

Spouse's Position With a Firm Doing Business With the
City
Ownership Interests
Charter Sections 2604(a)(1)(b), (a)(3) and (a)(4)
2604(b)(3) and (4)

Advisory Opinion No. 94-20 and Order No. 47

The Conflicts of Interest Board (the "Board") has received a request for an opinion from the general counsel of a City agency (the "Agency"), asking whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, two public servants may continue serving in their present positions at the Agency, in light of their husbands' interests in firms that do business with the Agency.

For the reasons discussed below, it is the opinion of the Board that it would violate Chapter 68 for the first public servant to continue working in her present position, in light of her husband's position with a firm that does business with her division at the Agency. With respect to the second public servant, the Board has determined that her husband's ownership interest (imputed to her by Chapter 68) in a firm which does business with the Agency does not conflict with

the discharge of her official duties.

Background

1. Public Servant A

Public Servant A, as part of her duties at the Agency, assures compliance with appropriate laws and regulations governing health and safety in the workplace during projects that involve major renovations to existing City facilities or construction of new City facilities. In order to accomplish her duties, the public servant works with private consultants. She selects those consultants from a list of five to seven consultants approved by the Agency. That list is compiled in the following manner: The Agency's contract administration department chooses the six to eight best bids from all bids received from the 25 firms pre-qualified to do business with the Agency and submits those six to eight best bids to a selection panel. The panel then chooses five to seven firms for the consultant list.

The public servant has advised the Board that she does not participate on the selection panel or in its selection of the five to seven names for the list.

However, she chooses one consultant from that list for a particular project. The public servant is not responsible for approving payments for consultants; her supervisor and other Agency personnel, including the Agency's finance department, share that authority.

The public servant's husband works as a project manager for one of the 25 pre-qualified consulting firms. The public servant has advised the Board that, if the firm for which her husband works is selected as one of the firms on the final list, she would not select that firm but would instead select one of the other firms. The Board has been advised by the Agency that the firm that employs her husband performs a substantial amount of work for the Agency and that the Agency has offered to transfer the public servant, with no decrease in pay, to another division of the Agency, where there would not be the potential for conflict.

2. Public Servant B

Public Servant B is an architect in another unit of the Agency. Her duties include the performance of general architectural tasks, including field assignments and the review of consultant projects, as

needed. The public servant's husband owns and operates an architectural design firm which he already had owned and which already had been doing business with the Agency prior to the public servant's employment there.

The Agency has advised the Board that the public servant has not supervised, and will not supervise or otherwise be involved in, any projects on which her husband or her husband's firm works. Public Servant B does, however, have access to confidential information relating to the Agency's general contract specifications, design expectations and design standards.

Discussion

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 a firm which is engaged in business dealings with the City. For the purposes of Chapter 68, a spouse's ownership interest is attributed to the public servant as well. See Charter Section 2601(16). If an individual, prior to becoming a public servant, has an ownership interest which would be prohibited by the Charter, he or she

must either divest the ownership interest or disclose the interest to the Board and comply with its order. See Charter Section 2604(a)(3). After that disclosure, the Board must issue an order setting forth its determination as to whether the interest, if maintained, would conflict with the proper discharge of the public servant's official duties. In making that determination, the Board must 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).

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 or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant. For the purposes of Chapter 68, a public servant's spouse is deemed to be "associated" with the public servant. Furthermore, Charter Section 2604(b)(4) provides that no public servant shall disclose any confidential information concerning the City, or use any such information to

advance any direct or indirect financial or other private interest of the public servant or of any other person or firm associated with the public servant.

With respect to Public Servant A, her husband does not have an ownership interest in his firm, and Charter Section 2604(a)(1)(b) is not implicated. The public servant's husband does have a position with a firm that does business with the Agency and, moreover, works on matters with the unit to which the public servant is assigned. The public servant has advised the Board that she would not work with the firm which employs her husband and that she would not utilize the firm which employs her husband for any future project. The Agency, however, has advised the Board that the public servant cannot effectively recuse herself from all matters concerning the firm which might come before her. In light of these circumstances, Public Servant A, if she were to continue serving in her present position, would be in a position to obtain a direct or indirect private advantage for her husband. See Charter Section 2604(b)(3).

With respect to Public Servant B, her husband owns a firm which has business dealings with the Agency and

which had business dealings with the Agency prior to the public servant's City employment. The ownership interest is imputed to the public servant by Chapter 68, and the public servant is therefore deemed to have a prohibited ownership interest. See Charter Sections 2601(16) and 2604(a)(1)(b). However, the public servant will not supervise or be involved in any matters on which her husband or his firm works. Thus, the public servant is not in a position to affect the interests of her husband or his firm.

Conclusion

For the reasons stated above, it is the opinion of the Board that it would violate Chapter 68 for Public Servant A to continue working in her present position, since neither she nor the Agency could ensure that she would not be involved with the firm that employs her husband. See Charter Section 2604(b)(3).

With respect to Public Servant B, the Board has determined that the public servant's ownership interest in her husband's firm, imputed to her by Chapter 68, would not, if retained, conflict with the discharge of her official duties, and it is hereby ordered that the

imputed ownership interest may be retained by the public servant. See Charter Section 2604(a)(4). The Board's approval is subject to the following conditions: that Public Servant B not use her position to obtain any private advantage for her husband's firm; that she recuse herself from any matters involving the firm or its work;¹ and that she refrain from disclosing or using any confidential information concerning the City. See Charter Sections 2604(b)(3) and (4).

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Dated: August 22, 1994

¹ Recusal means that Public Servant B will not be involved, directly or indirectly, in such matters. This includes, but is not limited to, not participating in discussions concerning her husband's firm or its work, not attending meetings with City officials and others involving discussions with the firm and not receiving copies of relevant documents.

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