

Outside Employment, Ownership Interest -
Charter Sections 2601(11), (12)
2604(a)(1)(b)
2604(a)(3), (a)(4)
2604(b)(2), (b)(3), (b)(4)
2604(e)

Advisory Opinion No. 94-1 and Order No. 41

The Conflicts of Interest Board (the "Board") has received a request from a public servant for an opinion as to whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, she may work as an independent contractor at a City agency other than the agency served by the public servant.

The public servant has advised the Board that her official responsibilities involve mediating complaints of discrimination in violation of the New York City Administrative Code, in addition to occasionally conducting training seminars. The public servant also advised the Board that she has more than ten years of work experience as a mediation and conciliation trainer. Further, the public servant stated that, during the course of her career, she has written articles, given lectures, and, until recently, served as a member of a professional society, and that her name is well known in the field.

The City agency, which wishes to employ the public servant as an independent contractor, has recently

established a new unit for the purpose of mediating disputes. The public servant has been asked by this agency to organize a training program for its staff on techniques in dispute resolution. The public servant has advised the Board that the entire training program would last approximately three weeks and, during this time period, the public servant would take a leave of absence without pay from the City agency which is her employer. Moreover, the Board has been informed that the public servant intends to recuse herself from consideration of any mediation cases involving the City agency where she would be a consultant.

The public servant's agency head has approved her proposed consulting activity with the other City agency. The agency head stated that the public servant's official duties do not relate to the proposed outside work at the other City agency.

Except as provided in Charter Sections 2604(a)(3), (a)(4) and 2604(e), a regular employee may not have an "ownership interest" in or a "position" with a firm, as these terms are defined in Chapter 68, which such regular employee knows is engaged in business dealings with the City. An "interest" is defined for purposes of Chapter 68 as an ownership interest in a firm or a

position in a firm. See Charter Section 2601(12). A "firm" is defined in Charter Section 2601(11) as "a sole proprietorship, joint venture, partnership, corporation and any other form of enterprise, but shall not include a public benefit corporation, local development corporation or other similar entity."

For the purposes of Chapter 68, an individual seeking business on behalf of himself or herself is a sole proprietorship and therefore a firm pursuant to Charter Section 2601(11). Such individuals would, if seeking to engage in business dealings with the City, be in violation of Charter Section 2604(a)(1)(b), absent Board approval as described above.

Charter Section 2604(a)(3) provides that a public servant who holds a prohibited ownership interest pursuant to Charter Section 2604(a)(1)(b), must either divest the ownership interest or disclose such interest to the Board and comply with its order. When a public servant discloses a prohibited interest to the Board,

Charter Section 2604(a)(4) provides in pertinent part:

... the Board shall issue an order setting forth its determination as to whether or not such interest, if maintained, would be in conflict with the proper discharge of the public servant's official duties. In making such determination, the Board shall take into account the nature of the public servant's

official duties, the manner in which the interest may be affected by any action of the city, and the appearance of conflict to the public.

The Board has considered both the nature of the public servant's position and responsibilities at her City agency as described above and determined that her proposed activity would not conflict with her official duties. The Board also notes that the public servant's proposed consulting work for the other agency would be performed during personal time and that the public servant has recused herself from any mediations involving the other agency. In addition, the public servant has obtained written approval from her agency head to engage in this outside activity. The Board has therefore determined that the public servant's work as an independent contractor at the other agency would not conflict with the proper discharge of her official duties at the agency which employs the public servant. See Charter Section 2604(a)(4).

The Board's approval is, however, subject to the limitations contained in Charter Sections 2604(b)(2), (b)(3) and (b)(4): the public servant's work as a consultant must be performed during times when she is not required to perform services for the agency served

by the public servant; the public servant may not use her official position to obtain any personal advantage for herself; and the public servant may not disclose or use for private advantage any confidential information obtained as a result of her employment with her agency.

The public servant is further advised that she is required to recuse herself from consideration of any mediation cases involving the other agency. The Board understands this recusal to require that the public servant will not be involved, directly or indirectly, in such matters. This includes, but is not limited to, participating in discussions or meetings with City officials or others and receiving copies of relevant documents.

Sheldon Oliensis
Chair

Benjamin Gim

Beryl R. Jones

Robert J. McGuire

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Dated: January 31, 1994