



CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

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Moonlighting
Waiver
Subcontractors

Charter Sections: 2604(a)(1)(b), (b)(2), (b)(3), (b)(4), and (e)

Advisory Opinion No. 99-2

The Conflicts of Interest Board (the "Board") has received a request for an opinion from a public servant who asks whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, he may work part-time for a firm which is a subcontractor for the City.

For the reasons discussed below, it is the opinion of the Board that it would not be a violation of Chapter 68 for the public servant in this particular instance to work part-time for the firm.

Background

This public servant is an employee at a City agency. He works part-time for a firm (the "Subcontractor"), which is a subcontractor for another firm (the "Firm") on contracts (the "Contracts") which the Firm has with the City. He does not work on the Contracts. The Subcontractor's name is listed in the Firm's City Contracts. The Contracts are not with the public servant's agency. The

Subcontractor's work on the Contract takes place at the Subcontractor's office, and requires little, if any contact with City employees. The public servant does not currently, nor will he in the future, work on any City-related business for the Subcontractor.

Discussion

Since the public servant has a "position" with the Subcontractor within the meaning of Charter Section 2601(18),¹ the initial question is whether the Subcontractor (as opposed to the Firm) has business dealings with the City within the meaning of Charter Section 2601(8)². If so, then the public servant's position is, in the absence of a waiver, a prohibited conflict of interest. See Charter Sections 2604(a)(1)(b) and (e).

To determine whether the Subcontractor itself is engaged in business dealings with the City, the Board looks at several factors, including the following: (1) whether the subcontractor receives any payment directly from the City; (2) whether the subcontractor reports to the City on any matters, for example,

¹ "Position' means a position in a firm, such as an officer, director, trustee, employee, or any management position, or as an attorney, agent, broker, or consultant to the firm, which does not constitute an ownership interest in the firm." Charter Section 2601(18).

² "Business dealings with the city' means any transaction with the city involving the sale, purchase, rental, disposition or exchange of any goods, services, or property, any license, permit, grant or benefit, and any performance of or litigation with respect to any of the foregoing. . . ."

whether the City inspects the subcontractor's work; and (3) whether the work for the City is being done at a City site or off-site.³

In a previous case, the Board determined, based on the above-listed factors, that a subcontractor firm was engaged in business dealings with the City because it had direct contact with and responsibility to the City on the projects for which it was a subcontractor. See Board Order No. 74.

Conversely, here, the Subcontractor does not receive any payments from the City. Any money to the Subcontractor for City work is paid by the Firm. In addition, the Subcontractor reports directly to the Firm on all matters. The City does not have any oversight responsibility over the work the Subcontractor performs. Also, any City work is performed off-site at the Subcontractor's offices.

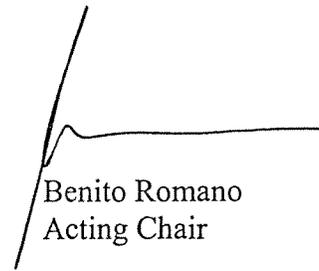
Conclusion

The Board therefore determines that it would not violate Chapter 68 for the public servant to work part-time for the Subcontractor, since, in light of the above-listed factors, the Subcontractor is not engaged in business dealings with the City. His work, however, must be performed at times when he is not

³ If, based on its analysis of the relevant factors, the Board determines that a subcontractor is engaged in business dealings with the City, the Board would consider the following factors in determining whether to grant a § 2604(e) waiver to a public servant moonlighting for the subcontractor: (1) whether the employee is working on any City business for the subcontractor; (2) whether the subcontractor engages in any business with the public servant's agency; and (3) whether the public servant is involved in any of the subcontractor's City business as part of his or her official duties.

required to perform services for the City. While performing this work, the public servant may not use his official position or title to obtain any private advantage for himself or the Subcontractor. Further, he must not disclose or use for private advantage any confidential information concerning the property, affairs, or government of the City which he obtained as a result of his official duties. See Charter Sections 2604(b)(2), (b)(3) and (b)(4), respectively.

Our opinion in this matter, involving application of the above listed factors, is necessarily limited to the particular facts of this case. In addition, decisions on matters such as these are conditioned on the correctness and completeness of the facts supplied to us. If such facts are in any respect incorrect or incomplete, the advice we have given may not apply.



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