

Public Servant Using Official Position
to Obtain Private Advantage

Charter Section: 2604(b)(3)

Advisory Opinion No. 94-17

The Conflicts of Interest Board (the "Board") has received a request for an opinion from a public servant who is a member of a City commission as to whether he may, consistent with the conflicts of interest provisions of Chapter 68, vote on an application for a project submitted by a private company, in light of his professional relationship with a not-for-profit organization which has publicly supported the company's project. For the reasons discussed below, it is the opinion of the Board that the public servant may not vote on the private company's application.

Background

A public servant who is a member of a City commission (the "Commission") has his own private consulting firm. This firm has contracted with a not-for-profit organization (the "NFP") to work with its

full-time staff and to help manage its construction projects. The NFP, in turn, has had a long-term financial relationship with a private company, a commercial bank. The bank has applied to the public servant's commission for approval of a project. A representative of the NFP has testified before the Commission in support of the bank's application.

Approval of the bank's application could provide a benefit to the NFP, although in an indirect manner. The NFP has no financial or ownership interest in the proposed project. However, the NFP has received donations from the bank over the past several years, including donations totalling almost \$100,000 from 1990 to 1992. In addition, the bank donated \$165,000 to the NFP in 1993, a significant part of which went to underwrite one of the NFP's programs. Furthermore, the NFP's proximity to the site of the proposed project and the fact that the NFP had its representative testify in support of the project at a Commission hearing create the appearance that the NFP has an interest in seeing the success of the project.

Discussion

By virtue of the contractual relationship between the public servant's firm and the NFP, the public servant is associated with the NFP for the purposes of Chapter 68.¹ The public servant has neither an ownership interest in nor a position with the bank. While the public servant does not have a financial stake in the bank or its project, his participation in the Commission's vote on the project could nevertheless give rise to an appearance that he would act favorably on the bank's application on behalf of the NFP.² This action could appear to be improper.

The public servant could be in a position to obtain a "private or personal advantage, direct or indirect" by voting in favor of the project, in possible violation of Charter Section 2604(b)(3),

¹ A person or firm "associated" with a public servant includes a person with whom the public servant has a business or other financial relationship and each firm in which the public servant has a present or potential interest. See Charter Section 2601(5).

² Charter Section 2604(b)(3) provides that no public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.

discussed in footnote 2. That is, the public servant's vote could be perceived as an attempt to obtain indirect private advantages for the NFP, including the ongoing assurance of generous donations from the bank and the benefit that would accrue to the NFP if the project were successfully completed in its neighborhood.

Conclusion

For the reasons discussed above, it is the opinion of the Board that the public servant may not vote on the bank's application. See Charter Section 2604(b)(3). Furthermore, the public servant is required to recuse himself from any consideration of the project. Recusal means that the public servant will not be involved, directly or indirectly, in the Commission's deliberations concerning the project. This includes, but is not limited to, not participating in discussions concerning the project and not receiving copies of relevant documents.

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