

Advisory Opinion No. 93-17

A public servant has requested an opinion from the Conflicts of Interest Board (the "Board") as to whether, consistent with Chapter 68 of the City Charter, a member of a City commission (the "Commission") may accept a position with a State public benefit corporation (the "Corporation").

The Board has been advised that the member (the "Member") is a professional and was appointed to the Commission to serve as one of a number of members who are required to be drawn from the ranks of this profession.

The Member has received an offer from the Corporation to serve as the manager of a large-scale reconstruction and renovation project (the "Project") at a facility operated by the Corporation. The scope of the Member's duties are limited to the Project, and he would not be involved with other properties operated by the Corporation.

The Commission does not have jurisdiction over the Project, and the Project will therefore not require consideration by, or appearances before, the

Commission. However, it is possible that other Corporation properties could present issues that would require approval or other official action by the Commission. The Member has agreed to recuse himself, in his capacity as a member of the Commission, from involvement in or consideration of, any Corporation matters that are brought before the Commission.

By letter to the Board, the Chair of the Commission approved the Member's proposed employment with the Corporation.

For the following reasons, it is the opinion of the Board that it would not be a violation of Chapter 68 of the City Charter for the Member to accept the position offered to him by the Corporation, provided that he recuses himself from involvement in, or consideration of, any Corporation matters that are brought before the Commission.

Position with the Corporation

Charter Section 2604(a)(1)(a) provides that no public servant shall hold an interest in any firm which such public servant knows is engaged in business dealings with his or her agency. An "interest" is defined as either an ownership interest in, or a position with, a firm. See Charter Sections 2601(12),

(16) and (18).

Although the position which has been offered to the Member would constitute an "interest" in the Corporation, the definition of a "firm" excludes any "public benefit corporation, local development corporation, or other similar entity as defined by rule of the [B]oard". See Charter Section 2601(11).

The Corporation is a public benefit corporation, created pursuant to State law, for the purpose of addressing a critical issue relating to the health and welfare of all City residents. It is therefore not a "firm" within the meaning of Chapter 68, and the Member's position with the Corporation is not prohibited by Charter Section 2604(a)(1)(a).

Avoidance of Conflict with Official Duties

Charter Section 2604(b)(2) provides that no public servant shall engage in any business, transaction, or other private employment, or have any financial or other private interest, direct or indirect, which conflicts with the proper discharge of his or her official duties.

This prohibition was intended to give the Board

the flexibility to address situations which present actual or potential conflicts of interest, but which are not expressly covered by other provisions in Chapter 68. See Volume Two, Report of the New York City Charter Revision Commission, December 1986 - November 1988, at p. 175.

The Board has indicated, in a variety of contexts, that maintaining public confidence in the integrity of government decision-making is one of the primary goals of Chapter 68. Accordingly, the Board has invoked Charter Section 2604(b)(2) to prohibit certain conduct which, while well-intentioned, could give rise to an appearance of pressure, favoritism or unfair advantage in dealing with City agencies and officials. See Advisory Opinion Nos. 92-33, 93-9 and 93-15.

Although the Project will not come before the Commission for review or approval, it is possible that other Corporation properties may require official action by the Commission during the Member's tenure thereon. The Member has recognized that his position with the Corporation might create a perception of favoritism towards his employer, and might therefore call into question the integrity and impartiality of the Commission's decision-making process. He has, for

this reason, agreed to recuse himself from involvement in or consideration of any Corporation matters which are brought before the Commission.

Based on the facts of the instant case, we believe that such recusal is an acceptable means of eliminating any potential conflict of interest under Charter Section 2604(b)(2).

As noted above, the Member is a professional and holds one of several seats on the Commission that are reserved for individuals practicing in his profession. Although Chapter 68 mandates a strong policy of avoiding any appearance of divided loyalty or favoritism, it must be carefully balanced against the equally important public policy of insuring that the Commission is able to attract and retain its required complement of designated professionals. These professionals bring an expertise to the agency which is critical to the fulfillment of its mission.

In addition, the Member will work solely on the Project, which does not require review or approval by the Commission. Any potential conflicts of interest would be limited to other properties of the Corporation in which the Member would not have any professional involvement or personal financial interest. The lack

of any direct conflict created by the Member's duties at the Corporation, when taken together with the need to maintain the Commission's professional strength and diversity, leads us to conclude that recusal is an adequate means of safeguarding the integrity of Commission deliberations, while allowing it to continue to benefit from the Member's talents and experience.

We note, in conclusion, that recusal means that the Member may not vote on, otherwise involve himself in, any such matters as a member of the Commission, directly or indirectly. This includes, but is not limited to, participating in Commission discussions, attending meetings on behalf of the Commission, and receiving copies of relevant documents, with respect to such matters. See Advisory Opinion No. 92-5.

Sheldon Oliensis
Chair

Benjamin Gim

Beryl R. Jones

Robert J. McGuire

Shirley Adelson Siegel

Dated: June 9, 1993