



# CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

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## **Community Boards**

Charter Sections: 2604(b)(2), (b)(3), (b)(14)  
2800 (g), (f)

Opinions Cited: 93-21, 94-20

## **Advisory Opinion No. 2004-3**

The Conflicts of Interest Board (the "Board") has been asked whether it is a violation of the conflict of interest provisions Chapter 68 of the New York City Charter for an immediate family member of a community board member to serve on the staff of the community board.

For the reasons set forth below, the Board determines that it would violate Chapter 68 for anyone, including immediate family members, who is "associated with," or has a "financial relationship" with, a community board member within the meaning of Chapter 68 to serve on the staff of that member's community board.

## **Background**

The City has fifty-nine community boards, each with up to fifty members, appointed by the borough president in consultation

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with the Council members whose districts include the community board. See Charter Section 2800. Community boards are empowered to “employ such other assistants as it may require within budgeted appropriations for such purposes . . . .” Charter Section 2800(g).

Community board budgets currently average approximately \$170,000 per annum, so that the staff of a community board typically consists of a district manager and two or three other employees. The Board has been informed that in several community districts, relatives of community board members, including spouses and children of such members, serve as staff to the community board. In this capacity, these relatives work at the community board’s district office, usually under the direct supervision of the community board’s district manager, who, in turn, is appointed by the community board and serves at the board’s pleasure. See Charter Section 2800(f). Among other things, community board members vote to determine how the community board budget will be allocated, including allocating money for salary increases for the district manager and other community board staff.

**Relevant Law**

Charter Section 2604(b)(2) states: “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)(3) states: “No public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant

or any person or firm associated with the public servant.” Charter Section 2601(5) defines a person or firm that is “associated” with a public servant as including “a spouse, domestic partner, child, parent or sibling; a person with whom the public servant has a business or other financial relationship; and each firm in which the public servant has a present or potential interest.”

Charter Section 2604(b)(14) states: “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.” The Charter Revision Commission indicated that,

Subordinates 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.

In Advisory Opinion No. 93-21, the Board stated that it would be a violation of Charter Section 2604(b)(3) for a member of the City Council to nominate his or her family member for an appointment to a community board, an unpaid position. The Board stated that “[w]hile membership on a community board is an uncompensated position, there is a certain degree of power and prestige in holding such a position . . .” In addition, the Board noted that Charter Section 2604(b)(3) is “intended, among other things, to prevent City employees from abusing the public trust by exerting official influence to secure financial gain or special treatment *for family members* . . . It is also intended to preserve public confidence in government by helping to insure that official actions or decisions are motivated solely by the public interest, rather than private relationships or affiliations.” (Emphasis added).

## **Discussion**

There are two separate bases for concluding that close relatives of community board members, as well as others with whom the members have “financial relationships,” may not serve on the community boards’ staffs. First, Charter Section 2604(b)(3) prohibits public servants from using their positions to benefit anyone with whom they are “associated,” a term which includes spouses, domestic partners, children, parents, and siblings, and anyone else with whom the public servant has a financial relationship. The board’s ability to hire or fire the district manager, and to allocate scarce board budgets for staff salary increases, puts the board members in a position to directly benefit such “associated persons” if they are members of the board’s staff.

In addition, precisely because community board members have such power to affect the terms and conditions of employment of community board staff, the staff members are “subordinates” of the members, so that any “financial relationship” between a community board staff member and a community board member will violate Charter Section 2604(b)(14). Since a member clearly has a financial relationship with his or her spouse and dependent children, and may also have such a relationship with other family members (as well as non-relatives), it is clear that no such persons may serve on the staff of the community board.

In prior advisory opinions, the Board has noted that in order to avoid a violation of Charter Section 2604(b)(3), a public servant must be able to *effectively* recuse himself or herself from any issues involving “associated” persons. See Advisory Opinion No. 94-20 (where the Board determined that a City employee could not “effectively recuse herself” from matters involving the consulting services provided by her husband’s firm to

her City office; Opinion No. 94-20, p. 6). Here the Board similarly believes that a member of a community board cannot effectively be recused from all matters affecting community board staff. The power to hire or fire the district manager, and the power to allocate the board's limited budget, are at the core of a board member's function. Thus, if a close relative is on staff, the member will inevitably take action that affects the relative's employment. It will thus violate Charter Section 2604(b)(3) for a community board member to serve on a board that employs his or her spouse, child, parent, sibling, or any of the other "associates" listed in Charter Section 2601(5). Likewise, it will violate Charter Section 2604(b)(14) for persons with whom a board member has a "financial relationship" to become a subordinate of the member by serving on the board's staff.

### **Conclusion**

It would violate Chapter 68 for anyone "associated with" a community board member, including the member's spouse, domestic partner, parents, children, and siblings, to serve as staff to that member's community board. It would also violate Chapter 68 for any other person with whom a board member has a financial relationship to serve as a staff member.



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