



# CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

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## **Superior-Subordinate Financial Relationships: Lottery Pools**

**Charter Sections:** 2601(5); 2604(b)(2); 2604(b)(3); 2604(b)(14)

**Opinion Cited:** 2004-2

### **Advisory Opinion No. 2017-5**

The Conflicts of Interest Board (the “Board”) has received requests for advice from public servants asking whether, consistent with Chapter 68 of the City Charter, the City’s conflicts of interest law, they may pool together money with a group of their City colleagues, including their City superiors and subordinates, to jointly purchase lottery tickets.

For the reasons set forth below, it is the Board’s determination that it would violate Chapter 68 for a public servant to jointly purchase lottery tickets with his or her City superior or subordinate. However, it would not violate Chapter 68 for a public servant to jointly purchase lottery tickets with a group of colleagues who are neither the public servant’s superiors nor subordinates.

#### **I. Relevant Law**

Charter Section 2604(b)(2) prohibits a public servant from engaging in any business, transaction, or private employment, or from having any

financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties.

Charter Section 2604(b)(3) prohibits a public servant from using or attempting to use his or her position as a public servant to obtain any financial gain, contract, license, privilege, or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant, to include any person with whom the public servant has a business or other financial relationship. See Charter Section 2601(5).

Charter Section 2604(b)(14) prohibits a public servant from entering into any business or financial relationship with another public servant who is a superior or subordinate of such public servant. Charter Section 2604(b)(14) recognizes “the potential for coercion or favoritism that exists when co-workers who occupy different positions in the hierarchy enter into business or financial relationships” and thus prohibits “jointly-run business ventures, and financial relationships such as loans,” between superiors and subordinates. Volume II, Report of the New York City Charter Revision Commission, December 1986 - November 1988, at 180. A public servant’s subordinates “are not limited to individuals directly under and reporting to the public servant, but include all individuals in lower positions in the organizational hierarchy of the agency, whose work the public servant has the power to direct or whose terms and conditions of employment the public servant has the power to affect.” Id. at 178.

In Advisory Opinion No. 2004-2, the Board determined that Charter Section 2604(b)(14) prohibits a superior and a subordinate from participating together in a savings club, more commonly known as a “sou-sou,” because “[e]ach member is, at one time or another, lending money to, and borrowing money from, every other member.” Advisory Opinion No. 2004-2 at 4.

## **II. Analysis**

Many public servants play the lottery and, in doing so, often pool their money together in order to purchase more lottery tickets than they otherwise would be able to purchase individually. The Board seeks to ensure that public servants comply with Chapter 68 in these lottery pools, as they are commonly called.<sup>1</sup>

When a lottery pool wins a jackpot, the members of the pool may find themselves with a shared interest in a substantial sum of money. To receive and distribute substantial winnings, the pool members may have to take steps, such as hiring a lawyer, accounting for local, state, and federal taxes, and sometimes even setting up a corporation that collects and distributes the money.<sup>2</sup> The shared financial interests and requisite business dealings that occur when public servants win the lottery together are clearly financial relationships within the meaning of Charter Section 2604(b)(14). The Board held as much when it issued waivers to permit groups of superiors and subordinates in two jackpot-winning lottery pools—one comprised of twenty-one New York City Human Resources Administration (“HRA”) employees and the other comprised of twenty-nine New York City Department of Finance (“DOF”) employees—to have financial and business relationships with each other in order to share in their lottery winnings. See COIB Case No. 2015-631 (2015) (twenty-one HRA employees); COIB Case Nos. 2017-457/b-p, r-x, and z-ee (2017) (twenty-nine DOF employees). Both of these pools were created prior to the issuance of this Advisory Opinion,

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<sup>1</sup> This Advisory Opinion only seeks to examine the Chapter 68 implications of lottery pools. Chapter 68 does not prohibit a public servant from individually purchasing a lottery ticket, regardless of whether the public servant’s City superior or subordinate also individually purchases a lottery ticket for the same drawing. Under such circumstances, even though the public servants have a financial interest in the lottery drawing, they do not have a financial relationship with each other. This rationale also applies to drawings that have fewer participants than lotteries, such as charitable raffles.

<sup>2</sup> A maximum of ten individuals can be issued checks to disburse New York State Lottery winnings, although, under exceptional circumstances, payment may be made to multiple payees at the discretion of the New York State Gambling Commission. See New York State Gambling Commission Rules § 5002.7(d). Even in a pool of fewer than ten members, the winners will still need to come to an agreement on dividing the winnings and convey that to the New York State Gambling Commission.

and the Board granted the waivers only after it was satisfied, upon applications by those agencies' commissioners, that the proposed arrangements would not conflict with the purposes and interests of the City.

In prohibiting business or financial relationships between superior and subordinate public servants, Charter Section 2604(b)(14) addresses the potential for coercion or favoritism that exists when public servants are in a superior and subordinate relationship. Thus, a superior public servant may not enter into a business or financial relationship with those public servants whose work he or she has the power to direct or whose terms and conditions of employment he or she has the power to affect. See Volume II, Report of the New York City Charter Revision Commission, December 1986 - November 1988, at 178, 180.

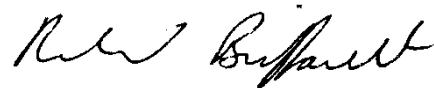
The question the Board must now resolve is whether the joint purchase of a lottery ticket—purchased with the hope of obtaining a windfall that would be a financial relationship between the two or more pool members—is also a financial relationship that creates the risks of coercion and favoritism that Charter Section 2604(b)(14) seeks to prevent. The Board concludes that it is. Even if the superior and subordinate public servants only contribute what they consider to be a negligible amount of money, perhaps even as little as \$1 or \$2, they do so with the goal of winning much more than that. Because achieving that goal creates a financial relationship prohibited by Charter Section 2604(b)(14), entering a lottery pool together also necessarily creates the prohibited financial relationship. Thus, public servants who are in a superior-subordinate relationship at the City may not participate in the same lottery pool.

The Charter Section 2604(b)(14) prohibition, however, does not prohibit all lottery pools. Indeed, Chapter 68 permits many different combinations of public servants to join lottery pools. For example, public servants may join lottery pools with their City peers, with employees of their

agency in other units or offices, or with employees of other City agencies. None of those lottery pools would violate Charter Section 2604(b)(14).<sup>3</sup> It is only the combination of superiors and subordinates together in a lottery pool that violates Charter Section 2604(b)(14).

**III. Conclusion**

Public servants may not enter into lottery pools with their City superiors or subordinates. Public servants may, however, enter into lottery pools with other public servants who are neither their City superiors nor subordinates.



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Dated: October 5, 2017

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<sup>3</sup> A public servant who has won the lottery as part of a lottery pool and is in the process of distributing the winnings is “associated” with the other members of the winning lottery pool and thus is prohibited from using or attempting to use his or her City position to benefit his or her fellow lottery pool members. See Charter Sections 2601(5) and 2604(b)(3). A lottery pool winner with plans to take some official action regarding a fellow pool winner should contact the Board for guidance.