

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

Advisory Opinion No. 94-8 and Order No. 43

The Conflicts of Interest Board (the "Board") has received a request for an opinion from a public servant as to whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, he may maintain his ownership interest in a small consulting firm (the "Firm"), which he also serves as an officer. For the reasons set forth below, the Board has determined that the public servant may maintain both his ownership interest in and position with the Firm.

Background

The public servant has advised the Board that the Firm provides general campaign consulting services to its clients, which include political candidates and not-for-profit organizations, and that the Firm's business dealings with the City are limited to

infrequently applying for street-closing permits on behalf of its clients for their production of special events. The Firm presently has no business dealings with the City; however, in the near future, the Firm will be applying on behalf of one of its clients for a permit to use one of the City parks.

The Board has been advised that the public servant's agency, as an oversight agency, monitors the operations of various City agencies to determine whether proper services are being provided to the public, but that the agency has no jurisdiction over any City agency. The agency has the power to conduct hearings at the discretion of the agency's head; however, it has no authority to take any enforcement action other than to make recommendations. In addition to the foregoing, the agency plays no role in awarding or renewing City contracts.

The public servant has further advised the Board that his official responsibilities involve supervising the agency's staff; that at the Firm, he plans to hire an individual, on a full-time basis, to supervise the Firm's daily operations; and that any work he performs for the Firm will be performed during his personal

time. Furthermore, the public servant will not be using any City resources in connection with his work for the Firm.

Discussion

Charter Section 2604(a)(1)(b) prohibits a regular City employee from having an interest in a firm which is engaged in business dealings with the City. As defined in Charter Section 2601(12), "interest" means an ownership interest in a firm or a position with a firm. Therefore, the public servant's ownership interest in and position with the Firm constitute "interests" under Charter Section 2601(12), and thus both are prohibited pursuant to Charter Section 2604(a)(1)(b). However, Charter Section 2604(e) permits the Board to issue a waiver, if, after receiving written approval from the head of the agency involved, the Board determines that the position would not conflict with the purposes and interests of the City. The head of the public servant's agency has sent the Board written approval regarding this outside position, and the Board has determined that the public

servant's position with AG does not conflict with the purposes and interests of the City.

With respect to the public servant's prohibited ownership interest in the Firm, Charter Sections 2604(a)(3) and (a)(4) allow the Board to issue an order permitting the public servant to retain his ownership interest, if warranted under the conditions set out in Charter Section 2604(a)(3), which provides that a public servant who holds an ownership interest prohibited by Charter Section 2604(a)(1)(b) must either divest the ownership interest or disclose such ownership interest to the Board and comply with its order. After such disclosure, the Board issues an order setting forth its determination as to whether such interest, if maintained, would conflict with the proper discharge of the public servant's duties. In making such determination, the Board shall take into account the nature of the public servant's official duties, the manner in which such interest may be affected by any action of the City, and the appearance of conflict to the public.

The public servant's official responsibilities consist of overseeing the internal procedures and

affairs of his agency. Because his official duties are not related in any way to his work for the Firm, maintaining this outside position would not conflict

with the proper discharge of his official duties for the City. Moreover, the public servant has indicated that any work for the Firm would be done on personal time and, in addition, he intends to hire a full-time employee to supervise the Firm's daily operations.

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 in connection with this outside interest must be performed during times when he is not required to perform services for the agency; the public servant may not use his official position to obtain any private advantage for himself, the Firm or any of its clients; and the public servant may not disclose or use for private advantage any confidential information obtained as the result of his City employment.

The public servant is further advised that, in the unlikely event that matters involving the Firm come before him in his official capacity, he is required to recuse himself in order to avoid the appearance of

impropriety. Recusal means that the public servant will not be involved, directly or indirectly, in such matters. This includes, but is not limited to, not

participating in discussions concerning the Firm, not attending meetings with City officials and others to discuss the Firm and not receiving copies of relevant documents.

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Chair

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Dated: March 31, 1994