

Consulting  
Moonlighting  
Sole Proprietorship

Charter Sections: 2601(12), (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. 98-7**

The Conflicts of Interest Board (the "Board") has received a request from a public servant employed by a City agency (the "Agency"), for an opinion as to whether, consistent with the conflicts of interest provisions contained in Chapter 68 of the City Charter, the public servant may establish a sole proprietorship which has customer firms that engage in business dealings with the City.

For the reasons discussed below, it is the opinion of the Board that the public servant, as a sole proprietor, is a consultant to his customer firms and, pursuant to Charter Section 2601(18), has a position with his customer firms. Further, as discussed below, the Board has determined that, since these firms engage in business dealings with the City, the public servant may not engage in this sole proprietorship without a

waiver from the Board pursuant to Charter Section 2604(e) of Chapter 68.

### Background

The public servant has advised the Board that he is proposing to establish a sole proprietorship to provide librarian services to law firms throughout the City. These services will include maintaining and updating law books for customer firms, ordering any necessary books or other publications, and making recommendations about different types of legal software that may be useful to the customer firm. Part of the services to be offered by the public servant will be job training and job placement for law librarians. The public servant has advised the Board, however, that he will not actively seek out firms that engage in business with the City or the Agency.

However, the public servant has also advised the Board that some of the customer firms using the public servant's services may engage in business dealings with the City. The public servant's agency head has written to the Board stating that it is his opinion that the public servant's proposed business would not conflict with the purposes and interests of the City.

Discussion

Charter Section 2604(a)(1)(a) and (b), respectively, provides that a public servant<sup>1</sup> shall not have an interest in a firm which is engaged in business dealings with the agency served by the public servant and a regular employee<sup>2</sup> may not have an interest in a firm doing business with the City. Charter Section 2601(12) defines "interest" as an ownership interest in a firm or a position with a firm. "Position" is defined in Charter Section 2601(18) 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. . . ."

The public servant as a sole proprietor will have an ongoing relationship with his customer firms as a consultant on law library matters. Because of this

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<sup>1</sup> Charter Section 2601(19) defines "public servant" as "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."

<sup>2</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).

ongoing consultant relationship, he has a position, as that term is defined in Charter Section 2601(18), with his customer firms. Because the public servant is a regular employee of the City, as defined in Charter Section 2601(20), the public servant may not, in accordance with Charter Section 2604(a)(1)(b,) have a position with a firm engaged in business dealings with the City. Therefore, if the public servant's customer firms engage in business dealings with the City, the public servant's position would be a prohibited position. Accordingly, the public servant may not work as a sole proprietor under the circumstances described above, without receiving a waiver from the Board.

Charter Section 2604(e) provides that a public servant may hold an otherwise prohibited position, where the Board has determined that the holding of the position would not conflict with the purposes and interests of the City.

The Board has determined, pursuant to Charter Section 2604(e), after considering all of the facts and circumstances of this case including the approval of the public servant's Agency head, that it would not conflict with the purposes and interests of the City

for the public servant to engage in business as a sole proprietor under the conditions described above.

However, in engaging in this outside work, the public servant must comply with Charter Sections 2604(b)(2), (b)(3) and (b)(4), as discussed below.

Charter Section 2604(b)(2) provides that no public servant shall engage in any private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties. Charter Section 2604(b)(3) provides that no public servant shall use or attempt to use his or her official position to obtain any private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant. Charter Section 2604(b)(4) provides that no public servant shall disclose any confidential information concerning the City or use any such information to advance any private interest of the public servant or of any person or firm associated with the public servant.

Thus, the public servant must perform all work in connection with his non-City activities during times when he is not required to perform services for the

Agency. He must also not use his official City position or title to obtain a private advantage for himself or his customers. Further, he may not use City equipment, letterhead, personnel or other City resources in connection with his outside activities. Lastly, he 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

Accordingly, the Board has determined that the public servant, as a sole proprietor, has a position as a consultant with his customer firms. The Board also finds it appropriate, under the particular facts and circumstances of this case to grant a waiver to permit the public servant, as a sole proprietor, to work for customer firms which engage in business dealings with the City.

The determinations in this case, as in all other cases involving the application of Charter Section 2604(e), are made by the Board on a case-by-case basis. Further, the Board's decision in this matter are conditioned on the correctness and completeness of the

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facts supplied to us. If such facts are in any respect incorrect or incomplete, the advice given in this case may not apply.

Benito Romano  
Acting Chair

Bruce A. Green  
Jane W. Parver

Dated: May 28, 1998