



CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

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Teaching
Moonlighting
Waiver

Charter Sections: 2604(b)(2), (b)(3), (b)(4), (b)(5), (b)(13), and (e)

Advisory Opinion No. 99-4

The Conflicts of Interest Board (the "Board") has received requests for opinions from two public servants regarding outside teaching. The first public servant asks whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, he may accept payment for teaching a class about the workings of his agency and in particular about recent new initiatives at the agency. The second public servant asks whether he may teach a course at a State University the subject of which is similar to the subject of a course he teaches as part of his City job. Neither public servant would use or disclose any confidential City information in his teaching.

For the reasons discussed below, it is the opinion of the Board that it would be a violation of Chapter 68 for the first public servant to teach, for compensation, the class about his agency, but that it would not violate Chapter 68 for the second public servant to teach the State University class.

Background

Public Servant No. 1

Public Servant No. 1 is a high level employee at a City agency who has been asked to teach a class at a private university about the workings of his agency and especially about its successful new initiatives. The audience would be drawn from the local business community. He has been offered \$1,000 to teach this class. He has advised the Board that he would take an annual leave day to teach the class. In the alternative, if the Board determines he cannot accept the fee, he has proposed to treat the day as a regular workday and to accept reimbursement of his incurred expenses, but not the offered \$1,000 stipend.

Public Servant No. 2

Public Servant No. 2 is employed as an instructor at a training center run by his agency. At that center he teaches, among other things, a course whose curriculum was developed by a private corporation in cooperation with his agency. The same private corporation has now developed a course, to be taught at a State University, whose curriculum will be virtually identical to the curriculum of his agency course. The State University seeks to hire the public servant to teach its course. The public servant has played and will play no role in developing the curriculum of either course. The course at the State University will be taught to a different audience from the audience for his City course. Furthermore, his City agency could not reasonably be expected ever to teach the

State University's audience since the latter is outside the scope of the agency's mission.

Discussion

Many public servants seek to moonlight as college level instructors or to teach one-day courses. From time to time the subject matter of the proposed outside course may relate to the public servant's City agency in either a general or specific way. The question presented to the Board is how to apply the provisions of Chapter 68, as interpreted in previous Board opinions, to the proposed activities of these two public servants.

Charter Section 2604(b)(3) states that "[n]o public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant."

Charter Section 2604(b)(13) provides, "No public servant shall receive compensation except from the city for performing any official duty or accept or receive any gratuity from any person whose interest may be affected by the public servant's official action." (Emphasis added.)

In Advisory Opinion No. 91-5, the Board determined that a public servant could not be employed to teach a course for compensation "concerning the subject matter which directly involved his official duties." Advisory Opinion No. 91-5 at

1. The Board stated that it would “be a violation of Chapter 68 for the public servant to teach this course, for compensation, in that it would be a private employment which is in conflict with the proper discharge of his duties, which is prohibited by Charter Section 2604(b)(2).”¹

In Advisory Opinion No. 95-3, the public servant was a supervising financial analyst and a regular full-time employee of the City. She asked the Board whether she could teach one or two general accounting courses per semester in the continuing studies department of a local university. The Board determined that the proposed teaching would not violate Chapter 68. The Board stated that its determination was based on “consideration of these factors, among others: the scope of the public servant’s proposed teaching duties is limited; the general nature of the courses’ subject matter is unrelated to the public servant’s official duties; and the amount of compensation is comparable to that paid to other adjunct professors.” Advisory Opinion No. 95-3 at 3.

The Board has thus, in determining what a public servant might teach in his or her private capacity, looked to whether the course concerned a “subject matter which directly involved his official duties” or whether “the general nature of the course’s subject matter is unrelated to the public servant’s official duties.” See Advisory Opinion Nos. 91-5 and 95-3, respectively. The Board now determines that these prior formulations, while useful, may not be dispositive. A

¹ “No public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper

comparison of the following two examples, both of a public servant teaching a course whose subject is “related to” his or her official duties, makes the point. In the first example, an attorney on the staff of the Conflicts of Interest Board proposes to teach a class at a private university, for compensation, about Chapter 68. In the second example, an attorney at a mayoral agency, whose duties include advising her agency about the requirements of Chapter 68, proposes to teach the same class. In both cases, the subject matter of the class is “related to the public servant’s official duties.” For the reasons which will be set forth below, however, the first example would violate Chapter 68, while the second would not.

More particularly, in the first case, since the duty of the Board is to teach Chapter 68 not only to public servants but also to virtually anyone within reason who is interested, the Board attorney could reasonably have been assigned to teach that subject to the university class as a part of his official duties and may therefore not do so for private compensation. See Charter Section 2604(b)(13). In contrast, because the attorney at the mayoral agency could reasonably have been assigned the duty of teaching Chapter 68 only to her own agency, but not to the public at large, it would not violate Charter Section 2604(b)(13) for her to teach that subject for private compensation.²

discharge of his or her official duties.” Charter Section 2604(b)(2).

² The federal ethics regulations reach this same result. See STANDARDS OF ETHICAL CONDUCT FOR THE EXECUTIVE BRANCH, 5 C.F.R. § 2635.807(a)(2)(i), Example 5, which states that a Commerce Department employee responsible for labor negotiation may teach for compensation an outside course on unfair labor practice decisions, but an employee of the Federal

This formulation thus rests on Charter Section 2604(b)(13), which explicitly sets forth the applicable standard: “No public servant shall receive compensation except from the city for performing any official duty. . . .” In determining what constitutes “any official duty” for the purposes of Charter Section 2604(b)(13), the Board will look to a public servant’s assigned tasks and also to any task which might reasonably be assigned to the public servant.³

In addition to the prohibition of Charter Section 2604(b)(13) against private compensation for “performing any official duty,” the following factors, without limitation, must be considered in evaluating other issues raised by outside teaching:

- (1) in teaching the class, the public servant does not divulge any confidential City information;⁴
- (2) the public servant does not utilize City time, resources, personnel, or equipment for the teaching or for the preparation of any materials to be used for the course;⁵

Labor Relations Authority (the agency responsible for those decisions) may not teach that outside course for pay.

³ See also the recently issued New York State Ethics Commission’s (the “State”) Advisory Opinion Nos. 98-15 and 98-16, where the State similarly determined that its previous, indeed comprehensive, consideration of the topic of outside teaching, contained most particularly in its Advisory Opinion No. 89-10, required revisiting. In these recent opinions, the State noted that its earlier test of whether “the subject matter is sufficiently unrelated to a state employee’s job responsibilities. . . .” was confusing. See State Advisory Opinion No. 98-15 at 4-5. The State instead will now look to whether the outside task was one which the public servant performed or might reasonably be assigned to perform as part of his or her State job. See State Advisory Opinion No. 98-16 at 2.

⁴ See Charter Section 2604(b)(4).

- (3) the public servant does not use his or her position as a public servant to obtain a disproportionate rate of pay for teaching a course or to obtain compensation except from the City for performing his or her official duties; and⁶
- (4) the public servant does not use his or her official title or position in any marketing of the course, although such information may be listed as part of biographical information about the public servant.⁷

With these factors in mind, the Board now turns to the requests here at issue. Public Servant No. 1 seeks to teach a class for pay about his agency. This course would focus specifically on the workings of his agency and its recent initiatives. Teaching the public about these subjects is indeed a task that the public servant might reasonably be expected to perform as part of his official duties. Therefore, to teach such a course for private compensation would violate Charter Section 2604(b)(13). The public servant would otherwise be paid for work which the City could ask him to perform as part of his City job.

Public Servant No. 2 seeks to teach a class for a State University whose subject is virtually identical to what he teaches for his agency, but whose

⁵ See Charter Section 2604(b)(2).

⁶ See Charter Section 2604(b)(3) and (b)(13), respectively.

audience is one whom his agency would not reasonably assign him to teach, since the audience is outside the agency's mission. Like the attorney in the mayoral agency, in the example above, whose duties included teaching Chapter 68 to her agency but not to anyone else, this public servant can also teach this course to a different "outside" audience for private compensation. In each case, teaching this class is not a task that the public servant might reasonably be assigned to perform as part of his official duties. Therefore, teaching such a class for compensation would not violate Charter Section 2604(b)(13).

Conclusion

Public Servant No. 1

It is the opinion of the Board, for the reasons stated above, that it would be a violation of Chapter 68 for the public servant to teach the above-described course for pay. The public servant may, however, teach the course for no compensation on City time and accept payment for travel expenses in accordance with Charter Section 2604(b)(5) and Board Rules Section 1-01(h).⁸

⁷ See Charter Section 2604(b)(3) and Board Order No. 76.

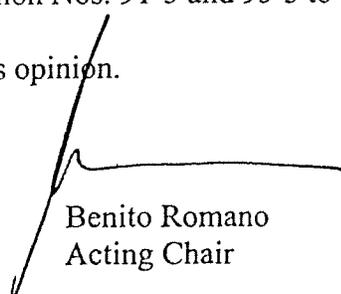
⁸ Charter Section 2604(b)(5) prohibits public servants from accepting any valuable gift from any person or firm the public servant knows is or intends to become engaged in business dealings with the City. This Charter provision is fleshed out in the Board Rules § 1-01 ("Valuable Gifts"). This rule, *inter alia*, permits public servants to accept travel-related expenses from a private entity as a gift to the City if certain conditions are met. The trip must be for a City purpose, the travel arrangements must be appropriate to the City purpose, and the trip must be no longer than reasonably necessary to accomplish the purpose of trip. Board Rules § 1-01(h).

Public Servant No. 2

It is the opinion of the Board, for the reasons stated above, that the public servant may teach the course for the State University subject to certain conditions. This work must be performed at times when he is not required to perform services for the City. While performing this work, he must not use his official position or title to obtain any private advantage for himself, the State University, or his students. Further, he must not disclose or use for private advantage any confidential information concerning the property, affairs, or government of City which he obtained as a result of his official duties. See Charter Sections 2604(b)(2), (b)(3), and (b)(4), respectively.

The Board's 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.

This opinion supercedes Advisory Opinion Nos. 91-5 and 95-3 to the extent those opinions are inconsistent with this opinion.



Benito Romano
Acting Chair

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November 8, 1999

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