

Serving as Officer and  
on Board of Cooperative Corporation  
Charter Section(s): 2601(8)  
2604(a)(1)(b)  
2604(b)(2), (b)(3)

Advisory Opinion No. 95-11

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 serve as an officer and as a member of the board of directors of the cooperative corporation (the "Corporation") where he resides, in light of his employment in a City agency (the "Agency") which will consider a loan application from the Corporation. For the reasons discussed below, the Board has determined that the public servant may not serve as an officer or as a member of the board of directors of the Corporation.

Background

The Corporation is applying for a loan through the Agency. The public servant is employed as a director within the division of the Agency which is responsible for administering many aspects of this loan program. However, neither the public servant nor anyone within the public servant's division is involved with the

decision to either approve or reject a loan application. The public servant has advised the Board that, if he were permitted to serve as an officer and on the board of directors of the Corporation, he would recuse himself, both as a City employee and as an officer and director of the Corporation, from participating in any aspect of the loan application.

Discussion

Charter Section 2604(a)(1)(b) provides that no public servant shall have an ownership interest in or a position with a firm which is engaged in business dealings with the City; however, since transactions involving a public servant's residence are excluded from the definition of "business dealings" with the City, a public servant may have an ownership interest in, for example, a cooperative corporation which has business dealings with the City. See Charter Section 2601(8). In addition, a public servant may, except for certain restrictions discussed below, serve on the board of directors of the cooperative corporation where he or she resides.

Advisory Opinion No. 92-7 cautions that there are situations in which a public servant's service on the

Advisory Opinion No. 95-11  
May 8, 1995  
Page 3

board of directors of a cooperative corporation is prohibited by Charter Section 2604(b)(2) as a direct or indirect financial or other private interest which is in conflict with the proper discharge of his or her official duties. Also, such service may be prohibited by Charter Section 2604(b)(3), which provides that no public servant shall use or attempt to use his or her position as a public servant to obtain any private or personal advantage, direct or indirect, for the public servant or a person or firm associated with the public servant.

Since the public servant is employed as the director of a division in the Agency which administers many aspects of the program through which the Corporation is seeking a loan, any direct or indirect involvement in this loan application by the public servant in his role as an officer and director of the Corporation would conflict with his official duties. See Charter Section 2604(b)(2). Furthermore, his service as an officer or on the board of directors of the Corporation could create the appearance that he is using his official City position to obtain a private advantage for the Corporation in its dealings with the

Agency.<sup>1</sup> See Charter Section 2604(b)(3). Recusal would not be sufficient to avoid a conflict of interests in this case because the public servant's official City position is that of a director in a division of the Agency which is directly responsible for administering the loan program to which the Corporation is making an application.

Conclusion

It is the opinion of the Board, for the reasons discussed above, that the public servant may not serve as an officer or as a member of the board of directors of the Corporation as long as the Corporation is engaged in business dealings with the Agency. See Charter Sections 2604(b)(2) and (3).

Sheldon Oliensis  
Chair

Jane W. Parver

Benito Romano

Shirley Adelson Siegel

Dated: May 8, 1995

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<sup>1</sup> Additionally, Charter Section 2604(b)(6) prohibits a public servant from appearing either directly or indirectly on behalf of private interests before the City.

Advisory Opinion No. 95-11  
May 8, 1995  
Page 5