

Advisory Opinion No. 93-32

The Conflicts of Interest Board (the "Board") has received a request for an opinion from a member of the City Planning Commission (the "Commission"), as to whether his professional firm may, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, be listed with the Department of General Services ("DGS") as a qualified contractor for possible City contracts, in light of his City employment.

Charter Section 2604(a)(1)(a) provides that public servants who are less than full-time, regular employees of the City, such as City Planning Commissioners, are prohibited from having a position with or an ownership interest in a firm that does business with their agencies. Charter Section 2604(b)(6) provides that no public servant who is less than a full-time, regular employee of the City shall, for compensation, represent private interests before his or her agency or appear directly or indirectly on behalf of private interests in matters involving his or her agency.

Those sections of the City Charter which define the scope of the powers and duties of the City Planning

Commission contain limitations on both the City Planning Commissioner and his firm vis-a-vis working on City contracts. Pursuant to Charter Section 192(b), Commissioners are prohibited from appearing, directly or indirectly, before the Commission and the Department of City Planning.

Furthermore, the Board, pursuant to its rulemaking authority as provided in Charter Section 2603(a), has promulgated Rule section 1-07, which prohibits City Planning Commissioners from appearing, directly or indirectly, before high-level City officials or certain agencies which have shared oversight responsibilities with the City Planning Commission. Under this rule, City Planning Commissioners are therefore prohibited from appearing, directly or indirectly, before another City agency in their private capacities where they would be in a position to use their official City positions to obtain private advantages for their firms or clients.

It is the opinion of the Board that it would not violate the conflicts of interest provisions of Chapter 68 for the City Planning Commissioner to be listed with DGS in his private capacity as a qualified contractor, provided that he and his firm act in strict accordance with the requirements imposed by the City Charter and

the City Planning Commission rule. It is also the opinion of the Board that the City Planning Commissioner's work as a contractor would not create a conflict of interest, provided that this work is performed at times when he is not required to perform services for the City; he does not use his position with the City to obtain a private advantage for himself, his firm, or his private clients; and he does not disclose or use for private advantage any confidential information concerning the City. See Charter Sections 2604(b)(2), (3) and (4), respectively.

The City Planning Commissioner should contact the Board again for further guidance if, in the future, he has any questions about the restrictions to which he is subject or about particular contracts, especially contracts which involve a matter coming before his own agency.

Sheldon Oliensis
Chair

Benjamin Gim

Beryl R. Jones

Robert J. McGuire

Shirley Adelson Siegel

Dated: December 30, 1993

