



CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

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Advisory Opinion No. 2019-1

The Conflicts of Interest Board (the “Board”) received a request for advice from a former public servant concerning the application of the post-employment restrictions of Chapter 68 of the New York City Charter. The former public servant asked, for purposes of calculating the end of the one-year appearance ban of Charter Section 2604(d)(2), whether his service with the City terminated on the day on which he began a three-month leave of absence and stopped performing work for his City agency or when he formally resigned from the City agency at the end of that leave.¹ Charter Section 2604(d)(2) states in relevant part: “No former public servant shall, within a period of one year after the termination of such person’s service with the City, appear before the City agency served by the public servant.” For the reasons stated below, the Board advised the former public servant that his service with the City terminated when he formally resigned from the City agency at the end of his three-month leave of absence.

When the public servant began planning to resign from City service he sought to be compensated for approximately 15 months of

¹ The advice contained in this Advisory Opinion applies only to the requesting public servant. See Charter Section 2604(c)(4).

accrued compensatory time. However, the public servant's employing City agency maintained a policy of paying only 12 months of compensatory time to departing employees. The public servant and the City agency reached an unmemorialized agreement to enable the public servant to receive payment for all 15 months of compensatory time in which the City agency agreed that on the public servant's last physical day in the office an exit interview would be conducted and the public servant would provide a letter of resignation. For three months, the public servant did no work for the City but he remained an employee as he "spent down" his accrued compensatory time; payroll deductions continued for his pension and commuter benefits; and he continued to be covered by City health, vision, and dental insurance. At the end of three months, his resignation was formally triggered. At this time, he stopped receiving the benefits afforded to employees but continued to receive payments for the remaining 12 months of accrued compensatory time.

In Advisory Opinion No. 1998-11, the Board addressed the question of when Chapter 68's post-employment restrictions begin for a former public servant receiving lagged paychecks for periodic payment for unused leave after ceasing City service.² The Board noted that a former public servant receiving periodic payments for unused leave "is not, however, working for the City, is not entitled to any City benefits (other than those available to former City employees) and does not continue to accrue any leave." The Board therefore advised that "the date of termination from City service is the date a public servant effectively resigns and stops working for the City. It is the public servant's removal from the active payroll that triggers the imposition of the one-year appearance ban." Advisory Opinion No. 1998-11 at 5. The Board distinguished

² Advisory Opinion No. 1998-11 applies only to the public servants who requested it. See Charter Section 2604(c)(4).

the former public servant at issue from a public servant who is “on leave” from his or her position, as a public servant on leave remains on the active payroll. Id. at 4.

Here, the Board determined that the requesting public servant remained an employee of the City until his resignation was triggered after concluding his three-month leave of absence. Although the former public servant performed no City work during the three months during which he “spent down” his accrued compensatory time, he retained his City position to enable him to receive, pursuant to his agency’s policy, payment for both the three months of compensatory time and the remaining twelve-month balance after his resignation was triggered. His status as an employee during the three-month period is further evidenced by his continued access to City healthcare, dental, pension, and commuter benefits during that period.

The Board thus advised the former public servant that his service with the City terminated, for the purposes of Charter Section 2604(d)(2), when he resigned from his City agency at the end of the three-month period. At that time he was no longer an employee of the City and became subject to the post-employment restrictions of Chapter 68, specifically the start of his first post-employment year.



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