

Community School Boards
Uncompensated Appearances
Volunteer Activities

Charter Sections: 2604(b)(2), (b)(3), (b)(4),
(b)(6) and (b)(7)

Advisory Opinion No. 98-10

The Board has received a request for an opinion from a public servant who is an attorney with a City agency (the "Agency"), as to whether she may, consistent with Chapter 68 of the City Charter, volunteer her legal services to a community school board (the "Community School Board"), which is part of the Board of Education (the "BOE").

For the reasons discussed below, it is the opinion of the Board that the public servant may volunteer her services to the Community School Board, provided she complies with the conditions set forth in this Opinion.

Background

The public servant has advised the Board that she is a supervisory attorney within the Agency's legal division. As part of her job duties, she appears on

behalf of the Agency in court proceedings. The public servant's job duties do not involve community school boards or any other part of the BOE.

The public servant has further advised the Board that she wishes to provide legal services on a pro bono basis to the Community School Board. As the parent of two children who attend school in the Community School Board's district, she has been involved in her children's Parent Teacher Association and Planning Committee since 1993. She has also participated in the district's past four annual retreats and has been trained as a Parent Facilitator.

Discussion

This case involves the question of whether, and to what extent, Chapter 68 permits public servants to engage in the uncompensated private practice of law against the interests of the City or in uncompensated appearances before the City. Although Chapter 68 does not prohibit public servants from having second jobs or from engaging in volunteer work for not-for-profit organizations, it does contain certain restrictions on these activities. See, e.g., Charter Sections

2604(a)(1)(a), (a)(1)(b), (b)(2), (b)(3), (b)(4) and (c)(6).

Although the public servant here is proposing to provide pro bono services to the Community School Board, these activities are not governed by the Charter's restrictions governing volunteer activities.

Charter Section 2604(c)(6)¹ applies only to volunteer work for not-for-profit organizations. The Community

¹ Charter Section 2604(c)(6) provides:

"[A] public servant [may] act[] as attorney, agent, broker, employee, officer, director or consultant for any not-for-profit corporation, or association, or other such entity which operates on a not-for-profit basis, interested in business dealings with the city, provided that:

"(a) such public servant takes no direct or indirect part in such business dealings;

"(b) such not-for-profit entity has no direct or indirect interest in any business dealings with the city agency in which the public servant is employed and is not subject to supervision, control or regulation by such agency, except where it is determined by the head of an agency, or by the mayor where the public servant is an agency head, that such activity is in furtherance of the purposes and interests of the city;

"(c) all such activities by such public servant shall be performed at times during which the public servant is not required to perform services for the city; and

"(d) such public servant receives no salary or other compensation in connection with such activities."

School Board is a City agency, as defined in Charter Section 2601(2)²; it is not a not-for-profit organization within the meaning of Charter Section 2604(c)(6). Therefore, the provisions of Section 2604(c)(6) do not apply to the public servant's pro bono work for the Community School Board.

The Board has previously considered whether public servants may engage in the compensated outside practice of law. In Advisory Opinion No. 91-7, the Board determined that public servants could engage in the compensated outside practice of law, provided that the public servant obtains written approval from his or her agency, does not do private legal work for a person or firm which has business dealings with the City, does not represent private clients before any City agency or appear directly or indirectly on their behalf on matters involving the City, does not appear as counsel against the interests of the City in any litigation in which the City, or any public servant of the City acting in the course of official duties, is a complainant, does not give opinion evidence as a paid

² "'Agency" means a . . . community school board. . . ." Charter Section 2601(2).

expert against the interest of the City in any civil litigation brought by or against the City, and does not use or attempt to use his or her official position to obtain any advantage for a private client. Charter Sections 2604 (a)(1)(b), (b)(6), (b)(7), (b)(8) and (b)(3), respectively.

Advisory Opinion No. 91-7, however, does not address the issue of either uncompensated appearances before the City or the uncompensated private practice of law on behalf of a City agency. The Board must, therefore, consider whether the foregoing restrictions in Chapter 68, particularly the restrictions on the representational activities of public servants, apply in those contexts. Charter Section 2604(b)(6) states, in pertinent part, that "[n]o public servant shall, for compensation, represent private interests before any city agency or appear directly or indirectly on behalf of private interests in matters involving the city." (Emphasis added.) Charter Section 2604(b)(7) states, in pertinent part, that "[n]o public servant shall appear as attorney or counsel against the interests of the city. . . ." (Emphasis added.) The Charter defines an appearance as a communication for

compensation.³

The 1988 Charter Revision Commission expressly excluded uncompensated appearances from the definition of appearances: "Encompassed within this term are personal appearances, as well as communications made in writing, by telephone, or in any other form, which are made for compensation. The definition excludes communications involving ministerial matters and non-compensated appearances." See Volume II, Report of the New York City Charter Revision Commission, December 1986 - November 1988, at 150 (emphasis added). Since the public servant will be providing uncompensated legal services to the Community School Board, the public servant's proposed representational activities for the Community School Board are not proscribed by Charter Sections 2604(b)(6) and (b)(7).

The Board must also consider the provisions of Charter Sections 2604(b)(2) and (b)(3) in determining whether the public servant's proposed activity is permitted under Chapter 68. Charter Section 2604(b)(2) provides that no public servant shall engage in any

³ "'Appear' means to make any communication, for compensation, other than those involving ministerial matters." Charter Section 2601(4).

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. In addition, Charter Section 2604(b)(3) 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.

After considering all of the facts and circumstances of this case, it is the opinion of the Board that if the public servant provides pro bono legal services to the Community School Board, she would not be engaging in an activity which is in conflict with the proper discharge of her official duties nor would she be using her official position to obtain a personal or private advantage for herself or someone with whom she is associated. However, in engaging in this outside work, the public servant must comply with certain restrictions. The public servant must perform all work on behalf of the Community School Board during times when she is not required to perform services for the Agency. She must also not use her official City

position or title at the Agency to obtain a private advantage for herself or the Community School Board. Further, she may not use Agency equipment, letterhead, personnel or other Agency resources in connection with her activities on behalf of the Community School Board.

In addition, she may not disclose or use for private advantage any confidential information concerning the City. Lastly, if the Community School Board ever has business dealings with the Agency, the public servant must recuse herself from those business dealings.

Recusal means that she will not be involved, directly or indirectly, in those matters. This includes, but is not limited to, not participating in discussions concerning the Community School Board in her City job, not attending meetings with City officials and others to discuss the Community School Board and not receiving copies of relevant documents. Should the issue of the Community School Board come up during any meeting at the Agency, the public servant must leave that portion of the meeting. In addition, in the same manner as described above, she must recuse herself as a volunteer of the Community School Board from any matters involving the Agency. See Charter Sections 2604(b)(2),

(b)(3), and (b)(4), respectively.

Conclusion

Accordingly, the Board has determined that the public servant may volunteer her legal services to the Community School Board, provided that she complies with the provisions of Charter Sections 2604(b)(2), (b)(3) and (b)(4), as discussed above. In addition, she must disclose to the Agency her outside work for the Community School Board.

The Board's decision in this case is based on the fact that the public servant's work for the Community School Board is uncompensated. The public servant is prohibited from accepting compensation of any kind for this outside volunteer work. If the public servant accepts any form of compensation, then the Board's approval of this outside activity is revoked and the public servant will be prohibited from performing any legal services for the Community School Board.

The Board's determination in this case applies to the specific facts of this case. If other public servants also wish to provide uncompensated legal services for City government agencies, the public

servant must seek guidance from the Board before pursuing any such representational activity.

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 given in this case may not apply.

Bruce A. Green
Acting Chair

Jane W. Parver
Benito Romano

Dated: December 7, 1998