

Advisory Opinion No. 90-4

By letter to the Conflicts of Interest Board (the "Board") dated February 21, 1990, Mayor David N. Dinkins requested an opinion as to whether the conflicts of interest provisions in Chapter 68 of the New York City Charter "[r]equire that I be restricted in any way in performing my duties as Mayor and as a member of the Board of Estimate with respect to cable television issues involving Time Warner, Inc."

In particular, the Mayor asked whether Chapter 68 limits him in conducting the performance of his official duties with respect to the consideration by the Board of Estimate, of which he is a member,¹ concerning the renewal of two Manhattan cable franchises² in which Time Warner has an interest.³

¹ The members of the Board of Estimate are the Mayor (Chairman), the Comptroller, the President of the City Council and the five Borough Presidents. Under the old Charter, which remains in effect until July 1, 1990, the franchise process is concentrated in the Board of Estimate and its Bureau of Franchises.

As of July 1, 1990, the Bureau of Franchises will be eliminated, and the new Department of Telecommunications will have authority over voice, video and data businesses. Charter Section 362. Under the new Charter, the Franchise and Concession Review Committee will have final approval of proposed franchises. The Committee consists of the Mayor, the Director of the Office of Management and Budget, the Corporation Counsel, an additional appointee of the Mayor, the Comptroller, and the Borough President of the borough in which the franchise is located. Charter Sections 371 and 373.

² A franchise is a grant by an agency of the right to occupy the City's property for a specific term,

generally not exceeding 25 years, to provide a public service. Charter Sections 362 and 363.

³ In June 1989, the Board of Estimate approved the transfer of six cable franchises which were separately affiliated with Time and Warner to the new merged entity, Time Warner. This approval was conditioned upon the merger taking place in the form then contemplated. Since the structure of the merger changed, another vote by the Board of Estimate may be required.

Our opinion does not address this issue, about which the Mayor also inquired, because it is not clear at this time whether it will come before the Board of Estimate again.

The Mayor's request was submitted well in advance of the time the renewal question was to be considered by the Board of Estimate.⁴

Background

Time Warner's Interests in City Cable Franchises

In Manhattan, Time Warner has a majority interest in American Television and Communications Corporation ("ATC"), which holds the cable franchise for southern Manhattan through its wholly-owned subsidiary, Manhattan Cable Television. Through ATC, Time Warner also owns half of Paragon Communications, the northern Manhattan franchisee.

Time Warner has a franchise in western Brooklyn through Warner Communications, doing business as Brooklyn-Queens Cable.

Time Warner also has a cable franchise for northeastern Queens through Brooklyn-Queens Cable. Through ATC, Time Warner owns American Cablevision of Queens, which holds the franchise for northwestern Queens.

The cable franchisee for central and southern Queens is Queens Inner Unity Cable System ("QIUCS"), a joint venture between a Time Warner subsidiary and

⁴ A hearing is scheduled for April 18, 1990, and a vote is anticipated in May or June.

Queens Inner Unity Cable Systems ("Inner Unity".)
Inner Unity is itself a joint venture in which Inner
City Broadcasting Company ("Inner City") has a forty
percent interest.

Inner City

The Mayor was a founding shareholder of Inner City
and an officer and director of this privately-held
company. In 1985, before he became Borough President
of Manhattan, he sold his shares in Inner City to his
son for \$58,000, plus interest, due on or before
January 1, 1991. To date, he has received no payments
from his son for these shares, which represent
approximately 1 percent of the company.⁵

By letter dated August 28, 1986, then Manhattan
Borough President Dinkins requested an opinion from
this Board's predecessor, the Board of Ethics, as to
whether he could vote on resolutions before the Board
of Estimate that affected the Queens cable franchise in
which Inner City had an interest and also whether he
could discuss that franchise with elected officials or
City employees.

By letter dated October 8, 1986, the Board of
Ethics recommended to the Manhattan Borough President

⁵ See the Mayor's letter to the Board dated
February 22, 1990; and his letter as Manhattan Borough
President to the Board of Ethics dated August 28, 1986.

that he should not vote on resolutions before the Board of Estimate or participate in discussions of matters affecting Inner City, "[b]ecause your doing so might create the appearance that you were using your position to benefit your son, who is a shareholder."⁶

Relevant Charter Sections

Charter Section 2604(b)(2) provides that "[n]o public servant shall engage in any business, transaction or 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." (Emphasis added.)

Charter Section 2604(b)(3) provides that:

⁶ The opinion of the Board of Ethics was predicated on former Charter Section 2604(c)(2), which provided that no City employee:

[s]hall use or attempt to use his position to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for himself or any person, firm, corporation or other entity with which he is associated; he shall be deemed "associated" with each person who is a close relative by blood or marriage, with each person with whom he has a business or other financial relationship and with each firm, corporation or other entity in which he has a present or potential substantial interest, direct or indirect;

This section, essentially unchanged, was renumbered as Section 2604(b)(3) in revised Chapter 68, effective January 1, 1990.

No public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant. (Emphasis added.)

Pursuant to Charter Section 2601(5), a person "associated" with a public servant includes "[a] spouse, child, parent or sibling" and "[a] person with whom the public servant has a business or other financial relationship...."

Discussion

It is the opinion of the Board that the Mayor has an indirect private interest in Inner City, for the purposes of Charter Section 2604(b)(2), based on the history of the Mayor's involvement with Inner City as an incorporator, as an officer, and as a director, and his sale of one percent of Inner City's stock to his son.

It is also the Board's opinion that the Mayor is "associated" with his son for the purposes of Charter Section 2604(b)(3); in addition to their familial relationship, the Mayor has a financial relationship with his son resulting from his son's obligation to pay him for the Inner City stock.

* * *

Whether or not Chapter 68 of the Charter limits the Mayor in carrying out his official duties with respect to cable television issues involving Time Warner depends on the nature of the official action in issue. For example, the Board determined that a decision on the ULURP applications before the Board of Estimate involving the Manhattan cable franchises would have no apparent effect on QIUCS, the Queens cable franchise in which Inner City has an interest. Accordingly, by letter dated March 21, 1990, the Board advised the Mayor that Chapter 68 of the Charter did not preclude his voting as a member of the Board of Estimate on the ULURP applications.

In contrast, it is the opinion of the Board that the renewal of the Manhattan franchises may affect Inner City's interest in QIUCS in several respects. First, the outcome of the City's negotiations with the Manhattan franchises may have precedential value when the QIUCS franchise is up for renewal. Second, pursuant to "matching" clauses in the Queens cable franchises, QIUCS may be required to increase its public access and government channels to match the number of such channels agreed to by the Manhattan

franchises. Finally, if the current Manhattan franchises are not renewed, Inner City could be among the companies interested in bidding on those franchises.

We believe that under these circumstances, the Mayor is prohibited from passing on the Time Warner franchise renewal under Charter Section 2604(b)(2).

Moreover, it is our opinion that the Mayor's participation as a member of the Board of Estimate in matters involving Time Warner's cable franchise renewals could create an appearance that he was conferring a benefit on a company in which his son has a 1% interest. Charter Section 2604(b)(3).

We share the view of the Board of Ethics, our predecessor, that high-level officials have a special obligation to avoid even the appearance of impropriety.

See, e.g., Board of Ethics Opinion No. 686 at p. 4.

Conclusion

For the reasons set forth above, with respect to the Mayor's specific question concerning the Board of Estimate vote on the renewal of the Manhattan cable franchises, it is the opinion of the Board that Chapter 68 of the Charter requires that the Mayor recuse himself from matters before the Board of Estimate involving this issue, delegating his authority to the

extent permitted by law.

The Mayor also asked the Board for an opinion as to whether Chapter 68 of the Charter requires that he be restricted in any way in performing his duties as Mayor with respect to cable television issues involving Time Warner. With respect to this general inquiry, we cannot, without knowing the particular facts and issues, determine what other official actions by the Mayor regarding cable television issues involving Time Warner might affect the Queens cable franchise in which Inner City has a stake.

Merrell E. Clark, Jr.
Chair

Robert J. Mc Guire

Beryl R. Jones

Dated: April 16, 1990