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**Community Education Councils
Post-employment Waivers**

Charter Sections: 2604(a)(1)(a), 2604(d)(2), 2604(e)

Opinions Cited: 2006-1

Advisory Opinion No. 2007-1

The Conflicts of Interest Board (the "Board") has received a request from the Chancellor of the Department of Education (the "DOE") for a waiver to permit a resigning member of one of the DOE's Community Education Councils ("CECs") to appear before the DOE on behalf of her private employer during the first year after her resignation. Absent a waiver, such an appearance would be prohibited by Charter Section 2604(d)(2). Because the Board anticipates receiving additional similar requests in the future, it issues this opinion to delineate the circumstances in which it will issue such waivers and the conditions it will attach to such waivers.

Discussion

In Advisory Opinion No. 2006-1 the Board considered whether members of these CECs could, in addition to their volunteer

service on these parent councils in each of the DOE's 32 districts, maintain full-time jobs with firms that do business with the DOE. In that opinion, the Board observed that members of CECs who work at private firms doing business with the DOE would, absent a waiver from the Board pursuant to the authority of Charter Section 2604(e), be in violation of Charter Section 2604(a)(1)(a). However, the Board determined that upon the written application of the DOE Chancellor the Board would, in appropriate circumstances, grant waivers, subject to various conditions insuring that CEC membership would not be used to benefit the member's private employer. In determining what the "appropriate circumstances" might be, the Board looked to N.Y. Educ. Law §2590-e, noting that CECs "have no executive or administrative powers or functions, no involvement with contracts between vendors and their respective districts, and no power to determine how their districts spend funds." Opinion No. 2006-1, p.2.

Given this largely advisory role of CECs, the Board held that, on applications for waivers for current CEC members to maintain jobs with firms doing business with the DOE, the Board would consider the "agency served" to be limited to the DOE district which the CEC serves, not the DOE as a whole. Thus, the waivers granted with respect to CEC members' jobs will typically permit a CEC member to hold such a job provided that communications on behalf of his or her private employer with the DOE are limited to DOE districts *other than their own*.

With regard to CEC members' post-service contacts with DOE, the relevant Charter provision is Section 2604(d)(2), which prohibits former public servants from appearing, within one year of the termination of their City service, before the City

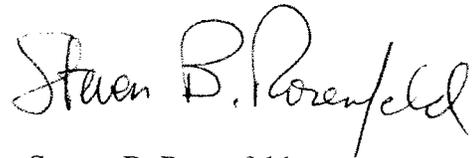
“agency served” by the public servant. The DOE is plainly the agency served by CEC members, so that former CEC members who appear before the DOE on behalf of their private employers within one year of the termination of their CEC service would, absent a waiver from the Board, be in violation of Section 2604(d)(2). However, as in the case of waivers to permit CEC members to maintain their “day jobs,” and again recognizing the limited powers of the CECs, the Board has determined that it will, upon written application by the Chancellor, typically grant waivers of the one-year appearance ban of Charter Section 2604(d)(2) on the condition that former CEC members have no dealings or contacts with the *DOE district on whose CEC they served* for a year after their CEC service has ended.

In the instant case, consistent with that guideline, upon the written application of the Chancellor, the Board determines, pursuant to Charter Section 2604(e), that it would not conflict with the purposes and interests of the City for the former CEC member to appear before the DOE on behalf of her private employer during the first year following the end of her CEC service, provided that she may not during that year appear before the DOE district on whose CEC she served.

Conclusion

In considering applications for former members of the Community Education Councils of the Department of Education for waivers of the one-year appearance ban of Charter Section 2604(d)(2), the Board will as a general matter consider the “agency served” to be the DOE district on whose CEC the member served. Upon the written

application by the DOE Chancellor for such waivers, the Board will typically grant such waivers on the condition that former CEC members may not appear during the first year following the end of their CEC service before the DOE district on whose CEC they served.



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