

Advisory Opinion No. 92-5

Two candidates for appointment to a City commission have asked the Conflicts of Interest Board for opinions as to whether, consistent with Chapter 68 of the City Charter, they may serve on this commission and maintain their private professional practices. One candidate is a principal in a firm that has several projects requiring approvals of the commission. The other candidate is a principal in a firm which may have such projects in the future.

Members of this commission, who serve without compensation, are subject to the conflicts of interest provisions in Chapter 68 which apply to public servants generally. Except as provided in Charter Sections 2604(a)(3) and 2604(e), a public servant may not have an "ownership interest" in or a "position" with a firm, as these terms are defined in Chapter 68, which the public servant knows is engaged in business dealings with his or her agency.* See Charter Section

*An ownership interest in a firm is an interest held by a public servant, his or her spouse or unemancipated child, which exceeds five per cent of the firm or an investment of \$25,000, and any lesser interest when managerial control is exercised, but does not include any interests in any pension plan, deferred

2604(a)(1)(a). Such business dealings include any license, permit, grant or benefit which is not ministerial, i.e., which is not carried out in a prescribed manner and which involves substantial personal discretion. See Charter Sections 2601(8), 2601(15).

Under Charter Section 2604(a)(3), when a person who, before becoming a public servant has an ownership interest that would be prohibited under Chapter 68 after he or she becomes a public servant, such ownership interest must be disclosed to the Board, which then issues an order as to whether or not such interest, if maintained, would be in conflict with the public servant's official duties. In making this determination, Charter Section 2604(a)(4) requires the Board to take into account the following factors: the nature of the public servant's official duties; the manner in which the interest may be affected by any action of the City and the appearance of conflict to the public.

Pursuant to Charter Section 2604(e), a public

compensation plan or mutual fund. See Charter Section 2601(16).

A position with a firm means a position such as an officer, director, trustee, employee or any management position, or an attorney, agent, broker or consultant to the firm. See Charter Section 2601(18).

servant may hold a position which is otherwise prohibited under Chapter 68, when the Board determines, after receiving the written approval of the public servant's agency head, that such position involves no conflict with the purposes and interests of the City.

In this instance, both candidates for appointment to the commission are principals in their firms and thus have both ownership interests in and positions with their firms, as these terms are used in Chapter 68.

The first candidate's firm has business dealings with the commission, i.e., projects which are currently before the commission for approvals. We have determined that no conflict of interest would be created if this candidate is appointed to the commission, having taken all of the factors in Charter Section 2604(a)(4) into account, provided that he recuses himself from the commission's business dealings with his firm.

We understand such recusal to require that he will not vote on any matters which involve his firm's business dealings with the commission, or be otherwise involved, directly or indirectly, in such business dealings. This includes, but is not limited to, participating in the commission's discussions,

attending meetings with City officials and others and receiving copies of relevant documents.

The Board has also determined, having received the written approval of the head of the commission, that this candidate's position with his firm would not conflict with the City's interests if he serves on the commission. See Charter Section 2604(e).

Inasmuch as the second candidate's firm does not currently have any business dealings with the commission, he may be appointed without any further action by the Board. He must, however, make an appropriate disclosure to the Board, at such time as his firm does undertake a project requiring the commission's approval, or otherwise has other business dealings with the commission, so that we may proceed as set forth in the foregoing provisions of Chapter 68.

Sheldon Oliensis
Chair

Benjamin Gim

Beryl R. Jones

Robert J. McGuire

Shirley Adelson Siegel

Dated: January 10, 1992

