

Advisory Opinion No. 91-8

The Conflicts of Interest Board has received requests from two former public servants for waivers of the prohibition in Section 2604(d)(2), contained in Chapter 68 of the City Charter, which provides in pertinent part that: "[n]o former public servant shall, within a period of one year after termination of such person's service with the city, appear before the city agency served by such public servant...."\* This one-year appearance ban became effective on April 1, 1990, as part of the Charter revision of Chapter 68 and was designed to strengthen its post-employment restrictions.

There is no provision in Chapter 68 explicitly authorizing a waiver of the one-year ban on appearances before the public servant's former agency. Charter

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\* "Appear" means to make any communication, for compensation, other than those involving ministerial matters. See Charter Section 2601(4). A "ministerial matter" means an administrative act, including the issuance of a license, permit or other permission by the City which is carried out in a prescribed manner and which does not involve substantial personal discretion. See Charter Section 2601(15).

Section 2604(e), however, provides that:  
A public servant or former public servant may hold or negotiate for a position otherwise prohibited by this section, where the holding of the position would not be in conflict with the purposes and interests of the city, if, after written approval by the head of the agency or agencies involved, the board determines that the position involves no such conflict. Such findings shall be in writing and made public by the board.

In commenting on this section, the Charter Revision Commission made clear its intent to permit waivers of the prohibitions upon the holding of positions (including those which apply during City service and the post-employment prohibitions) when not in conflict with the City's purposes and interests. Such waivers must be approved by the agency head and the Board and are intended to give relief "in otherwise inequitable situations." See Report of the New York City Charter Revision Commission, December 1986-November 1988, Vol. II at 184.

Given this legislative history, we interpret Charter Section 2604(e) to permit us to waive the one-year appearance ban in Charter Section 2604(d)(2), when justified by compelling circumstances in a particular case. We believe it important, however, that such waivers be granted sparingly, and only in exigent

cases.

The first request for a waiver of the one-year ban is from a former public servant who advised the Board that he believed his appearances before the former division of his former agency on behalf of a private firm, within the year after he left the agency, would be in furtherance of certain agency objectives. The former public servant submitted a letter from the agency head, who was also his former agency head, stating the belief that such appearances would not be in conflict with the City's interests.

We believe that many former public servants could provide similar justifications for permitting their appearance before their former agencies before the expiration of the one-year period in Charter Section 2604(d)(2). Granting a waiver under the circumstances here present would seriously dilute this post-employment restriction and run counter to the Charter Revision Commission's intent. Consequently, this request is denied.

The second request for a waiver is from a former public servant who was offered a position with a firm which has a contract to manage certain sites operated by his former agency. If the public servant accepts

the position, he would be involved in frequent appearances before his former agency. The agency head represented to the Board that the availability of the former public servant's expertise as an employee of this firm would materially help the agency's efforts to meet certain court-imposed deadlines. We conclude that a waiver of Charter Section 2604(d)(2) should issue under these circumstances, so that this former public servant may appear before his former agency within one year after the termination of his City service, to assist in meeting the court deadlines.

Sheldon Oliensis  
Chair

Benjamin Gim

Beryl R. Jones

Robert J. McGuire

Shirley Adelson Siegel

Dated: August 14, 1991

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