

Advisory Opinion No. 93-29

A high-level appointed official, who is a member of the board of a City agency, has asked the Conflicts of Interest Board (the "Board") for an opinion as to whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, her spouse may participate in developing a proposal for the implementation of a program (the "Program") by the City. The public servant also requested an opinion as to whether her husband may participate in the operation and development of the Program upon its implementation.

The public servant's spouse is employed by a law firm (the "Firm") which is planning to meet with representatives from the City, though not with the public servant's agency, to discuss ways in which the City can establish the Program in order to resolve a class of claims brought against the City. This initial meeting may eventually lead to a contract between the Firm and the City for the implementation of the Program.

The public servant has advised the Board that she and her husband do not have an ownership in the Firm

and that she would recuse herself from consideration of any matters concerning the Program if they should ever come before her board.

As a member of a board of a City agency, the public servant is defined as a public servant pursuant to Charter Section 2601(19).<sup>1</sup> Charter Section 2604(a)(1)(a) prohibits a public servant from having an interest in a firm which is engaged in business dealings with the agency served by such public servant.

"Interest" means an ownership interest in a firm or a position with a firm. See Charter Section 2601(12). Charter Section 2601(18) defines a "position" with a firm as "a position in a firm, such as an officer, director, trustee, employee, or any management position, or as an attorney, agent, broker, or consultant to the firm, which does not constitute an ownership interest in the firm." The Charter does not prohibit the spouse of a public servant from holding a position with a firm which has business dealings with the City. An ownership interest is an interest in a firm held by the public servant or the public servant's

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<sup>1</sup> A "public servant" is defined as "all officials, officers and employees of the city, including members of community boards and members of advisory committees, except unpaid members of advisory committees shall not be public servants."

spouse which exceeds five percent of the firm or an investment of twenty-five thousand dollars of the firm's indebtedness, whichever is less. See Charter Section 2601(16).

The Board has determined that it would not be a violation of Chapter 68 of the Charter for the public servant's spouse to participate in developing a proposal for the implementation of the Program, as well as participating in its actual operation and development, inasmuch as neither the public servant nor her spouse has an ownership interest in the Firm, as that term is defined in the Charter.

The prohibition outlined in Charter Section 2604(a)(1)(a) only extends to the agency served by such public servant; therefore, the Firm's possible future business dealings with the City would not create a conflict of interest even if they had an ownership in the firm since the City agency involved with the Program would not be the agency served by this public servant.

It is also the Board's opinion that, in the event that any matter relating to the Program comes before the public servant's agency, the public servant should recuse herself from consideration of that matter. We understand this recusal to require that the public

servant will not be involved, directly or indirectly, in any matters which relate to the Program. This includes, but is not limited to, the public servant's participation in discussions or meetings with City officials or others and receiving copies of relevant documents.

Sheldon Oliensis  
Chair

Benjamin Gim

Robert J. McGuire

Shirley Adelson Siegel

Dated: November 30, 1993

Beryl Jones recused herself from this matter.