

Teaching  
Moonlighting

Charter Sections: 2601(11), (12), and (18)  
2604(a)(1)(b)  
2604(b)(2), (b)(3), (b)(4), and (b)(13)  
2604(d)(6)  
2604(e)

#### Advisory Opinion No. 99-6

The Board has received a request for an opinion from public servants who wish to accept part-time teaching positions at the City University of New York (“CUNY”) and the State University of New York (“SUNY”). These public servants have asked the Board whether, in order to take the teaching positions at CUNY or SUNY, they are required to obtain waivers pursuant to Charter Section 2604(e).

#### Discussion

Charter Section 2604(a)(1)(b) provides that “no regular employee shall have an interest in a firm which such regular employee knows is engaged in business dealings 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. . . .” A teaching position with CUNY or SUNY would be considered a “position” under this definition.

Since CUNY and SUNY colleges plainly have business dealings with the City of New York, the remaining inquiry is whether they are “firms” within the meaning of Chapter 68. Charter Section 2601(11) defines a “firm” as a “sole proprietorship, joint venture, partnership, corporation and any other form of enterprise but shall not include a public benefit corporation, local development corporation or other similar entity as defined by rule of the board.” In Advisory Opinion No. 94-10, an opinion concerning investments of a prospective public servant, in its analysis of his bond portfolios, the Board stated that “the exclusion of quasi-public entities from the definition of firm contained in Charter Section 2601(11) indicates a legislative intent, a fortiori, to exclude public entities from the definition of firm.” The Board concluded that “governmental bodies are not firms within the meaning of Charter Section 2601(11).”

In People v. Branham, 53 Misc.2d 346, 348, 278 N.Y.S.2d 494, 496 (1967), the court opined that “the State University of New York is an integral part of the government of the State. . . .” In Board of Higher Education of the City of New York v. Cole, 176 Misc.2d 297, 298, 27 N.Y.S.2d 24, 25 (1941) the court concluded that “the Legislature has regarded the public colleges of the City of New York under the jurisdiction of the Board of Higher Education as part of the school system of the state and as a matter of state concern.” CUNY and SUNY are thus governmental bodies, not firms within the meaning of Charter

Section 2601(11). Accordingly, public servants need not obtain waivers from the Board in order to take teaching or other part-time positions at CUNY or SUNY.<sup>1</sup>

Public servants who take teaching positions with CUNY or SUNY are, however, subject to the other requirements of Chapter 68. Their work for CUNY or SUNY must be conducted at times when they are not required to perform services for the City. They may not use their official City positions or titles to obtain any private advantage for themselves, CUNY or SUNY, or their students. Further, they may not use City equipment, letterhead, personnel, or other City resources in connection with their positions with CUNY or SUNY. Lastly, they 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.

In addition, Charter Section 2604(b)(13) provides, “No public servant shall receive any compensation except from the city for performing any official duty. . . .” (Emphasis added.) In the Board’s Advisory Opinion No. 99-4, the Board determined that, as applied to public servant’s outside teaching, Section 2604(b)(13) requires that public servants not teach for outside compensation anything that they are assigned to teach, or might reasonably be assigned to teach, as part of their official duties.

---

<sup>1</sup> For the purpose of Charter Section 2604(d)(6), the “government-to-government” exception to the Charter’s post-employment restrictions, CUNY and SUNY are, for the reasons stated above, governmental “agencies.”

Conclusion

It is the opinion of the Board, for the reasons stated above, that both CUNY and SUNY are governmental agencies, and not firms within the meaning of Charter Section 2601(11). Public servants who wish to moonlight at CUNY or SUNY therefore need not obtain waivers to do so.

Benito Romano  
Acting Chair

Bruce A. Green  
Jane W. Parver

November 23, 1999

98-166.ao/jks