

**Advisory Opinion No. 90-5**

City Council President Andrew Stein has asked the Conflicts of Interest Board (the "Board") for an opinion as to whether it would be a conflict of interest under Chapter 68 of the New York City Charter for him to participate as a member of the Board of Estimate<sup>1</sup> with respect to petitions for renewal of two cable franchises partially owned by Time Warner, Inc. ("Time Warner"), in light of the fact that his brother and father have an interest in a company that has no cable interests, which is a partner of Time Warner.

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<sup>1</sup> 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.

## Background<sup>2</sup>

### Time Warner's Agreement with Price Communications

On March 2, 1990, Time Warner entered into an agreement with Price Communications Corporation ("Price"), a nation-wide diversified communications company whose primary businesses, in addition to cellular operations, are owning and operating television and radio stations. The Board has been advised that Price has no cable interests.

Pursuant to this agreement, for \$13.3 million, Time Warner acquired 25% of Price's wholly-owned subsidiary, the Pricellular Corporation ("Pricellular"), which acquires and operates cellular telephone systems. According to an article in the New York Times dated March 3, 1990, a spokesman for Time Warner said that the company "[b]elieves the cellular telephone business is a good one and this investment provides an interesting opportunity to explore it."

Time Warner also has an option to purchase up to 50% of Pricellular, which would entitle it to receive an additional 333,333 warrants to purchase Price common stock at \$10.00 per warrant.<sup>3</sup> If Time Warner exercises

<sup>2</sup> See letters to the Board from Mr. Stein's special counsel dated March 21, March 23 and March 30, 1990.

<sup>3</sup> A warrant is an option issued by a company giving the holder the right to buy certain securities, generally common stock, at a specified price and for a limited time.

its warrants, it will own 3.6% of Price, or up to 5.4% of the parent if it exercises its option on Pricellular. Time Warner will also receive five-year warrants to purchase 666,667 shares of Price common stock at \$11.88 per warrant.

The agreement also provides that Price may receive a profit participation of up to \$50,000 annually if Time Warner creates a "Legal Channel" for cable television.

#### Time Warner's Manhattan Cable Franchises

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

The current franchises for Manhattan Cable TV and Paragon Cable expire on August 17, 1990. It is estimated that these franchises are together worth \$1 billion.

#### Mr. Stein's Family Interests in Price

Mr. Stein does not personally have any holdings in Price or Pricellular. However, his brother and his father do. Pursuant to a contract which expires in

1991, Mr. Stein's brother is the publisher of The New York Law Journal and The National Law Journal, both of which are owned by Price. He also has 72,199 options to purchase shares of Price stock.<sup>4</sup> Mr. Stein's father owns less than 300 shares in Price.

#### 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) prohibits a public servant from using or attempting 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." Under Charter Section 2601(5), a person or firm "associated" with a public servant includes his or her parent or sibling.

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<sup>4</sup> At close of business on the day the agreement was announced, Price's shares closed at \$5.50, up 37.5 cents, on the American Stock Exchange. Time Warner rose \$1.75 a share, to \$97.875, on the New York Stock Exchange.

### Discussion

It is the opinion of the Board that Mr. Stein has an indirect private interest in Price for the purposes of Charter Section 2604(b)(2), based on his brother's employment by Price, his brother's ownership of a significant number of options in the company and his father's ownership of shares in Price. It is also the opinion of the Board that Mr. Stein is "associated" with his father and brother under Charter Section 2604(b)(3).

Whether the renewal or non-renewal of Time Warner's cable franchises will affect Time Warner's business dealings with Price in such a way as to affect, in turn, Mr. Stein's brother or father is speculative, but clearly possible. We believe that this possibility rises to the level of an indirect "private interest" which would prohibit Mr. Stein's passing on the Time Warner franchise renewal under Charter Section 2604(b)(2).

Moreover, it is our opinion that Mr. Stein'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, e.g., obtaining more capital, on a company in which his brother has a substantial

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 Nos. 620, 651 and 686.

#### Conclusion

For the reasons set forth above, it is our opinion that Chapter 68 of the Charter requires that Mr. Stein recuse himself from matters before the Board of Estimate involving the renewal of the Time Warner Manhattan cable franchises, delegating his authority to the extent permitted by law.

Merrell E. Clark, Jr.  
Chair

Beryl R. Jones

Dated: April 16, 1990

Robert J. McGuire did not participate in this opinion.