



CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

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Political Activities

Charter Sections: 678, 1054(a), 1054(b), 1055(3), 1057, 2601(1), 2601(19), 2604(b)(12), and 2604(b)(15)

Advisory Opinion No. 2003-5

The Conflicts of Interest Board (the “Board”) has received a request for advice as to whether a member of the Voter Assistance Commission (the “VAC”) may also serve as a district leader of a political party.

For the reasons discussed below, the Board determines that members of the VAC have “substantial policy discretion” within the meaning of Section 2604(b)(15) of Chapter 68 of the City Charter and are therefore prohibited from holding the position of district leader.

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Background

The individual in question has for some time served as a district leader of a political party. Recently, he was appointed to serve on the VAC, an entity prescribed by the City Charter.

The VAC is charged with advising “all appropriate officials on matters relating to voter registration and voter participation in New York

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[C]ity.” See Charter Section 1054(a). The VAC’s members serve without compensation. The VAC has the statutory authority to monitor the City’s voter assistance program; make recommendations and undertake activities for the purpose of encouraging and facilitating voter registration; receive, review, and forward reports; and hold public hearings, at least once annually, regarding voter registration and participation. See Charter Section 1054(b). The VAC also appoints, on the nomination of the Mayor, a coordinator (the “Coordinator”) with the authority to adopt rules in furtherance of VAC’s mission. See Charter Section 1055(3). Furthermore, when the VAC has a budget, which it currently does not, it has the opportunity to expend City funds on activities to encourage voter registration.

Relevant Law

Charter Section 2604(b)(15) prohibits high-ranking public servants, including all public servants “charged with substantial policy discretion as defined by rule of the board,” from holding certain political party positions, including the position of “assembly district leader of a political party.”

Board Rules Section 1-02 defines a public servant charged with substantial policy discretion to be one with “major responsibilities and [who] exercises independent judgment in connection with determining important agency matters.” The rule further states that such public servants shall include, without limitation, “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.” (Emphasis added.)

On the other hand, Charter Section 2601(19) excludes “unpaid members of advisory committees” from the definition of “public servant.” Charter Section 2601(1) in turn defines

“advisory committee” to mean an “entity constituted to provide advice or recommendations to the city and **having no authority to take a final action on behalf of the city** or take any action which would have the effect of conditioning, limiting or requiring any final action by any other agency, or to **take any action which is authorized by law.**” (Emphasis added.)

Discussion

The member of the VAC has suggested to the Board that: 1) he is an unpaid member of an “advisory committee” and hence not a public servant within the meaning of Charter Section 2601(19); and 2) even if he were deemed to be a public servant, the VAC should be exempt from Charter Section 2604(b)(15), as the Law Department, in Opinion No. 2-96, has determined the Board of Elections to be.

With respect to the first question, the VAC is plainly not an “advisory committee.” It has, for example, the power to appoint a City official, the Coordinator, who, in turn, has the power to promulgate City rules. This appointment power is “authority to take a final action of behalf of the city” within the meaning of Charter Section 2601(1). The VAC also has the authority to “undertake activities for the purpose of encouraging and facilitating voter registration,” and hence, in contrast to members of advisory committees, has the authority to “take any action which is authorized by law.”¹ Accordingly, the Board concludes that VAC members are public servants. VAC members are not only public servants, but are also among those charged with “substantial policy discretion,” since Board Rules Section 1-02 explicitly lists

¹ Compare these powers with, for example, the role of the advisory board to the City's Department of Juvenile Justice, as set forth in Charter Section 678, which is exclusively empowered to advise, make recommendations, and submit an annual report of its activities to the Mayor.

members of boards and **commissions** among those with substantial policy discretion for the purposes of Charter Sections 2604(b)(12) and (b)(15).

Regarding the second question, namely, whether members of the VAC might be exempted from the prohibition of Charter Section 2604(b)(15), the Board concludes that members of the VAC are not exempt. Law Department Opinion 2-96 found that members of the Board of Elections (the “BOE”) were exempt from that provision. That determination was based on Article II, Section 8, of the New York State Constitution, which provides that all laws regulating boards charged with duties pertaining to elections “shall secure equal representation of the two political parties.” Section 3-300 of the Election Law extends the requirement of bipartisan appointments to the **staff** of the BOE as well. Thus, where the legal mandate was “for parties to play a prominent role in the election process,” the Law Department concluded that BOE officials were exempt from the rule of Charter Section 2604(b)(15) prohibiting high-ranking public servants from holding certain party positions. Unlike the BOE, the VAC is not mandated by law to involve political parties in a prominent role. On the contrary, the Charter has mandated that the VAC be operated in a “strictly **non-partisan** manner.” See Charter Section 1057 (emphasis added). Accordingly, the stated reason for such an exception for the BOE simply does not apply to the VAC. The Board therefore determines that, while serving as a member of the VAC, the public servant may not simultaneously serve as a district leader or hold any of the other political party positions set forth in Charter Section 2604(b)(15).

Conclusion

By virtue of his position on the VAC, the public servant is one charged with substantial policy discretion. Therefore, it would violate Chapter 68 for him to serve simultaneously on the VAC and as a district leader.



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