

Paid Position on Boards of Directors
of Cooperative Corporations

Charter Sections 2604(b)(2) and (b)(3)

Advisory Opinion No. 95-22

A 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 may serve as a paid member of the boards of directors of two cooperative housing corporations (the "Corporations"), neither of which is his residence. For the reasons discussed in this opinion, the Board has determined that the public servant may not serve as a paid member of the boards of directors of the Corporations.

Background

The sponsors of the conversion to cooperative ownership of two apartment buildings located in the Bronx (the "Sponsors") continue to hold sufficient shares in the Corporations to allow them to elect board members for each of the two buildings. The Sponsors have asked the public servant to serve, for compensation, on the boards of directors of the Corporations. The public servant would be expected to

attend monthly meetings of the Corporations and to report back to the Sponsors as to what transpired at these meetings. He would be compensated at a rate of \$250 per meeting for this work.

The public servant is a manager in a division of a City agency (the "Agency") which handles, among other things, real property tax matters and other issues which concern cooperative housing corporations. While his responsibilities include working on issues of concern to cooperative housing corporations and supervising other employees in such matters, he has stated that he has never worked on any matters involving the Corporations, the Sponsors, or any properties located in the Bronx during his tenure with the Agency.

Discussion

Charter Section 2604(b)(2) provides that no public servant shall engage in any transaction or have any financial or other private interest, direct or indirect, which conflicts with the proper discharge of his or her official duties. In his official City position, the public servant is required to act as an advocate for the City in matters which may concern

cooperative housing corporations. Often, in tax matters, among others, the City's interests are in opposition to the interests of private cooperative corporations. Accordingly, the public servant's private employment could conflict with the proper discharge of his official duties.

When a public servant has private employment, there should never be any question that the public servant, in performing his official duties, is acting in the best interests of the City. As a supervisor in an agency which regularly considers matters which could affect the interests of the Corporations, his dual role as both a City manager in this particular field and as a paid member of the boards of directors of the Corporations could create an appearance that the public servant was using his official City position to obtain a private advantage for the Corporations. Thus, the dual role would also be inconsistent with Charter Section 2604(b)(3), which prohibits a public servant from using or attempting to use his or her City position 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.

The Board has previously addressed the issue of public servants' service on the boards of directors of cooperative corporations.¹ In determining whether such service would violate Chapter 68, the Board considered the nature of the work of the public servants' agencies and the extent of the public servants' involvement in matters which might be of concern to cooperative corporations. Thus, in Advisory Opinion No. 94-27, the Board determined that it would not violate Chapter 68 for a public servant to serve on the board of directors of a cooperative corporation, in part, because the public servant's official duties were sufficiently removed from the regulation of private cooperative

¹ In many of these cases, the public servants asked whether they could serve on the boards of cooperative corporations which were their personal residences. In cases where the cooperative corporations had business dealings with the City, such service did not violate Charter Section 2604(a)(1)(b), which prohibits public servants from having interests in firms which engage in business dealings with the City, because the definition of "business dealings with the City" excludes matters related to a public servant's residence. See Charter Section 2601(8). However, such service was still subject to the restrictions of Charter Sections 2604(b)(2) and (b)(3).

corporations and related issues. However, in Advisory Opinion No. 95-11, the Board determined that a public servant could not serve on the board of directors of a cooperative corporation because the corporation was engaged in business dealings with the public servant's City agency, and specifically, with the division in which the public servant was employed. Under the circumstances of that case, the Board advised that the public servant's position as a member of the board of directors of the corporation would conflict with his official duties and could create the appearance that he was using his official position to obtain a private advantage for the corporation. In the instant case, the public servant's proposed service on the boards of directors of the Corporations could create similar appearance problems, especially in light of the nature of the public servant's City employment. See Charter Sections 2604(b)(2) and (b)(3).

Conclusion

It is the opinion of the Board, for the reasons discussed above, that the public servant may not serve as a paid member of the boards of directors of the Corporations.

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