

Conflict With Official Duties
Charter Section 2604(b)(2)

Advisory Opinion No. 95-2

The Conflicts of Interest Board (the "Board") has received a request for an opinion from a high-level public servant as to whether he may, consistent with the conflicts of interest provisions of Chapter 68, allow his official City title to be used to promote a book published by a not-for-profit educational foundation (the "Foundation"). For the reasons discussed below, the Board has determined that the public servant may not allow his official title to be used to promote the book.

Background

A function of the public servant's City agency is to provide the City's residents informational material within the area of the agency's responsibility. The Foundation solicited the public servant's endorsement of the book because it addresses subjects which are related to the services performed by the public servant's City agency. The public servant has advised the Board that, after reading the book, he concluded that he would like to endorse it because, in his opinion, the book contains beneficial information for

individuals who use his agency's services.

According to the Foundation's Director, the book will cost \$7.95 if purchased directly from the Foundation, or \$10.95 if purchased from a bookstore. The public servant would not receive any compensation for his endorsement. The Foundation has no business dealings with the public servant's agency or the City.

Discussion

In Advisory Opinion No. 91-1, the Board determined that a high-level public servant could not appear in a paid advertisement for a for-profit entity and, in doing so, make reference to the public servant's City title. Although the public servant had agreed to donate any compensation for this appearance to charity, the Board concluded that "use of the public servant's likeness and City title under these circumstances presents a significant risk of creating the appearance that the public servant's official position is being used to advance a private interest" and "such use under such circumstances would also be in conflict with the proper discharge of the public servant's official duties." The Board further advised that such conduct would not be "appropriate even where the promotional

activity is for a worthy cause and/or if the public servant does not accept payment from the for-profit entity."

Although the instant case concerns an unpaid endorsement for a not-for-profit organization, the issues involved are similar to those in Advisory Opinion No. 91-1. If the public servant permits the use of his official title to promote the Foundation's book, it will indicate that the City also recommends the purchase of this book. Furthermore, while the book may be well-written and may offer valuable information, there appears to be no reason for the public servant to endorse the Foundation's book, as opposed to any other published material related to the book's particular subject matter. If the public servant were to permit his official City title to be used in this manner -- that is, to promote the sale of a private organization's publication -- this would be inconsistent with Charter Section 2604(b)(2), which provides that no public servant shall engage in any transaction or have any financial or other private interest, direct or indirect, which conflicts with the proper discharge of his or her official duties.

The foregoing is not intended to suggest that it would be inappropriate in all circumstances for a public servant to endorse materials published by private organizations. There may in fact be instances where the City's endorsement of privately generated materials is not only appropriate, but also essential to promote a City purpose. In such cases, however, safeguards must be utilized to protect against the appearance that some private organizations are receiving preferential treatment at the expense of other, similarly situated organizations. And, in all cases, the City's interests must be the clear determinant for the endorsement. Thus, for example, City agencies may make available to the public lists of useful private publications concerning subject matter which relates to the agencies' area of responsibility, provided that the list is not exclusive.

Conclusion

For the foregoing reasons, it is the opinion of the Board that the public servant may not use his official title to endorse the Foundation's book because such endorsement would advance the interests of one private organization over the interests of other

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similarly situated organizations.

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