

Ownership Interests
Working for Not-for-profit
Organizations

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

Advisory Opinion No. 95-12

The Conflicts of Interest Board (the "Board") has received a request for an opinion from a public servant who serves part-time on a City commission (the "Commission") as to whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, he may retain his ownership interests in various apartment buildings, and a position with the firm that owns one of the buildings, and continue his involvement with various not-for-profit organizations.

For the reasons discussed below, it is the opinion of the Board that the public servant may retain his ownership interests in the apartment buildings and his position with the firm that owns one of the buildings, and continue his involvement with the various not-for-profit organizations, provided that he acts in accordance with the conditions discussed in this opinion.

Background

The public servant serves as a member of the Commission, which has some regulatory authority over

certain classes of buildings and districts in the City.

Thus, for example, owners of certain buildings may have renovations or other kinds of work done on their properties only if they have obtained the Commission's permission.

The public servant has advised the Board that he is a shareholder in a cooperative corporation (the "Corporation") which owns and manages an apartment building in a district in Brooklyn over which the Commission has some regulatory authority, and also has an interest in a partnership which owns shares representing an additional 20 apartments in the Corporation. Moreover, he is a member of the Corporation's board of directors on behalf of the sponsor of the cooperative.

He has further advised the Board that he has ownership interests in other buildings in Brooklyn, some of which are located in districts regulated by the Commission.

The business dealings with the City of the Corporation and all other buildings referred to have been and are expected to remain limited to normal dealings with the Department of Finance and to obtaining annual licenses and permits for such standard

matters as fuel storage and boiler maintenance. None of the buildings has any pending matters with the Commission.

Furthermore, the public servant has advised the Board that if any of these buildings were to have any matter involving the Commission, he would completely recuse himself, both as an owner and as a commissioner, from any participation in that matter.

The public servant also has advised the Board that he is a trustee of a religious congregation which owns buildings in a district which is subject to the regulation of the Commission, and which has business dealings with City agencies other than the Commission.

The congregation has no matters pending before the Commission and, again, if any matters involving the congregation were to come before the Commission, the public servant has advised the Board that he would recuse himself from such matters.

In addition to the foregoing activities, the public servant serves as a trustee of a local not-for-profit organization which sponsors cultural events and of two not-for-profit organizations whose principal places of business are located in upstate New York. None of these organizations has business dealings with

the City.

Discussion

Ownership Interests

Members of the Commission serve part-time and are considered public servants, but not regular employees of the City. See Charter Sections 2601(19) and (20) and Board Rules, Section 1-06. Their conduct must, therefore, be consistent with Charter Section 2604(a)(1)(a), which 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 agency served by the public servant. The definition of "firm" includes partnerships, corporations and other forms of commercial enterprise. See Charter Section 2601(11). "Business dealings" with the City agency served by the public servant means, among other things, any transaction with the agency involving any license, permit, grant or benefit. See Charter Section 2601(8).

Since none of the apartment buildings located within a district subject to the Commission's jurisdiction in which the public servant has an interest is currently involved in any matter with the Commission, and since no such matter is imminent, the

public servant's interests in these properties are not prohibited by Charter Section 2604(a)(1)(a).¹ However, the public servant should disclose these particular interests on the Commission's public records. Furthermore, in the event that the buildings' owners seek to renovate or make other changes to the buildings, or if any other matters involving these interests or having an impact on these interests ever come before the Commission, the public servant is required to recuse himself, both as a member of the Commission and as a property owner, from participation in such matters.² In addition, the public servant should, at the time such matters arise, seek further

¹ Since none of the apartment buildings in which the public servant has an interest is currently involved or is expected to be involved in any matter before the Commission, the public servant's interests would not be prohibited by the Board's Advisory Opinion No. 92-7, in which the Board determined, among other things, that public servants could not serve as directors of cooperative corporations which would be likely to have matters coming before their agencies.

² Such recusal requires that the public servant will not vote on any matters which involve these buildings' business dealings with the Commission, or be otherwise involved, directly or indirectly, in such business dealings. This includes, but is not limited to, participating in the Commission's discussions, attending meetings with City officials and others and receiving copies of relevant documents. See Advisory Opinion No. 92-5.

guidance from the Board.³

The public servant also must perform any work in connection with his ownership interests in the various apartment buildings in accordance with Chapter 68. That is, the public servant is required to perform this work at times when he is not required to perform his official duties for the Commission; he may not use his official position or title with the Commission to obtain any financial gain, contract, license, privilege or other private advantage, direct or indirect, for himself or for any person or firm associated with him; he may not use City equipment or other City resources in connection with this work; and he may not disclose or use for private advantage any confidential information concerning the City. See Charter Sections 2604(b)(2), (3) and (4), respectively.

Not-for-profit Organizations

As stated above, the public servant is a trustee of a religious congregation which owns buildings in a district which is subject to the regulation of the

³ Chapter 68 empowers the Board, in certain circumstances, to issue orders and grant waivers which would allow public servants to retain otherwise prohibited ownership interests and prohibited positions. See Charter Sections 2604(a)(3) and (4) and 2604(e), respectively.

Commission and which has business dealings with City agencies other than the Commission. Charter Section 2604(c)(6) provides that a public servant may hold a position with a not-for-profit organization interested in business dealings with the City, provided that such public servant takes no direct or indirect part in such business dealings; the not-for-profit organization has no direct or indirect interest in any business dealings with the City agency in which the public servant is employed and is not subject to supervision, control or regulation by such agency, unless it is determined by the head of the agency that the public servant's work on behalf of the not-for-profit organization is in furtherance of the purposes and interests of the City; all work performed in connection with that position is performed at times during which the public servant is not required to perform services for the City; and the public servant does not receive any compensation in connection with this activity.

Thus, the public servant is required to obtain a determination from the Chair of the Commission that his work on behalf of the congregation is in furtherance of the purposes and interests of the City. See Charter Section 2604(c)(6). He should also recuse himself, as

that term is defined above, from any matters which involve or have an impact on the congregation which might come before the Commission and otherwise act in accordance with the provisions of Charter Sections 2604(b)(2), (3) and (4).

With respect to the public servant's involvement with the other not-for-profit organizations, none of which has business dealings with the City or the Commission, the public servant may continue working for these organizations, again provided that he acts in accordance with Charter Sections 2604(b)(2), (3) and (4), which are discussed above.

Conclusion

It is the Board's opinion that the public servant may retain his ownership interests in and, in one case, his position with, the firms which own the various apartment buildings discussed in this opinion, provided that he acts in accordance with the conditions discussed above. Furthermore, the public servant may continue working for the various not-for-profit organizations, again provided that he does so in a manner consistent with the conditions discussed in this opinion.

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