

Advisory Opinion No. 89-1

Pursuant to revised Charter Section 1152(c), the provisions of the former Chapter 68 of the Charter entitled “Ethics” remain in effect up to and including December 31, 1989. Revised Chapter 68, entitled “Conflicts of Interest,” becomes effective on January 1, 1990. Among other changes, revised Chapter 68 contains new post-employment restrictions applicable to City employees who leave their City jobs for the private sector.*

* Legislation now before the City Council clarifies the Charter Revision Commission’s intent that the post-employment provisions in the current Code of Ethics, not the new rules, apply to City officers or employees who leave City service before the effective date of the new law. See Transcript of Public Hearing of the Charter Revision Commission on July 26, 1988 (at 127-134) and on August 23, 1988 (at 18-19, 115-16).

In contrast, the New York State Ethics Commission in its Advisory Opinion No. 88-1 retroactively applied the post-employment restrictions of the new State ethics law to State officers and employees who left their State agencies before January 1, 1989, the effective date of that law, on the ground that only State legislative employees who left before that date were specifically exempted by the statute from the new post-employment restrictions.

The State Ethics Commission observed that “[i]t is worth noting, in this connection, that the United States Congress, in enacting the federal Ethics in Government Act of 1978 ... expressly provided that the more restrictive post-employment restraints established by the Act would ‘not apply to those individuals who left government service prior to the effective date of the amendments....’” Advisory Opinion 88-1 of the New York State Ethics Commission at 7, fn. 6.

We have been asked which post-employment restrictions apply to: (1) employees who have terminated their City employment on or before December 31, 1989, but who are receiving paychecks for accumulated leave after that date; and (2) managerial employees who have taken a discretionary leave of absence without pay from their City employment on or before December 31, 1989.

Board of Ethics Opinion No. 650

In a series of early opinions, the Board of Ethics ruled that a City employee on any kind of leave was subject to the entire Code of Ethics, as though he or she was still actively working for the City. See Board of Ethics Opinion Nos. 13, 59, 102, 111, 112, 160 and 176.

The Board of Ethics modified this position in its Opinion No. 650, issued in 1983, finding that such employees should only be subject to the Code's post-employment restrictions, stating:

... the real situation of a person who has taken the necessary formal steps to retire or resign or has been laid off but remains on the payroll until accumulated leave (such as terminal leave, annual leave or compensatory leave) is exhausted, is that he has left City service for all practical purposes ...

This holding also applied to City employees on a discretionary leave of absence.

Conclusion

We find that Board of Ethics Opinion No. 650 is consistent with the provisions of the revised Chapter 68 of the Charter. Accordingly, we hold that the post-employment restrictions of the current Code of Ethics apply to a City employee who has resigned or retired, has been terminated, or is on a discretionary leave of absence before the effective date of the post-employment restrictions of revised Chapter 68.

NEW YORK CITY
CONFLICTS OF INTEREST BOARD

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Dated: November 21, 1989