



CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

2 Lafayette Street, Suite 1010

New York, New York 10007

(212) 442-1400

Fax: (212) 442-1407 TDD: (212) 442-1443

Steven B. Rosenfeld
Chair Board Member

Monica Blum
Board Member

Angela Mariana Freyre
Board Member

Andrew Irving
Board Member

Burton Lehman
Board Member

Community Boards Community Education Councils

Charter Sections: 197-c(e), 2601(2), 2601(19),
2604(a)(1)(a), 2604(b)(1)(b),
2604(b)(2), 2800

Opinions Cited: 91-3, 93-2, 2006-1, 2007-1

Education Law Sections: 2590-c, 2590-e

Advisory Opinion No. 2010-1

Mark Davies
Executive Director

Wayne G. Hawley
*Deputy Executive Director
& General Counsel*

Julia Davis
*Director of Financial
Disclosure & Litigation
Counsel*

Carolyn Lisa Miller
Director of Enforcement

Alexander Kipp
*Director of Training &
Education*

Ute O'Malley
*Director of
Administration*

Derick Yu
*Director of Information
Technology*

The Conflicts of Interest Board (the “Board”) received a request from a City resident who serves as a member of both a community board and a community education council (“CEC”) of the New York City Department of Education (the “DOE”) seeking a determination as to the impact of the conflicts of interest provisions of Chapter 68 of the New York City Charter on her service on these two volunteer bodies. Because the Board’s advice in response to this request distinguished and significantly narrowed a prior Advisory Opinion regarding the now-superseded community school boards, the Board publishes this Opinion to explain and set forth its current advice regarding simultaneous service on both community boards and CECs.

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I. Background

The City resident who sought the Board's advice (hereinafter, "the public servant") serves on two bodies: a community board and a CEC.

First, she is a member of one of the City's fifty-nine community boards, each with up to fifty unpaid members, appointed by the Borough President in consultation with the City Council members whose districts include the community district served by the board. See Charter Section 2800. The members of a community board must live or work in the community district. Community boards serve as advisory bodies that provide recommendations to City agencies on such matters as zoning, community planning, City budgets, and the delivery of municipal services. Although the community boards are purely advisory, various statutory provisions require community board review before matters may be acted upon. For example, a large number of land use applications must proceed pursuant to the City's uniform land use review procedure, the first step of which, after certification by the Department of City Planning, is review by each affected community board. *See* Charter Section 197-c(e).

The public servant is also a member of one of the City's thirty-two CECs, one for each of the City's thirty-two community school districts. The CECs were created by the New York State Legislature in the school governance laws of 2002 and 2009 that, respectively, provided for and then renewed mayoral control of the City's public schools. The members of each CEC include nine parents of children who attend a public school in the district served by the CEC, as well as two additional members appointed by the Borough President. The CEC submits to the Chancellor of the DOE an annual evaluation

of the district superintendent, reviews the district's educational programs, and approves the zoning lines for district schools. *See* N.Y. Educ. Law §§ 2590-c and 2590-e.

As is often the case, the public servant's community board district and community school district significantly overlap. For this reason, matters that are considered by one body may well come before the other. In fact, in the case of the public servant, a proposal to relocate schools in her school district appeared likely to come before both her CEC and her community board. For this reason, she sought the Board's advice as to whether her consideration of the matter at the CEC would impose any restrictions on her participation in the community board's anticipated consideration of the same matter.

II. Relevant Law

Charter Section 2601(2) defines "agency" as, *inter alia*, a City department, including the Department of Education, of which CECs are a part.

Charter Section 2601(19) defines "public servants" as "all officials, officers and employees of the city, **including members of community boards** and members of advisory committees, except unpaid members of advisory committees shall not be public servants." (Emphasis added.)

Charter Section 2604(a)(1)(a) provides that "no public servant shall have an interest in a firm which such public servant knows is engaged in business dealings with the agency served by such public servant; provided, however, that, subject to paragraph one of subdivision b of this section, an appointed member of a community board shall not

be prohibited from having an interest in a firm which may be affected by an action on a matter before the community or borough board.”

Charter Section 2604(b)(1)(b) prohibits community board members from voting on any matter before the community board that may result in a personal and direct economic gain to the member or any person or firm with whom or which the member is associated.

Charter Section 2604(b)(2) prohibits a public servant from engaging in “any business, transaction or private employment, or [having] any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties.” This section has been described as Chapter 68’s “‘catch-all’ prohibition” (Volume II, *Report of the New York City Charter Revision Commission, December 1986-November 1988* at 175), prohibiting public servants from taking actions incompatible with their City duties, even though those actions might not be specifically proscribed by any other provision of Chapter 68.

III. Discussion

Recognizing, as provided for in Charter Section 2601(19), that members of community boards are public servants subject to the conflicts of interest law, this Board has issued a number of Opinions over the years addressing the application of Chapter 68 to the interests and conduct of community board members. In the first such opinion, Advisory Opinion No. 91-3, the Board advised that Charter Section 2604(b)(1)(b) prevented a community board member from *voting* on a matter that might result in a direct economic gain to the member or to a person or firm with whom or which the

member was associated. Nevertheless, recognizing that “City employees have a First Amendment right, albeit qualified, to express their personal views publicly on matters of public concern” (*id.* at 3), the Board advised that a member could participate in the community board’s discussion of that matter, provided that the member first disclosed his or her conflicting interest.

In that Opinion (and of particular relevance to the instant request for advice), this Board also determined that the considerable number of regular City employees who serve on community boards were prohibited from voting at the community board not only on matters in which they or persons associated with them had a personal and direct economic interest, but also on any matter that “*has been or may be considered by a City agency employing the member.*” Advisory Opinion No. 91-3 at 4 (emphasis added). The Board adopted the view of its predecessor, the Board of Ethics, that it was “[u]nseemly and inappropriate for an employee of a City agency to cast a formal vote [on a community board] which might be in opposition to a position theretofore or thereafter taken by his or her agency” (*id.* at 2) and based its determination that the same result was required under Chapter 68’s “catch-all” provision, Charter Section 2604(b)(2) – *i.e.*, that to permit the community board member to cast such a vote might well conflict with the proper discharge of his or her duties as a City employee.

Next, in Advisory Opinion No. 93-2, this Board considered the application of this holding to a community board member who was not a regular City employee but rather was also a member of one of the former community school boards. Prior to the mayoral control legislation noted above that abolished the community school boards, these boards had substantial executive and administrative authority. For example, they played a

prominent role in the hiring and firing of district personnel, most prominently selecting the district superintendent. Accordingly, in Advisory Opinion No. 93-2, this Board determined that it would violate Chapter 68 for a community board member who was also a member of the local community school board to chair the community board's Youth Service Committee or to vote at the community board on matters that could come before the community school board. However, this Board ruled that the community board member could participate in the board's discussion of such matters so long as the member disclosed his or her membership on the community school board. The Board reasoned that the same concern identified in Opinion No. 91-3 was present, namely, that "if a community board member were allowed to cast a vote on matters involving his or her other City agency [*i.e.*, the community school board], two governmental roles could be placed in direct competition, preventing the employee from properly discharging either role in a fair and unbiased manner," in violation of Charter Section 2604(b)(2). Advisory Opinion No. 93-2 at 4-5.

Because CECs are the successors to the community school boards, the instant request for advice required this Board to determine whether Opinion No. 93-2 applied with full force to community board members who also serve on CECs; if so, the public servant seeking advice would have been told that she could not vote at the community board on the anticipated matter involving relocation of public schools in her CEC district.

CECs are, however, substantially different bodies from the community school boards they replaced. In contrast to the community school boards' substantial executive and administrative authority noted above, the current school governance law explicitly states that the CECs "shall have no executive or administrative functions." N.Y. Educ.

Law §2590-e. In Opinions issued since that change, addressing the application of various provisions of Chapter 68 to CEC members, this Board has observed that the role of CECs is “largely advisory,” noting that CECs have no “executive or administrative functions, no involvement with contracts between vendors and their respective districts, and no power to determine how their districts spend funds.” Advisory Opinion Nos. 2007-1 at 2 and 2006-1 at 2.

Although the authority of community boards appears to be greater than that of CECs, the acts of community boards are themselves only recommendations. Indeed, the members of each community board are unpaid volunteers from their City neighborhoods who have been selected to provide a community voice in the governance of the City, but a voice with no binding authority.

Given the largely advisory nature of *both* community boards and CECs, it was this Board’s conclusion that the concern expressed in Advisory Opinion No. 93-2, that “two governmental roles could be placed in direct competition, preventing the employee from properly discharging either role in a fair and unbiased manner,” was largely absent in the instant case. For this reason, the Board concluded that service on a community board would not conflict with the proper discharge of an individual’s largely advisory functions as a member of a CEC, and thus there would be no violation of Charter Section 2604(b)(2). Accordingly, Chapter 68 does not require community board members who also serve as CEC members to refrain from voting on matters that have been or might be considered by their CEC. Nor does it disqualify them from chairing community board committees that will address matters that might involve or be considered by their CEC. Similarly, Chapter 68 does not require CEC members who also

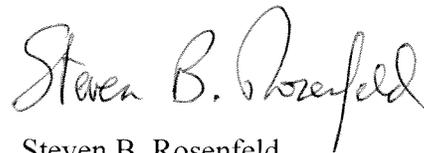
serve on community boards to recuse themselves at their CEC from matters that have been or might be considered by their community board.

The Board accordingly advised the public servant that she could serve both on the CEC and on the community board serving the same neighborhood, could consider and vote on matters at one entity that she had considered or might consider at the other, and could chair community board committees that might consider matters that had been or might be considered by the CEC.

To the extent that this Opinion is in any way inconsistent with Advisory Opinion No. 93-2, that Opinion is hereby overruled.

IV. Conclusion

It will not violate Chapter 68 for a person who concurrently serves on a community education council of the Department of Education and a community board to consider and vote on a matter at one entity that had been or might be considered at the other entity, or to chair a committee at one entity that might consider matters that had been or might be considered at the other.



Steven B. Rosenfeld
Chair

Monica Blum
Angela Mariana Freyre
Andrew Irving
Burton Lehman

Dated: December 15, 2010