

Appearance of Impropriety, Use of City Position -
Charter Sections 2604(b)(3), (b)(4)

Advisory Opinion No. 94-2

The Conflicts of Interest Board (the "Board") received a request for an opinion from a high-level public servant as to whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, the public servant's former firm (the "Firm") may bid on design work for the City of New York, in light of the public servant's official duties for his agency.

For the reasons discussed below, the Board has determined that the Firm may bid on design work for the City, but that the public servant's name may not appear on the Firm's letterhead, invoices, or similar documents in the Firm's dealings with the City.

Background

The public servant advised the Board that he terminated his employment with the Firm on July 27, 1993, to accept employment with the City. The public servant also advised the Board that he is no longer

affiliated with the Firm, of which he has been a partner, except for the existence of a blind trust in which he has placed his equity share of the Firm. The public servant further advised the Board that, in keeping with the provisions of the blind trust, he has had no relationship, direct or indirect, with the Firm since his employment with the City. The Board also has been advised that the Firm is presently in the process of submitting a proposal to a City agency other than the agency served by the public servant and that the public servant's name continues to appear on the Firm's letterhead.

Discussion

Charter Section 2604(b)(3) provides that no public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant. Pursuant to Charter Section 2601(5), a public servant is deemed "associated" with a firm if he or she has a present or potential interest in that

firm. Through the blind trust, the public servant here has such a present or potential interest in the Firm and thus is deemed associated with the Firm.

The Board has determined that it would not violate Chapter 68 for the Firm to bid on design work for the City, with the exception of projects involving the public servant's City agency, provided that the public servant does not use his official position to obtain any private or personal advantage for himself or the Firm and the public servant does not disclose to anyone or use for his or the Firm's private advantage any confidential information obtained as a result of his City employment. See Charter Sections 2604(b)(3) and (b)(4).

Furthermore, when dealing with any City agency during the public servant's employment with the City, the Firm may not list the public servant's name on its stationery, telephone listings, invoices, and similar documents, since the Firm's use of the public servant's name may create the appearance that the public servant is using his official position to gain a private advantage or preferential treatment for the Firm.

See Charter Section 2604(b)(3).

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Sheldon Oliensis
Chair

Benjamin Gim

Beryl R. Jones

Robert J. McGuire

Shirley Adelson Siegel

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