

Ownership of Real Estate  
Serving as Officer and Director of  
Cooperative Corporation  
Charter Sections 2604(a)(1)(b)  
(b)(2), (3)

Advisory Opinion No. 95-25

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, she may retain her positions as an officer and director of the cooperative board of a hotel (the "Hotel"), in which she owns eleven apartments. For the reasons discussed in the following opinion, the Board has determined that the public servant may continue to serve as an officer and director of the Hotel's cooperative board.

Background

The public servant owns eleven apartments in the Hotel, which functions as a cooperative corporation (the "Corporation"). One of these apartments is her personal residence. The other apartments are leased by

the Hotel's management staff, which handles generally the management of the Corporation and the Hotel, including all of the details associated with the leases. After all administrative expenses and maintenance costs are paid, the public servant receives the balance of the rental income from the apartments. In addition, the public servant serves without compensation as Vice President and as a member of the board of directors of the Corporation. There are no pending dealings between the Corporation and the City.

The public servant works for an agency (the "Agency") which has no involvement with real property tax matters, the regulation of residential buildings, or any other issues which would generally concern either hotels or cooperative corporations.

#### Discussion

Charter Section 2604(a)(1)(b) provides that no regular employee of the City shall have an interest in a firm which such regular employee knows is engaged in business dealings with the City. An "interest" in a firm is defined as an ownership interest in or a position with a firm. See Charter Section 2601(12). Pursuant to Charter Section 2601(11), a "firm" means a

sole proprietorship, joint venture, partnership, corporation and any other form of enterprise.

"Business dealings with the City" is defined as 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, but shall not include any transaction involving a public servant's residence or any ministerial matter. See Charter Section 2601(8).

Since the public servant, who is a regular employee of the City, resides in only one of the Hotel apartments which she owns, her investment interest in the remaining apartments is not subject to the residence exception of Charter Section 2601(8). As a result, if the Corporation or the Hotel were to engage in "business dealings with the city", the public servant's ownership interest in the apartments which are not her residences would be prohibited by Charter Section 2604(a)(1)(b). However, the incidents of ownership of real estate, without more, do not constitute business dealings with the City. The public servant has stated that the Corporation does not have matters pending with the City and her ownership of the

apartments is thus not prohibited by Charter Section 2604(a)(1)(b).

In addition to her ownership interest in the Corporation, the public servant is both an officer and member of the board of directors of the Corporation. The public servant may continue serving in these positions, provided that they do not conflict with the discharge of her official City duties. See 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. In determining whether a public servant's service as an officer or director of such a corporation, including a corporation in which the public servant resides, would conflict with his or her official duties, the Board considers whether the public servant's official City duties involve matters which might concern cooperative corporations. See Advisory Opinion No. 95-22. Inasmuch as the Agency has no regulatory authority over cooperative corporations and is not involved with matters concerning cooperative corporations, it would not conflict with the proper

discharge of her official duties for the public servant to serve as an officer and director of the Corporation, and such service is consistent with Charter Section 2604(b)(2).

Similarly, since the Agency is not involved in matters concerning cooperative corporations, the public servant is not in a position to take any official action which could affect the interests of the Corporation. As a result, her service as an officer and director of the Corporation is also consistent with 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 -- including the Corporation -- which is associated with the public servant.

If, in the future, the Corporation has any matters before the City, the public servant must recuse herself from such matters to avoid any appearance of impropriety, having no involvement, directly or indirectly, in these matters. Such recusal includes, but is not limited to, participating in any discussions

of these matters, attending meetings with City officials and others and receiving copies of relevant documents. See Advisory Opinion No. 92-5.

Conclusion

It is the opinion of the Board that the public servant may continue to serve as an officer and director of the Corporation, inasmuch as the City agency in which she works has no involvement with matters concerning residential real estate or cooperative corporations.

Sheldon Oliensis  
Chair

Jane W. Parver

Benito Romano

Shirley Adelson Siegel

Dated: October 30, 1995