

Gifts to the City  
Private Fundraising  
Honoraria

Charter Sections: 2604(b)(2)  
2604(b)(3)  
2604(b)(4)

Advisory Opinion No. 94-29

The Conflicts of Interest Board (the "Board") has received a request for an opinion from Wilfredo Lopez, General Counsel at the Department of Health ("DOH") as to whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, DOH may accept funds raised by employees of the Medical and Health Research Association of New York City, Inc. ("MHRA"), a not-for-profit organization which has business dealings with DOH. Also, Mr. Lopez has asked whether, in connection with these fundraising activities, DOH employees who are offered honoraria for their speaking engagements or personal appearances may request that these honoraria be contributed directly to MHRA. For the reasons discussed below, it is the Board's opinion that DOH may accept funds raised by

MHRA employees and, furthermore, that DOH employees may, under certain circumstances, request that honoraria be paid directly to MHRA for use on DOH projects.

#### Background

Mr. Lopez has advised the Board that MHRA was created in 1957 as a not-for-profit corporation to provide health research and planning services, and services related to the administration and operation of grants. Further, DOH and MHRA have had a long-term collaborative relationship in the management and operation of grant-funded programs and in the development and implementation of public health programs. Currently, four City officials, including DOH Commissioner Margaret A. Hamburg, serve as ex officio members of MHRA's board of directors.

MHRA does business or is otherwise involved with DOH in several ways, including the following:

- (1) DOH has contractual relationships with MHRA pursuant to the City's procurement rules, including contracts to provide services under the Ryan White Care Act and pursuant to a Maternal and Child Health Block Grant;

- (2) DOH collaborates with MHRA on governmental grant-funded activities where, typically, MHRA is the grant recipient, and DOH provides services in support of these activities, including the use of DOH employees and resources;
- (3) DOH is the beneficiary of various private fundraising activities, such as MHRA's solicitation of funds to establish an endowment for students seeking public health experience at DOH; and
- (4) DOH and MHRA participate in various joint public health projects.

Mr. Lopez has advised the Board that, in consideration of the various aspects of the relationship between DOH and MHRA, DOH employees have acted and will continue to act in accordance with Advisory Opinion No. 92-21, which provides, among other things, that, under certain conditions, a City agency may accept gifts from firms doing business with the City, and Advisory Opinion No. 93-26, which sanctions, as consistent with Chapter 68, the creation and operation of a not-for-profit organization for the purposes of providing financial support for a City agency's social and educational programs.

Among the precautionary measures MHRA would take to comply with these advisory opinions is the use of a

disclaimer on any written solicitations made by MHRA which would state that contributions will not affect any future business dealings between DOH and contributors. Further, according to Mr. Lopez, DOH will receive no funds directly from contributors; rather, MHRA will accept the funds and administer them with respect to particular DOH-related projects in which it is engaged.

As to the proposed acceptance of honoraria by MHRA, which would otherwise be paid to DOH employees, including the DOH Commissioner, Mr. Lopez has advised the Board that such funds would be available exclusively for joint MHRA-DOH projects rather than for any individual public servant's personal or private benefit.

#### Discussions

The decision as to whether City agencies, or persons or firms acting on behalf of City agencies, may accept gifts rests on the public policy underlying Chapter 68 "[t]o promote public confidence in government, to protect the integrity of government decision making and to enhance government efficiency."

See Charter Section 2600.

City agencies and not-for-profit organizations or other non-City entities, acting on behalf of City agencies, may, consistent with the conflicts of interest provisions of Chapter 68, solicit grants and gifts to the City, provided that such solicitations are conducted in accordance with Advisory Opinion No. 92-21, which addresses the propriety of City agencies soliciting or accepting gifts from the private sector to support agency programs and initiatives. See also Advisory Opinion No. 93-26, which sanctions a not-for-profit organization's fundraising activities on behalf of a City agency.

Certain factors need to be considered in order to determine whether the gift may either be improper or have the appearance of impropriety. These factors include, among other things, whether the donor has business dealings with the City; whether the donor has an interest in a matter awaiting determination by the City agency; whether the donor is a sole supplier; whether the donor's contracts with the City agency have been disclosed; and the extent to which the public servants accepting the gift on behalf of a City agency

are the same public servants who make decisions on the City agency's contracts.

In the case of donors seeking contracts with the City, the integrity of the contracting process must remain intact and any appearance of partiality in selecting contractors must be avoided. It is imperative that the solicitation is not linked by the City agency, or as in this case, by MHRA, explicitly or implicitly, to securing or not securing a contract with the City agency, and that the donor, through such gifts, does not attempt to influence the City agency's selection of a contractor. Thus, in appropriate cases, City agencies or those acting on behalf of City agencies should inform potential contractors in their solicitations that any gifts will not affect the bidding process or serve as a quid pro quo in securing contracts with these City agencies.

The Board also has recommended that City agencies consider the use of not-for-profit organizations which can solicit and receive donations with fewer ethical problems, and, indeed, in this case, MHRA is responsible for soliciting and receiving donations. If possible, MHRA's solicitations should be general in

nature and not target any specific entities, especially those which have business dealings with the City (though such business dealings do not alone preclude specific entities from making contributions). Also, proposals to receive gifts, such as the proposed arrangement between MHRA and DOH, should be referred to the Corporation Counsel and the Mayor for review and approval. See Advisory Opinion No. 92-21.

In the instant case, unlike the situation in Advisory Opinion No. 92-21, it is a not-for-profit organization, MHRA, rather than a City agency which seeks to solicit contributions. Thus, DOH will not be in a position to accept donations directly from any person or firm with which it has business dealings, except, of course, from MHRA itself. DOH and MHRA work closely on the health-related research and educational projects described above, and Mr. Lopez has advised the Board that funds raised by MHRA will be applied directly to DOH projects. Furthermore, as stated above, DOH Commissioner Hamburg serves as an ex officio member of MHRA's board of directors, and DOH therefore is assured of having some control over how MHRA spends the funds it raises. In light of these facts, it

appears that the contributions of funds raised by MHRA to DOH would not be used improperly to obtain a private benefit for MHRA or DOH employees.

Furthermore, as stated above, Mr. Lopez has advised the Board that DOH and MHRA officials already have taken several steps, discussed above, to incorporate the guidelines set forth in Advisory Opinion No. 92-21. Thus, in light of the particular circumstances of this case and the precautionary measures already taken by DOH, MHRA's fundraising efforts would be consistent with Chapter 68 and Advisory Opinion Nos. 92-21 and 93-26.

With respect to the proposed honoraria for DOH employees' speaking engagements or personal appearances, Chapter 68 does not explicitly address the acceptance of honoraria by public servants; however, the City's policy generally has been to prohibit in most cases the receipt of honoraria by City managers, when speeches or appearances are made before a group or organization which has business dealings with the City or which is regulated by the public servants' agencies. Also, City managers are generally prohibited from accepting honoraria when speeches or appearances are



made as part of their official duties.<sup>1</sup>

It would be consistent with Chapter 68 for DOH employees who are offered honoraria to request that the honoraria be paid directly to MHRA for use on DOH projects, provided that certain precautions, described below, are taken to prevent these employees' speaking engagements or personal appearances from interfering with the performance of their official City duties; to assure that these employees do not use their official City positions to obtain private benefits; and to assure that no confidential information concerning the City is disclosed or used for private advantage. See Charter Sections 2604(b)(2), (3) and (4), respectively.

While City managers may not personally "accept" or "receive" honoraria, they may request that these payments be donated directly to MHRA, provided that these employees do not solicit payment of the honoraria; the amounts offered as honoraria are

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<sup>1</sup> The City's policy on the acceptance of honoraria by City managers is contained in an August 11, 1989 memorandum from former Mayor Edward I. Koch to all City managers. That memorandum also advises City managers to consult the Board of Ethics, this Board's predecessor, if they are uncertain as to the propriety of accepting an honorarium.

reasonable and customary for similar speaking engagements or appearances; and these employees act in accordance with the Board's recommended procedures, discussed above, for the solicitation of gifts, including the use of a disclaimer which makes clear that the payment of honoraria will not result in preferential treatment. See Advisory Opinion No. 92-21.

#### Conclusion

For the reasons stated above, it is the opinion of the Board that DOH may, consistent with Chapter 68, accept funds raised by MHRA employees and that, further, DOH employees may request that honoraria offered for speaking engagements or personal appearances be contributed directly to MHRA for use on DOH projects, provided that any DOH employees involved in these activities act in accordance with the conditions set forth in this opinion.

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