

Political Fundraising
Charter Sections 2604(b)(9), (b)(11), (b)(12)

Advisory Opinion No. 95-13

A high-level public servant has requested an opinion from the Conflicts of Interest Board (the "Board") as to whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, he and his wife may engage in various fundraising and related activities on behalf of candidates for City elective office. Specifically, he has asked whether: (i) he may allow his home to be used as the site of fundraising events for the Mayor or for any other candidates for local or City-wide office; (ii) there are any limitations as to who may be invited to attend such events; (iii) his name may appear on the invitations; (iv) he may personally attend and participate in the events; (v) his wife may fully participate in the events; and (vi) other individuals may host such fundraising events in his home. For the reasons discussed below, the Board has determined that the public servant's wife may host such fundraisers, provided that the public servant and his wife comply with the conditions set forth in this opinion.

Background

The public servant's wife is not a City employee. Prior to her marriage to the public servant, she was active politically and, among other things, she raised campaign funds for various candidates for public office. In addition, she serves on the boards of directors of several not-for-profit corporations and raises funds for them as well. The public servant's wife plans to host one or more fundraising events for candidates for City elective office at the couple's home, which is owned solely by the public servant's wife.

The public servant, who is deemed to be a City employee charged with substantial policy discretion,¹ would not be identified as a host of the fundraising events. However, he has asked the Board for guidance as to the restrictions Chapter 68 would impose on his, or his wife's, participation in this fundraising activity.

¹ Pursuant to Board Rules, Section 1-02, "a public servant is deemed to have substantial policy discretion if, among other things, he or she has major responsibilities and exercises independent judgment in connection with determining important agency matters."

Discussion

Charter Section 2604(b)(12) provides that no public servant who is charged with substantial policy discretion "shall directly or indirectly request any person to make or pay any political assessment, subscription, or contribution for any candidate for an elective office of the City or for any elected official who is a candidate for any elective office." However, this section "shall not be construed to prohibit such public servant from speaking on behalf of any such candidate or elected official at an occasion where a request for a political assessment, subscription or contribution may be made by others."

Since, as noted above, the public servant is charged with substantial policy discretion, it would violate Charter Section 2604(b)(12) for him to host a fundraising event on behalf of a candidate for elective office of the City or for any elected official of the City who is a candidate for any elective office. Chapter 68 does not, however, prohibit a public servant's spouse from participating in political activities or engaging in fundraising on behalf of candidates for public office. Accordingly, a public

servant's spouse may host fundraising events on behalf of candidates for City elective office, provided that the public servant is not an active participant in the fundraising.

Thus, it must be clear that the spouse is hosting such an event, rather than the public servant. In cases such as this, the Board considers factors including, but not limited to, the spouse's history of involvement in political fundraising or other political activities; whether invitations to an event list only the spouse's own name, or both the public servant's and the spouse's name; whether invitees have business dealings or other connections with the public servant's agency; and any other factors which might indicate that it is the public servant, rather than the spouse, who is hosting the event.

In the instant case, the public servant's spouse has previously engaged in political fundraising for various candidates, and there is no evidence to suggest that it is the public servant rather than the spouse who is hosting the proposed fundraising events. The Board has thus determined that the public servant's spouse may host fundraisers on behalf of candidates for

City elective office in the couple's home. To avoid an appearance that the public servant is co-hosting these events, invitations to the fundraisers should be sent out in the name of the public servant's spouse. In addition, the public servant's name should not be listed anywhere on the invitation.

The public servant has also asked whether there would be any limitations as to who may be invited to these fundraisers. Charter Section 2604(b)(11) provides, in relevant part, that "no public servant shall, directly or indirectly, compel, induce or request any person to pay any political assessment, subscription or contribution, under threat or prejudice to or promise of or to secure advantage in rank, compensation or other job-related status or function" or "compel, induce or request any subordinate public servant to pay any political assessment, subscription or contribution." Similarly, Charter Section 2604(b)(9) provides that "no public servant shall coerce or attempt to coerce, by intimidation, threats or otherwise, any public servant to engage in political activities" or "request any subordinate public servant to participate in a political campaign."

If employees of the public servant's City agency or individuals engaging or seeking to engage in business dealings with his agency were invited to the fundraisers, this could create the appearance that the public servant is requesting that these individuals make a political contribution, in violation of Charter Sections 2604(b)(9) and (11). As a result, the Board has determined that the guest lists for these fundraisers should not include employees of the public servant's City agency or individuals who engage in, or seek to engage in, business dealings with the public servant's agency.

Chapter 68 does not restrict the public servant's attendance at fundraising events. In fact, as discussed above, Charter Section 2604(b)(12) states that public servants with substantial policy discretion may attend fundraising events on behalf of candidates for City elective office and speak on behalf of such candidates. Nevertheless, under the circumstances of this case, the Board has determined that the public servant should not speak on behalf of any candidates at fundraisers held in the public servant's own home, even if the public servant does not host these events. Such

a speech might create the appearance that the public servant is co-hosting the event and might also create the appearance that the public servant is requesting contributions. For the same reasons, the public servant should not personally greet invitees to the fundraiser (except for personal friends), accept donations, distribute buttons, or otherwise serve as an active participant in the fundraiser. As long as the public servant personally abides by the restrictions discussed above, it is the opinion of the Board that the public servant may attend the fundraising events held at his home.²

Since none of Chapter 68's restrictions on the political activities of public servants generally extend to the public servant's wife or acquaintances, who do not work for the City, they may fully

² Furthermore, the public servant may participate in political activities to the extent described in this opinion, provided that he engages in all such activities during times when he is not required to perform his official duties for the City; he does not use his official City position to obtain a private advantage for himself or the candidates; he does not use City equipment or other City resources in connection with these activities; and he does not disclose or use for private advantage any confidential information concerning the City. See Charter Sections 2604(b)(2), (b)(3) and (b)(4), respectively.

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participate, or serve as hosts, at these fundraising events, provided that they do not directly or indirectly use the public servant's name or City title in connection with the fundraiser.

Conclusion

It is the opinion of the Board that the public servant's wife or acquaintances may host fundraisers on behalf of candidates for City elective office in the couple's home, provided that the public servant abides by the restrictions set forth in this opinion.

Sheldon Oliensis
Chair

Jane W. Parver

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Dated: May 22, 1995