

## Advisory Opinion No. 91-2

The Conflicts of Interest Board has received two requests from public servants, both seeking to determine whether it would be a violation of Chapter 68 of the New York City Charter if an agency of the City of New York awarded a contract to perform legal services to a law firm with which their spouses are associated. As we explain below, it is our conclusion that such a determination depends on the circumstances of each case. We have determined that it would be a conflict of interest for the contract to be awarded in one case; however, in the other case, we have determined that it would not be a conflict.

### Background

The first request involves a public servant whose spouse is a sole practitioner who wants to respond to a Request for Proposals (RFP) announced by a City agency in which the public servant is employed. The RFP sought proposals for the provision of legal services for the agency. The agency is precluded from providing these services because of a conflict of interest.

The public servant in this case holds a managerial

position in the agency. In addition, the public servant's supervisor and other individuals with whom the public servant has regular contact are members of the RFP selection committee.

The second request involves a public servant whose spouse is a named partner in a law firm that wishes to respond to the same Request for Proposal announced by the City agency which employs the public servant. In this case, the public servant holds a non-managerial part-time position. The division to which this public servant is assigned would not ordinarily be involved in the referred matters.

#### Discussion

Employees of agencies of the City of New York are public servants subject to the ethical constraints of Chapter 68 of the Charter. As such, they may not have "ownership interests" in any firm which is engaged in business dealings with the City, including contracts for the performance of services. Charter Sections 2601(19), 2601(16), 2604(a)(1)(a). A prohibited ownership interest is defined by Charter Sections 2601(11) and (16) to include an interest in a sole proprietorship or partnership. The ownership interests which are prohibited under Charter Section 2604 include not only interests which are held directly by the

public servant, but also interests which are held by a public servant's spouse. Charter Section 2601(16). Thus, a public servant would ordinarily have a prohibited interest if a contract were awarded to a law firm with which the public servant's spouse was associated.

Chapter 68, however, permits public servants who hold ownership interests in firms which subsequently enter into business dealings that are prohibited under Charter Section 2604(a) to disclose the interest to the Board for a determination whether the interest, if maintained, would be in conflict with the proper discharge of the public servant's official duties. It is in light of this provision that we consider the requests of the public servants.

#### Conclusion

It is our conclusion that the first public servant's spouse may not be awarded the contract, although it would be permissible in the second case. In the first matter, it is our view that the public servant is not sufficiently isolated from either the award of the contract or the performance of the contract to avoid the ethical constraints of Chapter 68. The public servant is in a managerial position and is in regular contact not only with those individuals

who will be involved in the selection process but also the on-going supervision of the contract.

In the second case, however, the public servant is separated from both the award of the contract and the on-going supervision of the contract. Neither the public servant nor the division to which the public servant is assigned is involved in the process by which the RFP will be filled. In addition, neither the public servant nor the division to which the public servant is assigned will have any on-going involvement with the referred matters. It is therefore our conclusion, that there will be sufficient distance between the contract and this public servant that a contract may be awarded to the firm.

Sheldon Oliensis  
Chair

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Robert J. McGuire

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Dated: February 8, 1991