

Moonlighting
Private Investigator

Charter Sections 2604(a)(1)(b)
2604(b)(2), (3), (4) and (6)

Advisory Opinion No. 95-9

The Conflicts of Interest Board (the "Board") has received a request for an opinion from a public servant as to whether he may, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, maintain a sole proprietorship as a private investigator and retain others who would be employed under his license as assistant investigators, in light of his position as deputy chief of field operations for a division of a City agency.

For the reasons stated below, the public servant may work as a private investigator, provided he acts in accordance with the conditions discussed in this opinion.

Background

The public servant formerly worked as an investigator for the City agency which he serves. That agency is not primarily a law enforcement agency such as the Police Department, the Fire Department or the Department of Investigation; rather, it employs mostly non-uniformed civilians who work on non-criminal

matters affecting a particular function of City government.

The public servant has advised the Board that he is a licensed private investigator and, as such, the services his firm would provide for attorneys and other private employers would include, among other things, interviewing plaintiff/complainants or defendants, suspects and witnesses; surveying crime scenes; obtaining documents; and serving subpoenas.

In pursuing work as a private investigator, the public servant or investigators who work for his firm would be required to visit various City detention facilities. Also, the public servant or investigators who work for his firm might sometimes be required to testify in court concerning the results of his investigations.

The public servant has advised the Board that any work he does for his firm, such as attending meetings and writing reports, would be conducted during his personal time. The public servant has advised the Board that if he ever had to work for the firm on weekdays, he would do so on his personal time; however, most work required to be done on weekdays would be

handled by other investigators who work for the public servant's firm.

Discussion

Chapter 68 of the City Charter (Charter Sections 2600 et seq.) contains a number of restrictions on the outside activities of City employees. No public servant who is a regular employee of the City, for example, shall have an interest in a firm which such regular employee knows is engaged in business dealings with the City. See Charter Section 2604(a)(1)(b).

"Interest" means an ownership interest in or a position with a firm. See Charter Section 2601(12). Thus, the public servant may neither contract directly with any City agency nor do private investigative work for a person or firm which has business dealings with the City.¹

¹ A public servant may hold a position with a firm which would otherwise be prohibited by Charter Section 2604(a)(1)(b) if, after the Board receives the written approval of the public servant's agency head, it determines that the position would not conflict with the purposes and interests of the City. See Charter Section 2604(e). Furthermore, a public servant may sometimes retain an ownership interest in a firm which would otherwise be prohibited by Charter Section 2604(a)(1)(b) if the Board determines that the interest, if retained, would not conflict with the proper discharge of the public servant's official duties. See Charter Sections 2604(a)(3) and (4).

Even when a public servant has an interest in a firm which does not have business dealings with the City, if he or she wants to work as a private investigator or seek any other non-City employment, the public servant may do so only at times when he or she is not required to perform official City duties. See Charter Section 2604(b)(2), which provides that no public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which conflicts with the proper discharge of his or her official duties. The public servant already has advised the Board that any work he performs in connection with his private investigative work would be performed on his own time.

Public servants are also prohibited from using or attempting to use their City positions or titles as public servants to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servants or any persons or firms associated with the public servants. Charter Section 2604(b)(3). This section also proscribes the use of City equipment and other

City resources for private reasons. The public servant in this case is of course required to act in accordance with Charter Section 2604(b)(3), and he thus may not use his City position in any way to help his private business or his clients. Also, in conducting his private investigative business, the public servant may not disclose or use for private advantage any confidential information concerning the City which is not otherwise available to the public. See Charter Section 2604(b)(4).

Additionally, Charter Section 2604(b)(6) provides that no public servant shall, for compensation, represent private interests before any City agency or appear directly or indirectly on behalf of private interests in matters involving the City. "Appear" means to make any communication, for compensation, including personal appearances, telephone calls and letters, other than those involving ministerial matters. See Charter Section 2601(4). "Ministerial matters" are administrative acts, including the issuance of licenses, permits or other permission by the City, which are carried out in a prescribed manner and which do not involve substantial personal

discretion. Thus, for example, if the public servant is required to obtain a permit to visit a local prison, this would be a ministerial matter. However, any more substantial appearance by the public servant before any City agency would be prohibited.

The specific facts of this case militate against the possibility that Charter Sections 2604(b)(2), (3) or (4), discussed above, would be violated by the public servant's pursuit of private investigative work.

As stated above, the public servant's City duties do not involve conducting investigations. Furthermore, the City agency served by the public servant is not one of the City's law enforcement agencies engaged in the investigation of criminal matters.² In order to

² If the public servant worked for one of these City agencies, such as the Police Department, his proposed private investigative work might have been prohibited. See Advisory Opinion No. 93-23, in which the Board determined that, because of a public servant's status as a police officer, and his contact with the City's criminal court system in the course of discharging his official duties, it would be a violation of Chapter 68 for him to represent defendants charged with criminal offenses within that system. See also Charter Sections 2604(b)(2) and (3). Moreover, some City agencies, particularly in the law enforcement area, might have their own rules prohibiting their employees from working as private investigators. The Board has long recognized that, while Chapter 68 provides the minimum standards governing City employees' outside employment, City agencies are entitled to promulgate stricter rules for

further assure that the public servant's outside activities would not conflict with his City duties, the public servant may not accept or work on any private matter which involves the City agency by which he is employed.

Since the public servant has proposed managing and working for his own investigative business, the Board is concerned that this non-City activity, notwithstanding that it is conducted outside of normal business hours, may, under certain circumstances, appear to conflict with the proper discharge of his official duties. See Charter Section 2604(b)(2). It is therefore the opinion of the Board that the public servant should obtain the approval of his City agency to engage in private investigative work. See Advisory Opinion No. 91-7, which required public servants who wished to engage in the private practice of law to obtain written approval from their City agencies. This private investigative work must, of course, be conducted in compliance with the foregoing provisions of Chapter 68.

Conclusion

their own employees, where appropriate.

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For the reasons stated in this opinion, the public servant may own and work for his own private investigative firm, provided that he does so in accordance with the conditions discussed in this opinion.

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