

Advisory Opinion No. 93-30

A former public servant has requested that the Conflicts of Interest Board (the "Board") issue a waiver of certain post-employment restrictions contained in Chapter 68 of the City Charter. Specifically, the former public servant requests the Board to waive the provisions of Charter Section 2604(d)(2), allowing him to appear before his former City agency (the "Agency"), within one year after his termination of City employment.

Background

The Board has been advised that the former public servant was employed by the Agency from September 19, 1991 to December 30, 1992 and was responsible for underwriting loans for one of the Agency's programs, in addition to preparing various documents in connection with the loans. Following the public servant's employment at the Agency, he was employed at another City agency from December 31, 1992 to September 3, 1993.¹

¹ Board Rule § 1-07, Definition of Agency Served by a Former Public Servant, provides that where a "former public servant has served more than one agency within

A few months ago, the former public servant accepted a new position with a private company (the "Company"), where he is responsible for underwriting and coordinating projects jointly undertaken by the Agency and a not-for-profit corporation. The former public servant represents that his ability to directly contact the Agency would greatly facilitate the Company's participation in the Agency's programs. The former public servant therefore requests that the Board waive the provisions of Charter Section 2604(d)(2), and allow him to communicate with the Agency within one year of his separation from City Service. The one year period expires on December 30, 1993 and the public servant is requesting a waiver of the remaining portion of the one year period.

By letter addressed to the former public servant, the head of the Agency stated that the public servant's appearances before the Agency within one year of the public servant's separation from City service would not be in conflict with the purposes and interests of the City, provided that the purpose of the public servant's

one year prior to the termination of such person's service with the City, the former public servant shall not appear before each such City agency for a period of one year after the termination of service from each such agency."

appearances is to help underwrite and coordinate projects of the Agency.

For the following reasons, it is the opinion of the Board, as the public servant has previously been advised, that the facts and circumstances of the instant case do not warrant the granting of a waiver. Accordingly, Charter Section 2604(d)(2) applies to the former public servant and he is prohibited from appearing before the Agency for a period of one year following his termination of City employment, except for communications involving ministerial matters.

Post-Employment Restrictions

Chapter 68 contains a series of provisions regulating the conduct of individuals who have left, or are contemplating leaving, public service. See Charter Sections 2604(d)(1) through (d)(7). These provisions, commonly known as the post-employment restrictions, are intended to prevent public servants from exploiting public office for personal gain.

One of the post-employment restrictions, Charter Section 2604(d)(2) provides, in pertinent part, that

No former public servant shall,
within a period of one year after
such person's service with the
city, appear before the city agency
served by the public servant

Pursuant to Charter Section 2601(4), an "appearance" is

defined as any communication, for compensation, other than those involving ministerial matters.

In Advisory Opinion 91-8, the Board interpreted Charter Section 2604(e)² to authorize it to waive the one-year appearance ban set forth in Charter Section 2604(d)(2), "when justified by compelling circumstances in a particular case." The Board added, however, that such waivers should be granted sparingly, and only in exigent cases. Thus, the Board denied a request for a waiver where a former public servant asserted that communications "would be in furtherance of agency objectives" and the former public servant's agency head merely stated that the otherwise prohibited appearances would not be in conflict with the City's interests.

In Advisory Opinion No. 91-8, the Board also considered a waiver request from another public servant. In that case, the Board granted a waiver to a former public servant who was offered a position in a firm which had a contract to manage certain sites operated by his former agency. The agency head advised

² Charter Section 2604(e) provides that a public servant or former public servant may hold a position which is otherwise prohibited by various provisions in Chapter 68, if, after receiving the written approval of the head of the agency or agencies involved, the Board determines that the holding of such position would not be in conflict with the purposes and interests of the City.

the Board that the availability of the former public servant's expertise as an employee of this firm "would materially help the agency's efforts to meet certain court-imposed deadlines."

In Advisory Opinion 93-18, the Board, in following the guidance set forth in Advisory Opinion No. 91-8, denied a request for waiver of the one-year appearance ban where the former public servant did not provide the Board with any indication that his ability to appear before his former agency, within one year after his separation from City service, was justified by compelling circumstances. Furthermore, the Board determined that although his current position at a private corporation may help to advance his former agency's goals, this, in and of itself, did not support the granting of the waiver.

The former public servant has not provided the Board with any indication that his ability to appear before the Agency, within one year after his termination of City service from that Agency, is justified by compelling circumstances. Although the former public servant's current position at the Company may help to advance the Agency's efforts, this, in and of itself, does not support the granting of a waiver and is analogous to the argument which was rejected in

Advisory Opinions Nos. 91-8 and 93-18.

The former public servant has therefore been advised, that his request for a waiver is denied, and that he is prohibited from appearing before the Agency for a period of one year after his separation from that Agency, except for communications involving ministerial matters. See Charter Section 2604(d)(2). Thus, the former public servant may not appear before the agency served by him until December 30, 1992, until after December 30, 1993, the date the one year appearance ban expires.

Additionally, the former public servant has been advised that he is required to observe Charter Sections 2604(d)(4) and (d)(5), which are not limited in duration. Charter Section 2604(d)(4) provides that a former public servant may not appear, whether paid or unpaid, before any City agency on, or receive compensation for any services rendered, in relation to any particular matter involving the same party or parties with respect to which particular matter such person participated personally and substantially as a public servant through decision, approval, recommendation, investigation or other similar activities. Charter Section 2604(d)(5) provides that a former public servant may not disclose or use for

private advantage any confidential information gained from public service which is not otherwise made available to the public.

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