

Ownership Interests, Investments  
Not-For-Profit Organizations

Charter Sections: 2601(11)  
2601(16)  
2604(a)(1)(b), (3) and (4)  
2604(b)(2), (3) and (4)  
2604(c)(6)

**Advisory Opinion No. 94-13 and Order No. 45**

The Conflicts of Interest Board (the "Board") has received a request for an opinion from a prospective public servant (hereinafter, the "public servant") who seeks to serve as the head of a City agency, as to whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, she may enter City service if her husband maintains an ownership interest in a firm that does business with the City and in several brokerage accounts, with portfolios consisting of municipal bonds and a large variety of publicly traded securities, and whether she may continue serving on the boards of directors of various professional and not-for-profit organizations.

Background

The public servant's husband is a partner in a law firm (the "Firm") which has business dealings with the City. These dealings consist primarily of representing one specific City agency, pursuant to a contract, in tort matters. In addition, however, the Firm litigates diverse cases involving the City, including tax certiorari, bankruptcy, mortgage foreclosure matters and challenges to the Election Law. The City agency which the public servant will serve is currently not, and is unlikely to become, involved in these kinds of matters. Indeed, the Firm has never appeared before or engaged in business dealings with this agency, and the public servant's husband has represented that, as long as his wife serves this agency, the Firm will not accept any cases requiring appearances before it.

The public servant and her husband also have several brokerage accounts. These accounts have portfolios consisting of municipal bonds and a large variety of publicly traded securities.

The public servant serves on the boards of directors of several professional organizations which do not engage in business dealings with the City and

not-for-profit organizations which do engage in business dealings with the City, but not with the public servant's own agency.

### Discussion

#### Ownership Interest In Firm

Chapter 68 provides that no public servant who is a regular employee of the City "shall have an interest in a firm which such regular employee knows is engaged in business dealings with the City. See Charter Section 2604(a)(1)(b). An "interest" means an ownership interest in or a position with a firm. See Charter Section 2601(12). An "ownership interest" in a firm includes an interest held by a public servant, the public servant's spouse or the public servant's unemancipated child. See Charter Section 2601(16). Thus, the public servant in this case is deemed to have an ownership interest in her husband's firm, for the purposes of Chapter 68.

Since the Firm has a contract with a City agency, the public servant had an ownership interest, prior to becoming a public servant, which would have been

prohibited by Chapter 68. See Charter Section 2604(a)(1)(b). In such a situation, Chapter 68 provides that a public servant shall disclose the ownership interest to the Board and comply with its order. See Charter Section 2604(a)(3). When the public servant discloses an interest to the Board pursuant to Charter Section 2604(a)(3), 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. See Charter Section 2604(a)(4).

In this case, the City agency headed by the public servant is neither a party to nor otherwise involved in the kind of City-related matters handled by the Firm. Furthermore, the City agency, which deals mostly with matters referred to it from other City agencies, generally has no contracts with private firms. Also, the public servant's husband has represented that the Firm has not and will not appear before or do business

with his wife's agency. The public servant is not in a position to take any official action which would affect the Firm. The Board accordingly has determined that the public servant's interest in the Firm does not conflict with the proper discharge of her official duties. See Charter Section 2604(a)(4).

#### Municipal Bonds and Publicly Traded Securities

The public servant and her husband also have interests in several brokerage accounts, with portfolios consisting of municipal bonds and publicly traded securities.

As to the municipal bond investments, it is the opinion of the Board that this kind of investment does not constitute a prohibited ownership interest in a firm.<sup>1</sup> In the Board's Advisory Opinion No. 94-10, the Board ruled that the exclusion of quasi-public entities from the definition of firm contained in Chapter 68, cited in footnote 1 below, evidences a legislative

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

intent to exclude public entities, including governmental bodies, from the definition of firm. Thus, the Board reasoned, it follows that a public servant's ownership of municipal bonds is not prohibited by Chapter 68.

With respect to the other securities in which the public servant and her husband have invested, these securities constitute shares which firms offer or sell to the public and are listed and registered with the Securities and Exchange Commission for public trading on national securities exchanges or over-the-counter markets. As such, they are interests in "a firm whose shares are publicly traded." See Board Rules Section 1-04.<sup>2</sup> Ownership interests in firms whose shares are publicly traded are not prohibited. See Charter Section 2604(a)(1)(b).<sup>3</sup>

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

<sup>3</sup> It is also worth noting that the public servant's City agency does not engage in business dealings with any of the entities which have issued the bonds and securities and thus the public servant would not be in a position to influence the value of these interests by any official action. Furthermore, the public servant has advised the Board that in the unlikely event that

Professional Organizations

The public servant serves without compensation on the boards of directors of several professional organizations, none of which engage in business dealings with the City. The public servant's membership on these boards is not prohibited, provided that she works for these organizations at times when she is not required to perform her official duties for the City; she does not use or attempt to use her official City position to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for herself or for any of these organizations; and she does not disclose or use for private advantage any confidential information concerning the City. See Charter Sections 2604(b)(2), (3) and (4), respectively.

Not-for-Profit Organizations

The public servant also serves without compensation on the boards of directors of several not-for-

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any of these entities become involved in any matter with the public servant's agency, she will recuse herself from such matter.

profit organizations which engage in business dealings with the City, but not with the agency served by the public servant. The public servant is not prohibited from serving on these boards, provided that she takes no direct or indirect part in these organizations' business dealings with the City; these organizations continue to have no interest in any business dealings with the public servant's agency and are not subject to supervision, control or regulation by such agency; all work for these organizations is performed at times during which the public servant is not required to perform services for the City; and the public servant receives no salary or other compensation in connection with this work. See Charter Section 2604(c)(6).

Conclusion

For the reasons stated above, the Board has determined that the public servant's interest in the firm will not conflict with the proper discharge of her official duties, and it is hereby ordered that the public servant may retain such interests under the circumstances described above. Furthermore, it is the opinion of the Board that the public servant's municipal bond and securities investments are not

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prohibited by Chapter 68 and that she may continue serving on the boards of directors of the professional and other not-for-profit organizations, provided that she acts in accordance with Charter Sections 2604(b)(2), (3) and (4) and (c)(6).

Sheldon Oliensis  
Chair

Benjamin Gim

Beryl R. Jones

Robert J. McGuire

Shirley Adelson Siegel

Dated: May 16, 1994