

Community Boards  
Definition of Ownership Interest

Charter Sections 2601(12), (16)  
2604(a)(1)(a)  
2604(b)(1)(b)

Advisory Opinion No. 95-18

The Conflicts of Interest Board (the "Board") has received a request for an opinion from the Chair of a community board (the "Community Board") as to whether, under the current conflicts of interest provisions of Chapter 68 of the City Charter, Board of Ethics Opinion No. 673 retains its interpretive value. Specifically, the Board has been asked to clarify the circumstances under which a community board member may chair a committee which considers matters related to the community board member's private interests.

For the reasons discussed in this opinion, the Board has determined that under the current Chapter 68, a community board member may not chair a committee if that committee is likely to have matters before it which concern the community board member's private interests or employment. This opinion, in applying this new standard, supersedes Board of Ethics Opinion No. 673.

Background

As the predecessor agency to the Board, the Board

of Ethics issued opinions concerning the provisions of former Chapter 68. When the City Charter was revised, effective January 1, 1990, the Board was created and charged with the responsibility of rendering advice to public servants with respect to the provisions of the new Chapter 68. Nonetheless, since a number of the provisions of the revised Chapter 68 are similar to those of former Chapter 68, many of the opinions of the Board of Ethics are consistent with the provisions of current Chapter 68. However, unless the Board has formally adopted the advice given in a Board of Ethics opinion, it is not a binding opinion and should not be used by public servants as guidance for conducting their non-City activities in a manner consistent with the current Chapter 68.

In Opinion No. 673, the Board of Ethics considered whether a City concessionaire, who was also a member of a community board, could chair a community board committee which had the power to make recommendations with respect to his concession. The Board of Ethics concluded, "[i]t is our opinion that a person with significant financial interests coming within the special field of interest of a community board

committee may be a member of such committee but should not be its chair."

Based on Board of Ethics Opinion No. 673, two members of the Community Board resigned from their positions as chairs of certain committees. As a result, the Chair of the Community Board has asked for clarification from the Board as to circumstances under which a community board member is prohibited from chairing a committee which has matters before it related to the community board member's private interests.

#### Discussion

Neither the current nor the former Chapter 68 contains any reference to or definition of a "significant financial interest." Rather, former Chapter 68 makes reference to "substantial" and "insubstantial" investments in firms. When the Charter was revised, the Charter Revision Commission explained that the term "substantial investment" was being replaced by the term "ownership interest," which is defined in current Charter Section 2601(16).<sup>1</sup> "By

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<sup>1</sup> Charter Section 2601(16), as modified by Board Rules § 1-11, states that an ownership interest means "an interest in a firm held by a public servant, or the

substituting the imprecise concept of a 'substantial' investment with a bright-line rule, the commission seeks to provide public servants with clear guidance concerning the lawfulness of their activities." See Report of the New York City Charter Revision Commission, Vol. II (December 1986 - November 1988) at 169. In addition, Charter Section 2601(12) states that an "interest" in a firm means an ownership interest in a firm or a position with a firm.

In Advisory Opinion No. 93-2, the Board determined that it would violate Chapter 68 for a community board member who was also a member of a community school board to chair a community board committee which would be likely to consider matters related to the business of the school board. In this opinion, the Board noted that while a community board member may hold an

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public servant's spouse or unemancipated child, which exceeds five percent of the firm or an investment of twenty-nine thousand dollars in cash or other form of commitment, whichever is less, or five percent or twenty-nine thousand dollars of the firm's indebtedness, whichever is less, and any lesser interest in a firm when the public servant, or the public servant's spouse or unemancipated child exercises managerial control or responsibility regarding any such firm...."

interest in a firm which may be affected by an action on a matter before the community board, the member may not vote on any matter before the community board which may result in a personal and direct economic gain to the member or any person with whom the member is associated. See Charter Sections 2604(a)(1)(a) and (b)(1)(b). The Board also explained in the opinion that these provisions were intended to "insure that actions taken by a community board are not tainted by questions of self-interest or divided loyalty on the part of any member."

By analogy, the Board reasoned that the same concerns present when a community board member votes on a matter involving his or her private interest could also be present when a member chairs a committee which considers matters related to that interest because a committee chair can "greatly influence a committee by controlling the agenda, recognizing speakers and making rulings." See Advisory Opinion No. 93-2. There is thus a possibility that a community board member could use his or her position as a committee chair for the private advantage of a firm in which the community board member had an ownership interest or position.

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Thus, to avoid potential conflicts, a community board member may not chair a committee if that committee is likely to have matters before it which concern the community board member's private interests or employment.

Conclusion

For the reasons stated above, it is the opinion of the Board that a community board member may not chair a committee which is likely to have matters before it which concern the community board member's private interests or employment. This opinion supersedes Board of Ethics Opinion No. 673.

Sheldon Oliensis  
Chair

Jane W. Parver

Benito Romano

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Dated: July 17, 1995