

Ownership Interests, Investments  
Charter Sections 2601(11)  
2601(16)  
2604(a)(1)(b)

Advisory Opinion No. 94-10

A high-level public servant has requested an opinion from the Conflicts of Interest Board (the "Board") as to whether certain of his investments are prohibited by the conflicts of interest provisions of Chapter 68 of the City Charter. For the reasons stated below, the Board concludes that the investments do not violate Chapter 68.

Background

An individual entering employment with the City in a high-level position has advised the Board that he and his wife hold a number of investments. The investments for which he seeks an opinion of the Board as to whether they violate Chapter 68 are interests in pension funds, including an Individual Retirement Account ("IRA") and two Keogh accounts, which are invested in mutual funds; participation in a profit-sharing plan and another compensation plan of a private firm in which he formerly had an interest (The Board has been advised that these are deferred compensation plans which involve a fixed pay-out and that the public servant retains no interest in his former firm); previous purchases of units in five bond portfolios

sponsored by a licensed brokerage firm and offered for sale to the public. (The bond portfolios contain bond issues of various public entities); a single bond from a State authority; and finally, on behalf of his children, a fund consisting of United States Treasury notes -- specifically, United States Government Zero Coupon Bonds.

#### Discussion

A determination as to whether the public servant's investments being considered in this opinion are consistent with Chapter 68 requires an analysis of the provisions of Charter Section 2604(a)(1)(b), which provides that no regular employee of the City shall have an ownership interest in a firm<sup>1</sup> which the employee knows is engaged in business dealings with the City, except where that interest is in a firm whose shares are publicly traded, as defined by rule of the Board. See Board Rules Section 1-04.<sup>2</sup> Since some of

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<sup>1</sup> "Firm" means 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. See Charter Section 2601(11).

<sup>2</sup> Board Rules Section 1-04 states as follows:  
For purposes of Charter Section 2604(a)(1)(b), "a firm whose shares are publicly traded" means a firm which offers or sells its shares to the public and is listed and registered with the

the public servant's investments may not be publicly traded within the definition of this rule, these investments must be examined in light of other relevant Charter sections.

Under Charter Section 2601(16), a public servant is deemed to have an ownership interest in any firm in which he, his spouse or his unemancipated child: (1) has an interest which exceeds five percent of the firm or an investment of \$25,000 in cash or other form of commitment, whichever is less; or (2) has an interest which exceeds five percent or \$25,000 of the firm's indebtedness, whichever is less; or (3) has any lesser interest in the firm when the public servant (or his spouse or unemancipated child) exercises managerial control or responsibility regarding the firm. However, the definition of "ownership interest" specifically excludes, among other things, "interests held in any pension plan, deferred compensation plan or mutual fund, the investments of which are not controlled by the public servant, the public servant's spouse or unemancipated child...."

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Securities and Exchange Commission for public trading on national securities exchanges or over-the-counter markets."

The Board has determined that the public servant's listed investments do not violate Charter Section 2604(a)(1)(b). Those investments are of five basic types: (1) pension funds, including an IRA, two Keogh accounts and two deferred compensation plans from the public servant's former firm; (2) mutual funds; (3) units in bond portfolios; (4) a single bond of a State authority; and (5) United States Treasury notes.

For the reasons discussed below, none of those investments violates Chapter 68.

a) Pension Funds

The pension funds owned by the public servant and his wife, including the IRA, two Keogh accounts, and two deferred compensation plans, are specifically excluded from the definition of ownership interest contained in Charter Section 2601(16), provided that, as is the case here, the investments are not controlled by the public servant, his spouse or his unemancipated children.

b) Mutual Funds

Similarly, the public servant's mutual fund investments also are specifically excluded from the definition of ownership interest, inasmuch as the investments are controlled by professional fund

managers and not by the public servant or his family.  
See Charter Section 2601(16).

c) Bond Portfolios

As to the bond portfolios, they contain various bond issues in public entities, including the Commonwealth of Puerto Rico, the United Nations Development Corporation, the New York State Power Authority and the Metropolitan Transit Authority. Under Charter Section 2601(11), the definition of firm "shall not include a public benefit corporation, local development corporation or other similar entity." Thus, to the extent that the bond issues contained in the portfolios are interests in the foregoing types of entities, they are not prohibited ownership interests in firms. As to other bond issues contained in the portfolios (such as the bonds of the Commonwealth of Puerto Rico), the exclusion of quasi-public entities from the definition of firm contained in Charter Section 2601(11) indicates a legislative intent, a fortiori, to exclude public entities from the definition of firm. Thus, it follows, a fortiori, that the Commonwealth of Puerto Rico and other governmental bodies are not firms within the meaning of Charter Section 2601(11), and ownership of their bonds is not

prohibited.

d) State Authority Bond

Similarly, the public servant's single bond from the State authority constitutes an interest in a public benefit corporation. Since public benefit corporations are not firms for the purposes of Chapter 68, this does not constitute a prohibited ownership interest.

e) Trust of United States Treasury Notes

As to the public servant's fund for his children, it consists of United States Treasury notes -- specifically, United States Government Zero Coupon Bonds. As stated above, inasmuch as Chapter 68 evinces a legislative intent to exclude quasi-public entities from the definition of firms and thus to allow investments in these entities, then it follows with logical necessity that the United States government is not a firm for the purposes of Chapter 68, and investments in United States Treasury notes are not prohibited ownership interests. See Charter Sections 2604(a)(1)(b), 2601(11) and (16).

Conclusion

For the reasons stated above, it is the opinion of the Board that the public servant's investments cited to the Board are consistent with Chapter 68.

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