

Advisory Opinion No. 92-28

A candidate for appointment as a councilmanic aide to a City Council member has asked the Conflicts of Interest Board for an opinion as to whether, consistent with Chapter 68 of the City Charter, he may maintain his private professional practice.

The candidate has a longstanding personal and professional relationship with the Council member with whom he would be serving as an aide. This prospective public servant has represented and seeks to continue representing the Council member in private matters on a pro bono basis.

The candidate also represents various not-for-profit corporations which occasionally receive grants and/or loans from various City agencies, including the Department of Housing Preservation and Development ("HPD") and occasionally the Council. Some of his clients apply to the Council for the conveyance of City-owned land pursuant to planned-use approval mechanisms. He also represents clients who buy properties at auction through the Division of Real

Property.

The Council member who seeks to employ the candidate is not currently a member of any City Council committee which has oversight responsibility for HPD or the Division of Real Property.

It is the opinion of the Board that this prospective public servant's representation of clients and their projects while land-use applications are pending before the Council would be a violation of Chapter 68. See Charter Section 2604(b)(6), which prohibits a public servant from representing private interests before his or her own agency or appearing directly or indirectly on behalf of private interests in matters involving the agency served by the public servant. Accordingly, the candidate should not work on any matters which his clients might have pending before the Council, and he should recuse himself from any matters which are already before the Council or are likely to come before the Council.

Because the Council member he would work for is not currently a member of any City Council committee with oversight responsibility for HPD or the Division of Real Property, the candidate's appearance before HPD or the Division of Real Property would not create a conflict of interest under Chapter 68, as long as he

complies with the guidelines for public servants who are engaged in the private practice of law, as provided in the Board's Advisory Opinion No. 91-7. These guidelines include, among others, a prohibition against the candidate engaging in the private practice of law during times when he is required to perform services for the City (see Charter Section 2603(b)(2)), and a prohibition against the candidate appearing as an attorney or counsel against the City Council in any litigation to which it is a party (see Charter Section 2604(b)(7)).

If, however, this Council member were to become a member of any committee with oversight over either such agency, the candidate may no longer appear before that agency on behalf of private clients, while he is employed as the Council member's aide. Because the agency would come before such committee for approvals or for funding, and because he would be functioning as an advisor to the Council member, any appearance by the candidate before that agency on behalf of private clients, while he is employed as a Councilmanic aide, would create the impression that he is using his official position to secure more favorable treatment for those clients. See Charter Section 2604(b)(3), which prohibits a public servant from using his or her

official position to secure any private gain or personal advantage for the public servant, or for any person or firm associated with the public servant.

It is also our opinion that this prospective public servant's continued representation of the Council member without compensation on private matters would violate Chapter 68 because this arrangement may create the appearance that he and the Council member have an ongoing business relationship. See Charter Section 2604(b)(14), which prohibits a public servant from having a financial relationship with another public servant who is a superior or subordinate of such public servant.

Sheldon Oliensis
Chair

Benjamin Gim

Beryl R. Jones

Robert J. McGuire

Shirley Adelson Siegel

Dated: November 9, 1992