



CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD

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**Community Boards
Prohibited Conduct**

Angela Mariana Freyre
Board Member

Charter Sections: 2601(12), (16); and 2604(a)(1)(a), (b)(1)(b), (b)(3), (b)(4), and 2800

Bruce A. Green
Board Member

Opinions Cited: 91-3, 95-18

Jane W. Parver
Board Member

Advisory Opinion No. 2003-2

Benito Romano
Board Member

The Conflicts of Interest Board (the "Board") has received a request for advice from a community board member with an ownership interest in a licensed liquor facility¹ as to whether he may 1) chair the community board committee which makes liquor licensing recommendations and 2) whether he may vote on such recommendations.

For the reasons set forth herein, the Board determines that owners of licensed liquor facilities, such as bars and restaurants, may not chair a community board committee that considers the licensing of such facilities. The Board further determines that a community board member who also has an interest in a licensed liquor facility may not vote on matters concerning his or her

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¹ For the purpose of this opinion, "licensed liquor facility" shall mean any establishment that requires a license or permit to sell alcoholic beverages pursuant to the New York State Alcoholic Beverage Control Law, including, but not limited to, the sale of wine, beer, or liquor.

own licensed liquor facility, but may vote on matters concerning other licensed liquor facilities.

Background

The community board member in question has advised that he is part-owner and corporation president of a licensed liquor facility, in his case a bar/lounge. The business is located in Manhattan, in a particular area of the City that is dense with other bars and restaurants. The community board member also serves as a co-chair of his community board's business and licenses committee, which is charged with making recommendations to the full community board on whether or not to support liquor license applications to the State Liquor Authority.

Community Boards and the Liquor License Process

The City has fifty-nine community boards, each with up to fifty members, appointed by the borough president in consultation with the Council members whose districts include the community board. See Charter Section 2800. Among other duties, the community boards serve in an advisory capacity on such matters as zoning, community planning, City budget, and the delivery of municipal services. Each member of the community board must have a residence, a business, or other significant interest in the community board's district.

Each community board operates through its committees, and most, if not all, boards have a committee that regularly considers applications for liquor licenses by establishments within the district, and makes recommendations to the full community board on whether to support such applications. The vote of the community board, in turn, is forwarded to the New York State Liquor Authority, which considers, but is not bound by, the community board's recommendation.

The Board is informed that it is not uncommon for the community board committees responsible for considering applications for liquor licenses to include among their members those community board members who hold ownership interests in bars, restaurants, or other licensed liquor facilities in the community district, since those are the board members most interested in and knowledgeable about such matters.

Discussion

Chairing the Liquor License Committee

In Advisory Opinion No. 95-18, the Board determined that “a community board member may not chair a committee if that committee is likely to have matters before it which concern the community board member's private interests or employment.” See Advisory Opinion No. 95-18 at p. 5. The Board noted that since the chair of a committee can greatly influence its agenda, the chair could use his or her position for the private advantage of a firm in which the chair has an interest. Id.

Here, the community board member owns an interest in a facility in the district with an on-premises liquor license, and chairs the committee that considers liquor license matters. Applications concerning the member's own facility may therefore come before the committee upon initial application, renewal, or modification. Similarly, liquor license applications of neighboring and potentially competing facilities will certainly come before the member's committee. Since such matters plainly “concern” the private interests of the member, who, as chair, has considerable power to affect the outcome of such applications, the Board now determines that a community board member with an interest in a licensed liquor facility in the community district may not chair the community board committee that makes recommendations concerning liquor licenses.

Voting on Liquor Licenses

Charter Section 2604(b)(1)(b) provides that a public servant who has an interest in a firm which is not prohibited by Charter Section 2604(a) “shall not take any action as a public servant particularly affecting that interest, *except that . . .* in the case of an appointed community board member, such action shall not be prohibited, but no member may vote on any matter before the community or borough board which may result in a *personal and direct economic gain* to the member or any person with whom the member is associated” (emphasis added). In Advisory Opinion No. 91-3, the Board interpreted Charter Section 2604(b)(1)(b) to mean that, while a community board member may not vote on a matter which may result in a personal and direct economic gain to the member or to someone associated with the member, the member may participate in the discussions of the community board on such matters, provided that he or she first discloses that interest. See Advisory Opinion No. 91-3 at p. 4.

Here, the question is whether the prohibition against voting applies not only to votes concerning one’s own liquor licenses (where the member clearly has a “personal and direct” economic interest and therefore may not vote), but also to votes concerning applications from other facilities in the district, including those facilities that may be seen as competitors of the member’s facilities.

The Board recognizes that the opportunity for a community board member who owns a licensed liquor facility to vote on the liquor licensing of another, possibly competing, facility within the district, *could* arguably result in an economic advantage to the member. However, the extent of such advantage is speculative, and could vary greatly depending on the nature and location of the two competing establishments. Moreover, any impact on the member’s facility is an *indirect* one, not the “direct economic gain” prohibited by Charter Section 2604(b)(1)(b).

Accordingly, rather than attempting to promulgate uncertain, and possibly confusing, guidelines governing permissible and impermissible votes, the Board determines that a community board member who has an interest in a licensed liquor facility may vote on the liquor licenses of other facilities.

Conclusion

Community board members will violate Chapter 68 if they simultaneously have an interest in a licensed liquor facility and chair a community board committee responsible for considering liquor license applications. Community board members will not violate Chapter 68 if they have an interest in a licensed liquor facility and vote on matters involving liquor license applications of others, but, consistent with Charter Section 2604(b)(1)(b), they may not vote on their own license applications or those of persons with whom they are associated.



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Dated: May 7, 2003