

Agency Training Institute, Charging Fees
Charter Section 2604(b)(2)

Advisory Opinion No. 94-14

The Conflicts of Interest Board (the "Board") has received a request for an opinion as to whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, the New York City Commission on Human Rights (the "Commission") may charge fees, through its Training Institute (the "Institute"), from organizations which are currently parties to one or more proceedings before the Commission and, in some circumstances, waive or reduce those fees. The Board has determined that the Commission, through the Institute, may charge fees and, in appropriate cases, waive or reduce such fees, provided that certain guidelines, described below, are followed.

Background

The Commission has established the Institute to

educate both for-profit and not-for-profit organizations with regard to the non-discrimination provisions of Title 8 of the New York City Administrative Code. Fees are charged for the Institute's various training programs and are waived or decreased based on the ability of the organization seeking training to pay and on the particular organization's need for the training.

Some organizations seeking training with the Institute have matters pending, or have been the subject of past matters, before the Commission. In some cases, organizations with matters pending before the Commission have, on their own initiative, sought out these training programs in an attempt to comply with Title 8. In other cases, organizations were ordered by the Commission to receive non-discrimination training. For example, Commission decisions have ordered that certain organizations may send their staff to such training in mitigation of civil penalties imposed by the Commission for violations of Title 8 of the Administrative Code. When a decision requires or offers non-discrimination training as a means of mitigating any civil penalties imposed by the

Commission, a training program must be approved by the Commission. Although there are programs other than those sponsored by the Institute which meet the Commission's requirements for training, the number of alternative programs is limited.

Discussion

Charter Section 2604(b)(2) provides that public servants may not engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of the public servants' official duties. While City agencies may appropriately charge fees for services, this section of Chapter 68 is implicated because the training is often used as a part of the Commission's enforcement efforts, and there is a risk that agency personnel could be tempted to utilize the Institute for purposes of generating revenue rather than for remedial or educational purposes. The Board has been advised that paid training through the Institute might be used as the sole enforcement measure, in lieu of other enforcement measures. Such cases could cause an

appearance that decisions about the Commission's enforcement program are influenced by financial considerations -- that is, the generation of fees for training.

The training programs offered by the Institute serve an important function and help the Commission to satisfy its mandate to promote compliance with the non-discrimination provisions of Title 8 of the Administrative Code. The Board has been advised that, given the Commission's current budget, the Institute would have to cease most if not all of its training if it were prohibited from charging fees.

While all fees are paid to the City of New York and do not benefit the Commission or any of its employees directly, the amount of fees collected may be viewed as a relevant consideration in the Institute's budget allocation. The Commission must therefore take steps to prevent any possible appearance of impropriety when the Institute charges fees from organizations with matters before the Commission.

Furthermore, as noted above, in some cases the Institute waives or decreases its training fees. The granting of waivers and reductions, per se, does not

violate Chapter 68; however, the process by which the Commission does this must be fair and impartial, especially in that the Commission is an adjudicatory agency and must avoid even the appearance of preferential treatment towards any organization that comes before it. Although the Institute currently considers several factors when assessing the fee for any particular organization, the final decision to waive or decrease the fee is at the sole discretion of the Institute's director. In reducing or waiving fees for certain organizations, the Institute must take measures to protect against the appearance that certain organizations might receive preferential treatment based on whether, or how much, they pay for training.

Conclusion

It is the opinion of the Board that the Institute may charge fees for its training programs from organizations which have matters pending, or have been the subject of past matters, before the Commission, provided that a written disclaimer is sent to all training recipients. This disclaimer should state that any payments made by an organization for training will

not affect any Commission decisions or actions with respect to that organization, and that Commission-approved training, other than that offered by the Commission, is also available to the organization.

It is also the opinion of the Board that the Institute may continue its practice of waiving or decreasing fees for certain organizations, provided that safeguards are adopted to protect against the appearance that certain organizations might receive preferential treatment from the Commission based on whether, or how much, they pay for training.

Accordingly, the Commission is required to, at least:

(i) promulgate a written set of specific conditions which must be present for the training fee to be waived or decreased; (ii) designate a specific individual or individuals who will make the determination as to whether a fee will be waived or decreased; and (iii) insure that such individual(s) have no other involvement with any enforcement matters.

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Chair

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Dated: May 31, 1994