

CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD

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Advisory Opinion No. 92-34

I. Introduction.

Several public servants who are employees of the Department of Parks and Recreation ("DPR") have separately asked the Conflicts of Interest Board (the "Board") whether it would be a violation of Chapter 68 of the City Charter for them to accept consulting positions with not-for-profit organizations whose primary purpose is to provide financial assistance to the City in support of the public parks system.

In addition, a public servant and a not-for-profit organization dedicated to the support of a public park have separately asked the Board whether it would be a violation of Chapter 68 of the City Charter for such an organization to subsidize a portion of the wages or salaries of DPR employees, for work performed in connection with the public parks system.

A number of high-ranking public servants, including the Commissioner of DPR, serve as members of the Board of Directors, or as officers, of the not-for-profit organizations in question.

It is our opinion, as explained below, that the DPR employees in question may accept such consulting positions without violating Chapter 68, because, in each case, the employee obtained the written approval of the Commissioner of DPR, and because

1. the primary purpose of the not-for-profit in question is to provide financial assistance to the City in support of the public park system;

2. the consulting work to be undertaken by the employee is in furtherance of such purpose; and

3. it has been expressly determined, by the Commissioner of DPR, that it is in the interests of the City that the employee in question undertake such work, and that such work be completed in order to allow the not-for-profit to continue to fulfill its primary purpose.

In accepting any such position, the DPR employees must insure that the consulting work undertaken by them is performed in a manner otherwise in compliance with Chapter 68 of the City Charter.

It is also our opinion, as explained below, that the DPR employees in question may have their wages or salaries subsidized by a not-for-profit organization, because, in each case, the proposed arrangement has been approved in writing by the Commissioner of DPR, and because

1. the primary purpose of the not-for-profit in question is to provide financial assistance to the City in support of the public park system; and

2. the work to be undertaken by such employees, and for which the subsidized wages or salaries are to be paid, relates to the operation and maintenance of public parks or recreational facilities, for the benefit of the public at large.

In accepting any subsidization of wages or salaries, the DPR employees must also insure that the work to be undertaken by them, and for which the subsidized wages or salaries are to be paid, will be performed in a manner otherwise in compliance with the provisions of Chapter 68 of the City Charter.

II. Consulting Positions

In recent years, and as a result of cutbacks in government funding for parks, a number of not-for-profit organizations have been formed to provide financial assistance for the upkeep, maintenance and preservation of public parks, recreational centers and other facilities under the jurisdiction of DPR. Such organizations raise additional funds for the parks system through solicitation of private contributions, special events, plant sales, and other activities. Through their efforts, a variety of City parks and

recreational facilities have been maintained and improved, for the benefit of the public at large.

In conducting their fundraising activities, these organizations often request assistance from DPR employees who have expertise in relevant disciplines, such as administration, public affairs, special events, horticulture, and the like. These requests typically take the form of asking that DPR employees serve as part-time consultants, in addition to their official duties, and usually at some rate of compensation. As such, these requests raise the issue of whether acceptance of such consulting positions would violate the conflict of interest provisions contained in Chapter 68 of the City Charter.

III. Subsidization of Salaries

In addition to raising funds that are applied directly towards physical improvements to parks and recreational facilities, a number of not-for-profit organizations have provided financial assistance to the City, in support of public parks, by paying a portion of the wages or salaries of DPR employees for work performed as part of their official duties. The reasoning behind this type of arrangement is the same as that which is put forward to justify direct financial support for park improvements: the reduction in City funding for the park system as a result of

budgetary pressure and competing social needs, making it difficult to maintain staffing levels.

Since these arrangements, like the proposed consulting relationships, involve the payment of compensation to public servants by a private party, they also raise the issue of whether acceptance of the compensation would constitute a violation of the conflict of interest provisions of the City Charter.

IV. Applicable Charter Provisions

Sections 2604(b)(13) and 2604(a)(1)(b) are the relevant provisions which must be analyzed and applied in considering the propriety of the proposed consulting relationships, and the proposed subsidization of wages or salaries.

Charter Section 2604(b)(13)

Charter Section 2604(b)(13) provides that no public servant shall receive compensation except from the City for the performance of any official duty or receive any gratuity from any person whose interests may be affected by the public servant's official action. The Board has construed this Section as being intended to prevent a private person or entity from seeking some advantage by making payments to a City employee in connection with the employee's official duties, and to prevent a public employee from seeking payment from private citizens for work he or she is

employed by the City to perform. Although the DPR employees proposing to accept consulting positions will be receiving payment for their work as consultants, the payments will be made by not-for-profit organizations whose primary purpose is to provide financial assistance to the City, in support of the public park system. In addition, the payments themselves would be made in furtherance of such purpose and not to secure a private advantage; that is, in consideration of work intended to insure that these organizations retain their ability to assist the City in support of public parks. Finally, the Commissioner of DPR has determined, because of the skills and qualifications of the DPR employees and because of the nature of each consulting assignment, that it is in the interests of the City that each particular employee undertake the consulting work assigned to him or her, and that such work be completed in order to allow the not-for-profit in question to continue to fulfill its primary purpose.

Similarly, although the DPR employees receiving subsidized wages or salaries will be receiving payment from private parties, these parties are not-for-profit organizations dedicated to the support of the public park system. The payments themselves, which will be used to pay for overtime, management salaries, and supervision of additional summertime staff, are not for

the purpose of securing any private advantage but are instead intended to insure that personal services necessary to operate and maintain public parks continue uninterrupted. In making these payments, the not-for-profit organizations are acting for the benefit of the public at large, by helping to preserve the quality of the City's park system.

For these reasons, the Board concludes that neither the proposed consulting relationships nor the proposed subsidization of wages or salaries would violate Charter Section 2604(b)(13).

Charter Section 2604(a)(1)(b)

Charter Section 2604(a)(1)(b) provides that no regular City employee shall have an interest in a firm which such public servant knows is engaged in business dealings with the City, except if such interest is in a firm whose shares are publicly traded, as defined by rule of the Board. An "interest" is defined to include either an ownership interest in or a position with a firm. See Charter Section 2601(12). Since the not-for-profit organizations in question have continual business dealings with the City, a DPR employee, under Charter Section 2604(a)(1)(b), would be precluded from accepting a consulting position with, or accepting any portion of his or her wages from, any such organization. However, Charter Section 2604(e)

provides that a public servant or former public servant may hold or negotiate for a position, otherwise prohibited under Section 2604(a)(1)(b), if the head of the agency or agencies involved approves in writing, and if the Board thereafter determines that holding such position does not conflict with the purposes and interests of the City.

The DPR employees proposing to enter into consulting relationships have each secured the written approval of the Commissioner of DPR to accept their respective positions with the not-for-profit organizations. The organizations in question support the public park system by raising funds for preserving and maintaining parks, playgrounds and other recreational facilities. This assistance benefits the public at large, rather than the not-for-profits themselves, and is increasingly important as government funding for parks is reduced due to budgetary constraints.

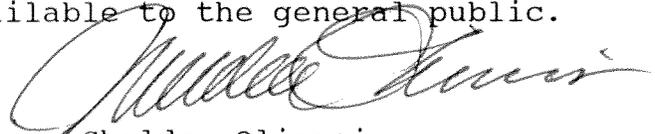
The proposals submitted to the Board to pay the wages or salaries of DPR employees have also been approved by the Commissioner of DPR. In addition, each proposal involves payment of wages or salaries for work performed to operate and maintain public park facilities, for the benefit of the public at large.

For these reasons, the Board determines, pursuant to Charter Section 2604(e), that neither the proposed consulting relationships nor the proposed subsidization of wages or salaries would be in conflict with the purposes and interests of the City.

Additional Considerations

It is important to note that Chapter 68 of the City Charter also contains a number of provisions which apply to outside activities undertaken by City employees, even if such activities are in and of themselves permissible under Charter Sections 2604(b)(13) and 2604(a)(1)(b). These provisions include, among others, a prohibition against engaging in any business, transaction or private employment that would conflict with the proper discharge of the employee's official duties, see Charter Section 2604(b)(2), and a prohibition against disclosure of confidential information concerning the property, affairs or government of the City which is obtained as a result of official duties and which is not otherwise available to the public, see Charter Section 2604(b)(4). The Board wishes to stress that these provisions continue to apply to the consulting positions in question, and to the proposed arrangements for subsidization of wages or salaries for DPR employees. Any DPR employee accepting such a position,

or receiving wages or salary under such an arrangement, is required to adhere to them. As an example, a DPR employee accepting such a position would be expected to schedule his or her consulting work so that it does not interfere with the proper discharge of official duties during normal work hours. A DPR employee who receives a portion of his or her wages through a not-for-profit organization would be prohibited from divulging, to that organization, any information pertaining to City government, learned through his or her official duties, and not otherwise available to the general public.



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