

Not-For-Profit Organizations
Fundraising
Charter Sections: 2604(b)(2)
2604(b)(6)
2604(c)(6)

Advisory Opinion No. 95-7

The Conflicts of Interest Board (the "Board") received a request for an opinion from a high-level public servant as to whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, he may: (1) serve as a member of the board of directors of a not-for-profit organization (the "Organization"); (2) engage in fundraising activities on behalf of the Organization; and (3) represent the Organization before community boards and private organizations.

For the reasons discussed below, the Board has determined that the public servant may serve on the board of directors of the Organization, but that he may not engage in fundraising on behalf of the Organization or represent the Organization before community boards or private organizations.

Background

The public servant is a highly placed individual in one of the City's agencies. The mission of the public servant's agency is to secure or enforce rights for those residing in the City, in part by receiving complaints and presiding over the resolution of disputes resulting from those complaints. Also, the agency sometimes deals with issues related to those addressed by the Organization.

The public servant advised the Board that he was appointed to serve as Co-Chairperson of the Organization. The public servant also advised the Board that the Organization provides housing and other services to homeless persons with AIDS.

The Mission Statement of the Organization states that its basic purpose is the full restoration of adequate food, housing, social services and medical care to people with HIV-related illnesses and their families. The Mission Statement contains a set of goals, which include helping homeless persons with HIV gain access to medical services; providing direct services to assist with independent living, including locating apartments, providing bridge loans, and expediting applications for rental assistance,

childcare, transportation, and homecare; locating, developing and operating housing for homeless persons with HIV; and assisting other organizations that provide housing to HIV-infected people.

The public servant advised the Board that the Organization receives some of its funding from the City, but that it has no business dealings with the public servant's City agency. The public servant receives no compensation in connection with his work for the Organization. Further, with respect to matters involving the City, the public servant informed the Board that he completely recuses himself from all such matters.

The public servant also advised the Board that he would like to contact private foundations in order to develop new private funding sources for the Organization and that, in a few instances, this effort would involve meetings between a private foundation official and the Organization's staff to discuss the role of the Organization. The public servant also plans to make telephone calls to private foundations to inform them that the Organization has submitted an application for funding to their foundations. The

public servant informed the Board that he would not mention his City title in any letters written to private foundations on behalf of the Organization, nor would he contact any entity which has had any business dealings with the public servant's City agency.

The Organization conducts two fundraising events annually, and the public servant's name could appear on the invitation as a member of the board of directors. The public servant advised the Board that he would like to sell tickets to an Organization fundraising event. The public servant would not attempt to sell tickets to any staff members at his City agency.

Additionally, the public servant would appear, as a private citizen, before community boards and private organizations to speak generally on behalf of the Organization. On these occasions, the public servant would speak as a representative of the Organization and make no reference to his City position.

Discussion

A. Membership on the Board of Directors

The public servant's request for an opinion presents the Board with several issues regarding his continued involvement with the Organization. The

public servant seeks to continue serving on the board of directors of the Organization, which has business dealings with the City, but not with his City agency. Chapter 68 provides that a public servant may serve as a director, officer or consultant to a not-for-profit corporation or association or other similar entity interested in business dealings with the City, provided that the public servant takes no part, directly or indirectly, in such business dealings; the not-for-profit organization has no direct or indirect interest in business dealings with the public servant's agency and is not subject to supervision, control or regulation by the public servant's agency, except where it has been determined by the head of an agency, or by the Mayor where the public servant is an agency head, that the activity is in furtherance of the purposes and interests of the City; the public servant provides services to the not-for-profit organization at times during which he or she is not required to perform services for the City; and the public servant is not compensated for the not-for-profit activity. See Charter Section 2604(c)(6).

With respect to the public servant's service on

the Organization's board of directors, the requirements set forth in Charter Section 2604(c)(6) have been satisfied. First, according to the public servant, he takes no direct or indirect part in the Organization's business dealings with the City. Second, the Organization has no direct or indirect interest in any business dealings with the public servant's agency and is not subject to supervision, control or regulation by the public servant's agency. Third, his work for the Organization is performed on his own time. Fourth, the public servant receives no compensation for his work on behalf of the Organization.

The Organization has never brought, and does not anticipate bringing, any matters before the public servant's agency. If, however, in the future, the Organization does bring matters before the public servant's agency, the public servant must obtain a determination from the appropriate authority that serving on the board of directors of the Organization is in furtherance of the purposes and interests of the City. See Charter Section 2604(c)(6).

Based on the foregoing, it is the opinion of the Board that the public servant may continue to serve on

the board of directors of the Organization, consistent with Charter Section 2604(c)(6).

B. Participation in Fundraising

The public servant's request also presents the issue of whether and to what extent the public servant may engage in fundraising on behalf of the Organization. Charter Section 2604(b)(2) provides that "[n]o public servant shall 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 his or her official duties."

In Advisory Opinion No. 91-10, the Board applied Charter Section 2604(b)(2) in considering the extent to which elected officials and high-level public servants may participate in fundraising activities on behalf of not-for-profit organizations.

The Board adopted a distinction first enunciated by the Board's predecessor agency, the Board of Ethics, between "active" and "passive" fundraising. Active fundraising means that the public servant takes an active role in soliciting charitable contributions. Such active involvement may create the appearance of

impropriety. See Advisory Opinion No. 91-10 at 3. Active fundraising includes making telephone calls to prospective contributors, door-to-door solicitations, and similar activities.

In contrast, passive fundraising means that the public servant engages in conduct that is insulated from the direct solicitation of funds and, thus, less likely to involve, or be perceived as, a misuse of public office. See Advisory Opinion Nos. 91-10 at 3 and 93-15 at 6. An example of passive fundraising is being listed as a member of an honorary committee for a fundraising event.

This active-passive fundraising distinction provides, generally, a useful tool in determining whether the fundraising is permissible in the particular case, but the distinction is not dispositive. Ultimately, the focus of the analysis must rest

on whether or not a public servant's involvement "is perceived to be coercive or provides an inappropriate opportunity for access to such official." In other words, the principal concern is whether or not the public servant's actions would create an appearance that he or she is using the power of public office to pressure others into contributing, taking official action on the basis of whether or not a contribution has been made, or allowing contributors to have

access to City government in a manner not enjoyed by the general public.

Advisory Opinion No. 93-15 at 8-9, quoting Advisory Opinion No. 91-10.

1. Active Fundraising

As discussed above, the public servant would like to sell tickets to Organization-sponsored events. The public servant advised the Board that the solicitations would be directed at individuals who are not likely to come before the public servant's agency. The public servant also indicated that he would sell only a limited number of tickets.

Although the public servant would be selling a limited number of tickets, this does not necessarily negate the possibility that those to whom the solicitations would be directed may feel pressured to purchase tickets. The public servant is well known and, as stated above, is highly placed in City government. These factors alone may be enough to create pressure. In addition, because the mission of the public servant's agency and the mission of the Organization are related, an appearance may be created that the City is sponsoring the Organization or that the Organization may receive preferential treatment.

Accordingly, the Board concludes that the public servant's sale of the tickets would be impermissible active fundraising as described in Advisory Opinion No. 91-10. Therefore, it is the opinion of the Board that the public servant may not sell tickets to future Organization-sponsored events.

2. Passive Fundraising

The public servant advised the Board that his name might appear on invitations to fundraising events sponsored by the Organization. This type of activity would be considered passive fundraising, as described in Advisory Opinion Nos. 91-10 and 93-15.

Advisory Opinion No. 91-10 permits high-level appointed officials to engage in passive fundraising, provided that the official's participation has not been held out as an inducement to contribute. In this opinion, the Board noted that "[b]eing listed as a member of such a committee is not generally viewed as a request for contributions, or as a suggestion that those who choose not to contribute risk official disfavor at the hands of the individual so named." Advisory Opinion No. 93-15 at 6.

In Advisory Opinion No. 92-15, the Board

considered whether high-level appointed officials may take a passive role in fundraising events by chairing an honorary committee. Advisory Opinion No. 92-15 provides that "high level appointed officials may take a 'passive' role in fundraising by chairing an honorary committee, when their involvement is limited to attending the event and having their names listed on invitations to the event." Advisory Opinion No. 92-15.

Based on the facts in the instant case, it is the opinion of the Board that the public servant may not engage in the passive fundraising by having his name appear on invitations to fundraising events sponsored by the Organization. As stated above, the connection between the mission of the public servant's agency and the mission of the Organization might create an appearance that the City is sponsoring the Organization or that the Organization may receive preferential treatment.

C. Representing the Organization before Community Boards

The public servant proposes to address community boards and other groups, including private organizations, on behalf of the Organization. This would include testifying at public hearings. The

purpose of such appearances is to gain local support for the Organization. The public servant would receive no compensation for such appearances.

As discussed above, the public servant is a well known, high-level public official. Although the public servant ostensibly would testify as a private citizen without identifying himself as a City official, the fact that he would be appearing before community boards or other groups could create the impression, despite not identifying himself as a City official, that he is speaking on behalf of his City agency for the Organization. This is particularly true in the instant case, since the goals of the Organization are similar to those of the public servant's City agency. Accordingly, the Board has determined that it would violate Chapter 68 for the public servant to address community boards or other private organizations on behalf of the Organization.

Conclusion

It is the opinion of the Board that the public servant may serve on the board of directors of the Organization, consistent with the conditions discussed in this opinion. The Board further concludes that the

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public servant may not engage in the fundraising activities discussed above and may not represent the Organization before community boards or private organizations.

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Dated: February 27, 1995