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**One-Year Post-Employment Appearance Ban
Political Endorsements**

Charter Sections: 2601(4), 2601(15), 2604(d)(2)

Opinions Cited: 2003-6, 2008-1

Advisory Opinion No. 2009-5

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The Conflicts of Interest Board (the "Board") received a request for advice from a former City employee who had recently resigned from her position on the staff of a City Council Member in order to accept a position with the campaign of a candidate (who is not the City Council Member for whom she had worked) for another City elective office. This former City employee asked whether in her first year after leaving City service she might contact officials and employees at her former City agency, which consists of the entire City Council and not just the office of the Council Member for whom she had worked, to seek those individuals' endorsements of the candidate for whom the former City employee was now working. For the reasons set forth below, the Board advised that this conduct would be permissible. Because the Board's advice addressed important post-employment and political activity questions under Charter Chapter 68, the

City's conflicts of interest law, the Board issues this public opinion reflecting the advice previously given.

Relevant Law

Charter Section 2604(d)(2) provides that no former public servant shall, within a period of one year after the termination of the public servant's service with the City, "appear before the city agency served by such public servant." "Appear" means to make *any communication*, including personal appearances, telephone calls, and letters, for compensation, other than those involving ministerial matters. *See* Charter Section 2601(4) (emphasis added). A ministerial matter means "an administrative act ... which is carried out in a prescribed manner and which does not involved substantial personal discretion." *See* Charter Section 2601(15).

Discussion

Here, the former public servant plainly sought to communicate on behalf of her new employer, the campaign; the proposed communication was thus clearly "for compensation" within the meaning of Charter Section 2601(4); and it was clearly not on a "ministerial matter." It likewise was within her first post-employment year and was to be a communication with officials and employees of her former City agency. Nevertheless, the Board has previously concluded that the prohibition on post-employment communications with the "[C]ity agency served" by former public servants contained in Section 2604(d)(2) relates only to communications with "officers or employees of their former agencies *acting in their official capacities.*" Advisory Opinion No. 2008-1, p. 5 (emphasis added). The provision does not, in contrast, prohibit compensated communications with former colleagues in their *personal*

capacities. Thus, for example, former City employees may, on behalf of their new private sector employers, call their former City colleagues to ask them to consider leaving City employment and joining them at their new private firms. Similarly, a City employee who leaves City service for the private practice of law may call an employee of his or her former City agency to seek that employee's *personal* legal business, for example, to perform estate planning work for the former colleague. In each case, the former City employee is communicating with the City employee about matters personal to the City employee and not about City matters. Such communications are thus with the individual contacted, not with the "agency served" and are accordingly permissible.

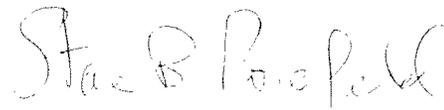
The question presented to the Board in the present case is whether the former City employee, in seeking to communicate for her new employer (the campaign) with City Council Members and/or employees to seek their endorsement of a candidate, was proposing to communicate with them in their official or their personal capacities. Put differently, are political endorsements by City public servants, whether elected or appointed, official actions or personal actions? The Board determined that political endorsements by public servants of the City are personal actions of those individuals. For that reason, for example, public servants, including elected officials, may not issue political endorsements on City letterhead and may not otherwise use City resources or staff in connection with their political endorsements. More generally, as the Board has repeatedly advised, public servants may not use City time or resources in connection with any political activities. *See* Advisory Opinion No. 2003-6, p. 10.¹

¹ In contrast with all other public servants, however, a City elected official will not violate Chapter 68 by using, or permitting others to use, the elected official's City title in connection with his or her endorsement of candidates for elective office.

Accordingly, since a political endorsement is determined to be a personal activity by a public servant, a communication with any public servant seeking that person's endorsement of a candidate is a communication seeking a personal, not an official, action. For that reason, the Board advised the former City employee in the instant case that it would not violate Chapter 68 for her to communicate, in her first post-employment year, with Council Members and Council employees to seek their endorsement of a candidate for elective office, because the action sought was a personal not an official action.

Conclusion

A former public servant will not violate the ban on communicating with his or her former City agency for one year after leaving City service by communicating during that year with employees or officials of that agency to seek those persons' endorsements of candidates for elective office, because such communications seek not official action by the agency but rather seek the personal action of those being solicited.



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