



# 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

Book Writing

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

## Advisory Opinion No. 99-5

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 be compensated for writing a book the subject matter of which is related to his official duties.

For the reasons discussed below, it is the opinion of the Board that it would be a violation of Chapter 68 for the public servant to write the book.

### Background

The public servant's agency has developed an innovative program, about which the public servant lectures around the country. The public servant had some involvement in setting up the units that run the program, although he did not develop the program. Because of the program's favorable reception, and with the help of a federal grant, the public servant's agency and two university professors jointly presented a conference about the program and about other related innovations in the field. The public servant helped to coordinate this conference.

The professors then collected papers presented at the conference and compiled them into a book. The public servant was asked to write a short additional chapter, specifically about his agency's program, and to edit the other chapters. The professors have offered to share royalties with the public servant.

### Discussion

Many public servants seek to write books and articles about subjects with which they are familiar. From time to time, the subject matter of the proposed writing may relate to the public servant's City agency. The question presented to the Board is how to apply the provisions of Chapter 68 to such activity.

Charter Section 2404(b)(2) states: "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 discharge of his or her official duties."

The Charter also provides: "No public servant shall 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)(3).

Further, Charter Section 2604(b)(4) states: "No public servant shall disclose any confidential information concerning the property, affairs or

government of the city which is obtained as a result of the official duties of such public servant and which is not otherwise available to the public. . . .”

In addition, 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 the Board’s Advisory Opinion No. 93-25, the Board considered whether a public servant could write a book based on her experiences as a public servant. The book was written on the public servant’s own time and did not divulge any confidential City information. In determining that this public servant and other public servants may write a book or article for publication, the Board examined the following factors:

- (1) the book or article must be written on the public servant’s own time and not when he or she is required to perform services for the City;
- (2) the public servant may not utilize City facilities, supplies, or equipment in writing the book or article;
- (3) the book or article may not disclose any information which is confidential to the City and is not otherwise a matter of public record;

- (4) the book must contain a disclaimer that the views expressed therein are that of the public servant alone, and are not necessarily the views of his or her agency, or of the City; and
- (5) no other facts or circumstances may be present which suggest that the publication of the book or article would result in a conflict of interest proscribed by Chapter 68.<sup>1</sup>

Advisory Opinion No. 93-25 at 10-11.

This Board herein revisits Opinion No. 93-25, and in particular will attempt to provide more guidance regarding the “other facts or circumstances” factor (factor five) of that opinion. As in Advisory Opinion No. 99-4, issued concurrently herewith, the Board’s determination with respect to the subject matter of outside, compensated writing shall hinge on Charter Section 2604(b)(13), which prohibits a public servant from receiving “compensation except from the city for performing any official duty. . . .” As explained in Advisory Opinion No. 99-4, this prohibition will prevent a public servant from performing, for outside compensation, any task “which the public servant perform[s] or might reasonably be assigned to perform as part of his or her [City] job.”

---

<sup>1</sup> For example, if a public servant proposing to publish a book or article has an ongoing relationship, and hence a “position” within the meaning of Chapter 68, with a publishing company which engages in business dealings with the City, the public servant must obtain a waiver from the Board. See Advisory Opinion No. 98-7 and Charter Sections 2604(a) and (e).

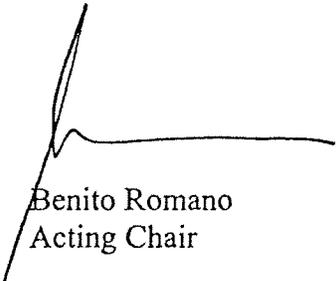
The particular public servant at issue here may not accept compensation for writing about his agency's program, since this writing is something he might reasonably have been assigned to perform as part of his City job. He could, however, write about the program and waive compensation, or require that his compensation be paid directly to the City.

### Conclusion

It is the opinion of the Board, for the reasons discussed above, that in cases where public servants seek to write books or articles, the factors contained in Advisory Opinion 93-25, as modified, shall apply. As noted, applying those factors instant case, the Board concludes that the public servant may not, for compensation, author and edit this text.

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 No. 93-25 to the extent that opinion is inconsistent with this opinion.



Benito Romano  
Acting Chair

Bruce A. Green

COIB Advisory Opinion No. 99-5  
November 8, 1999  
Page 6

Jane W. Parver

November 8, 1999

98-157.ao/jks