

**Business Dealings with the City
Ownership Interests**

Charter Sections: 2601(8)
2601(16)
2604(a)(1)(b), (a)(3), and
(a)(4)
2604(b)(2), (3), (4), and (6)

Advisory Opinion No. 98-2 and Order No. 65

The Conflicts of Interest Board (the "Board"), has received a request for an opinion from Anthony Yodice, Robert DeMarco and William J. Hrubes (collectively, the "public servants"), as to whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, they may retain their ownership interests in the Parking Meter Security Devices Corp. (the "Corporation"), which seeks to engage in business dealings with the City and, specifically, the Department of Transportation, Bureau of Parking ("DOT"), the agency which they serve, by licensing a device they invented, named the "BAR-PIN," to DOT. They have also asked whether they may seek compensation from the City for the alleged misappropriation of the patent rights to the BAR-PIN.

For the reasons discussed below, it is the opinion

of the Board that it would not violate Chapter 68 for the public servants to retain their ownership interests in the Corporation, which owns the rights to the BAR-PIN. The Board has also determined that, subject to the conditions set forth below, the Corporation may contract with DOT to sell the BAR-PIN and, further, the Corporation may seek compensation from the City for the alleged misappropriation of the patent rights to the BAR-PIN.

Background

The public servants are employed by the DOT in the Bureau of Parking as traffic device maintainers. As such, they are responsible for the maintenance and repair of the City's parking meters. They have no responsibility within DOT for purchasing any of the materials they use.

The public servants have made the following representations to the Board: They invented the BAR-PIN, a device which secures parking meter heads to sidewalk posts to prevent meter theft and removal. The BAR-PIN was invented in their spare time, using their

own money, materials and facilities. The BAR-PIN is

currently awaiting a patent. The pending patent application and all the rights to the BAR-PIN are held by the Corporation, which is owned by the public servants. After the public servants had developed a prototype of the BAR-PIN, they showed it to their superiors at DOT who, with the public servants' consent, produced samples for testing. Subsequently, allegedly without the public servants' consent or involvement, DOT solicited bids from manufacturers for production of the BAR-PIN and then placed an order for it. The public servants have further stated that they believe that DOT has already accepted delivery of some BAR-PINS.

In addition, the public servants have further advised the Board that DOT, by its words and actions, has demonstrated great interest in obtaining and using the BAR-PIN. According to the public servants, immediately upon learning of its existence, DOT personnel arranged for the production of samples and had tests performed. After the testing, DOT allegedly

placed an order with a manufacturer. Further, according to the public servants, DOT officials believe that the BAR-PIN could save the City a considerable sum of money.

Discussion

Charter Section 2604(a)(1)(b) provides that no public servant who is a regular employee of the City shall have an ownership interest in a firm which is engaged in business dealings with the City. In addition, Charter Section 2604(a)(1)(a) of Chapter 68 prohibits all public servants, whether or not regular employees, from having ownership interests in firms which engage in business dealings with the agency which they serve. Pursuant to Charter Section 2601(16), as implemented by Board Rules Section 1-11, an "ownership interest" means an interest in a firm held by a public servant which exceeds five percent of the firm or an investment of \$29,000.00 in cash or other form of commitment.¹

¹ "Business dealings with the City" means any transaction with the City involving the sale, purchase, rental, disposition or exchange of any goods, services,

Discussions with DOT concerning the sale of the
BAR-PIN and the alleged misappropriation of patent

rights, as well as any litigation resulting therefrom,
would be deemed "business dealings with the City." See
Charter Section 2601(8). The public servants therefore
have ownership interests which, in the absence of
specific permission from the Board, would violate
Charter Section 2604(a)(1). Public servants who have
ownership interests which would otherwise be prohibited
by Charter Section 2604(a)(1) must either divest such
interests or disclose them to the Board and comply with
its order. See Charter Section 2604(a)(3).

Charter Section 2604(a)(4) provides that the Board
shall issue an order setting forth its determination as
to whether otherwise prohibited ownership interests, if
maintained, would conflict with the proper discharge of
public servants' official duties. In making such
determination, the Board takes into account, among

or property, any license, permit, grant or benefit, and
any performance of or litigation with respect to the
foregoing. See Charter Section 2601(8).

other factors: the nature of the public servants' official duties; the manner in which the interests may be affected by any action of the City; and the appearance of a conflict to the public.

In this case, the public servants' official duties do not involve any responsibility for purchasing or recommending the purchase of any equipment or

materials, including devices of the type they have invented. Also, any risk of an appearance of conflict to the public is mitigated by the fact that DOT, according to the public servants, has expressed its great interest -- in word and deed -- in purchasing and installing the BAR-PIN.

In accordance with Charter Section 2604(a)(4), the Board has determined that it would not conflict with the proper discharge of the public servants' official duties for them to retain their ownership interests in the Corporation and to license the BAR-PIN to DOT. Further, the Board has determined that the Corporation may, consistent with the conflicts of interest law, negotiate for compensation with the City as a result of

the alleged misappropriation of the patent rights to the BAR-PIN and may, if necessary, commence a lawsuit based on the alleged misappropriation of the patent rights to the BAR-PIN.

The Board notes, however, that, while an order is appropriate in this case, the public servants should have consulted the Board before engaging in business dealings with DOT. Moreover, City agencies must take some responsibility to assure that their employees

comply with the conflicts of interest law, and, when necessary, consult with the Board. This is especially true where, as is the case here, a City agency expresses interest in and even encourages business dealings between the agency and its employees.

Conclusion

Accordingly, the Board has determined, and it is hereby ordered, that the public servants may retain their ownership interests in the Corporation that holds the patent to the BAR-PIN, provided that, during their employment with DOT, they are not directly or

indirectly involved on behalf of the City in any matter involving the BAR-PIN.

In addition, the public servants must perform all work for the Corporation at times when they are not required to perform their official City duties; they may not use their official City positions or titles to obtain advantages for themselves, the Corporation or its customers; they may not use City equipment, letterhead, personnel or other City resources in connection with this non-City work; they may not disclose or use for private advantage any confidential

information concerning the City; and, with the exception of the limited circumstances discussed in this opinion and order, they may not appear, directly or indirectly before DOT or any other City agency on behalf of the Corporation. See Charter Sections 2604(b)(2), (b)(3), (b)(4), and (b)(6), respectively.

This opinion and order are limited to the particular facts of this case. Determinations concerning public servants' ownership interests in firms which engage in business dealings with the City,

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and the public servants' involvement in such business dealings, are made by the Board on a case-by-case basis.

Sheldon Oliensis
Chair

Bruce A. Green

Jane W. Parver

Benito Romano

Shirley Adelson Siegel

Dated: March 2, 1998