

Spouse's Ownership Interest
Imputed to Public Servant
Prohibited Ownership Interest
Charter Sections 2601(16)
2604(a)(1)(b)

Advisory Opinion No. 95-10

The Conflicts of Interest Board (the "Board") has received a request for an opinion from a public servant as to whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, he may retain his imputed ownership interest in his spouse's newly formed company (the "Company"), which might seek to engage in business dealings with the City. For the reasons set forth below, the Board has determined that the Company's proposed business dealings with the City would conflict with the proper discharge of the public servant's official City duties and, thus, he may not remain a City employee if the Company seeks to engage in those business dealings with the City.

Background

The public servant has advised the Board that the Company's business consists of providing various parts and supplies related to plumbing systems; that the Company was incorporated in the State of New York on January 20, 1995; and that, in addition to the public

servant's spouse having an ownership interest in the Company, she serves as its president. The public servant has stated that he is not involved in any way with the Company's business, i.e., he neither holds a position with the Company nor performs any work for the Company. The Company presently has no business dealings with the City; however, the Company would like to bid on contracts with two City agencies, neither of which is the City agency which employs the public servant. The public servant has also advised the Board that the Company intends to pursue business with private companies, as well as with non-City government entities, and that the anticipated City business is a small percentage of the Company's overall activity.

Discussion

Charter Section 2604(a)(1)(b) prohibits a regular, full-time City employee from having an ownership interest in a firm which is engaged in business dealings with the City. The definition of an "ownership interest" includes an interest held by the public servant, the public servant's spouse or the public servant's unemancipated child. See Charter Section 2601(16). The public servant in this case is therefore deemed to have an ownership interest in a

firm which seeks to engage in business dealings with the City, and this ownership interest is prohibited by Charter Section 2604(a)(1)(b). In such a situation, Chapter 68 provides that, under certain circumstances, a public servant may disclose the ownership interest to the Board and comply with its order, which would either require the public servant to divest the interest or, under certain conditions, permit the public servant to retain the interest. See Charter Section 2604(a)(3).

When the public servant discloses an interest to the Board pursuant to Charter Section 2604(a)(3), the Board then issues the aforementioned order, setting forth its determination as to whether or not such interest, if maintained, would be in conflict with the proper discharge of the public servant's official duties. In making such determination, the Board takes 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).

The circumstances of this case indicate that the public servant does not appear to be in a position to

assist the Company by, for example, making decisions affecting the Company or steering business to the Company. However, the Company is a newly formed corporation, incorporated in January 1995, in which the public servant has an imputed ownership interest. The close proximity in time of the Company's incorporation and its subsequent pursuit of City business under these circumstances gives rise to an appearance that the Company was established with the intention of actively soliciting business with the City. Furthermore, it might also create the appearance that the Company was formed to take advantage of the public servant's official City position. Although the public servant has stated that he is not in a position to take any official action which would affect the Company, this does not entirely mitigate the appearance problem.

Conclusion

For the reasons stated above, the Board has determined, that the Company's proposed business dealings with the City would conflict with the proper discharge of the public servant's official duties since such dealings might create an appearance of impropriety, as described above. Accordingly, the Board has determined that the public servant may retain

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his imputed ownership interest in the Company, but that the Company may not seek to engage in business dealings with the City. If the Company does seek to engage in such dealings, the public servant may not remain a City employee.

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Chair

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Dated: April 10, 1995