

Moonlighting  
Temporary Employment

Charter Sections: 2601(11), (16), (18), (19) and  
(20)  
2604(a)(1)(a) and (a)(1)(b)  
2604(b)(2), (b)(3) and (b)(4)  
2604(e)

**Advisory Opinion No. 98-5**

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, she may register for part-time temporary employment as a clerical worker, in light of Charter Section 2604(a)(1), which imposes restrictions on public servants seeking to perform non-City work.

For the reasons discussed in this opinion, the Board has determined that, subject to the conditions set forth in this opinion, it would not be a violation of Chapter 68 for the public servant to register with, and work for, temporary agencies.

**Background**

The public servant is employed part-time by a City

agency (the "Agency") and seeks to register with several temporary agencies to perform part-time clerical work for private firms (the "client firms") that have a contractual relationship with one or more temporary agencies. The Board has been advised that individuals generally register with a number of temporary agencies to perform work. These individuals are called by the temporary agency on an as-needed basis to work at various firms. Temporary workers do not usually know where they will be assigned until the day before they are required to report to work. The length of assignments at client firms vary from one day to several months.

Although some City agencies use temporary employees from time to time, temporary agencies are used most often in the private sector. The client firms using the services of temporary workers may include accounting and law firms, financial concerns and other businesses. The client firm where temporary employees are placed may have business dealings with the City, even if the temporary agency itself does not.

The issue, therefore, is whether and under what circumstances a public servant needs a waiver pursuant to Charter Section 2604(e), when working as a temporary

worker at a client firm through a temporary agency.

Discussion

Charter Section 2604(a)(1)(a) provides that no public servant<sup>1</sup> shall have an interest<sup>2</sup> in a "firm" which engages in business dealings with the public servant's own agency. Charter Section 2604(a)(1)(b) provides that no regular employee<sup>3</sup> shall have an interest in a firm doing business with the City. The public servant here works only part-time for the City

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<sup>1</sup> "'Public servant' means all officials, officers and employees of the city, including members of community boards and members of advisory committees, except unpaid members of advisory committees shall not be public servants." Charter Section 2601(19).

<sup>2</sup> "Interest" is defined as "an ownership interest in a firm or a position with a firm." Charter Section 2601(12). 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 twenty-nine thousand dollars. . . ." Charter Section 2601(16), as amended by Board Rules §1-11. A "position" is defined as "a position in a firm, such as an officer, director, trustee, employee, or any management position, or as an attorney, agent, broker, or consultant to the firm, which does not constitute an ownership interest in the firm." Charter Section 2601(18).

<sup>3</sup> "'Regular employee' means all elected officials and public servants whose primary employment, as defined by rule of the board, is with the city, but shall not include members of advisory committees or community boards." Charter Section 2601(20).

and is thus subject only to the first of these two provisions.

Charter Section 2601(11) defines a "'firm' as a sole proprietorship, joint venture, partnership, corporation and any other form of enterprise . . . ." Thus, for the purposes of Chapter 68, a temporary agency is a firm. Therefore, if the temporary agency engages in business dealings with the City, any public servant employed by that temporary agency would have a prohibited position with that firm. To work for that temporary agency, the public servant would be required to apply to the Board for a waiver under Charter Section 2604(e).<sup>4</sup> The waiver, if granted, would permit the public servant to hold a position with the temporary agency which would otherwise be prohibited by Charter Section 2604(a)(1).

The question then arises whether work for the client firm constitutes a position with that firm, as well as with the temporary agency. Often temporary workers do not know where they will be sent until a

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<sup>4</sup> A public servant may hold an otherwise prohibited position where the Board determines, after receiving the written approval of the head of the public servant's agency, that the holding of such a position would not be in conflict with the purposes and interests of the City. See Charter Section 2604(e).

short time before they are required to perform services for a client firm. In addition, most assignments are of very limited duration, ranging from a day or two to a week. The Board would not consider such short assignments to be a "position" with the client firm under Charter Section 2601(18).

Some assignments, however, last longer. Temporary workers can be assigned to a client firm for several months or longer on one assignment, or, alternatively, can be assigned and reassigned repeatedly to the same client firm. In these situations, the temporary worker may develop a relationship with the client firm and, in effect, identify himself or herself as an employee of the client firm, notwithstanding that the temporary agency is actually paying the temporary worker. The temporary assignment would then effectively become a "position" with the client firm within the meaning of Charter Section 2601(18).

Accordingly, it is the opinion of the Board that the temporary assignment becomes a position with the client firm whenever the public servant works more than 30 days with the same client firm in any twelve month period, whether the days are consecutive or seriatim. In such a situation, the public servant would be

required to determine whether the client firm is engaged in business dealings with the City and, if so, to obtain a waiver from the Board, pursuant to Charter Section 2604(e), before working more than 30 days for the client firm.

It is also the opinion of the Board that for any temporary assignment, temporary workers must fully recuse themselves from any matters involving the City (in the case of regular employees) or their own agency (in the case of part-time public servants), which might come before them at their temporary assignment, including the typing of documents. Recusal means that there may be no direct or indirect involvement in any matter involving the City or agency, as the case may be. This includes, but is not limited to, not participating in discussions concerning the City or agency, not attending meetings and not receiving copies of relevant documents.

Further, the public servant must perform this work only at times when she is not required to perform services for the City; she may not use her official City position or title to obtain any private advantage for herself, the temporary agencies or their clients; she may not use City equipment, letterhead, personnel

or other City resources in connection with this non-City work; and she may not disclose or use for private advantage any confidential information concerning the City. See Charter Sections 2604(b)(2), (b)(3) and (b)(4), respectively.

Conclusion

The Board has determined that, for the purposes of Charter Section 2604(a)(1)(a) and (b), an employee in a temporary assignment with a client firm shall be deemed to have a "position" with that client firm whenever the public servant works for more than 30 days for the firm in any twelve month period, regardless of whether the days are consecutive. Accordingly, it is the opinion of the Board that the public servant may, consistent with the conditions described in this opinion, seek, and engage in, temporary employment with temporary agencies.

Benito Romano  
Acting Chair

Bruce A. Green

Jane W. Parver

Dated: April 22, 1998