



CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD

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Appearing Before the City
Charter Section: 2604(b)(6)

Advisory Opinion No. 95-6

The Conflicts of Interest Board (the "Board") has received requests for opinions from three public servants ("Public Servants A, B, and C" or "the public servants") as to whether, consistent with the conflicts of interest provisions of Chapter 68 of the New York City Charter, they may affix their professional seals to architectural plans and, either personally or through an expediter, file plans and conduct follow-up discussions with the Department of Buildings ("DOB") and other necessary City agencies. For the reasons discussed below, it is the opinion of the Board that it would not violate Chapter 68 for the public servants to affix their professional seals to architectural plans and to file such plans with DOB, but that these public servants may not be personally involved with DOB beyond the initial presentation of the plans. These public servants may, however, use expediters to take the plans through the approval process.

Background

Each public servant is employed in a different City agency. Public Servants A and B are both registered architects who are seeking to maintain private architectural practices. They advised the Board that they would like to be able to affix their architectural seal and signature to construction plans and, thereafter, use an expediter to file the plans with DOB or any other necessary City agency. Public Servants A and B also advised the Board that they would engage in their private architectural work on their own time, not during times when they are expected to perform services for the City.

Public Servant C is an engineer who has established an engineering consulting firm. He advised the Board that he works for the firm on his own time. Public Servant C has further advised the Board that an architect has offered to retain him for the purpose of attaching his engineering seal to architectural plans submitted to DOB and other necessary City agencies.

In accordance with DOB procedures, architectural plans are submitted to DOB for review and approval. The examiner reviews the plans and determines whether they conform to the building and zoning codes.

Discussion of the plans focuses on their conformity with the codes, not on the merits of the architectural project.

Plans may be submitted to DOB either directly by the applicant, an architect or engineer, or through an expeditor, hired by the applicant. The most common method of employing expeditors is for an architect or engineer to prepare plans and then sign and stamp them with his or her seal. An expeditor, hired by the architect or engineer, then presents the plans to DOB and shepherds the plans through the approval process.

Discussion

Chapter 68 contains a number of provisions governing the outside activities of City employees. The purpose of these provisions is, among other things, to ensure the integrity of government operations. Among these provisions is Charter Section 2604(b)(6), which provides that "[n]o public servant shall, for compensation, represent private interests before any city agency or appear directly or indirectly on behalf of private interests in matters involving the city." "Appear" means "to make any communication, for compensation, other than those involving ministerial

matters." Charter Section 2601(4). A "ministerial matter" is defined as "an administrative act, including the issuance of a license, permit or other permission by the city, which is carried out in a prescribed manner and which does not involve substantial personal discretion." Charter Section 2601(15).

The factual situations in the instant case are analogous to those considered by the Board in Advisory Opinion Nos. 92-32 and 92-36. In the latter case, the Board considered whether electricians could file applications for certificates of electrical inspection at DOB and then attend related inspections. The Board determined that it would not be a violation of Chapter 68 for active City employees to file such applications and attend inspections. The Board stated, among other things, that "certain communications are so routine in form and lacking in substantial discretion that they should not invoke the prohibitions contained in Charter Section 2604(b)(6)...." Advisory Opinion No. 92-36 at 7.

In the instant case, DOB's initial review of architectural plans involves the comparison of submitted plans to the building or zoning codes. The DOB examiner does not make any substantive decisions regarding the plans. Rather, the examiner discusses

the plans with the applicant (or expediter) and determines whether the plans meet the objective standards contained in the applicable code.

Communication between the applicant (or expediter) and the DOB examiner in this context is ministerial in nature, inasmuch as the examiner has authority only to review plans for conformity with the objective standards contained in the building and/or zoning codes. This requires knowledge of the applicable codes and a comparison of drafted plans with the code. However, the examiner's authority does not extend beyond this review.¹

¹ The Board of Ethics, this Board's predecessor, decided a number of opinions similar to the instant case under former Chapter 68, Section 2604(b)(4). The provisions of current Chapter 68 differ from those of former Chapter 68. Specifically, former Chapter 68 did not contain language limiting appearances to those matters which are "ministerial" as does current Charter Section 2601(4).

In Opinion No. 664 the Board of Ethics permitted an active City employee to file an "Application for Plumbing Alteration and Repair Slip," as no other documents needed to be filed for this minor work, and filing the application did not rise to the level of an "appearance before a City agency". In essence, the Board of Ethics excluded from the scope of representation what are now referred to as "ministerial matters." Prior to Opinion No. 664, the Board of Ethics had disallowed such appearances. See e.g., Opinion No. 56 (affixing an engineer's professional seal on documents and affidavits for filing with DOB found to be an appearance before the City and impermissible); Opinion No. 156 (engineer not permitted to engage in free-lance design work inasmuch as the

Conclusion

It is the opinion of the Board that the public servants may, consistent with Chapter 68, either appear before DOB personally to file architectural or engineering plans, or they may use expeditors to process the plans through the approval process at DOB. Such appearances would not violate Charter Section 2604(b)(6), inasmuch as the public servants' communications with the City would be ministerial in nature. However, any involvement by the public servants themselves beyond the initial presentation of the architectural plans would not be ministerial and thus would be prohibited by Chapter 68. See Advisory Opinion No. 92-36.

Moreover, the public servants would continue to be subject to the other provisions of Chapter 68. In particular, the public servants may engage in their outside employment only at times when they are not required to perform services for the City; they may not

filing of plans before a City agency constitutes an appearance and the representation of private interests before the City agency); Opinion No. 204 (engineer not permitted to submit signed and stamped surveys to DOB).

To the extent that these Board of Ethics opinions are inconsistent with this opinion and the provisions of current Chapter 68, they are superseded.

use their official City positions to obtain any financial gain or other private advantage for themselves or for any persons or firms with which they are associated; they may not use City equipment or other City resources in connection with their non-City activities; and they may not disclose or use for private advantage any confidential information concerning the City. See Charter Sections 2604(b)(2), (3) and (4), respectively.



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