

**Spouse's Ownership Interest
Imputed to Public Servant**

Prohibited Ownership Interest

Charter Sections 2601(16)
 2604(a)(1)((b), (a)(3) and (a)(4)
 2604(b)(3) and (b)(4)

Advisory Opinion No. 98-3 and Order No. 66

The Conflicts of Interest Board (the "Board") has received a request for an opinion from Bat-Sheva Horodniceanu, a public servant who is employed by the New York City Housing Authority (the "NYCHA"), as to whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, she may retain her imputed ownership interest in Urbitran Associates, Inc. (the "Firm"), a planning and consulting firm of which her husband, Michael Horodniceanu, is a part owner. The Firm is engaged in business dealings with the City and seeks to engage in business dealings with the NYCHA.

For the reasons stated in this opinion and order, the Board has determined that it would not violate Chapter 68 for Ms. Horodniceanu to retain her imputed

ownership interest in the Firm, provided that she acts in accordance with the conditions discussed herein and, in the future, consults the Board before the Firm pursues any new contracts with the NYCHA.

Background

Ms. Horodniceanu has advised the Board that she has been employed by the NYCHA since 1974 in various roles in the administrative and computer services units; that, currently, she is Deputy Director for Administration, Department of Computer Services. She has also advised the Board that her official City responsibilities involve computer systems and software maintenance; that she does not work in the division of the NYCHA which either formulates or awards contracts; and that her responsibilities at the NYCHA do not involve any aspect of the contracting process.

In addition, she has advised the Board that the Firm is a consulting planners' and engineers' firm and that it has been engaged in business dealings with various City agencies since 1977; that Mr. Horodniceanu

is currently president of, and holds a 30 percent ownership interest in, the Firm; that from the time Mr.

Horodniceanu first obtained the interest in 1990, Ms. Horodniceanu reported the interest on financial disclosure reports filed with the Board, but that she has not previously sought guidance from the Board concerning that interest.

Further, Ms. Horodniceanu has advised the Board that the Firm has recently responded to a Request for Proposals (RFP) issued by the NYCHA to provide environmental quality review services and that she has no responsibility at the NYCHA with respect to such matters.

Discussion

Charter Section (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. Pursuant to Charter Section 2601(16), as implemented by Board Rules Section 1-11, an "ownership interest" includes an interest in a firm held by the public servant, or the

public servant's spouse or unemancipated child, which exceeds five percent of the firm or an investment of \$29,000 in cash or other form of commitment, 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 the firm.¹ Ms. Horodniceanu is therefore deemed to have a imputed ownership interest in the Firm, which engages in business dealings with the City; and in the absence of specific permission from the Board, such an imputed ownership interest violates Charter Section 2604(a)(1)(b).

When a public servant has an ownership interest which would otherwise be prohibited by Charter Section 2604(a)(1)(b), the public servant shall either divest the interest or disclose the interest to the Board and comply with the Board's order. See Charter Section

¹ "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 the foregoing. See Charter Section 2601(8).

2604(a)(3). When a public servant discloses an interest to the Board, the Board, pursuant to Charter Section 2604(a)(4), issues an order setting forth its determination as to whether the interest, if maintained, would conflict with the proper discharge of

the public servant's official duties. In making such a determination, the Board takes into account the nature of the public servant's duties, the manner in which the interest may be affected by any action of the City, and the appearance of a conflict to the public. In Ms. Horodniceanu's case, the disclosure requirement has been met by her request for an opinion and order under Charter Section 2604(a)(3).²

The Board has determined, in accordance with Charter Section 2604(a)(4), that it would not conflict with the proper discharge of Ms. Horodniceanu's official duties for her to maintain her imputed ownership interest in the Firm, provided that she recuses herself from all matters related to the Firm in

² The Board notes that reporting an ownership interest on financial disclosure reports does not satisfy the disclosure requirement of Charter Section 2604(a)(3).

her official NYCHA capacity and further provided that she continues to play no role in the NYCHA's selection of any contractors.

Conclusion

Accordingly, the Board has determined, and it is

hereby ordered, that Ms. Horodniceanu may retain her imputed ownership interest in the Firm, provided that, during her employment with the City, she takes no direct or indirect part in any business dealings which the Firm has with the City, including the NYCHA. Also, Ms. Horodniceanu is required to recuse herself from any matters involving the Firm. Such recusal includes, but is not limited to, not participating in discussions concerning the Firm with anyone at the NYCHA, not attending meetings with City officials and others to discuss the Firm, and not receiving copies of relevant documents. Furthermore, Ms. Horodniceanu may not use or attempt to use her official City position or title to obtain any private or personal advantage for herself, her spouse or the Firm, and she must not

disclose or use for private advantage any confidential information concerning the City. See Charter Sections 2604(b)(3) and (b)(4), respectively.

If, in the future, the Firm seeks to engage in further business dealings with the NYCHA, Ms. Horodniceanu should seek further guidance at that time.

This opinion and order are limited to the particular facts of this case. Determinations

concerning public servants' imputed ownership interests in firms which engage in business dealings with the City and, in particular, with the public servants' agency, and public servants' involvement in such business dealings are made by the Board on a case-by-case basis.

Sheldon Oliensis
Chair

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