

Prohibited Ownership Interests; Prohibited Positions
Charter Sections 2604(a)(1)(b), (3) and (4);
2604(b)(2), (3) and (4)
2604(e)

Advisory Opinion No. 94-11 and Order No.44

The Conflicts of Interest Board (the "Board") has received a request for an opinion from a public servant who is an agency head as to whether he may, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, retain his ownership interests in real property and continue serving as an officer of the two realty corporations which hold the titles to and manage two of the properties. For the reasons stated below, the Board has determined that it would not violate Chapter 68 for the public servant to retain his ownership interests in the real property and to continue serving as an officer of the realty corporations.

Discussion

A public servant who is an agency head has advised the Board that he has several ownership interests in

real property, the management of which involves business dealings with the City, and that he is an officer of two realty corporations that do business with the City. The ownership interests in real property are part of his late father's estate, and he is a trustee and residual beneficiary of a marital trust for his father's widow. The marital trust includes the following: two residential apartment buildings; a commercial space in a building; a building which houses an office, a garage and an apartment (where the public servant resides); and another commercial building.

In addition to his ownership interests in the property, the public servant serves two realty corporations as an officer, for which he is compensated by each corporation at the rate of \$1,000 per month. These corporations hold the titles to and manage two of the properties described above. The public servant has advised the Board that his role as an officer for these corporations will be passive in nature and that he will not be actively involved in the management or operation of the corporations or their properties.

The properties owned by the public servant are

involved in the following matters concerning the City: all the properties routinely file certiorari petitions challenging real estate tax assessments with a City agency other than that served by the public servant in order to obtain reductions; from time to time there are complaints filed by residential tenants with a City agency other than that served by the public servant, which result in the issuance of violation notices; and there are occasional rent protests made by tenants to a City agency other than that served by the public servant.

The public servant also has advised the Board that his ownership interests involve no business dealings with the City agency which he serves, but that if any matters involving his private interests were to come before him in his official City position, he would recuse himself from such matters.

Charter Section 2604(a)(1)(b) provides that no public servant who is a regular employee of the City shall have an ownership interest in or a position with a firm which is engaged in business dealings with the City. If a public servant, prior to becoming a public servant, has an ownership interest which would be

prohibited by Charter Section 2604(a), he or she shall either divest the ownership interest or disclose such interest to the Board and comply with its order. See Charter Section 2604(a)(3). 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 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 such interest may be affected by any action of the City, and the appearance of conflict to the public. See Charter Section 2604(a)(4).

As to those positions which would be prohibited under Charter Section 2604(a), the Board may issue a waiver, if, after receiving written approval from the head of the agency involved, or in the case of an agency head, from the Mayor, the Board determines that the position at issue does not conflict with the purposes and interests of the City. See Charter Section 2604(e).

With respect to the public servant's positions with the realty corporations, the Board has received an

approval letter, pursuant to Charter Section 2604(e), which contains a determination that his private interests do not conflict with the purposes and interests of the City.

Conclusion

The Board has determined that the public servant's ownership interests in real property will not conflict with the proper discharge of his official duties, and it is hereby ordered, pursuant to Charter Section 2604(a)(4), that the public servant may retain these ownership interests. Furthermore, the Board has determined, pursuant to Charter Section 2604(e), that it would not conflict with the purposes and interests of the City for the public servant to continue serving as an officer of the realty corporations.

The public servant heads the City agency which he serves, but that agency has neither business dealings with nor regulatory authority over the properties owned by the public servant. Thus, neither the public servant nor his City agency would be in a position to affect the public servant's private interests.

Furthermore, in the unlikely event that any matters involving the public servant's private interests came before his City agency, he has advised the Board that he would recuse himself from any such matters, both in his official City position and as an owner and officer of his private interests.

The Board's approval of these ownership interests and positions is subject to the limitations contained in Charter Sections 2604(b)(2), (b)(3) and (b)(4), respectively; the public servant's work in connection with these private interests must be performed at times during which he is not required to perform services for the City; the public servant is prohibited from using his official position to obtain any private advantage for himself, his properties or the corporations; and the public servant is prohibited from disclosing or using for private advantage any confidential information concerning the City.

The public servant is further advised that, in the event that any matters involving his private interests come before his City agency, he is required to recuse himself from such matters. 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 his private interests, not attending meetings with City

officials and others to discuss his private interests and not receiving copies of relevant documents.

Sheldon Oliensis
Chair

Benjamin Gim

Beryl R. Jones

Robert J. McGuire

Shirley Adelson Siegel

Dated: May 2, 1994