

CONFLICTS OF INTEREST BOARD
ADDITIONAL PROPOSED CHARTER AMENDMENTS
April 2012

2604(b)(16):

16. No public servant shall solicit, negotiate for, or accept any position, or solicit, negotiate for, or enter into any other business or financial relationship, with any person or firm or other entity who or which is involved in a matter with the city, while such public servant is actively considering, directly concerned with, or personally participating in such matter on behalf of the city.

Commentary: This provision is transferred from current § 2604(d)(1) because it relates to actions by a public servant not after but before leaving City service and also because it should apply not just to post-City jobs but to moonlighting jobs as well. The amendments also make four changes in the text of the provision. First, they delete the prohibition in current § 2604(d)(1)(i) on soliciting, negotiating for, or accepting a position “from which, after leaving city service, the public servant would be disqualified under this subdivision [d]” In fact, the post-employment provisions of § 2604(d) do not restrict where a public servant may work but only what he or she may do; current § 2604(d)(1)(i) is thus simply erroneous. Second, the amendments add “or other entity,” in order to capture, for example, non-City government agencies, quasi-governmental agencies, CUNY, and SUNY, none of which are firms. See current § 2601(11) (proposed § 2601(12)); Advisory Opinion No. 94-10 and 99-06. Third, the amendments delete the word “particular” before “matter” because “particular matter” is a term of art defined in current § 2601(17) (substantively unchanged in proposed § 2601(18)) relating specifically to post-employment work by a public servant on a specific matter that he or she worked on while in City service. “Given the permanent nature of the post-employment [particular matter] prohibition [in § 2604(d)(4)], the definition of ‘particular matter’ is intended to be construed narrowly.” Vol. II, Report of the Charter Revision

Commission, Dec. 1986 – Nov. 1988, at p. 152-153. By contrast, the solicitation prohibition in current § 2604(d)(1), transferred to this proposed § 2604(b)(16), need not be so narrowly construed because it is far more limited in time than § 2604(d)(4). Furthermore, the restriction should apply to soliciting a job from any person or entity with which one is involved in one’s City job, not just to those persons or entities with which one is working on a particular matter. So, too, this prohibition should capture solicitation of a job from a private person or entity, such as a lobbyist, with whom one is working on proposed legislation, a budgetary matter, or a zoning resolution, all of which are excluded from the definition of “particular matter.” Note that this § 2604(b)(16) would not apply to seeking a job with another City agency. In regard to public servants who are attorneys, see N.Y. Rules of Professional Conduct, Rule 1.11(d) (prohibiting a lawyer in public service from “negotiate[ing] for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially”). Finally, to make clear what the Board has stated the Charter as currently written implicitly prohibits, this prohibition would make explicit that not only are public servants barred from soliciting a job from a party across the table from them in their City work, but also from soliciting a business or financial relationship with such a party. For example, to solicit a loan from a vendor with which a public servant is dealing in his or her City job presents the same conflicts of interest concerns as soliciting a job from such a party, and that prohibition should be just as clearly stated.

2604(c)(7):

(7) a public servant, other than elected officials, employees in ~~the office of property management of~~ the department of housing preservation and development, **and** employees in the department of citywide administrative services who are designated by the commissioners of such departments pursuant to this paragraph, and the commissioners, deputy commissioners, assistant commissioners and others of equivalent ranks in such departments, or the successors to such departments, from bidding on and purchasing any city-owned real property at public auction or sealed bid sale, or from purchasing any city-owned residential building containing six or less dwelling units through negotiated sale, provided that such public servant, in the course of city employment, did not participate in decisions or matters affecting the disposition of the city property to be purchased and has no such matters under active consideration **and further provided that the public servant shall otherwise comply with the provisions of this chapter.** The commissioner of citywide administrative services shall designate all employees of the department of citywide administrative services whose functions relate to citywide real property matters to be subject to this paragraph; or

Commentary: The Office of Property Management in the Department of Housing Preservation and Development has not existed for many years, and no current analog exists. To address this anachronism this amendment would provide that the Commissioner of that department would designate the employees of the department who would not fall within the safe harbor provided by this provision, just as the provision currently provides for the Department of Citywide Administrative Services. With respect to the addition of the proviso, see Commentary to § 2604(c)(3).