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Savings Clubs Superior-Subordinate Relationships

Charter Sections: 2601(5), 2604(b)(2), (b)(3), and (b)(14), 2606(d)

Opinions Cited: 98-12

Advisory Opinion No. 2004-2

The Conflicts of Interest Board (the "Board") has received a request for an opinion from a City agency asking whether a number of its employees may enter into an informal savings club arrangement, more commonly known as a "sou-sou," with each other. Because the Board's inquiry on this matter has indicated that such sou-sou arrangements may be prevalent among public servants in many City agencies, it was decided to make this the subject of a public Advisory Opinion.

For the reasons set forth below, it is the Board's determination that it would be a violation of the conflicts of interests provisions of Charter Chapter 68 for a public servant to enter into a sou-sou agreement which included his or her City superior or subordinate, but that it would not be a

violation for public servants to enter into such an arrangement if the members have no superior-subordinate relationships with one another.

Background

A sou-sou has been described as an “informal system of rotating credit.” Dennis Hevesi, Finding a Home Inside the Golden Door, N.Y. TIMES, January 17, 1999. One person generally coordinates the arrangement, typically free of charge, though sometimes for a fee. The participants in a sou-sou are required to pay a certain amount of money to the coordinator at regularly scheduled intervals, often coinciding with the City’s payroll cycle. At each such interval, all the collected money (less any fee to the coordinator) is disbursed to one of the members; a different member receives the entire pot (or “hand”) each time – the timing of one’s hand often scheduled to coincide with a predicted future need. Once each member has received a hand, a new cycle begins, often with the same members, but with an adjustment of the order of receipt. A sou-sou thus serves as a method for the members to make interest-free loans to one another on a rotating basis.

At the City agency in question, the sou-sou participants include public servants whose City jobs are in superior-subordinate relationships with other members. It is also apparent that in at least some sou-sou arrangements the funds are collected and disbursed in City offices during regular working hours.

Relevant Law

Charter Section 2604(b)(2) provides that no public servant shall engage in any business transaction or private employment, or have any financial interest, direct or indirect, which is in conflict 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 time, letterhead, personnel, equipment, resources, or supplies for non-City purposes 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)(14) provides that no public servant shall enter into any business or financial relationship with another public servant who is a superior or subordinate of such public servant.

Discussion

In Advisory Opinion No. 98-12 the Board addressed whether public servants may sell beauty supplies to subordinate City employees. The Board determined that such sales activities were prohibited by the Section 2604(b)(14) provision against entering into financial relationships with superior or subordinate employees. The Board noted the Charter Revision Commission's definition of the superior-subordinate relationship, which states:

[s]ubordinates are not limited to individuals directly under and reporting to the public servant, but include all individuals in lower positions in the organizational hierarchy of the agency, whose work the public servant has the power to direct or whose terms and conditions of employment the public servant has the power to affect.

See Volume II, Report of the New York City Charter Revision Commission, December 1986 - November 1988, p. 178.

Thus, the Charter flatly prohibits any "financial relationship" between two City employees, one of whom has the ability to affect the terms and conditions of the other's employment. The purpose of this prohibition is to "preserve the integrity of public service, to prevent City employees from being exposed to official coercion in their City positions, and to

prevent employees from using their City positions for personal gain.” See Advisory Opinion No. 98-12, p. 2.

Here, it is evident that members of a sou-sou do establish a “financial relationship” with one another. Each member is, at one time or another, lending money to, and borrowing money from, every other member. If, therefore, any member is a City superior or subordinate of another member, these members are in violation of Charter Section 2604(b)(14). As in any debtor-creditor relationship, the sou-sou members can default, leaving subordinates in debt to their superiors, or vice-versa, and creating precisely the kind of situation Charter Section 2604(b)(14) was designed to prevent. See COIB v. Marilyn Ross, COIB Case No. 97-225 (1997) (where the Board fined an assistant principal \$1,000 for borrowing \$1,000 from a subordinate teacher).

On the other hand, Section 2604(b)(14) would not prohibit a sou-sou composed entirely of public servants who are not in superior-subordinate relationships. However, the public servant members of such sou-sous must perform all activities in connection with the sou-sou during times when they are not otherwise required to perform services for their agency; they may not use their City positions or titles to obtain any private or personal advantage for themselves or other members of the sou-sou; and they may not use City equipment, letterhead, personnel, or other City resources in connection with these activities. See Charter Sections 2604(b)(2) and (b)(3).

Conclusion

City employees may not enter into a sou-sou in which their City superiors or subordinates are also members. Public servants who are not in superior-subordinate relationships may enter into a sou-sou, provided that they do not use City time or resources in furtherance of this activity

and that they do not use their City positions or titles to obtain any private advantage for other members of their sou-sou.



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Dated: November 22, 2004

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OPINION SUMMARY

OPINION NO: 2004-2

DATE: 11/22/04

CHARTER SECTION(S) INTERPRETED:

2601(5)
2604(b)(2), (b)(3), and (b)(14)
2606(d)

SUBJECT(S): Savings Clubs
Superior-Subordinate
Relationships

OTHER OPINION(S) CITED: 98-12

SUMMARY: City employees may not enter into a sou-sou in which their City superiors or subordinates are also members. Public servants who are not in superior-subordinate relationships may enter into a sou-sou, provided that they do not use City time or resources in furtherance of this activity and that they do not use their City positions or titles to obtain any private advantage for other members of their sou-sou.