



# CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

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## Political Fundraising

Charter Sections: 2601(2), (9), and (10); 2603(j);  
2604(b)(2), (3), (11)(c), (12), and (15)

Opinions Cited: 2001-1

### Advisory Opinion No. 2003-1

Charter Section 2604(b)(12), among other things, prohibits appointed public servants with substantial policy discretion from directly or **indirectly** asking **anyone** for contributions to a candidate for “an elective office of the city.” In Advisory Opinion No. 2001-1, the Board advised that Section 2604(b)(12), where applicable, applies equally to a public servant who is the candidate and to a public servant who is a supporter of the candidate. In a case of first impression, a high-ranking public servant has requested the Board’s advice concerning whether that section prohibits soliciting contributions in support of a candidate for the office of district attorney of one of the City’s five counties. For the reasons set forth herein, the Board determines that the office of district attorney is *not* an “elective office of the city” within the meaning of Charter Section 2604(b)(12). High-ranking City officials may therefore engage

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in fundraising in support of candidates for the office of district attorney, subject of course to the restrictions, noted below, that Chapter 68 imposes on all political fundraising.

#### Relevant Charter Sections

Charter Section 2604(b)(12) states in relevant part: “No public servant, **other than an elected official**, who is a deputy mayor, or head of an agency or who is charged with substantial policy discretion as defined by rule of the board, shall directly or indirectly request any person to make or pay any political assessment, subscription or contribution for any candidate for **an elective office of the city** or for any elected official who is a candidate for any elective office.” (Emphasis added).

Charter Section 2601(9) defines “City” as the City of New York and includes an “agency” of the City.

Charter Section 2601(2) defines “agency” as a City, **county**, borough, or other office, the expenses of which are paid in whole or in part from the City treasury.

Charter Section 2601(10) defines an “elected official” as a person holding office as mayor, comptroller, public advocate, borough president, or member of the council – but not district attorney.

Rules of the Board Section 1-02(a) states that, for purposes of Charter Section 2604(b)(12) and Charter Section 2604(b)(15), a public servant is deemed to have substantial policy discretion if he or she has major responsibilities and exercises independent judgment in connection with determining important agency matters. Public servants with substantial policy discretion include, but are not limited to: agency heads,

deputy agency heads, assistant agency heads, members of boards and commissions, and public servants in charge of any major office, division, bureau, or unit of an agency.

### Discussion

Charter Section 2604(b)(12) prohibits appointed public servants with substantial discretion from fundraising for candidates for an “elective office of the city.” The question presented is whether the office of the district attorney is such an office. The term “elective office of the City” is not defined in the Charter. A review of the reports and of the transcripts of the meetings and hearing of the Charter Revision Commission of 1986-1988, which crafted this new provision, yields no information about the drafters’ intent in that regard.

Charter Section 2601(10) does, however, define “elected official” to include the mayor, comptroller, public advocate, borough presidents, and members of the council, a definition that does *not* include district attorneys.<sup>1</sup> The omission of the district attorney from the definition of “elected official” has a special significance for the question presented here, since it is only “elected officials” who are exempt from Section 2604(b)(12)’s prohibition against political fundraising by high-ranking public servants. Thus, if the term “elective office of the City” in Section 2604(b)(12) is construed, in contrast to Section 2601(10), to include the office of district attorney, that would

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<sup>1</sup> That this omission cannot be “cured” by interpretation seems to be a conclusion of the Law Department in Opinion Number 4-95, which notes that district attorneys are not “elected officials” under Chapter 68, but states “the exclusion of the district attorneys from the definition of ‘elected official’ in no way indicates that they are not covered by Chapter 68; rather, it means only that they are not subject to the special limitations and exceptions which apply to the City-wide elected officials (the Mayor, the

produce the anomalous result that incumbent district attorneys (who are not exempt “elected officials”) could not raise funds for their own re-election campaigns, but would need to resign before they could engage in fundraising for their own re-elections.

The Board also notes that the City’s Campaign Finance Law, as set forth in New York City Administrative Code Section 3-702, contains no such anomaly: the term “participating candidate” does not include district attorney, and the term “covered election” also does not include an election for the district attorney’s office. See New York City Administrative Code Sections 3-702(1), (10).

Charter Sections 2601(10) and 2604(b)(12) ought to be construed in harmony. Indeed, the Board can think of no reason why they should not be.<sup>2</sup> Thus, the Board concludes that the office of the district attorney is **not** an “elective office of the City” within the meaning of Charter Section 2604(b)(12), so that high-ranking appointed officials may fundraise for candidates – themselves or others – who are seeking the office of district attorney. The Board notes, however, that these appointed public servants must conduct any such fundraising activities in accordance with the other restrictions of Chapter 68: they may not use City time or resources for such fundraising; they may not use their City positions or titles in such fundraising; and they may not solicit political contributions from any City subordinate (see Charter Sections 2604(b)(2), (3), and (11)(c)).

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Comptroller, the Public Advocate), as well as the Borough Presidents and members of City Council.” (See pp. 3-4, emphasis added).

<sup>2</sup> Consistent with its Charter mandate to suggest possible amendments to Chapter 68 (see Charter Section 2603(j)), the Board notes that it may be desirable to amend Charter Section 2601(10) to include district attorneys within the definition of “elected official,” and at the same time to define “elective office of the city” in Section 2604(b)(12) as co-extensive with that definition.

Conclusion

The Board has determined that the district attorney's office is not an "elective office of the City" within the meaning of Charter Section 2604(b)(12), so that high-ranking appointed public officials may fundraise on behalf of candidates for election to the office of district attorney. These public servants must, however, conduct any such fundraising on their own time, without the use of City resources, and without the use of their City position or title; and they may not solicit contributions from any of their City subordinates.

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Dated: March 20, 2003