

# CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

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## Political Campaigns

Steven B. Rosenfeld  
*Chair/Board Member*

Charter Sections: 2601(4) and (8); 2604(a)(1)(b); 2604(b)(2), (3),  
(4), (6), (9), (11), (12), and (14); 2604(e)

Angela Mariana Freyre  
*Board Member*

Opinions Cited: 93-24, 94-8

Bruce A. Green  
*Board Member*

Jane W. Parver  
*Board Member*

Benito Romano  
*Board Member*

### Advisory Opinion No. 2003-6

A high-ranking appointed City official has requested the Board's advice concerning the following two questions:

Mark Davies  
*Executive Director*

(1) Whether City employees who work on their own time for

Joan R. Salzman  
*Deputy Executive Director  
& Chief of Enforcement*

political campaigns (including the re-election campaigns of their superiors)

Wayne G. Hawley  
*General Counsel*

that participate in the City's campaign finance system have a position with a

Ute O'Malley  
*Director of  
Administration*

firm "engaged in business dealings with the city," within the meaning of

Joanne Giura-Else  
*Acting Director of  
Financial Disclosure*

Charter Chapter 68, and hence require a waiver from the Board under Charter

Christopher M. Lall  
*Director of MIS*

Section 2604(e) in order to do so?

Astrid B. Gloade  
*Deputy Chief of  
Enforcement*

(2) Whether City employees who thus moonlight for political

campaigns may communicate with City agencies on behalf of campaign

organizations?

As more fully set forth below, in Advisory Opinion Nos. 93-24 and 94-8, the Board ruled that it is not a violation of Chapter 68 for public

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servants to serve as paid consultants to campaign organizations, provided that they adhere to the several restrictions and limitations on outside activities contained in Charter Section 2604(b). We reaffirm those Opinions, subject to the same cautions therein cited (and cited again below) and subject to a clarification regarding communications with the City. But in those Opinions, the Board had no occasion to consider the relationships between political campaigns and the City's campaign finance system, which is administered by the Campaign Finance Board, and other City agencies such as the Board of Elections. Those relationships are the principal focus of this Advisory Opinion.

#### Background

With only the most rare of exceptions, a political campaign for City elective office is conducted by a political committee, which is an entity that obtains an Employer Identification Number from the Internal Revenue Service, opens a bank account, designates a treasurer, and then files with the Board of Elections in the City of New York (the "BOE"). The committee is the entity that employs campaign staff. If the candidate chooses to participate in the City's campaign finance program, it is the committee that receives public matching dollars from the City's Campaign Finance Board (the "CFB").

City employees who work for a political committee on a campaign might therefore have occasion to communicate on behalf of the committee with various City agencies, including in particular the BOE and the CFB. Background on those agencies and on those potential communications follows.

The Campaign Finance Board is the independent City agency responsible for administering the City campaign finance program. Candidates for City elective office who

choose to participate in the program can qualify to have private contributions matched with public money. In return, the participating candidates agree to full disclosure of their campaign finances, strict limits on their contributions and expenditures, and a full audit of their finances. Representatives of candidates, in particular the campaign's treasurer or a designated liaison to the CFB, therefore regularly interact with staff of the CFB, filing disclosure reports, responding to CFB questions about those reports, meeting with CFB audit staff in connection with the mandated audit of the campaign (which audits may continue well after Election Day), and representing the committee before the CFB in enforcement proceedings.

The Board of Elections in the City of New York is an administrative body of ten commissioners, two from each borough, appointed by the City Council to four-year terms upon recommendation by the two major political parties. Among the BOE's functions, in addition to operating the polling places and counting the ballots, are the receipt of reports disclosing campaign income and expenditures, the receipt and review of the petitions filed on behalf of the candidates in order to qualify for a place on the ballot, and the hearing of objections to a candidate's petitions filed by an opposing candidate. Campaign representatives therefore communicate with the BOE, first in filing the designation of treasurer, later in filing the designating petitions and disclosure reports, and possibly in the challenge to, or defense of, designating petitions.

In addition, representatives of campaign committees sometimes communicate with the Conflicts of Interest Board (the "Board") itself, since candidates for elective City office are required by Administrative Code Section 12-110 to file personal financial disclosure reports with the Board. Those communications typically involve questions for Board staff concerning filing deadlines and the required content of the report. Campaign representatives may also

communicate with those City agencies that regulate the posting of literature on public property or with those agencies that rent City property for campaign events.

#### Relevant Law

Pursuant to Charter Section 2604(a)(1)(b), a public servant whose primary employment is with the City may not also hold a position with a firm engaged in “business dealings with the city.” Charter Section 2601(8) defines “business dealings with the city” to mean any transaction with the City involving “the sale, purchase, rental, disposition or exchange of any goods, services, or property, any license, permit, *grant or benefit*, ...but shall not include any transaction involving...any ministerial matter.” (Emphasis added.)

Charter Section 2604(e) permits the Board to grant waivers of this prohibition where the holding of the position would not be in conflict with the purposes and interests of the City, if, after receiving written approval by the head of the agency or agencies involved, the Board determines that the position involves no such conflict.

Charter Section 2604(b)(2) provides that no public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties.

Charter Section 2604(b)(6) provides that no public servant shall, for compensation, represent private interests before any City agency or appear directly or indirectly on behalf of private interests in matters involving the City. “Appear” means to make any communication, for compensation, other than those involving ministerial matters. See Charter Section 2601(4).

Charter Sections 2604(b)(9) and (11) prohibit a public servant from even asking a public servant who is subordinate to him or her to participate in a political campaign or make a political contribution.

Charter Section 2604(b)(12) prohibits certain high-level public servants, and those charged with substantial policy discretion, from requesting any person to make or pay a political assessment or contribution for any candidate for elective office of the City, or for any City elected official who is a candidate for other elective office.

Charter Section 2604(b)(14) prohibits a City superior and subordinate from entering into a business or financial relationship.

#### Discussion

In Advisory Opinion Nos. 93-24 and 94-8, the Board considered the question of City employees working as paid consultants to campaign committees for candidates for City elective office. In Advisory Opinion No. 93-24 we noted with favor that the employee was volunteering his services and was not pressured to work in the campaign. In Advisory Opinion No. 94-8 we favorably noted that work the employee wanted voluntarily to undertake on behalf of the campaign was unrelated to the employee's official duties. Those Opinions concluded that such uncoerced activities did not violate Chapter 68, so long as the employees complied with other prohibitions in Chapter 68, such as those on the use of City time or resources for outside activities, as well as the prohibitions of Charter Sections 2604(b)(9), (11), and (12) noted above. In so ruling, the Board relied in large measure on the legislative history of Chapter 68, in which the Charter Revision Commission made it clear that the Conflicts of Interest Law was not intended to prohibit City employees from volunteering for political campaign work. The Charter

Revision Commission's commentary stated that "(n)othing prohibits any public servant from volunteering to participate in a political campaign." See Volume II, Report of the New York City Charter Revision Commission, December 1986-November 1988, p. 178.

While concluding that moonlighting on political campaigns does not *per se* violate Chapter 68, the Board cautioned in those Opinions that Charter Sections 2604(b)(2), 2604(b)(3), and 2604(b)(4) still prohibit public servants from engaging in private activities, including political campaigning, during City time or using City resources; from using their official positions to secure any private advantage, direct or indirect, for the public servant or for any person or firm associated with the public servant; and from disclosing any confidential information concerning the City, or utilize such information to advance any direct or indirect financial or other private interest. See also Board Rules Section 1-13. In addition, the Board reminded public servants that Charter Sections 2604(b)(9) and 2604(b)(11) prohibit them from requesting that a subordinate participate in a political campaign, whether as an unpaid volunteer or for pay, or make any political contribution whatsoever, and that Section 2604(b)(12) sharply restricts the political fundraising activities of certain high-level officials and those charged with substantial policy discretion.

But Advisory Opinion Nos. 93-24 and 94-8 did not consider the City's then relatively new campaign finance system, or the likelihood that campaign organizations could receive matching funds through the CFB, thus arguably engaging in "business dealings with the city" within the meaning of Charter Section 2604(a)(1)(b). Nor did either of those Opinions consider whether individual public servants working for campaigns could "appear" before the CFB in connection with such funding, or before other City agencies, such as the Board of Elections, on behalf of the campaign organizations.

1. Does Receipt of CFB Matching Funds Constitute “Business Dealings with the City”?

We are now called upon to consider, first, whether a campaign committee or organization that files an application with the CFB for matching funds, and/or subsequently receives those funds, is a firm “engaged in business dealings” with the City, so that a City employee working for such an entity would violate Charter Section 2604(a)(1)(b). If so, then such employment would require individual waivers by the Board under Charter Section 2604(e), which would require the employee’s “agency head” to approve such employment *and* for the Board to determine that it did not “conflict with the purposes and interests of the city.”

The above-quoted comments of the Charter Revision Commission, and our Advisory Opinion Nos. 93-24 and 94-8 based thereon, state that an employee has the privilege to volunteer to work in political campaigns. It would be inconsistent with those comments and Opinions for us now to conclude that if a campaign committee participates in the CFB matching grant program, then it is a firm “engaged in business dealings” with the City and, therefore, a public servant may no longer exercise the privilege of volunteering to work for that campaign committee.

If we were to conclude that, henceforth, public servants must apply for a waiver prior to voluntarily participating in political campaigns, that conclusion would have the practical effect of rescinding Advisory Opinion Nos. 93-24 and 94-8, since nearly all campaign committees do receive CFB matching funds. Moreover, it would create a host of new problems. For example, City agency heads would be called upon to approve or disapprove their subordinates’ political activities, creating at least a chilling effect, if not an actual restriction, on the political activities

that the Charter Revision Commission clearly intended not to curtail. Likewise, the Section 2604(e) waiver process would then require this Board to decide on a case-by-case basis whether individual campaign activities did or did not conflict with the purposes and interests of the City, a decision process we do not think was ever envisioned for this Board under Chapter 68.

The Board accordingly construes Chapter 68 as excluding receipt of matching fund campaign financing through CFB from the definition of “business dealings” in Charter Section 2601(8). And it follows, therefore, that a City employee who moonlights for a campaign organization receiving matching funds from the CFB does not violate Charter Section 2604(a)(1)(b) and hence will not require a waiver of that provision from the Board pursuant to Charter Section 2604(e).

While the foregoing ruling will apply to most City employees, there are undoubtedly certain City employees, such as those who are employed by the CFB itself or those who have some authority over, or responsibility for oversight of, the CFB, whose participation in a campaign that receives CFB funds may well violate the prohibition of Charter Section 2604(b)(2) against having a position in conflict with the proper discharge of their official duties. Employees in such positions should seek further advice from the Board before accepting paid or even unpaid positions in campaigns for City elective office.

2. May City Workers Moonlighting on Political Campaigns Communicate with City Agencies?

The second question presented is whether, absent a waiver from the Board under Section 2604(e), City employees working for compensation for political campaigns may communicate with City agencies on behalf of those campaigns.

Charter Section 2604(b)(6) prohibits City employees from communicating, for compensation, with a “city agency” on behalf of any “private interest.” Notwithstanding the Charter Revision Commission’s intent that public servants should be allowed to work for political campaigns, it seems clear that a campaign committee is a “private interest,” within the meaning of Section 2604(b)(6). While Chapter 68 does not define “private interest,” a campaign committee operates not to serve the public, but rather, to serve an individual’s personal interest in becoming (or remaining) an elected official. Accordingly, we conclude that Section 2604(b)(6) does prohibit City employees moonlighting on campaigns *for compensation* from communicating with City agencies (including the CFB) on behalf of a campaign committee. In appropriate cases, with the requisite written approval of the head of the City agency for which the public servant works, the Board may, pursuant to Charter Section 2604(e), determine that such communication would not conflict with the purposes and interests of the City and, therefore, issue a waiver of the prohibition against such communication.

3. May a City Employee Have a Paid Position in a Superior’s Election Campaign?

Finally, consideration of the foregoing raised a related issue which was not specifically posed to the Board, but which ought to be answered: may a City employee work *for compensation* on his or her superior’s campaign for election or re-election? Outside the context of election campaigns, an outside employment relationship between a superior and a subordinate City employee would expressly violate Charter Section 2604(b)(14). But the City Charter Revision Commission’s commentary on Section 2604(b)(9), which prohibits a superior from asking a subordinate to participate in political activity, makes clear that “(n)othing prohibits any public servant from volunteering to participate in a political campaign.” See Volume II, Report of the New York City Charter Revision Commission, December 1986 – November 1988, p. 178.

We are confident that, had the Charter Revision Commission addressed the question of whether campaign workers could be *compensated* for voluntarily working on their superiors' campaigns, they would have answered that question in the affirmative. In other words, we do not think that, in using the word "volunteering," the Charter Revision Commission meant to preclude a public servant from voluntarily seeking and obtaining a paid position on a campaign. We believe that "volunteer," as used in the quoted passage, refers to lack of coercion, not to the absence of compensation.

The Board believes that there is even less cause for concern that a public servant who is being paid for his or her campaign services has been or will be pressured by his or her City superior to engage in campaign work. City employees may therefore volunteer to work on their superiors' election or re-election campaigns, and may also accept payment for those services without violating Section 2604(b)(14), so long as they are not coerced into doing so, nor requested to do so, by a City superior.<sup>1</sup>

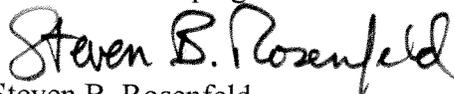
We also take this opportunity to repeat the cautions, set forth in Advisory Opinion Nos. 93-24 and 94-8, accompanying outside political work. Public servants may not use City time or resources for such work, may not use their City positions to benefit the campaign, and may not ask a subordinate to work for or give to a political campaign. Nor may public servants with substantial policy discretion engage in any kind of fundraising for City races.

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<sup>1</sup> The Board cautions, however, that Charter Section 2604(b)(14) prohibits all other financial relationships between subordinates and superiors (e.g., loans, subleases of apartments, sales of personal property). That a public servant may be paid to work for a superior's political campaign is a limited exception to this prohibition, one grounded, as noted above, in the Charter history on volunteering to engage in political activity.

Conclusion

It is not necessary for a City employee who moonlights for a campaign organization to obtain a waiver from the Board in order to do so. City employees may indeed volunteer to work for political campaigns, including their superiors' election campaigns, and may also accept payment for these services. City employees who do accept compensation are prohibited, however, from communicating with City agencies (including the CFB) on behalf of a campaign, absent a waiver from the Board. Finally, CFB employees or other City employees who have some authority over, or responsibility for oversight of, the CFB should seek advice from the Board before accepting paid or even unpaid positions in campaigns for elective City office.

  
Steven B. Rosenfeld  
Chair

Angela Mariana Freyre  
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Jane W. Parver  
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Dated: November 24, 2003

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