

Outside Employment  
Waiver

Charter Sections 2604(a)(1)(b)  
2604(b)(2)  
2604(b)(3)  
2604(b)(4)  
2604(e)

Advisory Opinion No. 95-16

A public servant, employed by the New York City Police Department (the "Police Department") 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 may work part-time for the Patrolmen's Benevolent Association ("PBA"), which is engaged in business dealings with the City. For the reasons discussed below, it is the opinion of the Board that, under the particular circumstances here present, it would not be a conflict of interest for the public servant to accept the part-time employment with the PBA, subject to the conditions discussed in this opinion.

Background

The City has five pension plans, including the New York City Employees Retirement System, and the fire, teachers, Board of Education and police pensions. The Police Department's pension section administers its own

pension fund (the "pension fund"), which covers uniformed, but not civilian, employees of the Police Department. Administration of the pension fund involves, among other things, investing and accounting for moneys invested in the pension fund, preparing fiscal reports, computing pensions for retirees, processing loans taken against individual retirement accounts, counselling prospective retirees and performing other similar duties related to managing a pension fund with 62,000 members.

A Board of Trustees, composed of representatives from both the City and the civil service unions, votes on matters pertaining to the pension fund. The unions include the detectives' union, the sergeants' union, the lieutenants' union, the captains' union, and the PBA. The City has an equal voice with the unions collectively on issues pertaining to the pension fund.

The Police Department's pension section has a significant backlog of requests from its employees for calculations of retirement benefits. This backlog is expected to grow, due to cutbacks in personnel and the incorporation of the Housing Authority and Transit Authority Police Departments into the City's Police

Department. The PBA has approached the Police Department and asked whether, if the PBA were to provide a microfiche reader, the Police Department would permit one of its employees to work for the PBA part-time, in the evenings and on weekends, to gather information concerning pension earnings of retirees.

The Police Department has selected the public servant, who works in the pension section and has had considerable experience in the pension area. Because of his level of experience, however, the public servant is assigned to high profile and complex assignments as part of his official duties and is not involved in the type of work that he would be performing for the PBA.

The public servant's work for the PBA would involve conducting a microfiche search for retirement information and thereafter providing raw data to the PBA. The information provided to the PBA would be used to calculate retirement benefits for prospective retirees. In addition, with this information, the PBA would counsel prospective retirees about their retirement benefits and options. As stated above, the public servant's duties for the PBA would be different from the public servant's regularly assigned job

duties, and he has advised the Board that this work would be performed on his own time.

The Police Commissioner has approved this outside employment and has determined that it does not conflict with the purposes and interests of the City. Further, he has stated that he believes this off-duty employment would benefit the Police Department.

#### Discussion

Charter Section 2604(a)(1)(b) provides that no regular employee of the City shall have a position with a firm, including an entity such as the PBA, which is engaged in business dealings with the City. However, Charter Section 2604(e) provides that a public servant may hold an otherwise prohibited position, where the Board has determined that the holding of the position would not conflict with the purposes and interests of the City. As stated above, the public servant has received the written approval of the Police Commissioner to hold the part-time position with the PBA.

The Police Department, whose uniformed employees are beneficiaries of the pension fund, has an interest

in the effective administration of the pension fund. This proposed employment arrangement would enable the Police Department, which has suffered cutbacks in its civilian work force and has a substantial backlog in the number of employees waiting for information regarding their retirement benefits, to continue to have services provided to its employees. Also, the Police Department has represented to the Board that the public servant, by engaging in this particular part-time employment, would not be required to disclose any confidential information concerning the City.

The public servant, if he worked for the PBA, would be performing work that he does not perform as part of his official City duties. In addition, this work would be performed on the public servant's own time, during the evenings and on weekends. It is, therefore, unlikely that this work would conflict with the proper discharge of the public servant's official duties.

Based on the foregoing, the public servant may, consistent with Chapter 68, work part-time for the PBA, provided that he performs this work only at times when he is not required to perform his official duties for

the City; he does not use his City title or position to obtain or attempt to obtain any private or personal advantage for himself, the PBA or the PBA's membership; and the public servant 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.

Conclusion

The Board has determined, in accordance with Charter Section 2604(e), that the public servant's part-time employment with the PBA would not conflict with the purposes and interests of the City. Accordingly, it is the opinion of the Board that the public servant may, consistent with the conditions described above, accept this employment with the PBA. Further, the public servant's work for the PBA must be conducted in accordance with Charter Sections 2604(b)(2), (b)(3), and (b)(4).

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