

Advisory Opinion No. 92-11

An employee of the Department of Environmental Protection ("DEP") has asked the Conflicts of Interest Board for an opinion as to whether, consistent with Chapter 68 of the City Charter, he may sell certain land located in the upstate watershed area to the City.

This public servant has a non-managerial position with the agency, where his duties involve patrolling the area which includes the property at issue, which he acquired through inheritance. He would not be personally involved in negotiating the sale of the property to the City, which would be handled in the same manner as other City purchases in the upstate watershed area, with the City's initial offer being based on independent appraisals and surveys.

DEP's Commissioner has advised the Board that DEP is involved in a major effort to preserve the quality of the City's water supply system, which includes the acquisition of sensitive watershed land to insure that the land not be developed or otherwise used in a manner detrimental to the City's water supply system. He has

also advised the Board that the City's proposed acquisition of this property, which is located in one of the most sensitive areas of the watershed, is in the best interests of the City.

Pursuant to Charter Section 2604(a)(1)(b), except as otherwise provided in Chapter 68, a public servant may not have an ownership interest in a firm which is engaged in business dealings with the City. Charter Section 2601(11) includes a sole proprietorship in the definition of such a firm.

This prohibition is limited by Charter Section 2604(a)(3), which provides in pertinent part that, when a public servant holds an ownership interest which, after the public servant's acquisition of the interest, enters into a business dealing that would cause the ownership interest to be prohibited under Chapter 68, the public servant must disclose such 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.

In our view, the public servant is a sole proprietor with respect to his ownership of land, which he may not sell to the City absent our approval. See Charter Section 2604(a)(1)(b). Based on his representations and on the written approval of his agency head, the Board has determined that this public servant's proposed sale of land to the City under the circumstances as described does not conflict with the proper discharge of his official duties. See Charter Section 2604(a)(4).

Sheldon Oliensis
Chair

Benjamin Gim

Beryl R. Jones

Robert J. McGuire

Shirley Adelson Siegel

Dated: April 13, 1992