

Advisory Opinion No. 92-9

The New York City Law Department has asked the Conflicts of Interest Board for an opinion as to whether, consistent with Chapter 68 of the New York City Charter, Barry F. Sullivan may be appointed as Deputy Mayor for Finance and Development and retain his ownership interest in and positions with the First Chicago Corporation ("FCC") and the First National Bank of Chicago ("FNBC").\*

As Deputy Mayor for Finance and Development, Mr. Sullivan will be responsible for overseeing the implementation of business, industrial and commercial development policies for the City. Mr. Sullivan has outstanding qualifications for this position, having had an impressive career in banking and finance and substantial experience in bringing together the private, public and not-for-profit sectors.

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\* The facts stated herein are based on representations to the Board by the Law Department, which has authorized the use of Mr. Sullivan's name and the names of FCC and FNBC in this opinion. See Charter Section 2603(c)(3) which requires the Board to make public its advisory opinions with such deletions as may be necessary to prevent disclosure of the identity of any public servant or other involved party.

Mr. Sullivan recently retired as the Chairman of the Board and Chief Executive Officer of FCC and FNBC, with which he entered into a consulting agreement before his retirement. Pursuant to this agreement, which continues through December 31, 1994, Mr. Sullivan will be available at reasonable times to provide consulting services to FCC, FNBC and their affiliates and subsidiaries, taking into account his other commitments and activities and allowing for reasonable advance notice of the need for his assistance.

Mr. Sullivan has a significant compensation package under this agreement, including a sizeable annual salary, a furnished office in Chicago, pension and other benefits. He also owns, controls or has options on a substantial amount of First Chicago Common Stock.

The Law Department has advised the Board that it is aware of only one business dealing with the City involving FCC and FNBC, through an FNBC investment banking affiliate and wholly owned subsidiary, First Chicago Capital Markets, Inc. ("Capital Markets"). Capital Markets is one of approximately 27 investment banking firms which market New York City's General Obligation Bonds. These firms were selected to participate in the City's underwriting group through

the submission of proposals as part of a Request for Proposal process. These proposals were reviewed by representatives of the Office of the Comptroller, the Office of Management and Budget, the Office of the Deputy Mayor for Finance and Economic Development, the Law Department and the City's financial advisors.

Five investment banking firms were selected as co-senior managers, with the lead co-senior manager being rotated from deal to deal among this group.

Approximately 22 other firms were selected as co-managers and divided into two groups: the first group consists of thirteen co-managers and the second group consists of nine firms (one of which is Capital Markets), which generally move into the management group following a rotation schedule. When there is a departure from this rotation, such as when a General Obligation Bond sale is unusually large or complex, the entire second group of firms is given additional management responsibilities; the level of a particular firm's involvement is subject to City review in consultation with the co-senior managers.

The Law Department has advised the Board that Mr. Sullivan will take precautions, both as Deputy Mayor for Finance and Development and as a consultant to FCC and FNBC, to recuse himself from any direct or indirect

involvement concerning any business dealings or potential business dealings which FCC, FNBC or any of their subsidiaries or affiliates has or may have with the City while he is Deputy Mayor for Finance and Development.

As Deputy Mayor for Finance and Economic Development, Mr. Sullivan will not be given any documents or correspondence, be invited to meetings or be involved in any way with any matters which concern the City's business dealings or potential business dealings with FCC, FNBC and their affiliates or subsidiaries. In addition, anyone who reports to Mr. Sullivan who is involved directly or indirectly with any such matters will report on these matters to First Deputy Mayor Norman Steisel. Mr. Sullivan has agreed to make his recusal clear in a memorandum to the Mayor and to his staff, the Comptroller and the Director of the Office of Management and Budget.

In addition, Mr. Sullivan, FCC and FNBC have agreed to take certain precautions with respect to Mr. Sullivan's position as a consultant, for the purpose of shielding him from any involvement in their current or potential business dealings with the City. FCC and FNBC have agreed that while Mr. Sullivan is Deputy Mayor for Finance and Development, they will not ask

him to provide any advice concerning any business dealings or potential business dealings involving FCC, FNBC and their subsidiaries and affiliates and the City or any City-controlled entity. It is also understood that Mr. Sullivan will recuse himself from any such matters and not disclose to FCC, FNBC or any of their subsidiaries or affiliates any confidential information concerning the property, affairs or government of the City of New York which is obtained as a result of his official duties and not otherwise available to the public. FCC and FNBC have agreed to the foregoing conditions, in writing, with the understanding that neither FCC or FNBC or their subsidiaries and affiliates are expected to cease or limit their present or future relationship with the City.

FCC and FNBC have also provided the Corporation Counsel with a list of their subsidiaries and affiliates (many of which are international), only one of which, Capital Markets, currently has business dealings with the City. This list will be updated by FCC and FNBC on an annual basis. In addition, arrangements have been made for the Law Department to be advised if FCC, FNBC or any of its subsidiaries and affiliates are seeking to do business with the City or are engaged in such business dealings, so that steps

can be taken to ensure Mr. Sullivan's recusal from such matters as Deputy Mayor for Finance and Development.

Mayor David N. Dinkins, having reviewed the facts and circumstances regarding the position which Mr. Sullivan holds with FCC and FNBC, has advised the Board, in writing, of his finding that Mr. Sullivan's holding this position does not conflict with the purposes and the interests of the City.

#### Relevant Charter Sections

Pursuant to Charter Section 2604(a)(1)(b), except as otherwise provided in Chapter 68, a public servant whose primary employment is with the City may not have an "ownership interest" in or a "position" with a firm which the public servant knows is engaged in business dealings with the City.\*\*

This prohibition is limited by Charter Section 2604(a)(3), which provides in pertinent part that, when

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\*\* For the purposes of Chapter 68, an ownership interest in a firm is an interest held by a public servant, his or her spouse or unemancipated child, which exceeds five percent 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 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, agency, broker or consultant to the firm. See Charter Section 2601(18).

a public servant or prospective public servant has a ownership interest under Chapter 68, he or she must disclose the interest to the Board and comply with its 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 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 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.

#### Conclusion

It is the opinion of the Board, that, for the purposes of Chapter 68 of the Charter, Mr. Sullivan has both an ownership interest in and a position with a firm which is engaged in business dealings with the City.

The Board has determined that it would not be a violation of Chapter 68 if Mr. Sullivan retains his

ownership interest in FCC and FNBC after he is appointed as Deputy Mayor for Finance and Development. See Charter Section 2604(a)(4). The Board has also determined that Mr. Sullivan's position as a consultant to FCC, FNBC and their subsidiaries and affiliates does not conflict with the purposes and interests of the City, based on the written approval of Mayor David N. Dinkins. See Charter Section 2604(e).

We have reached these determinations based on the representations made to the Board by the Law Department and as contained in materials submitted to the Law Department, in particular, those representations concerning precautions which Mr. Sullivan will take both as Deputy Mayor for Finance and Development and as a consultant to FCC and FNBC, regarding any matters which involve business dealings or potential business dealings which FCC, FNBC and their subsidiaries and affiliates have or may have with the City.

We understand this recusal, which will guard against any conflict of interest or the appearance of impropriety, to require that Mr. Sullivan will not be involved, directly or indirectly, in any matters which involve current or future business dealings which FCC, FNBC or its subsidiaries and affiliates may have with the City. This includes, but is not limited, to Mr.

Sullivan's participation in discussions or meetings with City officials or others and receiving copies of relevant documents.

Our determinations are also based on the Law Department's representations concerning the importance of Mr. Sullivan's services to the City; the limited business dealings which Capital Markets has with the City; that, to the Law Department's knowledge, Capital Markets is the only one of the many FCC and FNBC subsidiaries and affiliates which currently has business dealings with the City; that the Law Department will be advised if FCC, FNBC or any of its affiliates or subsidiaries is seeking to do business with the City; and that any advice which Mr. Sullivan provides to FCC and FNBC will, of course, be at times when he is not required to perform services for the City.

Inasmuch as FCC and FNBC are not limited in their business dealings with the City as a result of Mr. Sullivan's appointment as Deputy Mayor for Finance and Economic Development, we have also advised him to seek our advice if the nature or extent of the business dealings with FCC, FNBC or their subsidiaries and affiliates have with the City changes in any significant respect.

We recognize that there has been a tradition of distinguished executives in the private sector who have devoted their time and talent to public service, which has been of great value to the City, particularly in difficult fiscal times. We believe that the public is well served by encouraging this tradition, where, as here, significant safeguards have been created to insure that both the fact and the appearance of impropriety have been avoided.

See the Board's Opinion No. 92-6, in which we determined that the proposed Deputy Comptroller for Asset Management could retain an ownership interest in and position with a firm which has substantial business dealings with the Comptroller's Office under the circumstances as described in the opinion, which included precautions requiring his recusal from these business dealings.

See also Opinion Nos. 388, 400 and 400A of our predecessor, the Board of Ethics, interpreting former Chapter 68 of the Charter, which we have previously affirmed as being consistent with revised Chapter 68.

Beryl Jones  
Acting Chair

Sheldon Oliensis

Benjamin Gim

Robert J. McGuire

Shirley Adelson Siegel

Dated: March 23, 1992