

Advisory Opinion No. 93-14

The Conflicts of Interest Board (the "Board") has received a request for an opinion from a public servant whose City agency (the "Agency") has regulatory jurisdiction over certain classes of real property. Specifically, the public servant has requested an opinion as to whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, he may continue serving on the Board of Directors of a not-for-profit real estate development and management corporation (the "Corporation"), in light of the Corporation's pending acquisition of certain property (the "Property") subject to the jurisdiction of the Agency.¹

¹ The public servant has also asked for the Board's opinion as to whether a provision of the Agency's enabling statute would prohibit him from continuing to serve on the Corporation's Board of Directors. The Agency's enabling statute provides, in pertinent part, that no person who owns or manages real property subject to the Agency's jurisdiction shall serve in the position held by the public servant.

While the Board is expressly authorized and

Background

The public servant has advised the Board that in his official capacity, he votes on regulatory actions affecting a large number of properties within the City; that the Corporation is a not-for-profit, minority-operated, real estate development and management company; that his work for the Corporation is uncompensated; and that he has no financial interest in the Corporation. He has also advised the Board that the Corporation is interested in submitting an application to the federal government to purchase the Property, which is subject to the Agency's jurisdiction. If the application is successful, the Corporation will become the owner and manager of the Property.

Service as Director under Chapter 68

Based on the public servant's representations, it is the opinion of the Board that in light of the public servant's position at the Agency, his continued service

empowered to interpret the provisions of Chapter 68 of the City Charter, it has no authorization to interpret the provisions of the Agency's enabling statute. Accordingly, the Board has determined that the public servant's second request falls outside of its jurisdiction, and such request is therefore not addressed herein.

on the Board of Directors of the Corporation would constitute a violation of Chapter 68, if the Corporation were to acquire the Property.

The Agency was established, under local law, to address a serious issue affecting the public welfare in the City. The public servant is a high-ranking official within the Agency and, as noted above, votes on regulatory actions affecting a large number of properties within the City. The Property is covered by the law establishing the Agency and is, therefore, subject to regulation by the Agency. If the Corporation were to acquire the Property and if the public servant were to continue as a member of its Board of Directors, he would be in a position to use his public office to secure regulatory actions in favor of the Property, for the benefit of the Corporation. Any attempt to use his official position in this manner would be prohibited by Charter Section 2604(b)(3), which provides that no public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal benefit, for the public servant or for any person or firm associated with the public servant.²

² The definition of "associated" includes a firm in which a public servant has a present or potential

At the very least, the public servant's continued service as a Director of the Corporation would create an appearance of conflict between his public responsibilities and his private affiliation, in violation of this Section. As a high-level official within the Agency, the public servant is charged with protecting the public welfare by carefully evaluating any proposed regulatory actions that are considered by the Agency, and by opposing such actions when they are inconsistent with the Agency's enabling statute. However, as a member of the Board of Directors of the Corporation, he is responsible for advancing the Corporation's own business agenda, and would be expected to help assure the Corporation's viability by supporting regulatory actions which benefit the Property, whenever they are proposed. Given the importance of the issue which the Agency deals with, and the ongoing public debate over how this issue can best be dealt with, this apparent conflict between official duties and private interest can only serve to

"interest". An "interest", in turn, includes an ownership interest in or a position with a firm. See Charter Sections 2601(5) and (12), respectively. Thus, for the purposes of Chapter 68, this public servant is associated with the Corporation.

undermine public confidence in the Agency, and in the integrity of its decision-making process.

For this reason, under Chapter 68 of the City Charter, it would be inappropriate for the public servant to continue as Director of the Corporation, if it is successful in acquiring the Property.

Sheldon Oliensis
Chair

Benjamin Gim

Beryl R. Jones

Robert J. McGuire

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Dated: May 17, 1993