

Appearance of Impropriety
Agency Heads
Endorsements

Charter Sections: 2604(b)(2)

Advisory Opinion Nos.: 95-2

Advisory Opinion No. 98-6

The Conflicts of Interest Board (the "Board") has received a request from a high level public servant at a City agency (the "Agency"), for an opinion from the Board as to whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, he may endorse a documentary film. Specifically, the public servant has asked the following questions: May he endorse the film as a private citizen even if it is to be sold to organizations that do business with his Agency? May he endorse the film in his official capacity?

For the reasons discussed below, it is the opinion of the Board that the public servant may not endorse the film in either his private or official capacity.

Background

The public servant seeks to endorse a documentary film. He will not be compensated for this endorsement.

The film will, however, be sold for profit and will be distributed both locally and nationally.

The subject matter of the film specifically involves areas within the Agency's responsibility. While the film focuses on an organization that receives funding from the Agency, it is not an advocacy film. Rather, the film tells a story, and describes the related services provided by the Agency.

Discussion

In Advisory Opinion No. 95-2, the Board determined that a public servant may not use his City title to endorse a book for a not-for-profit educational foundation. Of primary concern in that opinion was that use of the public servant's City title would violate Charter Section 2604(b)(2), which 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.

While the instant case involves the endorsement of

a film, rather than a book, the same concerns present in Advisory Opinion No. 95-2 are involved here. Here, the film will be sold nationwide and to, among others, organizations that contract with the Agency. The public servant is well known and, because the film will be marketed to organizations that currently contract with the Agency or could contract with the Agency in the future, it may appear that the Agency is somehow recommending the purchase of the film. It may also appear, because of the visibility of the public servant, that the Agency, rather than merely the public servant, is endorsing this for-profit film. This perception could be created even if the public servant endorsed the film in his private capacity.

In addition, because the film focuses on a particular organization that does business with the public servant's Agency, the endorsement could create the appearance that some private organizations are receiving or will receive preferential treatment at the expense of other, similarly situated organizations.

The Board also noted in Advisory Opinion No. 95-2 that endorsements are not inappropriate in all circumstances, and that in certain situations,

endorsements may be appropriate. However, in the case of any endorsement, "the City's interests must be the clear determinant for the endorsement." See Advisory Opinion No. 95-2. The facts of this case do not demonstrate that a City interest would be advanced by having the public servant endorse this particular film.

Conclusion

Accordingly, the Board has determined that the public servant may not endorse the above-mentioned film either in his official capacity or as a private citizen.

This opinion is limited to the particular facts of this case, as issues such as this must be decided on a case-by-case basis by the Board. Further, the Board's decision in this matter is conditioned on the correctness and completeness of the facts supplied to us. If such facts are in any respect incorrect or incomplete, the advice in this opinion may not apply.

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COIB Advisory Opinion No. 98-6
May 28, 1998
Page 5

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