employees who contract with their own or other city agencies to provide part-time work in addition to their regular City jobs. These situations can often benefit both City employees who seek to augment their income and City agencies which, because of severe budget restrictions, often need to enter into contracts in order to provide services which they formerly provided but, because of staff reductions, cannot provide without such contracts. Accordingly, in Advisory Opinion No. 95-26, the Board determined that, in some circumstances, City employees may, subject to certain restrictions, contract with their own or other City agencies to provide personal services. Similarly, in Advisory Opinion No. 95-19, the Board ruled that City employees could work part-time for a not-for-profit organization, performing the same services which they had formerly provided for their agency as part of their City jobs.

The Board's recent opinions have demonstrated a sensitivity to the economic hardships being undergone by many City agencies. Community boards' budgets have been cut drastically, and the Board has issued an opinion, Advisory Opinion No. 95-27, which describes the conditions under which community board members and staff may engage in fundraising activities to support the boards' operations.

In addition to these advisory opinions, which apply to a wide range of activities engaged in by a variety of City employees, the Board also addressed issues which arose only in special situations. For example, the Board advised the City Council, in Advisory Opinion No. 95-24, that Council Members and staff could conduct voter registration drives using City employees and resources, provided that no partisan political activities were engaged in during the drives. These registration drives, the Board ruled, fall within the scope of the Council Members' official duties.

The Board believes that it is important to offer City employees detailed guidance in these and all other areas covered by Chapter 68. Accordingly, as exemplified by the opinions discussed above, the Board continues to issue opinions of broad applicability which provide interpretation and clarification of Chapter 68 and the Board's rules. The end result should be a clear and comprehensive body of law that makes Chapter 68 easier for public servants to understand and comply with.

## **Board Rules**

**T**he Board did not promulgate any new rules in 1995 but did hold a public hearing in December on proposed amendments to the Board's procedures for conducting enforcement hearings. Those amendments should be promulgated in early 1996. It is expected that these rule changes will streamline the enforcement process and enable the Board to prosecute more cases with greater efficiency, without impairing due process rights of respondents.

Under the Charter, the Board may not impose civil fines for a violation of Section 2604(b)(2) of the Charter, unless the violation involves conduct identified by a rule of the Board as prohibited by the section. During 1995 the Board worked to develop a rule pursuant to Section (b)(2) to identify conduct prohibited by that provision. The Board is also working on a rule to define "particular matter" in the context of real property tax assessments.

## Publication and Distribution of Opinions and Rules

During 1995 the Board continued to distribute, on a regular basis, its opinions and rules to agency counsel, the City's Law Department, the Municipal Reference Library, the New York Public Library, the Association of the Bar of the City of New York, and the New York County Lawyers Association. An up-to-date set of the Board's opinions is also available on the Law Department's computerized City Law Legal Research System, which gives agencies, including the Board, that have access to that system the capability of searching the opinions by words and phrases.

The Board's rules and opinions are regularly published in the City Record and are the subject of articles in *CityLaw*, a publication of New York Law School, and *The Chief-Leader*, the civil service weekly newspaper. The Board's Director of Training and Education also arranged with West Publishing Company to have the Board's opinions placed on WESTLAW, a computerized legal research data base subscribed to by tens of thousands of lawyers around the world.

The Board has been working with the Mayor's Office of Operations and the Department of Information Technology and Telecommunications to have the Board's advisory opinions, as well as the text of Chapter 68 and the Board's rules, available on CITY HOME PAGE, the City's new bulletin board on the World Wide Web, accessible through the Internet. The Board hopes to have the Board's 1990-1995 opinions published in 1996 at no cost to the Board, since they have become so voluminous that the typed set is difficult for people to use. The Board also hopes to publish a compilation of the legislative history of Chapter 68, including the relevant Charter Revision Commission testimony.

## Charter Amendments

As required by the Charter, the Board began reviewing the provisions of Chapter 68 in 1995 and, during the first half of 1996, will recommend to the Council those changes or additions that the Board considers appropriate or desirable. Some of these changes will be somewhat technical in nature -- for example, permitting high-level City agency employees below the agency head level to approve waiver requests that must be submitted to the Board for final determination. Other changes will effectuate substantive improvement.

Because the Board lacks sufficient legal staff to research and draft the proposed amendments, the Board enlisted the assistance of Prof. Barry Zaretsky and his legislative drafting class at Brooklyn Law School in this endeavor. By the close of 1995, two Brooklyn Law School students were devoting substantial time to this effort, in coordination with the Board's staff.

## Personnel Order 88/5

The Board has been seeking an amendment to Personnel Order 88/5, which presently requires certain management employees in Mayoral agencies to obtain the permission of the Board before engaging in certain outside activities, including working for not-for-profit organizations, even where the employer has no business dealings with the City and the outside activity in no way implicates Chapter 68. In the Board's view, any benefit gained from this requirement does not warrant the significant time required for the Board's legal staff to respond to these routine letters. The Board has, therefore, requested that the provision be deleted from 88/5. Any outside activity that does raise Chapter 68 issues must, of course, still be brought to the Board.



## REQUESTS FROM CITY EMPLOYEES FOR GUIDANCE

During 1995 the Board received 351 written requests for advice from public servants as to the permissibility of their proposed actions or interests under Chapter 68. In addition to written requests for advice, the Board received approximately 25 telephone inquiries each week -- about 1,200 to 1,400 during the year. These callers either requested information or had specific questions for staff regarding the provisions of Chapter 68. The substantial number of calls may be attributable to the higher profile of the Board, as a result of the new videotape, the Board's cable TV programs, posters, training sessions, Myth of the Month columns, and the media attention to the Board's enforcement results.

Written requests for advice which present issues that are clear-cut under the Charter, or which involve issues that have been decided by the Board in prior opinions or rules, are handled by the Board's staff through the issuance of staff letters. Those cases that present novel issues, or that are particularly complex or sensitive, are considered and determined by the full Board.

In 1995 the Board issued 246 staff letters, 60 waiver letters, 5 orders, and 29 advisory opinions. (Some advisory opinions also include orders.)

At year end the Board had pending before it only 13 requests for staff letters, waivers, orders, and formal advisory opinions. These figures reflect the enormous strides the Board made during 1995 in addressing its backlog of requests. Indeed, the Board no longer has any backlog. As of December 31, 1995, the oldest open request for an advisory opinion, order, waiver, or staff letter was less than six weeks old.

Thus, for the first time in the life of the Conflicts of Interest Board, the Board is completely current on requests for advice. The oldest request pending before the Board as of December 31 was received on November 20, 1995. As summarized in Table 2, from December 31, 1993, to December 31, 1995, the Board reduced the pending number of requests from 105 to 13, or 88% and the average age of requests from more than 10 months to less than 3 weeks, an improvement of 95%.

The Board's staff now respond to most requests for advice within 10 business days -- in urgent matters, within 48 hours. The more complex matters that must go before the Chair, such as waiver letters, are handled within 15 business days, except when the Board must wait for additional information from the requester. Requests that require formal advisory opinions, and thus formal consideration at one or more monthly Board meetings, are disposed of, with few exceptions, within 90 days.

## ENFORCEMENT

The Board bears responsibility for enforcing both Chapter 68 and the City's financial disclosure law. 1995 was a successful year for the Board with respect to enforcement. After many months in the second half of 1994 without any enforcement attorney, when other legal staff maintained the Board's enforcement program, albeit on a reduced basis, in 1995 the Board once again had a full-time attorney charged with responsibility for enforcement matters. In those complex and protracted cases where the Board lacked the resources required to prosecute them effectively, the Board continued to rely upon distinguished *pro bono* counsel to assist in enforcement cases. The Board also received occasional help from local law school students.

In 1995 the Board made great strides in increasing the reach of its enforcement program, through improved communications with major law enforcement agencies, additional education, newly established computerized tracking of cases, and improved facilities for legal

research. Finally, the Board made significant progress in clearing up its financial disclosure enforcement backlog. In short, the Board's enforcement unit accomplished much in 1995 and, with even minimal additional full-time enforcement staff, could do much more. Indeed, the enforcement unit is critically understaffed and desperately requires additional resources if it is to accomplish its mission.

## Docket

During 1995 the enforcement unit set up a computerized tracking system showing the status of all 103 of the Board's Chapter 68 enforcement cases and, in particular, the specific dates of important events in the enforcement proceedings, such as notices of probable cause findings, petitions, answers, trial dates, referrals for investigation, dispositions, and other Board action. This improvement is crucial to controlling the enforcement unit's docket.

In 1995, the Board received 29 new complaints, as compared with 31 in 1994, 29 in 1993, 22 in 1992, 20 in 1991, and 8 in 1990. (These figures do not reflect those complaints received which, while requiring staff time and attention, were legally insufficient to merit the formal opening of a case.) In 1995, the Board disposed of 33 complaints and was thus able to keep up with new filings.

Of the 33 cases disposed of in 1995, 17 were dismissed for failure to state a violation of law, insufficient evidence to warrant proceeding, or in the exercise of prosecutorial discretion; five were disposed of by stipulation, in which the respondents either admitted or did not contest that they had violated Chapter 68 (in three of those cases respondents paid a fine); six were disposed of with an informal warning or other confidential letter to the public servant; in four cases, the Board concluded that it need not proceed because of a disposition by another agency, with or without a formal referral by the Board; and one case was dismissed because of the death of the respondent.

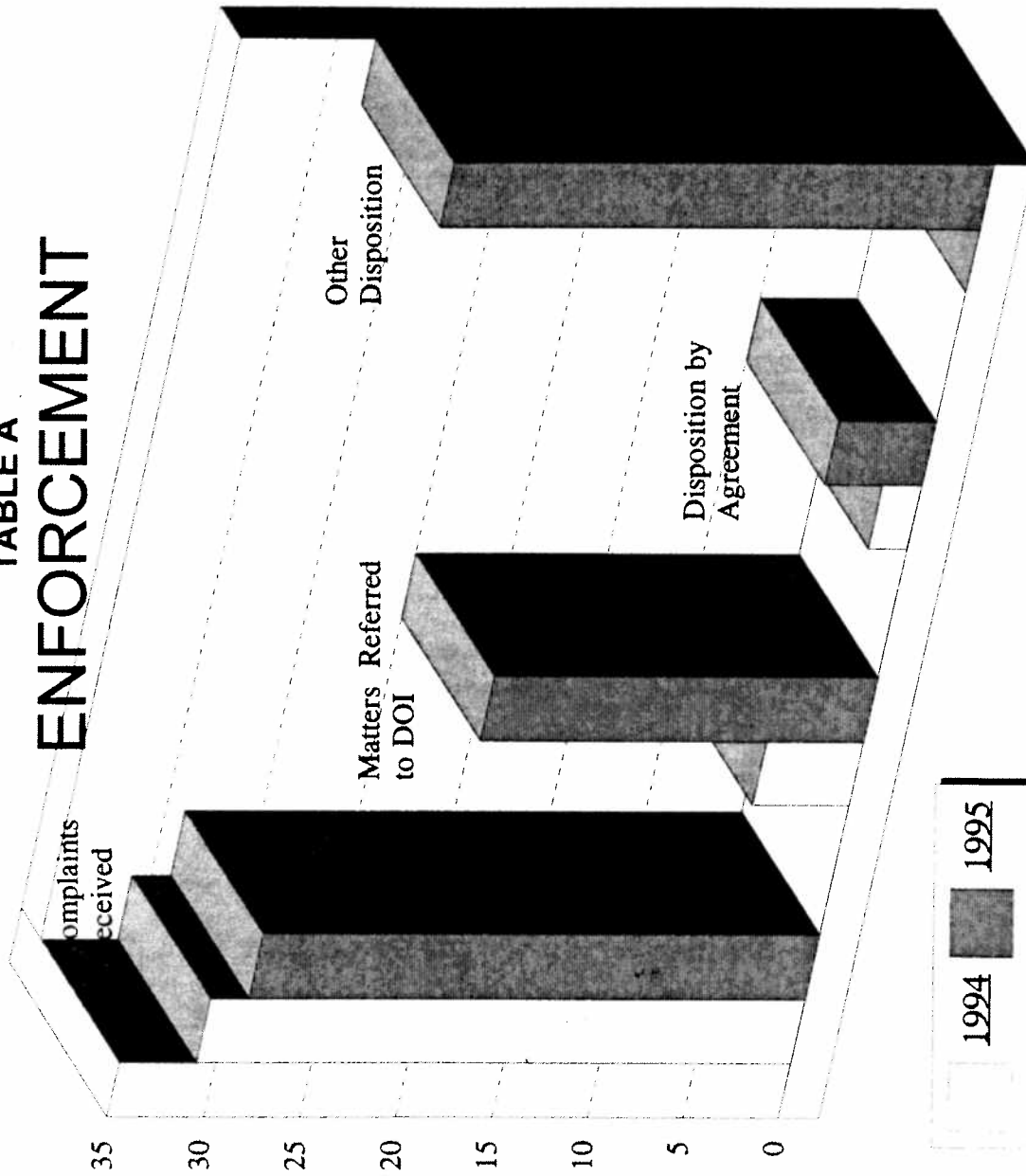
Of the pending 103 cases, 65 were referred for investigation or were investigated at least in part; two were referred back to the agency employing the respondents as required by the Charter because the respondents were then current employees subject to a collective bargaining agreement providing for disciplinary proceedings. Twelve are in active litigation, triggered by the service of a notice to the public servant of the Board's initial determination of probable cause; these 12 cases include 10 that were investigated, two that were referred back for collective bargaining disciplinary proceedings, and one case that has been fully tried before the City's Office of Administrative Trials and Hearings ("OATH") and is pending before the Board for final findings.

Many of the remaining cases can be expected to result in prosecution by other law enforcement agencies and/or investigation, probable cause notices from the Board, or closure because of insufficient evidence, unavailability of witnesses, exercise of prosecutorial discretion, and other reasons. A summary of the Board's 1994 and 1995 enforcement activity is set out in Table A on the following page.

The issues that arose in enforcement in 1995 included allegations concerning improper political campaign activities, improper acceptance of gifts, impropriety in contract procurement, misuse of City resources, abuse of City title for personal financial gain, improper solicitation of employment, misuse of agency funds, unauthorized moonlighting and outside interests in firms doing business with the City, and improper financial relationships between public servants, among others.

The Board's enforcement unit identified and reviewed legal issues and requested much-needed legal opinions from the Law Department on these important legal questions affecting the enforcement docket. The Board received four such opinions in 1995 and greatly appreciates the excellent work of the Law Department.

TABLE A  
ENFORCEMENT



## Financial Disclosure Enforcement

With respect to financial disclosure, in 1995 the Board's enforcement unit brought 108 cases of late filers and non-filers to OATH. Eighty-four of these cases were settled or withdrawn. The Board issued Orders in 23 of the remaining cases and will issue a 24th order in early 1996. During 1995 the Board collected more than \$46,000 in cases that did not require complete Board proceedings, the result of a combination of the financial disclosure unit's letter notices, a directive from the Office of Operations requiring compliance by current employees, and formal enforcement proceedings brought to OATH. In December 1995 the Board referred 28 Board orders, with a face value of over \$200,000, to the Law Department for collection. At year end the staff was reviewing over 100 additional financial disclosure Orders in preparation for sending them to the Law Department for collection.

The Board made great strides in 1995 in clearing its financial disclosure backlog. The enforcement staff brought formal proceedings in all but four of the longer pending financial disclosure enforcement cases, involving failure to file financial disclosure reports or non-payment of late fines for the years 1990-1992. These cases have resulted in the issuance of Board Orders or in settlements, compliance, and collections of late penalties.

To streamline the enforcement process, particularly financial disclosure enforcement, the Board began overhauling its hearing rules. As noted above, the Board should be promulgating these amendments in early 1996.

During the summer of 1995, the Board's enforcement attorney ran a clinic for two volunteer law students, from Cardozo and Brooklyn Law Schools, to train the students to prepare and present financial disclosure enforcement cases to OATH. The students did a fine job in assisting the enforcement staff on a *pro bono* basis in this time-consuming work and, in the process, learned valuable trial and negotiation skills. As of year end the Board had two other law students, from Fordham and New York Law Schools, who are assisting the Board part-time with legal research and financial disclosure enforcement. The Board is most grateful for the significant assistance provided by law student volunteers.

Also during the summer of 1995, a former City employee who failed to file a 1992 financial disclosure report challenged a Board Order in Court. The Director of Enforcement prepared the Court papers in response to the Petition, with assistance from the Law Department, and in November argued the motion in Court. At year end the matter was under submission to the Justice assigned to the case.

## Chapter 68 Results

The publication of the Board's enforcement results plays an important part in its training and education work. In 1995, the Board completed a case involving a parking violations judge who admitted to having adjudicated the cases of her father-in-law and her neighbor in violation of the ethics law, the Code of Professional Responsibility for lawyers, and the Code of Judicial Conduct. This disposition was reported in the *New York Post*, the *New York Law Journal*, *New York Newsday*, and *CityLaw*.

Another case involved a former chief of staff to a former deputy mayor who, in a settlement, was fined \$5,000. This official interviewed for a job with a private firm during a period when she was involved in discussions with the firm as a prospective bidder for a major City contract and accepted meals from that firm worth more than \$50. The disposition was reported in the *Daily News* and *CityLaw*.

## Cooperation with Law Enforcement Agencies

During 1995 the Board made significant strides in co-operating regularly with other law enforcement agencies. As part of its efforts to strengthen its enforcement program, the Board established a liaison with the City Department of Investigation ("DOI"). As a result of the improved communication between DOI investigators and the Board's enforcement staff, more work is being accomplished more efficiently and more promptly.

The Board also began work on establishing similar liaisons with other law enforcement agencies. The enforcement unit worked closely with the District Attorney's Offices in Manhattan and Queens to assist in the trial preparation of criminal cases in which violations of Chapter 68 and the financial disclosure law have been charged. In December the Manhattan DA's office obtained what the Board believes is the first jury verdict convicting a City employee of a violation of Chapter 68. The Board's Deputy Counsel testified as a witness in that case. Also in December a Board of Education employee pleaded guilty in Brooklyn to a violation of Chapter 68 for coercing other Board of Education employees to make political contributions. These new developments can be expected to result in more widespread use of Chapter 68 and the Administrative Code in law enforcement generally.

## Library and Litigation Support

During 1995 the enforcement unit upgraded the Board's basic legal research capabilities in the most cost-effective way. While the Board's law library is hardly adequate, it does now offer many legal research materials in-house, a necessity when conducting litigation. To reduce acquisition and maintenance costs for this library, the Board purchased second-hand books and subscribed to CD-Rom services, at a fraction of the cost of new books and computerized legal research databases.

In November 1995 the Board succeeded, at no cost, in connecting the Board's computer to OATH. That connection enables the legal staff to search, at the Board's offices, summaries of OATH's decisional law on particular legal topics and to find particular cases by name or number. These significant improvements, combined with the computerization of the Board's opinions, have increased the legal staff's efficiency and effectiveness, not only in litigating cases but also in dispensing advice.

## Other Enforcement Activities

During 1995 the enforcement unit responded to grand jury and civil subpoenas and to requests from the media and from law schools and others for information about the Board and its activities. As noted, at the close of 1995 the Board had over 100 Chapter 68 cases in various stages of enforcement.

## FINANCIAL DISCLOSURE

The Board's financial disclosure program consists of two major components: administration of the financial disclosure system and the substantive review of financial disclosure reports for possible conflicts of interest. Each of these components is addressed below.

## Administration

Administering the financial disclosure law presents a monumental task. The Board's duties in this area include preparing and distributing 12,000 annual report forms, collecting and filing these reports, reviewing them for completeness and signatures, identifying late filers and non-filers, considering late filers' requests for waivers of fines, collecting fines, tracking public servants' appeals from 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 has an excellent compliance record in financial disclosure. As detailed in Table 3, for calendar years 1989 through 1993, the Board achieved and maintained a compliance rate exceeding 99% in every year of the Board's existence. As of December 31, 1995, for calendar year 1994, with a required filing date of May 1, 1995, the Board had a 98% compliance rate, which the Board fully expects will also grow to exceed 99%. See table B on page 23 of this report.

However, the Board views as unacceptable any compliance rate that is less than 100%. The Board has, therefore, vigorously pursued those individuals who have violated the law by failing to file their disclosure reports, or by filing them late, and has imposed the appropriate fine under the law. As of December 31, 1995, there were no active City employees who had not filed financial disclosure reports for calendar years 1989 through 1993. For calendar year 1994 reports -- required to be filed in May 1995 -- as of December 31, 1995, only 19 active public servants had failed to file their reports with the Board.

This vastly improved record is attributable, first, to the financial disclosure staff and the excellent cooperation the Board received from agency heads in taking administrative measures to assure that all active employees file on time, and, second, to the Board's vigorous enforcement program. In addition, at the request of the Board, the First Deputy Mayor wrote to the heads of those agencies that had two or more employees who had failed to file for years prior to 1994, requesting that the agency head ensure the employees' compliance with the financial disclosure law. The First Deputy Mayor's letter proved quite effective since, as noted, all active City employees have filed their reports for 1989 through 1993.

With respect to former City employees who have either failed to file their reports for 1989 through 1992, or who filed their reports late and failed to pay the required late fine, the Board has adjudicated all cases of non-filers or late filers for years 1989 through 1992, except, as noted earlier, for four cases. This adjudication involved the bringing of 108 financial disclosure cases to OATH during 1995 and the issuance of 67 orders by the Board. These 67 individuals were assessed civil penalties ranging from \$1,000 to \$10,000. As of December 31, 1995, the Board has issued 146 such orders.

With respect to former public servants who have either failed to file their reports for 1993 (due May 1, 1994), or who filed their reports late, the Board issued 143 probable cause letters during 1995. Of these 143 cases, approximately 80 will be brought to OATH in early 1996; the balance were settled or withdrawn. The total number of financial disclosure enforcement actions initiated since the Board's inception is 1,267.

With respect to current and former City employees who were required to file 1994 reports (due May 1, 1995), as noted, the Board had achieved a compliance rate of 98% by December 31, 1995. The Board sent individual notifications to the 446 non-filers and also notified their agency heads. If these individuals remain non-filers, the Board will commence enforcement proceedings.

Of the 11,689 1994 reports received by the Board in 1995, 795 -- roughly 7% -- were filed after the May 1, 1995, deadline and are therefore considered late. During 1995 the Board col-

lected late fines from 331 of those late filers, totalling \$33,100. The Board waived fines in 369 cases where an individual demonstrated a medical excuse satisfactory to the Board or where the public servant's agency had failed to timely notify the individual of his or her requirement to file a financial disclosure report. The enforcement unit will proceed to enforcement in the remaining 95 cases. See table C on page 24.

In the entire period since the Board assumed responsibility for financial disclosure in 1990, the Board has collected \$192,863 in fines, \$46,745 of which was collected during 1995. See table D on page 25.

### **Initiatives**

To reduce the enormous burden of administering the financial disclosure system, and thereby to enable the Board's staff to spend more time on substantive reviews of financial disclosure reports and Chapter 68 enforcement, the Board has undertaken three new initiatives. The first, directed at active City employees, is the directive from the First Deputy Mayor to agency heads as to non-compliance by active employees.

The second initiative, a Mayoral Directive that at year end was being finalized by the Law Department, is directed at employees leaving City service. This Directive will withhold final lump sum/salary payments from departing employees who are required to file a disclosure report until they have fully complied with their financial disclosure obligations. Over 90% of the Board's financial disclosure enforcement actions involve former employees. For example, of the 240 non-filers in 1995, 221 (92.1%) have left City service. Tracking these former City employees down and securing their compliance with the financial disclosure law imposes an enormous burden on the Board's staff. Therefore, this Directive, by eliminating some 90% of the Board's financial disclosure enforcement actions, will save the Board significant time and effort.

The third initiative is electronic filing, which would eliminate the need for reviews of disclosure reports for completeness, thus saving the Board three months of staff time. More importantly, electronic filing would permit the Board to conduct more effective substantive reviews of disclosure reports.

### **Substantive Review of Financial Disclosure Reports**

**S**imply processing disclosure reports -- filing them and imposing penalties on non-filers -- is not what financial disclosure is all about. If financial disclosure is to contribute in any meaningful way to the improvement of integrity in City government, disclosure reports *must* be reviewed individually and analyzed in light of other data for possible conflicts of interest.

Unfortunately, as a result of the loss of two senior investigator positions, the Board was forced to suspend substantive review of financial disclosure reports filed with the Board, except for reviews of elected, and certain high-level, officials. Before that loss, Board investigators conducted a substantive review of 941 disclosure reports, which were selected on the basis of staff review of computer scannable forms completed by each filer. Use of these scanner forms was initiated by the Board in 1992, to permit the Board to comply with its Charter-mandated obligation to review all financial disclosure reports. However, no manual financial disclosure system will ever permit an adequate review of the reports. The Board has, therefore, proposed major new initiatives that it hopes will correct this problem: electronic filing and amending the financial disclosure law to identify more precisely the classes of public servants who should be filing financial disclosure reports.

## Electronic Filing

During much of 1995, Board staff worked with the Office of Operations to explore the feasibility of adopting an electronic filing system. Such a system would not only reduce significantly the cost of administering financial disclosure, by eliminating many of the steps staff now must take in a manual filing system, but would give the Board an enormously powerful tool in investigating conflicts of interest.

Financial disclosure reports, on their face, rarely reveal a conflict of interest. Ordinarily one must compare the information on a report against information from earlier reports or from other sources in order to identify a possible conflict. In view of the large number of reports filed with the Board, their contents must be contained in a database, which can be electronically compared with other databases, such as Vendex and ICMS. Since the Conflicts of Interest Board will never have the resources to enter into a computer manually all of the data contained in the reports, they must be filed in electronic form.

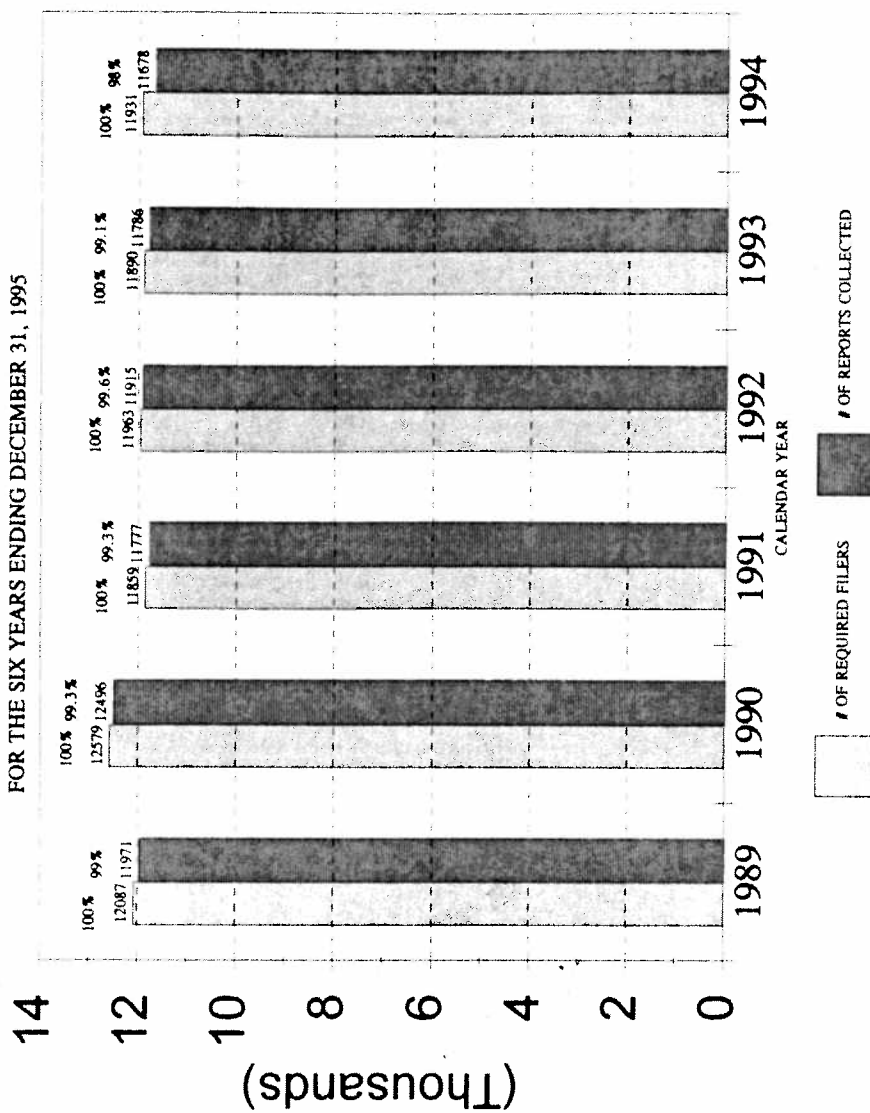
Electronic filing would also reduce enormously the administrative burden of financial disclosure upon the Board and permit it to shift its efforts from processing reports to proactive investigations aimed at ferreting out conflicts of interest. Preliminary calculations indicate that electronic filing would reduce the administrative cost of financial disclosure from over \$24 per report to \$12 per report, a 50% savings. The Board is also exploring the use of CityMail to replace the hundreds of written memoranda staff sends to agency financial disclosure liaisons every year.

With respect to electronic filing, one should note one final point. Although ethics boards around the country have for years been discussing electronic filing of financial disclosure reports, to the Board's knowledge, the Conflicts of Interest Board would be the first ethics board in the nation to actually implement an electronic filing system.

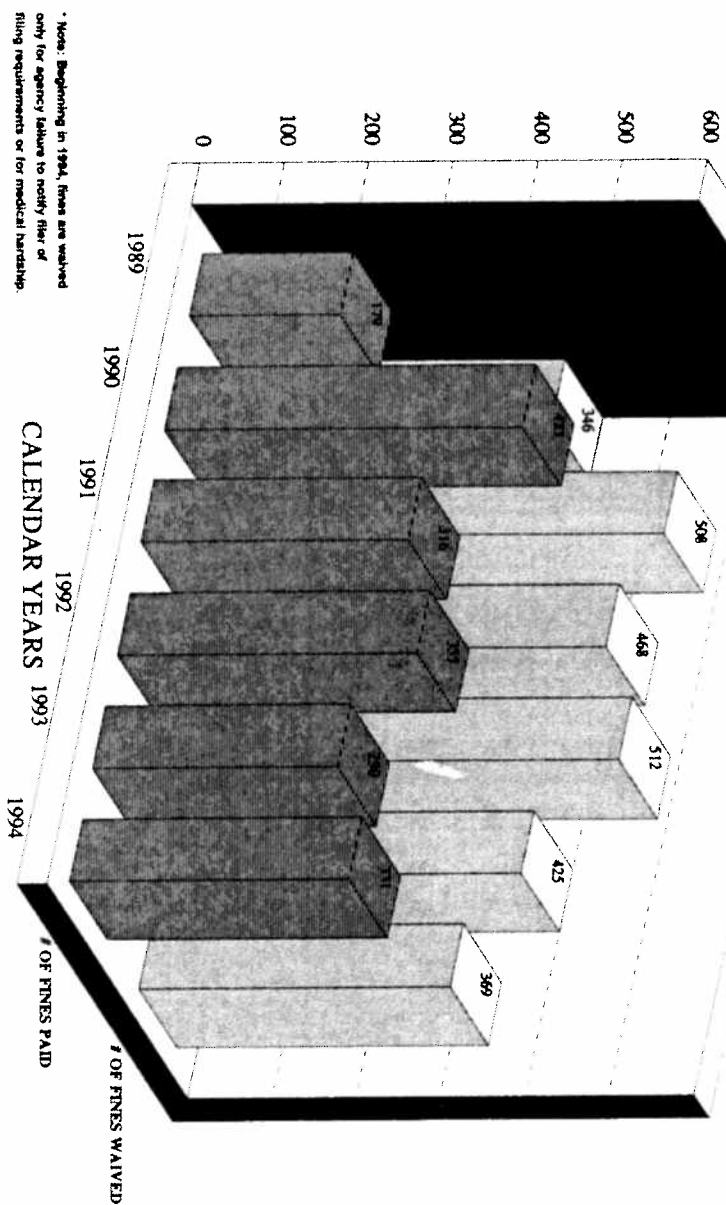


**TABLE B**  
**FINANCIAL DISCLOSURE REPORTS**

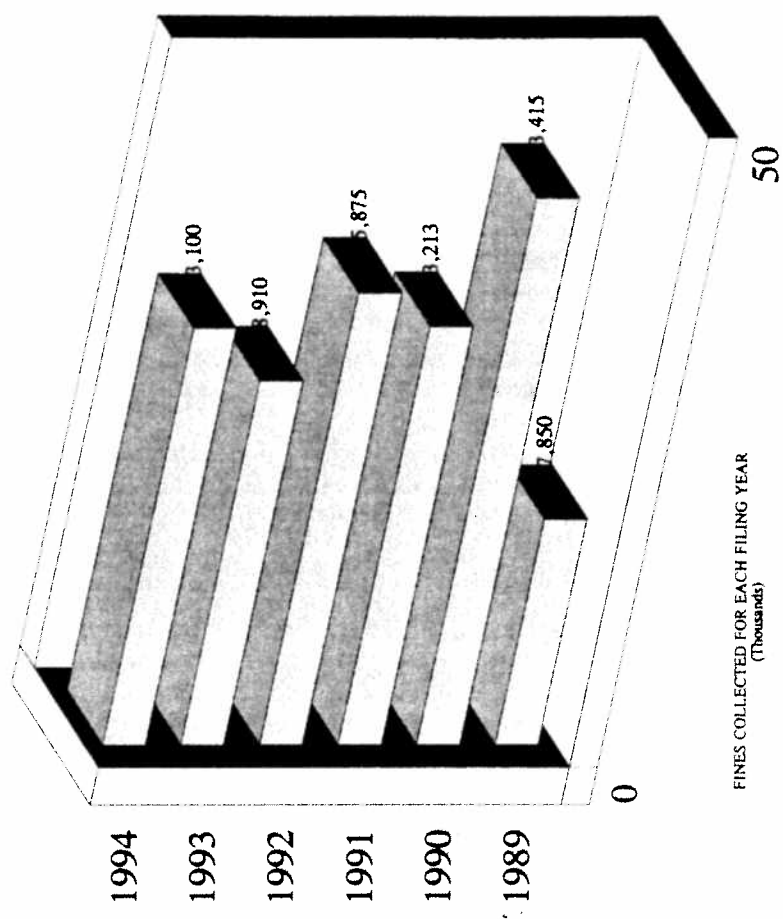
FOR THE SIX YEARS ENDING DECEMBER 31, 1995



**TABLE C**  
**FINES COLLECTED AND FINES WAIVED**



**TABLE D**  
**FINANCIAL DISCLOSURE FINES**



## REORGANIZING AND RESTRUCTURING THE CONFLICTS OF INTEREST BOARD

In 1994 and the beginning of 1995, the Board suffered massive personnel and budget cuts. As part of the Citywide reduction program, six of the Board's 26 budgeted positions were eliminated, representing a 23% reduction in staff. During that same period, the Board's OTPS budget was slashed by over 40%.

Few, if any, City agencies have suffered cuts of this magnitude.

Faced with the potential crippling of the agency, the Board devised and began to implement a number of new initiatives during 1995 that together will fundamentally alter the Conflicts of Interest Board. The linchpin for this plan was the upgrading of the Board's staff. In return for voluntarily reducing its headcount from 20 to 17, the Board was able to restructure and reorganize its staff, promoting several employees and firing others. As a result, the Board has significantly increased its productivity, as outlined above, and enabled the implementation of the new initiatives. Most significant among these initiatives are the following:

### Training and Education

- The "train the trainer" program, which permits the Board to teach agency trainers how to train the City's 200,000 employees;
- The proposed directive by the First Deputy Mayor mandating ethics officers and ethics training in every Mayoral agency;
- The creation of innovative educational materials, such as the game show videotape and proposed ethics spots for the City's cable television channel, to reach City employees through the mass media, and a traveling, interactive ethics game show;
- The proposed employment of *pro bono* college and journalism interns to assist in writing educational materials and responding to media inquiries.

### Chapter 68 Advice to Public Servants

- The reorganization of the Legal Unit, which has eliminated the backlog in written requests for advice;
- The proposed appointment of ethics officers in every City agency to assist the Board in answering common Chapter 68 questions and to ensure that requests to the Board for advice contain the required information;
- The substantial increase in accessibility to Board rules and opinions through WESTLAW, the Law Department's computerized City Law Legal Research System, the proposed CITY HOME PAGE, and the proposed publication of a collection of the opinions;
- The proposed expansion of the Board's intern program, using *pro bono* college and law school interns to perform legal research and draft routine staff letters.

### Enforcement

- The introduction of a computerized tracking system;
- The proposed streamlining of the Board's hearing rules;

- The establishment of a liaison with DOI and the proposed establishment of similar liaisons with district attorneys and other law enforcement agencies;
- The proposed expansion of the Board's intern program, using *pro bono* high school, college, and law school interns to prosecute financial disclosure enforcement proceedings;
- The continued use of *pro bono* attorneys to prosecute Chapter 68 proceedings.

### **Financial Disclosure**

- A proposed Mayoral Directive mandating compliance with the financial disclosure law before departing employees receive their final lump sum/salary payment;
- A memorandum from the First Deputy Mayor directing agency heads to obtain compliance by their current employees with the financial disclosure law;
- The proposed implementation of an electronic filing system, which would reduce financial disclosure processing costs by 50% and permit computerized searches for conflicts of interest;
- The use of Work Experience Program participants and *pro bono* high school interns and the proposed use of college interns to process reports; the proposed use of *pro bono* accountants to review them substantively.

## **CONCLUSION**

In 1995, as a result of the restructuring of the Board's staff, the streamlining of its operations, and the implementation of a number of new initiatives, the Board significantly increased its productivity, expanded its programs, and improved its delivery of services to City employees, despite a 35% cut in its budgeted staff and a 41% cut in its other than personal services budget. The Board has thus proven itself an innovative leader in the restructuring of government, willing and able to develop and implement bold new initiatives. However, the Board remains critically understaffed and severely underfunded in the areas of education and enforcement. In these areas restructuring, streamlining, and reinventing cannot offset the drastic staff and budget cuts. A modest increase in staff and budget is required.

# TABLE 1

## PUBLICATIONS OF THE CONFLICTS OF INTEREST BOARD

### The Law

*Conflicts of Interest: Chapter 68 of the New York City Charter* (Sept. 1994) ("bluebook") (booklet)

*Conflicts of Interest: Rules of the Board* (Sept. 1994) ("redbook") (booklet)

*Financial Disclosure: Section 12-110 of the NYC Administrative Code* (Sept. 1994) ("greenbook") (booklet)

### About the Law

*Advisory Opinions of the Conflicts of Interest Board* (1990-date)

*Annual Reports of the Conflicts of Interest Board* (1990-1995) (includes summaries of advisory opinions)

*Conflicts of Interest: Outlines of Selected Topics* (Sept. 1994) (77-page guide)

*Enforcement of Ethics and Financial Disclosure Laws*, NEW YORK LAW JOURNAL (May 19, 1995) (article)

*It's a Question of Ethics* (1994) (videotape)

*It's a Question of Ethics: The Game Show* (1995) (videotape)

*Myth of the Month*, CHIEF-LEADER (April 1994-date) (monthly column by Board staff on selected ethics issues)

*New York City's Financial Disclosure Law: A Guide* (Jan. 1995) (leaflet)

*Planning Commissioners Avoid Conflicts of Interest*, NEW YORK LAW JOURNAL (Feb. 16, 1995) (article)

*Thinking of Leaving City Government? Here Are the Rules*, CITYLAW (April 1995) (article)

*What You Should Know: The Plain Language Guide to New York City Employee Ethics and Conflicts of Interest Rules* (1991) (pamphlet)

*What's a Conflict of Interest?* (1994) (poster)

**TABLE 2**  
**PENDING REQUESTS FOR ADVISORY OPINIONS\***

	<u>Number of</u>	<u>Average Age of</u>	<u>Oldest Request</u>
Dec. 31, 1993	105	10.1 months	January 3, 1990
Dec. 31, 1994	65	13.8 months	April 20, 1990
Dec. 31, 1995	13	0.5 months	November 20, 1995

\* Includes requests for advisory opinions, staff letters, waivers, and orders.

**TABLE 3**  
**FINANCIAL DISCLOSURE REPORTS**  
**DECEMBER 31, 1995**

Calendar Year ("C.Y.")	Number of Reports Required for C.Y.	Reports Filed for C.Y.	Compliance Rate for C.Y.	Number of Fines Waived for C.Y.	Number of Fines Paid for C.Y.	Amount of Fines Paid for C.Y.	Amount of Fines Collected in C.Y.	Current Non- Filers for C.Y. *	Current Non-Payers for C.Y. *
1989	12,087	11,971	99.0%	346	179	\$17,850	-----	0	0
1990	12,579	12,496	99.3%	508	423	\$43,415	\$44,282	83	76
1991	11,859	11,777	99.3%	468	316	\$33,213	\$25,385	0	29
1992	11,963	11,915	99.6%	512	355	\$35,875	\$40,400	48	1
1993	11,890	11,786	99.1%	425	290	\$28,910	\$36,051	104	3
1994	11,931	11,678	98.0%	369	331	\$33,100	\$46,745	234	70
<b>TOTALS:</b>	<b>72,309</b>	<b>71,623</b>	<b>99.1%</b>	<b>2,628</b>	<b>1,894</b>	<b>\$192,363</b>	<b>\$192,863**</b>	<b>19</b>	<b>71</b>
								<b>551</b>	<b>280</b>

\* "Act." indicates current non-filers or non-payer (that is, late filers who have failed to pay their late filing fine) who are current City employees.

\*\* Fines paid for late filing of 1995 reports from public servants leaving City service account for the \$500 difference between the total amount of the fines paid and the total amount of fines collected.



# **ADVISORY OPINIONS OF THE BOARD**

## **SUMMARIES**

**OPINION SUMMARY****OPINION NO:****95-1**

DATE:

1/30/95

CHARTER SECTION(S) INTERPRETED:

2604(d)(2), (d)(4), (d)(6)  
2604(e)

SUBJECT(S):

Appearance before City Agency  
Post-Employment Restrictions  
Waivers/Orders

OPINION(S) CITED:

91-8, 92-17, 93-12, 94-15,  
94-19

SUMMARY: A former public servant may not perform services for his former City agency pursuant to a contract between the agency and his current employer, a private consulting firm, because such work would involve appearing before his former agency within one year after he left City service and working on particular matters with which he was involved as a public servant. A waiver of the post-employment restrictions is not appropriate in this case, for the reasons stated in the Opinion. The former public servant may contract personally with his former City agency, however.

**OPINION SUMMARY**

<b>OPINION NO:</b>	<b>95-2</b>
 DATE:	 2/1/95
 CHARTER SECTION(S) INTERPRETED:	 2604(b)(2)
 SUBJECT(S):	 City Position, Use of Not-For-Profit Organizations
 OTHER OPINION(S) CITED:	 91-1

SUMMARY: A high-level public servant may not use his City title to endorse a book published by a private not-for-profit educational institution. While the book addresses subjects which are related to the services performed by the public servant's City agency and thus could assist the agency in meeting its goals, the endorsement is impermissible because it would advance the interests of one private organization over the interests of other similarly situated organizations.

**OPINION SUMMARY****OPINION NO:****95-3**

DATE:

2/13/95

CHARTER SECTION(S) INTERPRETED:

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

SUBJECT(S):

Business Dealings with the  
City  
Teaching  
Waivers/Orders

OTHER OPINION(S) CITED:

n/a

SUMMARY: It would not conflict with the purposes and interests of the City for a public servant to teach on a part-time basis at a local university which has business dealings with the City, provided that she acts in accordance with the conditions discussed in the Opinion. This determination is based on the written approval of the public servant's agency head and on other factors including: the limited scope of the public servant's teaching duties; the nature of the subject matter of the courses as unrelated to the public servant's official duties; and compensation commensurate with her teaching responsibilities. The public servant is not required to consult the Board every semester or every year that she wants to teach, if the facts remain unchanged. However, if the factual circumstances of her teaching activities change, then she is to contact the Board again for further guidance.

**OPINION SUMMARY****OPINION NO:****95-4**

DATE:

2/27/95

CHARTER SECTION(S) INTERPRETED:

2604(d)(1), (d)(2), (d)(4),  
(d)(5)

SUBJECT(S):

Post-Employment Restrictions

OTHER OPINION(S) CITED:

n/a

SUMMARY: A public servant may respond to a Request for Qualifications ("RFQ") issued by the Department of Housing Preservation and Development ("HPD") in connection with its Neighborhood Entrepreneurs Program (the "Program"). The public servant stated that he would leave City service if he is deemed qualified to participate in the Program. Inasmuch as the public servant had no involvement with HPD as a City employee, and would not otherwise be precluded from participating in the Program after leaving City service, the public servant's response to the RFQ is consistent with Charter Section 2604(d)(1). Further, if he is deemed qualified by HPD, he may participate in the Program after leaving City service.

**OPINION SUMMARY****OPINION NO: 95-5**

DATE: 2/27/95

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

SUBJECT(S): City Position, Use of  
Not-For-Profit Organizations

OTHER OPINION(S) CITED: n/a

SUMMARY: It would be a violation of Chapter 68 for a not-for-profit fraternal association (the "Association") whose membership consists of employees of a City agency to approach various business owners to solicit discounts for the Association's members, inasmuch as such solicitation would constitute the improper use of the public servants' City positions for personal or private gain.

**OPINION SUMMARY****OPINION NO:****95-6**

DATE:

2/27/95

CHARTER SECTION(S) INTERPRETED:

2604(b)(6)

SUBJECT(S):

Appearance Before City Agency  
Ministerial Matters  
Moonlighting

OTHER OPINION(S) CITED:

92-32, 92-36  
Board of Ethics Opinion Nos.  
56, 156, 204, 664

SUMMARY: Architects and engineers who are City employees may affix their professional seal to architectural plans and, either personally or through an expeditor, file the plans with the Department of Buildings ("DOB") and other City agencies, inasmuch as such appearances are ministerial in nature. Involvement by the public servants themselves beyond the initial presentation of the architectural plans would not be ministerial and would be prohibited under Chapter 68. However, the architects and engineers may use expeditors to take the plans through the approval process at DOB.

**OPINION SUMMARY****OPINION NO: 95-7**

DATE: 2/27/95

CHARTER SECTION(S) INTERPRETED: 2604(b)(2)  
2604(c)(6)SUBJECT(S): Appearance of Impropriety  
Fundraising  
Not-For-Profit Organizations

OTHER OPINION(S) CITED: 91-10, 92-15, 93-15

SUMMARY: A high-level public servant may continue serving on the board of directors of a not-for-profit organization, inasmuch as the requirements of Charter Section 2604(c)(6) have been met. The public servant may not, however, engage in fundraising on behalf of the not-for-profit organization either through the sale of tickets or by having his name appear on invitations. Because the mission of the public servant's agency and the mission of the organization are related, an appearance may be created that the City is sponsoring the organization or that the organization may receive preferential treatment. In addition, the public servant may not represent the not-for-profit organization before community boards or private organizations.



**OPINION SUMMARY**

**OPINION NO:** 95-8

**DATE:** 4/10/95

**CHARTER SECTION(S) INTERPRETED:** 604(a)(1)(a)  
2604(b)(6), (b)(7)  
2604(d)(2)

**SUBJECT(S):** Agency Served  
Regular Employee

**OTHER OPINION(S) CITED:** 93-10 (Revised)

**SUMMARY:** For the purposes of Chapter 68, the agency served by Parking Violations Bureau ("PVB") Administrative Law Judges ("ALJ") is the Department of Finance ("DOF"). The Board based its determination on the analysis in Advisory Opinion No. 93-10 (Revised). In that Opinion, the agency served by the PVB ALJs was deemed to be the Department of Transportation ("DOT"). However, since the PVB was administratively transferred from DOT to DOF, the agency which these public servants now serve is DOF. Inasmuch as there were no other significant changes in the structure or operations of the PVB, all other aspects of revised Advisory Opinion No. 93-10 concerning the non-City activities of PVB ALJs remain in effect.

**OPINION SUMMARY****OPINION NO: 95-9**

DATE: 4/10/95

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

SUBJECT(S): Moonlighting

OTHER OPINION(S) CITED: 91-7, 93-23

SUMMARY: A public servant who does not work for the City as an investigator and who works for a City agency which is not involved in law enforcement may own and work for his own private investigations firm, provided that he does not contract with the City or work for a firm that does business with the City. See Charter Section 2604(a)(1)(b). In addition, the public servant may not conduct private business at times when he is required to perform his City duties; he may not accept or work on any matter which involves the City agency which he serves; he may not use his City position to obtain a private advantage for himself, his firm, or any of his clients; he may not use City equipment or other City resources in conducting his private business; he may not disclose or use for private advantage any confidential information concerning the City; and he may not appear on behalf of private interests before any City agency. See Charter Sections 2604(b)(2), (3), (4), and (6). Also, the public servant should obtain the written approval of his City agency to engage in private investigative work.

**OPINION SUMMARY****OPINION NO: 95-10**

DATE: 4/10/95

CHARTER SECTION(S) INTERPRETED: 2601(16)  
2604(a)(1)(b)SUBJECT(S): Appearance of Impropriety  
Ownership Interests  
Prohibited Interests

OTHER OPINION(S) CITED: n/a

SUMMARY: It would not violate Chapter 68 for a public servant to retain his imputed ownership interest in his spouse's newly formed company (the "Company"); however, if the Company were to seek to engage in business dealings with the City, it would create an appearance that the Company was established with the intention of actively pursuing City business. Such an appearance would conflict with the proper discharge of the public servant's official duties. Thus, if the Company seeks to engage in business dealings with the City, the public servant may not remain a City employee.

**OPINION SUMMARY****OPINION NO:****95-11**

DATE:

5/8/95

CHARTER SECTION(S) INTERPRETED:

2601(8)  
2604(a)(1)(b)  
2604(b)(2), (b)(3)

SUBJECT(S):

Appearance of Impropriety  
Cooperative Corporations

OTHER OPINION(S) CITED:

92-7

SUMMARY: A public servant may not serve as an officer and as a member of the board of directors of the cooperative corporation where he resides while the corporation is applying for a loan through the City agency in which the public servant is employed. Since the public servant is a director of the division within the agency which administers some aspects of the loan program to which the corporation is making an application, it would conflict with his official duties to also serve as an officer and director of the corporation. In addition, such service could create the appearance that the public servant is using his official City position for the private advantage of the corporation in its dealings with the City agency.

**OPINION SUMMARY****OPINION NO:****95-12****DATE:**

5/15/95

**CHARTER SECTION(S) INTERPRETED:**2604(a)(1)(a)  
2604(b)(2), (b)(3), (b)(4)  
2604(c)(6)**SUBJECT(S):**Ownership Interests  
Not-For-Profit Organizations  
Prohibited Interests**OTHER OPINION(S) CITED:**

92-5, 92-7

**SUMMARY:** A public servant may retain his ownership interests in various apartment buildings, and a position with the firm that owns one of the buildings, notwithstanding that some of these buildings are located in districts which are subject to the regulatory authority of the City agency served by the public servant, because the buildings have no pending matters with the agency and are not likely to have any matters before the agency. However, because these buildings are located in a district subject to the regulation of the agency, the public servant should disclose these ownership interests on the agency's public records and recuse himself, both as a public servant and as a private owner, from any future matter involving his ownership interests which comes before the agency. The public servant may also continue his involvement with the not-for-profit organizations, provided he acts in accordance with the relevant provisions of Chapter 68, as discussed in the Opinion.

**OPINION SUMMARY****OPINION NO: 95-13**

DATE: 5/22/95

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

SUBJECT(S): Political Activities

BOARD RULE(S) CITED: 1-02

OTHER OPINION(S) CITED: n/a

SUMMARY: A high-level public servant's wife or acquaintances may host fundraisers on behalf of candidates for City elective office in the public servant's home under the conditions described in the Opinion. Although the public servant may attend the fundraisers, his name may not appear on the invitations and the invitees may not have business dealings with or be employees of the public servant's agency. Furthermore, it must not appear that the public servant is co-hosting the fundraisers or personally requesting contributions. Thus, the public servant may not make speeches or otherwise serve as an active participant in the fundraisers held in his home.

**OPINION SUMMARY****OPINION NO: 95-14**

DATE: 5/22/95

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

SUBJECT(S): City Position, Use of

OTHER OPINION(S) CITED: 95-5

SUMMARY: Employees of a City agency may accept an offer of special banking privileges and incentives from a local bank because the offer does not specifically target City employees and the special banking privileges and incentives have also been made available to the employees of area businesses and other non-City organizations.

**OPINION SUMMARY****OPINION NO:****95-15**

DATE:

6/5/95

CHARTER SECTION(S) INTERPRETED:

2604(a)(1)(b)  
2604(b)(6)  
2604(e)

SUBJECT(S):

Appearance Before City Agency  
Business Dealings with the City  
Consulting

OTHER OPINION(S) CITED:

n/a

SUMMARY: A public servant may not work part-time as a consultant for a business improvement district (a "BID") which is not controlled by the City, because her duties for the BID would require her to make frequent and substantive appearances before various City agencies in contravention of Chapter 68.



**OPINION SUMMARY****OPINION NO: 95-16**

DATE: 6/5/95

CHARTER SECTION(S) INTERPRETED: 2604(a)(1)(b)  
2604(b)(2), (b)(3), (b)(4)  
2604(e)SUBJECT(S): Business Dealings with the  
City  
Moonlighting  
Waivers/Orders

OTHER OPINION(S) CITED: n/a

SUMMARY: A Police Department employee may accept part-time employment with the Patrolmen's Benevolent Association (the "PBA") to extract data on pension earnings for retirees from Police Department records, inasmuch as he obtained the prior written approval of the Police Commissioner, and this employment would not be in conflict with the purposes and interests of the City. The public servant's duties for the PBA would be different from the duties he performs for the Police Department. Further, the Police Department's uniformed employees are the beneficiaries of the pension fund and thus the Police Department has an interest in its effective administration. This work would not involve divulging confidential City information and would be performed at times when the public servant is not required to perform his official duties for the City.

**OPINION SUMMARY****OPINION NO: 95-17**

DATE: 6/30/95

CHARTER SECTION(S) CITED: 2604(a)(1)(b)  
2604(b)(2), (b)(3), (b)(4)  
2604(e)SUBJECT(S): Appearance of Impropriety  
Business Dealings with the  
City  
Moonlighting  
Waivers/Orders

OTHER OPINION(S) CITED: 91-7, 95-12

SUMMARY: A public servant who is a full-time aide to a member of the City Council may not work part-time for a private law firm where more than one-third of the firm's business consists of matters involving the City, and the specific duties of the public servant involve working in some of the same substantive areas of the law in which the firm is active and with some of the same City agencies.

**OPINION SUMMARY**

**OPINION NO:** **95-18**

**DATE:** 7/17/95

**CHARTER SECTIONS INTERPRETED:** 2601(12), (16)  
2604(a)(1)(a)  
2604(b)(1)(b)

**SUBJECT(S):** Community Boards  
Ownership Interests  
Prohibited Interests

**OTHER OPINION(S) CITED:** 93-2  
Board of Ethics Opinion No.  
673

**SUMMARY:** A community board member may not chair a committee of his or her community board if that committee is likely to have matters before it which concern the community board member's private interests or employment. This Opinion supersedes Board of Ethics Opinion No. 673.

**OPINION SUMMARY****OPINION NO: 95-19**

DATE: 7/17/95

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

SUBJECT(S): Moonlighting

OTHER OPINION(S) CITED: n/a

SUMMARY: Clinicians employed by the Department of Mental Health, Mental Retardation and Alcoholism Services (the "Department") may engage in outside employment performing custody and visitation evaluations for the Family Court, provided that they obtain such work by being selected by the Family Court from a court-certified list and not as a result of referrals by private attorneys. In addition, Department employees may not conduct evaluations for litigants or interested parties for whom they have conducted evaluations as part of their official City duties. Further, Department employees may not conduct any custody or visitation evaluations in matters where their involvement would require them to appear against the interests of the Department. Department employees also may not use their City titles or positions to obtain or attempt to obtain any private or personal advantage for themselves, private attorneys, or any other individuals involved in the proceedings. Finally, any such work must be performed in accordance with Charter Sections 2604(b)(2) and (3), and 2604(b)(4), which provides that no public servant shall disclose or use for private advantage any confidential information concerning the City.

**OPINION SUMMARY****OPINION NO:****95-20**

DATE:

8/21/95

CHARTER SECTION(S) INTERPRETED:

2604(b)(2), (b)(3), (b)(4)

SUBJECT(S):

Elected Officials  
Moonlighting

OTHER OPINION(S) CITED:

93-5

SUMMARY: Staten Island Borough President Guy V. Molinari may serve as Chair and Public Interest Director of the Federal Home Loan Bank of New York. Since the Bank's mission to facilitate the extension of credit for affordable housing is consistent with the City's interests, and the Bank has no business dealings with the City, the Borough President's work for the Bank would not conflict with his official duties as an elected official. Furthermore, in light of the foregoing factors, the Borough President's position with the Bank would not be likely to create an appearance that he was improperly using his official position to advance any private interest of the Bank.

## OPINION SUMMARY

## OPINION NO:

95-21

## DATE:

8/21/95

## CHARTER SECTION(S) INTERPRETED:

2601(16)  
2604(a)(1)(b), (a)(3), (a)(4)  
2604(b)(3), (b)(4)

## SUBJECT(S):

Business Dealings with the  
City  
Ownership Interests  
Prohibited Interests

## BOARD RULE(S) CITED:

1-11

## OTHER OPINION(S) CITED:

95-10

SUMMARY: It would not violate Chapter 68 for a public servant to retain an imputed ownership interest in his spouse's private firm (the "Firm"), which became prohibited by the operation of law when her interest in the firm increased to over five percent, provided that he takes no direct or indirect part in any business dealings between the Firm and the City, because the ownership interest would not conflict with the proper discharge of his official duties. Furthermore, the public servant may retain the imputed ownership interest which will arise when the public servant and the Firm establish a new company affiliated with the Firm (the "Affiliate"), but only if this newly formed Affiliate does not seek to engage in business dealings with the City, since such dealings could create an appearance of impropriety. Under the specific circumstances of this case, the Board has permitted the public servant to retain this ownership interest in the Firm and the Affiliate.

**OPINION SUMMARY****OPINION NO:****95-22**

DATE:

9/11/95

CHARTER SECTION(S) INTERPRETED:

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

SUBJECT(S):

Cooperative Corporations  
Moonlighting

OTHER OPINION(S) CITED:

94-27, 95-11

SUMMARY: A public servant may not serve on behalf of private interests as a paid member of the boards of directors of two cooperative housing Corporations (the "Corporations") because he is a manager in a City agency which regularly considers matters which could affect the interests of the Corporations. Such a dual role would conflict with his official duties and could create the appearance that he was using or attempting to use his City position to obtain a private advantage for the Corporations.

**OPINION SUMMARY****OPINION NO:****95-23**

DATE:

9/12/95

CHARTER SECTION(S) INTERPRETED:

2601(17)  
2604(d)(4)

SUBJECT(S):

Particular Matter  
Post-Employment Restrictions

OTHER OPINION(S) CITED:

n/a

SUMMARY: A former public servant who had been personally and substantially involved in working on a legislative bill while employed by the City may not work on the same bill for a private firm for the duration of the pending legislative session since such a bill is considered a "particular matter" for purposes of Charter Section 2604(d)(4). However, the same bill introduced in a subsequent session of the Legislature would not be considered the same "particular matter" and the prohibition of Section 2604(d)(4) would not apply.



**OPINION SUMMARY****OPINION NO:****95-24**

DATE:

10/30/95

CHARTER SECTION(S) INTERPRETED:

2604(b)(2), (b)(3), (b)(9)

SUBJECT(S):

Political Activities

OTHER OPINION(S) CITED:

n/a

SUMMARY: City Council Members may conduct non-partisan voter registration drives using City employees and resources. Such determination is, however, conditioned on the requirement that no partisan political activity is conducted during the drives which would promote the interests of a particular Council Member, elected official, or candidate for elective office, including the distribution of political campaign materials. This activity is within the scope of the Council Members' official duties and promotes the general legislative goal of increasing voter registration. However, the Council Members may not use the drives to promote private political campaigns.

**OPINION SUMMARY****OPINION NO:****95-25**

DATE:

10/30/95

CHARTER SECTION(S) INTERPRETED:

2604(a)(1)(b)  
2604(b)(2), (b)(3)

SUBJECT(S):

Cooperative Corporations

OTHER OPINION(S) CITED:

92-5, 95-22

SUMMARY: A public servant may serve as an officer and director of a cooperative corporation inasmuch as the City agency for which she works is not involved in matters concerning residential real estate or cooperative corporations. Such service would, under these circumstances, neither conflict with her official duties nor create the appearance that she was using her official position to obtain a private advantage for the cooperative corporation. In addition, the public servant may retain her ownership interest in several apartments in the cooperative which are not her residences because the cooperative corporation has no business dealings with the City. The incidents of ownership of real estate, without more, do not constitute business dealings with the City.

**OPINION SUMMARY****OPINION NO:****95-26**

DATE:

11/16/95

CHARTER SECTION(S) INTERPRETED:

2601(11), (12)  
2604(a)(1)(a), (a)(1)(b),  
(a)(3), (a)(4)  
2604(b)(2), (b)(3), (b)(4)  
2604(e)

SUBJECT(S):

Dual City Employment

OTHER OPINION(S) CITED:

n/a

SUMMARY: Regular employees of a City agency may, under certain circumstances, contract to work part-time for their own or another City agency, in addition to their regular City job, provided that they act in accordance with the conditions discussed in the Opinion. The factors considered in making the determination as to whether the employees' part-time employment is consistent with Chapter 68 are, among others: to what extent the City controls and finances the program in which the employees would work part-time; whether the City employees negotiate for the second City position as part of an ongoing commercial activity; the degree to which the employees would have autonomy to determine the time and manner in which the part-time work would be performed; whether the City or the employees provide work space, materials, and equipment; whether the employees have any financial or other interest in the result of the part-time work; and whether the employees are paid on an hourly basis or on a per-job basis. In situations, such as those involved in this case, where the proposed second City employment involves teaching, or administering examinations, the Board will also consider whether the City or the employees are responsible for the registration for the course or examinations. In addition, the employees must obtain the approval of their agency to do the part-time work; and the agency for which the employees would work part-time must be informed that they are City employees. City agencies, however, may adopt stricter standards than those required by Chapter 68, and thus dual City employment may still be prohibited.

Any employee who seeks to contract for part-time work with a City agency must seek a Board determination. The Board will consider such requests on a case-by-case basis.

## OPINION SUMMARY

**OPINION NO:** 95-27

**DATE:** 11/17/95

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

**SUBJECT(S):** Community Boards  
Fundraising

**OTHER OPINION(S) CITED:** 91-10, 92-21, 92-27, 93-15

**SUMMARY:** Members and staff of a community board may solicit and accept contributions of money or supplies, hold fundraising events, or make contributions themselves, in order to support the community board's programs and initiatives, provided that they do not solicit or accept contributions from individuals, businesses, or organizations which have matters pending before the community board, or which have matters where the community board's involvement is imminent. In addition, all potential contributors should be informed that contributions will not affect any possible future dealings with the community board or serve as a quid pro quo in securing favorable treatment from the community board. With respect to the community board members' and staff's involvement in fundraising activities, they may perform their work on City time, and they may use City resources, since this work is in furtherance of the City's interests.

**OPINION SUMMARY****OPINION NO: 95-28**

DATE: 11/27/95

CHARTER SECTION(S) INTERPRETED: 2604(b)(2), (b)(3), (b)(5), (b)(13)

SUBJECT(S): Gifts

BOARD RULE(S) CITED: I-01

OTHER OPINION(S) CITED: n/a

SUMMARY: A public servant may, under the particular circumstances of this case, accept an unsolicited award of a watch given to him by a private watch company in recognition of an act of heroism he performed in the course of his official duties, inasmuch as the company has no business dealings with the City and has no expectation of seeking such dealings; the public servant was not influenced by the incentive of an award; the public servant would not be able to use his official position to obtain any private advantage for the company; and neither the company nor its officials benefited directly from the public servant's actions.

**OPINION SUMMARY****OPINION NO:****95-29**

DATE:

12/4/95

CHARTER SECTION(S) INTERPRETED:

2604(b)(2), (b)(3), (b)(4)

SUBJECT(S):

Renting Property to Public  
Assistance Recipients

OTHER OPINION(S) CITED:

92-5  
Board of Ethics Opinion No.  
666

SUMMARY: Employees of the Human Resources Administration ("HRA") may rent property that they own or manage to recipients of public assistance, provided that they comply with the guidelines set out in Board of Ethics Opinion No. 666, as modified in the Opinion. This means, among other things, that: (1) with respect to each such recipient, the HRA employees do not work in the Income Maintenance Center which handled the recipient's case, or the Department of Social Services completely insulates the employee from that recipient's case; and (2) the units consist of no more than one building of "modest size" (consisting of no more than eight units). HRA should also keep careful records of all rentals by HRA employees to public assistance recipients. Further, HRA employees who rent property to income assistance recipients may not use their City positions to assure rental payments. This conclusion is conditioned on there being no evidence that these transactions would otherwise give rise to an actual or potential conflict of interest under Charter Sections 2604(b)(2), (3), or (4).

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