

Advisory Opinion No. 92-13

A former high-level public servant has asked the Conflicts of Interest Board whether, consistent with Chapter 68 of the New York City Charter, he may discuss certain matters on behalf of his private employer with City agencies that were not under his former jurisdiction.

Charter Section 2604(d)(3) provides that no elected official or the holder of certain appointed positions, shall, within a period of one year after the termination of such person's employment with the City, appear before any agency in the branch of City government served by such person.* "Appear" means to make any communication, for compensation, other than those involving ministerial matters. See Charter Section 2601(4).

* The appointed positions governed by Charter Section 2604(d)(3) are: Deputy Mayor, Director of the Office of Management and Budget, Personnel Director, Commissioner of General Services, Corporation Counsel, Commissioner of Finance, Commissioner of Investigation, and Chair of the City Planning Commission.

For the purposes of Charter Section 2604(d)(3), the legislative branch of the City consists of the Council and the offices of the Council; the executive branch of the City consists of all agencies of the City.

The public servant here involved falls within this category. Charter Section 2604(d)(3) accordingly prohibits him from communicating with agencies in the branch of government he served on behalf of his private employer, until one year has passed after the termination of his City service.

While Chapter 68 does not explicitly authorize a waiver of this one-year ban, we have interpreted a provision of this statute to give us the power to issue such waivers "where justified by compelling circumstances in a particular case." We have cautioned that such waivers should "be granted sparingly, and only in exigent circumstances." See the Board's Opinion No. 91-8. After deliberation, the Board has concluded that the policy enunciated in Opinion No. 91-8 precludes our issuing a waiver under these circumstances.

Sheldon Oliensis
Chair

Benjamin Gim

Beryl R. Jones

Robert J. McGuire

Shirley Adelson Siegel

Dated: April 30, 1992