

CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD

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Community School Boards
Political Fundraising

Charter Sections: 2601(2); 2604(b)(2), (3); (4) (9), (11), and (12); 2606(b) and (d)

Opinions Cited: 91-12, 2001-1

Advisory Opinion No. 2001-2

A member of a community school board¹ of the New York City Board of Education (the “BOE”) has requested the Board’s advice concerning soliciting contributions in support of his campaign for an elective office of the City. In more particular, the public servant asks whether he may solicit contributions from BOE employees who work in his community school district.

Background

For over three decades the elementary and middle schools of the BOE have been operated under a decentralized system which divides the City into thirty-two community school districts, each with its locally elected nine-member community school board and its appointed district superintendent. The community school board members are people who live in the school district

¹ “[C]ommunity school boards” are specifically listed among the agencies under the jurisdiction of the Conflicts of Interest Board. See Charter Section 2601(2).

(or whose children attend school in the district). They serve without regular compensation, but receive reimbursement for expenses up to \$125.00 per month (\$200.00 for the board chairman). The district superintendent is a full-time BOE employee and is the highest-ranking BOE employee in the district.

Until 1996, when the State legislature substantially amended the laws concerning the governance of New York City schools,² the community school boards were responsible for hiring, assigning, promoting, and discharging all district personnel. Now, except for the district superintendent, where the community board submits a list of no more than four names from which the BOE Chancellor selects the superintendent,³ and except for the board secretary, whom they hire,⁴ the community boards have no statutory role in district personnel matters. The law now vests that authority in the district superintendent.⁵ In fact, the 1996 amendments added a provision permitting the removal of a community school board member who “knowingly interfered with or was involved in the hiring, appointment or assignment of employees....” See Educ. Law Section 2590-1.2-a. As a federal court observed, understating the case, “the 1996 amendments limited the role of community board members over the hiring and firing of school personnel....”⁶

While the 1996 amendment reduced greatly, if not eliminated entirely, the community board’s official role in hiring, promoting, and firing district staff (except for the superintendent and the board secretary), the community board retains indirect authority and hence some

² See 1996 N.Y. Laws ch. 720.

³ See N.Y. Educ. Law Section 2590-e.1.

⁴ See N.Y. Educ. Law Section 2590-c.1.

⁵ See N.Y. Educ. Law Sections 2590-f.1(c) through (g).

⁶ Warden v. Pataki, 35 F. Supp. 2d 354, 358, *aff’d*, 201 F.3d 430 (2d Cir. 1999), *cert.denied*, 121 S.Ct. 122.

influence, both real and perceived, over district personnel matters. Each community board, for example, is responsible for preparing an annual evaluation of the performance of its district superintendent, an evaluation that naturally considers the educational progress of the district's schools. Such evaluations may call into question the performance of lower ranking employees, principals and assistant principals in particular. Other community board responsibilities, such as the approval of the district zoning plan, may, like the familiar redrawing of legislative districts following the census, bring before the decision maker the qualifications and the personalities of the employees involved. Likewise, too, the assignment of individual board members as liaisons to schools within their district places the community board members into close, official contact not only with school administrators, but often with teachers as well.

Against this background, a member of a community school board is seeking City elective office and asks the Board's advice regarding what restrictions, if any, Chapter 68 imposes upon his campaign fundraising, particularly upon his raising money from a natural constituency, namely, the BOE employees whose schools and whose students he has served as a community school board member.⁷

Discussion

Charter Section 2604(b)(2) prohibits a public servant from engaging in any private transaction, or having any private interest, which conflicts with the proper discharge of his or her official duties. As provided for in Charter Section 2606(d), the Board has identified by rule the use of City resources for non-City purposes and the performance of private activities during time

⁷ The Board is informed that there may be 10 to 20 community school board members seeking City elective office in 2001, this year's being the first election in which the recently enacted term limits law will prevent City elected officials from seeking re-election.

when one is required to perform service for the City as conduct by a public servant that will violate Section 2604(b)(2). See Board Rules Sections 1-13(a) and (b).

Charter Section 2604(b)(3) prohibits a public servant from using or attempting to use his or her City position for the private advantage of the public servant or of anyone associated with the public servant.

Charter Section 2604(b)(4) forbids public servants from disclosing confidential City information or using such information for his or her private interest.

Charter Section 2604(b)(9)(b) provides that a public servant shall not **request** any subordinate public servant to engage in a political campaign. Charter Section 2604(b)(11)(c) similarly forbids requesting subordinates to make a political contribution. The legislative history of both provisions explicitly provides that they do not prohibit a subordinate public servant from volunteering to make a contribution or to participate in a campaign. See Volume II, Report of the New York City Charter Revision Commission, December 1986 – November 1988 (the “Report”), pp. 178-179. At page 178, the Report further states that subordinate is not limited to those directly reporting to a public servant, but includes those “whose terms and conditions of employment the public servant has the power to affect.”

Charter Section 2604(b)(12) provides that a public servant charged with substantial policy discretion may not request a contribution from **anyone** for a candidate for City elective office or for a City elected official seeking any elective office. In its Advisory Opinion No. 2001-1, the Board made clear that this prohibition applies to a public servant seeking contributions in support of his or her own candidacy. In Advisory Opinion No. 91-12, the Board determined that chairs and district managers of *community boards* did not possess substantial policy discretion within the meaning of Chapter 68.

Here, if the Board were to determine, in contrast with community board members, that community *school* board members **are** charged with substantial policy discretion, the inquiry would be over, *i.e.*, Section 2604(b)(12) would prohibit them from all fundraising in support of their candidacies. See Advisory Opinion No. 2001-1. Board Rules Section 1-02 provides that a public servant will have substantial policy discretion “if he or she has major responsibilities and exercises independent judgment in connection with determining important agency matters.” However the question might have been answered before the 1996 change in the school governance law, the Board now concludes that community school board members are **not** charged with substantial policy discretion. The prohibitions of Section 2604(b)(12) will therefore not apply to them.

Similarly, if the Board were to determine that the BOE employees in a community school district were the “subordinates,” within the meaning of Chapter 68, of the district’s school board members, Section 2604(b)(11)(c) would forbid the school board members from even asking those employees for political contributions. In fact, because of their role in selecting the district superintendent and the board secretary, school board members are plainly the superintendent’s superior, and the board secretary’s superior, within the meaning of Chapter 68 and may therefore **not** request the superintendent or the board secretary to make political contributions to their (or anyone else’s) campaign.

As to the other employees of the district, before the 1996 governance law change community school board members plainly had the power to affect the “terms and conditions of employment” of all district personnel, and therefore were their “superiors” within the meaning of Chapter 68. In light of the change in the law, however, and in particular the prohibition in Education Law Section 2590-1.2-a against any involvement in the district’s personnel decisions

(except of course for the superintendent and board secretary positions), the Board concludes that community school board members are not the “superiors” within the meaning of Chapter 68 of the district’s personnel, again except for the superintendent and the board secretary. Section 2604(b)(11)(c) therefore does not prohibit a community school board member from requesting contributions from BOE employees in his or her district.

The above conclusions, namely, that Section 2604(b)(12) does not apply to community board members and that Section 2604(b)(11)(c) forbids only their solicitations of the district superintendent and the board secretary, do not however resolve all Chapter 68 issues. In particular, in light of the reality and certainly the perception that community board members do have some influence, though diminished, over the careers of administrators, teachers, and other BOE staff throughout their district, the prohibition of Section 2604(b)(3) against using one’s City position for personal advantage has meaning when community board members are seeking support from these employees for their candidacies for elective office. While unsolicited contributions from employees in their district will not violate Chapter 68, community board members will violate Section 2604(b)(3) when they “target” fundraising at BOE employees. Impermissible “targeted” fundraising includes the following:

- (1) Community board members may not speak to BOE employees from their districts to ask them for campaign funds, whether face-to-face or by telephone.
- (2) Community board members may not send fundraising solicitations to BOE employees at their BOE place of employment.
- (3) Community board members may not send solicitations to BOE employees that identify the employee by title, *e.g.*, “Joan Smith, Principal, P.S. 999.”

In contrast, the use of general mailing lists (e.g., those of registered voters, those of contributors to past campaigns), even if those lists happen to contain the names of some BOE personnel, will not violate Chapter 68. The use, however, of BOE mailing lists that are not available to the general public would violate both Section 2604(b)(3) and Section 2604(b)(4), the latter prohibiting the use of confidential information for personal advantage.

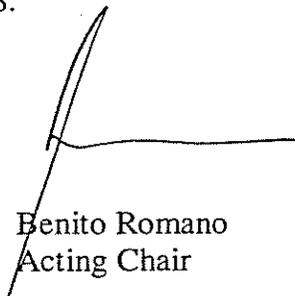
Finally, in addition to the above-discussed prohibitions on who may be solicited, the general prohibitions against the use of City time or City resources for private activities certainly apply to political activities. In that regard, community school board members may not use BOE facilities, BOE telephones, BOE copiers and fax machines, BOE postage, BOE office supplies, BOE letterhead, or any other BOE resources in support of their candidacies. See Board Rules Sections 1-13(a) and (b).⁸

Conclusion

Community school board members will violate Chapter 68 if they solicit funds in support of their candidacies for elective office from their district superintendent or their board secretary. Community school board members will violate Chapter 68 if they “target” other BOE personnel from their district for campaign contributions. Prohibited “targeted” fundraising includes face-to-face requests; requests sent to an employee’s BOE workplace; and requests that identify the recipient by BOE title or position. Requests to a general mailing list that happens to contain names of some BOE employees will not violate Chapter 68. Unsolicited contributions do not

⁸ For each violation of this provision, as with each violation of any other provision of Charter Section 2604, the Board may impose fines of up to \$10,000. See Charter Section 2606(b).

violate Chapter 68. Use of BOE facilities, or any BOE resources, in support of a school board member's candidacy will violate Chapter 68.



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