

Advisory Opinion No. 93-2

The Conflicts of Interest Board (the "Board") has received a request from a public servant asking whether it would be a violation of the conflicts of interest provisions of Chapter 68 of the New York City Charter for a community board member, who is also a school board member, to chair a committee which will vote on matters which will also be voted upon by the school board.

Background

Every community board has a Youth Services Committee which reviews proposals for the funding of after-school centers by the Department of Youth Services (the "Department"). These recommendations, in turn, are voted on by the community board and submitted to the Department for final decision.

The public servant in question is a member of a community board, and also serves as a member of a local community school board, which has overlapping jurisdiction with the community board. The public

servant wishes to chair the Youth Services Committee of his community board, which would vote on recommendations to the Department concerning the funding of after-school centers. This responsibility is similar to his duty as a member of the local school board, which also votes on recommendations to the Department for the funding of such centers. The Board has been advised that the community boards and community school boards compete for Department funds which are available for after school programs and that the Department asks community boards for recommendations as to how the local school board allocations should be used.

#### Discussion

Chapter 68 is based on the premise that public service is a public trust, and that certain limits on the conduct of public servants are necessary in order to promote public confidence in government and to protect the integrity of government decision making. See Charter Section 2600.

Because they act as an interface between neighborhoods and the providers of City services, community boards are an important arm of City

government, and are therefore subject to many of the limitations imposed by Chapter 68. At the same time, however, community boards are recognized as special institutions, reflecting the fact that most members are privately employed and are not full-time public servants, and the desire to attract members representing the wide spectrum of interests reflected in each community. See Volume Two, Report of the New York City Charter Revision Commission, December 1986 - November 1988, at 154 and 170.

Chapter 68 therefore provides that, unlike other public servants, an appointed member of a community board may hold an interest in a firm which may be affected by an action on a matter before the community board. See Charter Section 2604(a)(1)(a). However, the member may not

"vote on any matter before the community ... board which may result in a personal and direct economic gain to the member or any person with whom the member is associated." Charter Section 2604(b)(1)(b).

The intent of this prohibition was to insure that actions taken by a community board are not tainted by questions of self-interest or divided loyalty on the

part of any member. Although these questions arise most frequently in the context of private employment or interests in private enterprise, the Board has recognized that they can also occur where a community board member holds other public employment.

In its Advisory Opinion No. 91-3, the Board considered whether a community board member who was also employed by another City agency could participate in board discussions concerning matters which involved his or her other agency. The Board concluded that it would be "[u]nseemly and inappropriate for an employee of a City agency to cast a formal vote [on a community board] which might be in opposition to a position theretofor or thereafter taken by his or her agency." See also Board of Ethics Opinion No. 359-A (1975). The Board also cited Charter Section 2604(b)(2),<sup>1</sup> reflecting its view that if a community board member were allowed to cast a vote on matters involving his or her other City agency, two governmental roles would be placed in direct competition, preventing the employee

---

<sup>1</sup> Charter Section 2604(b)(2) provides that "No public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties."

from properly discharging either role in a fair and unbiased manner.

The Board also ruled that a community board member was free to participate in discussions concerning matters which have been or may be considered by the City agency where the member is employed, provided that, before participating, the member discloses to the other members of the community board the nature and extent of his or her interest in such matters. This conclusion was based on the principle that City employees have a First Amendment right, albeit qualified, to express their personal views publicly on matters of public concern.

In our view, the same concerns which arise when a community board member votes on matters involving his or her other City agency also arise when a community board member chairs a committee which votes on matters which have been or may be considered by him or her in another official capacity on behalf of his or her other City agency. Our position is consistent with that taken by the Board of Ethics in its Opinion No. 571 (1980), where it stated that "[c]hairing a committee which has as a primary function considering matters which come or may come before an employee's City agency

is analogous to voting on [such] matters." That is because a committee chair can, if she or he so wishes, greatly influence a committee by controlling the agenda, recognizing speakers and making rulings. This would not, however, preclude a City employee from serving as a member of a community board committee which considers matters as to which his agency has taken or might take a position, "[p]rovided that he votes neither in the committee nor at meetings of the full board with respect to such matters."<sup>2</sup>

#### Conclusion

For the reasons set forth above, it is our opinion that it would be a violation of Chapter 68 for a community board member who is also a member of a local community school board, to chair the Youth Services Committee of his community board or to vote on funding recommendations for after-school centers while continuing to serve as a member of the school board. He may, however, participate in community board discussions of such recommendations, provided that, before participating, he discloses the nature and

---

<sup>2</sup>See Board of Ethics Opinion No. 657, which this Board adopts as consistent with revised Chapter 68.

extent of his interest in such recommendations, as a school board member, to the other members of the community board.

Sheldon Oliensis  
Chair

Benjamin Gim

Beryl R. Jones

Robert J. McGuire

Shirley Adelson Siegel

Dated: January 18, 1993