

Advisory Opinion No. 93-31

The Conflicts of Interest Board (the "Board") has received a request for an opinion from Dr. Billy E. Jones, President of the New York City Health and Hospitals Corporation ("HHC"), asking whether he may, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, negotiate for the position of President of the State University of New York/Health Science Center at Brooklyn ("SUNY"), and, if he is offered the position, whether he may accept the position and perform its duties, some of which involve dealing with and appearing before HHC.

Dr. Jones has advised the Board that he has been contacted by an executive search firm concerning the position with SUNY and that HHC has an affiliation relationship with SUNY which predates his employment with HHC. As part of that relationship, SUNY has provided certain professional staff for Kings County Hospital, which is administered by HHC. Dr. Jones has further advised the Board that HHC is currently negotiating a new affiliation contract with SUNY and that, under normal circumstances, he would have played

an active role in these negotiations in advising HHC's negotiators, deciding the final material terms for HHC, and, ultimately, signing the contract; however, Dr. Jones has also advised the Board that he has recused himself from all involvement in the negotiation and approval process and that, in the event he accepts employment with SUNY, he would, if required to do so, recuse himself from involvement in the contract.

The post-employment restrictions of Chapter 68 include the following: Charter Section 2604(d)(1)(ii), which provides that no public servant shall solicit, negotiate for or accept any position with any firm which is involved in a particular matter with the City, while such public servant is actively considering, or is directly concerned or personally participating in such particular matter on behalf of the City; Charter Section 2604(d)(2), which provides that no public servant shall, within a period of one year after the termination of such person's service with the City, appear before the City agency served by such former public servant; and Charter Section 2604(d)(4), which provides that no former public servant shall appear before the City or receive compensation for any services rendered in relation to any particular matter with respect to which such former public servant had

participated personally and substantially. However, Charter Section 2604(d)(6) provides that the prohibitions on negotiating for and having certain positions after leaving City service shall not apply to positions with or representation on behalf of any local, state or federal agency.

Notwithstanding Charter Section 2604(d)(6), public servants negotiating with local, state or federal agencies are still active public servants and are thus bound by the provisions of Chapter 68, which apply to all current City employees. Those provisions which are relevant to Dr. Jones' request thus include the following: Charter Section 2604(b)(2), which provides that no public servant shall engage in any business, transaction or 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; 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 or other private or personal advantage for the public servant or any firm associated with the public servant; and Charter Section 2604(b)(4), which provides that no public servant shall disclose or use for private advantage any confidential

information concerning the City.

It is the opinion of the Board that, inasmuch as SUNY is a state entity, it would not violate Chapter 68 for Dr. Jones to negotiate with SUNY for the position of President of the Health Science Center at Brooklyn, provided that he conducts such negotiations at times when he is not required to perform services for the City; he continues to recuse himself from the contract negotiations and other business dealings between HHC and SUNY; does not use his City position in any way to obtain a private advantage for himself or for SUNY; and does not use or disclose any confidential information concerning the City. See Charter Sections 2604(b)(2), (3) and (4), respectively. The Board understands recusal to require that Dr. Jones will not participate, directly or indirectly, in any matters which involve SUNY's business dealings with HHC. This includes, but is not limited to, participating in HHC's discussions, attending meetings with City officials and others, and receiving copies of relevant documents.

It is also the Board's opinion that, if Dr. Jones is offered and accepts the position with SUNY, he may appear before and work on matters involving HHC without waiting one year after termination of his City service. See Charter Section 2604(d)(6), which provides that

the post-employment provisions of Charter Section 2604(d) shall not apply to a former public servant's representation on behalf of any local, state or federal agency.

Sheldon Oliensis
Chair

Benjamin Gim

Beryl R. Jones

Robert J. McGuire

Shirley Adelson Siegel

Dated: December 30, 1993