

Part-time Private Employment
Waiver Denied

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

Advisory Opinion No. 95-17

The Conflicts of Interest Board (the "Board") has received a request for an opinion from a public servant who is a full-time aide to a member of the City Council (the "Council Member") as to whether he may, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, work part-time for a law firm (the "Firm"), where a substantial portion of the Firm's work involves business dealings with the City. For the reasons discussed below, it would be inconsistent with Chapter 68 for this public servant to work for this particular law firm.

Background

The public servant has advised the Board that his official duties as a councilmanic aide include drafting legislation; developing and implementing new legislative proposals; assisting in the formulation of public policy; preparing position papers; and presenting testimony at hearings before City and other government agencies. Also, the public servant serves

as the Council Member's liaison to City agencies regarding legislative agenda and legal issues and is involved in constituent affairs and the delivery of City services. The public servant has further advised the Board that, as a councilmanic aide, he monitors the activities of City Council committees, especially those committees on which the Council Member serves, which include committees or subcommittees which deal with, among other things, land use, zoning and financial matters.

The public servant has advised the Board that more than one-third of the Firm's business involves representing clients before the City's Board of Standards and Appeals and its Department of Buildings, and handling tax cases. The Firm's tax practice involves all phases of the tax appeals process, including meeting with City tax assessors, filing applications with the City's Tax Commission for the correction of assessments, and initiating tax certiorari proceedings to review final determinations of the Tax Commission. The Firm does not have business dealings with the City, other than those described above.

The public servant has stated that, as a pre-condition to his accepting a position with the Firm, he would recuse himself from any involvement in the Firm's City-related business and abide by the following rules: the public servant would not share in the proceeds from the Firm's City-related business; he would not participate in or have discussions with anyone involved in such business, either at the Firm or in City government; he would not permit the Firm to use his name or his relationship with the Council Member, in any matter involving the Firm's City-related business; he would maintain separate physical quarters; in the event that the Firm's City-related business comes before the City Council or one of its committees, he would recuse himself from any involvement in the matter, both at the Council and the Firm; and he "would make every other effort to disassociate himself from the firm's City-related business or the public perception that there is even a remote relationship between him and the firm's City-related business."

In addition to the foregoing, the public servant has obtained the written approval of his agency head to hold this part-time employment. The agency head

advised the Board that, in his view, the holding of the position would not be in conflict with the purposes and interests of the City.

Discussion

Charter Section 2604(a)(1)(b) provides that no regular employee of the City shall have an interest in a firm which such employee knows is engaged in business dealings with the City. "Interest" means an ownership interest in or a position with a firm. See Charter Section 2601(12). "Business dealings with the city" means any transaction with the City involving the sale, purchase, rental, disposition or exchange of any goods, services, or property, any license, permit, grant or benefit, and any performance of or litigation with respect to any of the foregoing. See Charter Section 2601(8). Inasmuch as the Firm is engaged in business dealings with the City, as described above, the public servant's proposed part-time position with the Firm is prohibited.

Notwithstanding the foregoing, a public servant may, in certain circumstances, obtain a waiver from the Board which would allow the public servant to hold an otherwise prohibited position. A public servant may

hold a position otherwise prohibited by Chapter 68 if, after the Board has received the written approval of the public servant's agency head, the Board determines that the holding of the position would not be in conflict with the purposes and interests of the City. See Charter Section 2604(e).

The Board has determined that, in light of the specific facts of this case, the public servant's part-time position with the Firm would conflict with the purposes and interests of the City, and, accordingly, it would be inconsistent with Chapter 68 for the public servant to work for the Firm. First, more than one-third of the Firm's business involves City matters. Also, the public servant's City duties involve working in some of the same substantive areas of the law in which the Firm is active. Moreover, the public servant's work on behalf of various committees of the City Council involves contact with some of the same City agencies with which the Firm and its employees are involved.

A consideration of the amount and nature of the Firm's City business and the nature of the public servant's City duties -- with respect to both the areas

of the law in which he is active and the other City agencies with which he deals -- thus compel the Board to determine that it would conflict with the purposes and interests of the City for this public servant to hold this particular position. See Charter Section 2604(e).

Moreover, the confluence of private interests and public duties in this case would create the appearance, despite the public servant's recusal, of possible conflicts of interest under Chapter 68: to wit, Charter Section 2604(b)(2), which provides that no public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which conflicts with the proper discharge of his or her official duties; 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 financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant; and Charter Section 2604(b)(4), which provides that no public servant shall

disclose or use for private advantage any confidential information concerning the City.

While the Board has recognized recusal as one method of protecting against the entanglement of private interests and public duties,¹ recusal would not provide adequate protection against the possible conflicts described above. The proximity of the areas of law practiced by the Firm to the specific duties of the public servant could result in conflicts of interest. See Charter Sections 2604(b)(2), (3) and (4).

While the public servant may not work for the Firm, he may engage in the private practice of law, provided that this is done in accordance with the Board's Advisory Opinion No. 91-7 and the relevant provisions of Chapter 68 discussed in that opinion.

Conclusion

¹ For example, in the Board's Advisory Opinion No. 95-12, the Board determined that a member of a City commission could retain his interests in various apartment buildings which were located in districts over which the commission had some regulatory authority, but which had no business dealings with the commission, provided that, if any matters affecting those interests ever came before the commission, he recused himself from participation in such matters.

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For the reasons discussed above, it is the opinion of the Board that it would conflict with the purposes and interests of the City if the public servant were to work for the Firm. Accordingly, his request for a waiver is denied. See Charter Section 2604(e).

Sheldon Oliensis
Chair

Jane W. Parver

Benito Romano

Shirley Adelson Siegel

Dated: June 30, 1995