

Advisory Opinion No. 93-3

The Community Assistance Unit within the Office of the Mayor has requested an opinion as to whether, consistent with Chapter 68 of the City Charter, certain members of a community board may vote to adopt expense and capital budget priorities for fiscal year 1993 at a meeting of that community board. In addition, an individual member of the community board has requested an opinion as to whether an "unpaid position" with a local development corporation or a public benefit corporation constitutes an "interest" in a "firm" pursuant to Charter Section 2601(12).

The community board members in question are also unpaid directors of a local development corporation (the "Corporation") serving the community in question, and the vote concerning the expense and capital budget priorities may affect the amount of funding to be received by the Corporation from a City agency, which allows the Corporation to operate programs within the community.

Community boards are City agencies and community board members are public servants, although they are not

regular employees of the City. See Charter Sections 2601(2), 2601(19) and 2601(20).

A public servant who is not a regular City employee is prohibited from holding an interest in a firm which the public servant knows is engaged in business dealings with his or her agency. See Charter Section 2604(a)(1)(a). An "interest", in turn, is defined to include either an ownership interest in, or a position with, a firm. See Charter Sections 2601(12), 2601(16) and 2601(18).

Although the community board members have an interest in the Corporation, Charter Section 2601(11) expressly excludes local development corporations from the definition of a "firm". This reflects a recognition, on the part of the drafters of Chapter 68, that local development corporations are not for profit entities

whose primary purpose is to stimulate economic growth and development, for the benefit of the public at large. Local development corporations perform an

essential public function and can therefore be considered an arm of government. Accordingly, the community board members in question may serve as directors of the Corporation without violating Charter Section 2604(a)(1)(a).

Chapter 68 goes on to provide that a community board member holding an interest in a firm not prohibited by Charter Section 2604(a)(1)(a) may take action as a public servant affecting that interest, but may not vote on any matter before the community board which will result in a personal and direct economic gain to the member, or to any person with whom the member is associated. See Charter Section 2604(b)(1)(b). By limiting this prohibition to votes which would result in a personal and direct economic gain, the drafters of Chapter 68 recognized two basic principles: that members of community boards are selected to reflect the interests of the community, including the local business community, and that any standards erected to preserve the integrity of decision-making should not deprive community boards of this desired diversity. See Volume Two, Report of the New York City Charter Revision Commission, December 1986 - November 1988, at 170.

Although a local development corporation is not a "firm" within the meaning of Chapter 68, the Board is of the view that the principles inherent in Charter Section 2604(b)(1)(b) are controlling. The paramount legislative intent, as expressed in this Section, was to carefully tailor restrictions on community board members, so that community boards would be able to represent, and would continue to benefit from the input of, the wide range of interests reflected in the community at large. Therefore, it is the opinion of the Board that, pursuant to Charter Section 2604(b)(1)(b), a community board member who is also an unpaid director of a local development corporation may vote on a matter affecting the corporation, unless the facts and circumstances demonstrate that the vote would result in a personal and direct economic gain to the member or to a person associated with the member. In the instant case, the community board members in question are unpaid directors of the Corporation, and receive no compensation for their service as directors. No facts or circumstances have been presented which demonstrate that any of the members (or any person associated with any of the members) would stand to derive a personal and direct economic gain from voting on budget priorities which

may affect the Corporation. Accordingly, the community board members may vote on such priorities without violating Chapter 68.

It is also the Board's opinion that, pursuant to Charter Section 2601(11), an unpaid position with a local development corporation or a public benefit corporation is not an "interest" in a "firm" for purposes of Charter Section 2604(a)(1)(a).^{*} If an individual community board member holds an unpaid position with either a local development corporation or a public benefit corporation, the ability of such member to vote on matters affecting the corporation would, as noted above, be determined on the basis of whether or not such vote would result in a personal and direct economic gain to the member, or to a person associated with the member.

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Chair

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^{*} Because local development corporations and public benefit corporations are excluded from the definition of a "firm", it is not necessary to decide, as a general matter, whether unpaid positions are included within the scope of an "interest" for purposes of Chapter 68.

Shirley Adelson Siegel

Dated: January 18, 1993