

CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD

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In the Matter of :
 :
 ELIZABETH HOLTZMAN, : COIB Case No. 93-121
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 Respondent. :
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DECISION AND ORDER

Introduction

This proceeding concerns the conduct of Elizabeth Holtzman while serving as Comptroller of the City of New York. While Ms. Holtzman was Comptroller, she personally guaranteed a \$450,000 loan to her campaign for the United States Senate (the "Loan" and the "Guaranty") from Fleet Bank ("Fleet Bank" or the "Bank"). The Loan went into default. At the time of these events, Fleet Securities, an affiliate of the Bank, applied to be a co-manager of a City bond issue. Rather than recuse herself from the selection process, Ms. Holtzman participated in selecting Fleet Securities as a co-manager. Further, during the selection process she countenanced an office policy, called a "quiet period," barring communications with firms that had responded to the City's Request for Proposals ("RFPs") issued in connection with the proposed bond offering. The application of the "quiet period" to Fleet Bank enabled her to avoid discussions with the Bank concerning repayment of the Loan, thereby obtaining an advantage from the Bank by virtue of her position as

Comptroller. These acts violated sections 2604(b)(2) and 2604(b)(3) of Chapter 68 of the New York City Charter, which define prohibited conflicts of interest on the part of public officials.

The Board's findings are based on 11 days of testimony at which over 150 exhibits were introduced and over 2,000 pages of testimony were taken.

Findings of Fact

1. Ms. Holtzman's Duties as Comptroller

Ms. Holtzman served as the New York City Comptroller from January 1, 1990 through December 31, 1993. As Comptroller, Ms. Holtzman was the City's chief financial officer and was responsible for advising the Mayor, the City Council and the public of the City's financial condition, and making recommendations on the City's operations, fiscal policies and financial transactions. See 5 N.Y.C. Charter Section 93. Ms. Holtzman also kept the accounts of the City; audited and investigated all matters relating to the City's finances; conducted performance analyses of City agencies and programs to eliminate waste and fraud; settled and adjusted all claims for or against the City; and issued and sold City obligations. Ibid. Among Ms. Holtzman's primary duties was the management of the Bureau of Debt Management, which is responsible for issuing municipal bonds and notes to support the City's capital expenditures. Ms. Holtzman, jointly with the Mayor, selected the management team of senior managers and co-managers to underwrite

the City's bonds and notes. In addition, as Comptroller, Ms. Holtzman was a trustee of five municipal pension systems and was the custodian of the funds' approximately \$52 billion in assets. The Bureau of Asset Management within the Comptroller's Office is responsible for managing these pension fund assets.

2. Fleet Financial Group and its Affiliates

Fleet Financial Group, Inc. ("FFG") is a holding company based in Providence, Rhode Island, that consists of seven banks and several other financial subsidiaries. FFG is the parent company of both Fleet Bank and Fleet Securities, Inc. ("Fleet Securities"). Fleet Bank handles Fleet's downstate-New York banking operations, including those in New York City. Fleet Securities is FFG's bond trading and public finance unit and was known as Fleet/Norstar Securities.¹ FFG was formed in 1988 as a result of a merger between Fleet Financial Group and Norstar Bancorp. Between 1988 and 1992, FFG was known as Fleet/Norstar Financial Group, Inc.

3. FFG's Efforts to Obtain City Business

In the late 1980s, FFG realized that, in order to compete effectively in the financial market, it needed to focus its attention on negotiated sales of municipal bonds, which had become the primary method of selling such securities. Fleet Securities adopted a corporate strategy of expanding its public

¹ On occasion, for convenience, this Decision and Order refers to FFG and Fleet Securities, though they had different names during parts of the time period under discussion.

finance capabilities in New York. Part of this strategy was to seek business with the City of New York, since the City had historically been one of the largest sellers of municipal bonds on a negotiated basis. In particular, Fleet wanted to secure a role in managing the City's \$52 billion in pension funds and the City's several billion dollar municipal bond offerings. Underwriters compete for positions on the City's management team because of the profits to be earned from bond sales, the management fees paid by the City and the prestige of underwriting the debt of the largest issuer of municipal bonds in the nation.

The management team consists of both senior managers and co-managers. Senior managers actually manage the sale of bonds to other firms and institutions and are chosen for their ability to structure bond issues and advise the City on market conditions, including the optimal time for an issue to be offered. Co-managers are contractually bound to the City to purchase a portion of the bonds issued by the City. Although not part of the City's management team, various financial institutions constitute the City's "selling group," which also participates in selling the City's debt.

In 1989, as part of its efforts to pursue City business, FFG hired James Murphy as executive vice president in charge of government lobbying and inter-governmental relations. Mr. Murphy was also made a member of the Board of Directors of Fleet Securities. Mr. Murphy coordinated FFG's contacts with State, City and Federal officials and, among other things, was

responsible for the activities of FFG's Political Action Committee ("PAC") and for managing the solicitation of political contributions from other Fleet entities.

Mr. Murphy also became involved in FFG's efforts to obtain additional business from the City of New York, including Fleet Securities' efforts to become a co-manager on a City bond offering. Starting in June 1990, Mr. Murphy sought meetings with senior members of Ms. Holtzman's staff in order to promote FFG's abilities. Through a friend who worked in the Comptroller's Office, Mr. Murphy was able to schedule a meeting on June 7, 1990, with Edward O'Malley, then Ms. Holtzman's Senior Assistant Comptroller. During the meeting, Mr. Murphy told Mr. O'Malley that FFG was expanding its public finance division and wanted to talk to the individuals in the Comptroller's Office handling that business. Mr. Murphy also promoted FFG's qualifications to manage the City's pension funds and told Mr. O'Malley he wanted to meet with representatives of the Comptroller's Office responsible for asset management. Later, meetings were held between FFG and the asset management and underwriting departments of the Comptroller's office.

In August 1990, the Comptroller's Office, the Mayor's Office and the New York City Employees Retirement System ("NYCERS") announced the selection of Norstar Mortgage Company ("Norstar"), an FFG affiliate, to participate in the HOME project, which was designed to provide mortgages to moderate and middle income families. Norstar's participation in the HOME

project was announced at a ceremony at City Hall on August 14, 1990. At that ceremony, Ms. Holtzman made a statement about the program and specifically commented on Fleet/Norstar's participation in the program. Mr. Murphy was introduced to Ms. Holtzman at the ceremony. Ms. Holtzman has testified that she was "not sure whether at the time of the NYCERS press conference announcing Project Home [she] knew who Jim Murphy was or had made the connection, but [she] might have."

In September 1990, Fleet Bank was selected to participate in a small business loan program, a \$50 million credit facility administered by the Comptroller's Bureau of Asset Management and sponsored by the Police Pension Fund. Comptroller Holtzman's Office issued a press release on September 26, 1990, announcing the participation of Fleet Bank (then Norstar Bank) in this program. Ms. Holtzman has testified that it was "possibl[e]" she saw this press release.

As part of its effort to enhance its standing with the Comptroller, FFG also made contributions to Ms. Holtzman's political fund. In November 1990, Mr. Murphy attended a fundraising dinner for Ms. Holtzman at which he again met the Comptroller. That month the FFG PAC made a \$4,000 contribution to the Friends of Liz Holtzman.

In 1991, FFG and its affiliates continued to correspond and meet with high-level officials in the Comptroller's Office in an effort to obtain business from the City. On August 29, 1991,

Fleet Securities responded to a RFP issued by the New York City Health and Hospitals Corporation ("HHC") to select its bond underwriting management team. As required by the RFP, Fleet Securities submitted its response to the Comptroller's Office for consideration, and officials of the Comptroller's Office participated in the selection process. On December 23, 1991, HHC announced that Fleet Securities had been selected as co-manager of its bond underwriting.

4. Ms. Holtzman's Candidacy for the United States Senate and FFG's Involvement with Ms. Holtzman and the Campaign

On July 29, 1991, Ms. Holtzman filed a Statement of Candidacy with the Secretary of the Senate in Washington, D.C., indicating that she would be a Democratic candidate for the United States Senate from New York State in 1992. The Liz Holtzman for Senate Committee (the "Committee") was designated as the principal campaign committee. Edward O'Malley, Senior Assistant Comptroller and one of Ms. Holtzman's principal political advisors, took a leave of absence from the Comptroller's office to become Ms. Holtzman's campaign manager.

FFG and its affiliates were early financial supporters of Ms. Holtzman's Senate campaign, and Ms. Holtzman had personal contact with FFG executives in this connection. At a breakfast meeting at the Mayfair Regent Hotel on October 21, 1991, Ms. Holtzman and the finance director of her Senate campaign discussed a number of issues, including Ms. Holtzman's Senate campaign, with Mr. Murphy and Terrence Murray, the President and

Chief Executive Officer of FFG. Ms. Holtzman remembers this meeting and testified that "it was a kind of getting-to-know-you meeting." She hoped that this meeting would lead to fundraising support by Mr. Murray. As Ms. Holtzman had hoped, FFG and its affiliates, both through its PAC and its employees, donated money to her Senate campaign.

Mr. Murphy also served on Ms. Holtzman's Finance Committee. Mr. Murphy invited Ms. Holtzman to a Fleet holiday party scheduled for December 9, 1991. This event appears on Ms. Holtzman's official calendar indicating that the party was hosted by "FLEET/NORSTAR FINANCIAL GROUP." The calendar bears the notation "Sheila to speak with EH and decision made if EH to attend." Ms. Holtzman testified that to the best of her recollection she did not attend this function. That month the FFG PAC and Fleet Securities' executives made contributions to Ms. Holtzman's Senate campaign in the amount of \$2,000.

Mr. Murphy also agreed to co-host a fundraising event to support Ms. Holtzman's candidacy for the Senate and invited a few FFG employees to the event. Ms. Holtzman attended the fundraiser on May 18, 1992, met Mr. Murphy and expressed her appreciation for his support. Ms. Holtzman sent a letter to Mr. Murphy, addressed "Dear Jim," thanking him for "hosting a wonderful fundraiser" for her Senate campaign. Later that month, the FFG PAC made a \$1,000 contribution to Ms. Holtzman's Senate campaign.

On June 12, 1992, Fleet Securities senior executives, including its president, John O'Brien, and two senior vice presidents, met with Ms. Holtzman at the Vista Hotel's Greenhouse Restaurant. These Fleet Securities executives made it clear that their firm wanted to be selected as co-manager for the City's municipal bond offering. Mr. O'Brien discussed the firm's recent record of expansion, its commitment to New York City, and its enhanced abilities to assist the City in municipal finance matters. Mr. O'Brien and other Fleet Securities executives presented a number of arguments why Fleet Securities was a "credible candidate to be at a different [management] level." Ms. Holtzman was told that Fleet Securities had recently been appointed as a co-manager on the HHC bond issue. Mr. O'Brien told Ms. Holtzman, who had been informed six months earlier that the City would issue a new RFP in late 1992, that "we were hopeful that an RFP would come out that we could respond to."

Ms. Holtzman appeared to listen "attentively" to each of Fleet Securities' arguments. At the end of the meeting, after Ms. Holtzman had left, a Fleet Securities executive handed the Campaign's finance director an envelope containing at least \$2,000 in checks from Fleet employees.

Ms. Holtzman testified that she has absolutely no recollection of this meeting, but does not dispute that the meeting occurred.

5. Fleet Bank's Loan to the Holtzman Senate Campaign

In early August 1992, Ms. Holtzman's Senate campaign was faltering. Primary election polls showed that Ms. Holtzman was running third in a field of four candidates. The Committee had only approximately \$80,000 available in primary eligible funds, and the next major fundraiser was not scheduled until September 9, 1992, six days before the primary. The Committee concluded that if Ms. Holtzman had any chance of winning the Senate primary race, she needed to run a media campaign. As Ms. Holtzman explained, without the media campaign, her bid for the Senate would fail "for sure."

On August 11, 1992, a consulting firm submitted a media plan that would begin on August 27, 1992, with a projected cost of \$450,000. The broadcasters, however, had to be paid before the campaign could begin. Thus, the Committee needed to obtain a significant loan quickly. At Mr. O'Malley's suggestion, and with Ms. Holtzman's express approval, the Committee approached Fleet Bank to obtain the financing for the media campaign.

In mid-August 1992, Mr. O'Malley called Mr. Murphy to inquire about whether Fleet Bank could make a loan to the Committee. At a meeting on August 20, 1992, arranged by Mr. Murphy, between FFG officials, Fleet Bank officials and representatives of the Committee, the Committee represented to the Bank that it had "commitments" for ticket sales to a fundraising dinner, scheduled for September 9, 1992, totaling

approximately \$373,500. In addition, the Committee gave the Bank a balance sheet, showing \$544,163 in available cash (including \$500,000 to be raised at the September 9, 1992, dinner). The Bank told the Committee that, "in order to proceed with any consideration [of] this loan, the Committee needed to be aware that it would require a personal guarantee from Ms. Holtzman."

On August 28, 1992, Ms. Holtzman entered into a letter agreement with Fleet Bank for a \$450,000 loan to the Committee (the "Loan Agreement"). Ms. Holtzman signed the required promissory note on behalf of the Committee and executed a personal guaranty. The Loan Agreement provided that the Bank granted the Committee a loan in the amount of \$450,000, repayable on September 30, 1992, at an interest rate of prime plus one with a \$4,500 back-end fee. Although the Loan was unsecured, it was provided on the basis of the personal guaranty of Ms. Holtzman. The Loan Agreement further provided for the establishment of a pledge account at Fleet Bank "into which [the] Committee [would] deposit, on a daily basis, all proceeds from the ticket sales to a fundraising dinner to be held on September 9, 1992 at the Tavern on the Green." The Loan Agreement also provided that, in the event of a shortfall from the September 9 dinner, the Bank, "in its sole discretion," could require the Committee to hold additional fundraisers to pay down the debt.

On September 9, 1992, the Committee's fundraising dinner took place at Tavern on the Green. The event was a "disaster," generating only approximately \$200,000, significantly

less revenue than the approximately \$500,000 that had been represented to the Bank to obtain the Loan. The Bank in turn received less than half of these proceeds -- only approximately \$91,000 because, despite the terms of the Loan Agreement, the Committee did not deposit all of the dinner proceeds into the special account, and, in fact, spent approximately \$48,000 of the proceeds on other campaign-related expenses.

The New York State Senate Primary was held on September 15, 1992, and Ms. Holtzman ran fourth in a field of four. Because of the poor turnout at the September 9 dinner and Ms. Holtzman's fourth-place finish in the primary, it became apparent that the Committee would not be able to meet the September 30, 1992, due date for the Loan. Thus, Mr. Murphy arranged a meeting "to review the loan repayment, the deposits made to the Holtzman accounts and additional funds available for repayment."

6. The September 24 Meeting: The Bank Requests A Schedule For Repayment Of The Loan

On September 24, 1992, Nancy O'Connor, a senior vice president of the Bank, and Mr. Murphy met with Ms. Sheila Levin, the Committee's finance director, and Mr. McDonald, counsel to the Committee, to determine the Committee's plans to repay the Loan. Fleet Bank was particularly concerned about two matters: (1) the Committee's diversion of funds from the Tavern on the Green fundraising dinner to pay campaign expenses, in violation of the express terms of the Loan Agreement; and (2) the Committee's failure to provide the Bank with a schedule for

repayment of the debt. According to Mr. McDonald the Bank was "upset" and the meeting was "recriminatory."

At the meeting, the Bank confirmed that, of the \$676,500 in projected pledges, the Committee received only \$210,000 in paid pledges, and in turn had paid the Bank only \$91,000. Moreover, the Committee had been barred from using at least \$20,000 of the \$210,000 in connection with the primary election. The Committee did not account for the use of the remaining pledged funds.

On the basis of this information, the Bank's representatives stated that they expected the Committee to hold significant debt fundraisers so that the outstanding balance of the Loan would be reduced, citing the provision in the original Loan Agreement. Despite the contractual provisions in the Loan Agreement, the Committee took the position that it would not hold a debt fundraiser until after the general election on November 3, 1992, because Ms. Holtzman needed to provide her support to Robert Abrams, the winner of the primary. The Bank's representatives also reminded the Committee that the Bank had a personal guaranty from Ms. Holtzman and that it would "need to consider pursuing [the guaranty] if an acceptable repayment program were not put forth."

7. September 30 Default - Followed by Extensions Granted To The Committee and Ms. Holtzman

On September 30, 1992, Fleet Bank's Loan to the Committee became due in full. The Loan was not repaid. Thus, as

of that date, the Loan was in default. Prior and subsequent to the Committee's September 30, 1992, default, Ms. Holtzman and her staff engaged in negotiations with Fleet Bank to extend the Loan and to avoid payment on the guaranty. On or about September 30, 1992, the Bank extended the Loan until November 2, 1992. When the Loan became due and payable on November 2, 1992, the Bank again agreed to extend the note through December 4, 1992.

8. December 15: The Bank Presses Ms. Holtzman For Repayment From Her Personal Assets

On December 15, 1992, at the Bank's insistence, Ms. Holtzman and members of the Committee met with the Bank. According to Nancy O'Connor, "[t]he main purpose [of the meeting] was to review the status of the loan, what additional plan [the Committee] had for repayment, the bank's concerns about the lack of information we had been getting and how we were going to view the loan going forward relative to its pay down." As of that date there was \$314,000 outstanding on the Loan and the Committee still had not provided the Bank with a repayment schedule or an accounting of the funds raised at the September 9 dinner.

At the meeting, the Bank continued to insist on repayment of the Loan. The meeting was very "hostile" and "accusatory." During the meeting, Ms. O'Connor stated that some of the money raised by the fundraising dinner that belonged to the Bank had been otherwise used by the Committee. Ms. Holtzman made no comment on the subject, stating only that she did not get involved in such matters. For the first time, in a "tough

conversation", the Bank's representatives told Ms. Holtzman that it was considering requiring collateral for the Loan or transferring the Loan to Ms. Holtzman personally. Ms. Holtzman became visibly tense when informed that the Bank might enforce the Guaranty against her personal assets. Ms. Holtzman later described the Bank's threats a "little bit like . . . a police detective, open[ing] his or her jacket and showing a gun but not taking it out of the holster." Ms. Holtzman was concerned because she "didn't want to lose [her] house." The parties also discussed the fact that, if the Guaranty were enforced, Ms. Holtzman could be forced into bankruptcy.

Ms. Holtzman asked the Bank to extend the Loan for longer than thirty days so that she did not have to worry about 30 day renewals. The Bank, however, declined this request because it wanted to keep the Committee on a "tight leash" so that the Committee would be responsive to the Bank's requests for information and additional fundraisers. At the end of the December 15 meeting, it was agreed that a meeting would be held in January to discuss repayment of the Loan. Based on its understanding that negotiations with the Committee would be ongoing, the Bank agreed to extend the Loan until February 1, 1993. On December 23, 1992, Ms. Holtzman asked her attorney, Mr. McDonald, for advice on a replacement note that had been sent by the Bank. On December 29, 1992, Ms. Holtzman signed the note and had it returned to the Bank.

9. Fleet Securities Seeks Role in City Bond Underwriting While Ms. Holtzman Remains In Charge Of Selection Process

Sometime prior to mid-December 1992, Ms. Holtzman had been made aware that the City was preparing to issue an RFP for a new underwriting team for the City's bonds. On December 17, 1992, two days after the meeting with Fleet Bank where the potential for pursuing her personal assets was discussed, Ms. Holtzman designated Darcy Bradbury, Deputy Controller for Finance, pursuant to written delegation of authority, to exercise certain "powers and duties of the Comptroller," including the authority to oversee the RFP process. Ms. Holtzman, however, retained the ultimate authority within the Comptroller's Office to designate senior managers and co-managers.

According to Ms. Holtzman, Ms. Bradbury could exercise authority except where Ms. Holtzman "expressed she wanted to be involved." Ms. Holtzman "always had the right to take back the authority [she] had given [Bradbury]." Ms. Holtzman did not disclose to Ms. Bradbury her personal obligation to Fleet Bank.

On December 22, 1992, the Office of the Comptroller and the Office of the Mayor issued a Request for Proposals (the "RFP") to select a new management team to underwrite the City's general obligations bonds and New York City Water Authority revenue bonds. Various underwriting firms, including Fleet Securities, responded to the RFP, applying for either senior manager or co-manager positions. Fleet Securities sought a co-manager position.

10. Ms. Holtzman Imposes a "Quiet Period" on Discussions With Underwriters

The 1992 RFP directed underwriters to discuss the RFP only with a designated RFP contact and not with any other City officials until proposals were submitted. This usual and ordinary City procedure is designed to preserve a level playing field among underwriters competing for City business. However, there was no prohibition in the RFP on communications between City agencies and potential underwriters on matters unrelated to the RFP.

Nonetheless, as Comptroller, Ms. Holtzman employed a somewhat more rigorous prohibition against employees of the Comptroller's Office speaking with financial institutions with outstanding RFP bids. Under this policy, employees were prohibited from discussing campaign contributions or the bidding process with any RFP bidders. Ms. Holtzman explained this "quiet period" as follows:

I have instituted a policy which during the period of time from the sending out of the R.F.P. to the conclusion of the selection process for underwriters that we would not engage in campaign solicitations or discuss the [selection] process with the underwriters [which had responded to the RFP] except . . . [where] discussion of the [selection] process would be [had] under very controlled circumstances.

Ms. Holtzman further testified "that my understanding of the quiet period was that we would not negotiate with the bank, excuse me, the campaign would not negotiate with the bank during this period of time." Ms. Holtzman has stated that this

policy was not committed to writing and that she did not know how it was communicated to her campaign staff or her staff in the Comptroller's Office.

This policy mandating a "quiet period" was invoked throughout most of the RFP process to prevent communications concerning the Loan between Ms. Holtzman, the Committee and Fleet Bank. In January 1993, Deputy Comptroller O'Malley had a telephone conversation with Mr. McDonald, Ms. Levin, and Mary Kornman, the campaign's Treasurer, in which they indicated to him that they were planning to meet with Fleet Bank with regard to the repayment of the loan. During that conversation, Mr. O'Malley said that "Fleet may have responded to this R.F.P., I'm not so sure you can meet with them, let me put you on hold, let me check with someone down in Finance and I'll get right back to you." Upon learning that Fleet Securities had, in fact, responded to the RFP, Mr. O'Malley "went back to the conversation and said, listen, they responded and I don't believe you can meet with them during this period," and asked one of them to "convey this to the bank." Mr. O'Malley based his instructions not to communicate with the Bank about the Loan upon what he believed was Ms. Holtzman's policy that there should be no communications with underwriting firms that respond to RFPs.

11. Fleet Bank is Informed of the Quiet Period

On January 25, 1993, Ms. O'Connor telephoned Mr. McDonald to discuss the impending February due date of the Loan. As Mr. O'Malley had instructed, Mr. McDonald informed Ms.

O'Connor that, because the Comptroller's Office had bids out to investment banks for bond underwriting, a "rule or regulation" precluded Ms. Holtzman from having dealings with financial institutions.

Mr. O'Connor thought this policy was outrageous and "unconscionable." Nevertheless, the Bank abided by this "quiet period." According to their testimony, neither Mr. O'Malley, Ms. Levin, nor Mr. McDonald ever mentioned to Ms. Holtzman the imposition of the moratorium on discussions with the Bank. Ms. Holtzman testified that, during this three-month "quiet period" she never inquired about the Loan. Ms. Holtzman explained that "possibly psychologically I just wanted to push it away from me." However, Ms. Holtzman recalled that "at some point during this period of time I remember some thought entering my mind about, gee, it seems like a while since I've had a note to sign or something. But I didn't pursue that thought because I assumed that the bank had responded favorably to our request for an extension."

12. Fleet Bank's Letter To Ms. Holtzman Discussing the "Quiet Period"

On February 1, 1993, the Loan again became due, and once again, was not repaid. On February 12, 1993, Ms. O'Connor wrote to Mr. McDonald and advised him that the Loan "is being transferred to our Managed Asset Department," in large part due to the Bank's

inability to negotiate such a restructure until after March 1, 1993 because of Ms. Holtzman's position as Comptroller and her

involvement in choosing banks for city underwriting, [which] leaves us with a past due loan with the inability to pay interest. Until such time as we can meet to discuss a restructure, it is the bank's request that the committee and/or Ms. Holtzman make arrangements to keep interest payments current.

Ms. Holtzman also was sent a copy of this letter and does not dispute that the letter was received by her office. Still, Ms. Holtzman claimed that, to "the best [of her] recollection," she did not receive this letter and that, even if she got the letter, it is "doubtful" that she would have read it. As she explained, she "did not read mail that was addressed to [her] in a CC form assuming that if it was important enough for [her] to see the sender would send it to [her] directly."

In March 1993, the Loan was downgraded and transferred to the Bank's Managed Asset Department ("MAD"). The downgrading and transfer indicated that the Bank considered repayment of the Loan to be questionable. In transferring the Loan, the Bank observed that "[w]hile MAD may establish a restructure plan in return for providing a one year extension, it would appear appropriate to transfer the obligation directly to Ms. Holtzman, require that she make the monthly interest payments and attempt to obtain collateral, whether it is a pledge of assets or second mortgage on her property," although it recognized that "[t]hese issues will most likely not be acceptable to Ms. Holtzman who seems to view this as a 'committee' obligation." Moreover, the Bank considered "discuss[ing] personal collateral via [Ms. Holtzman's] \$130m in liquid assets."

For the short term, the Bank decided to wait and take no further action. Since the quiet period imposed by Ms. Holtzman prevented any discussions with her, and "given the fact that all viable alternatives [were] of a personal nature and should be discussed directly with [Ms. Holtzman]," the "decision was to hold off."

13. Promotion of Fleet Securities to Co-Manager

During the same period that Fleet Bank was making the decision to transfer the Loan to its workout group, the offices of the Comptroller and the Mayor were in the final stages of selecting a new underwriting team for the City's bonds.

Ms. Bradbury and her staff reviewed and evaluated each of the proposals submitted in response to the RFP, interviewed applicants, ranked the proposals, and drafted a proposed team of senior managers and co-managers. Fleet Securities was among the applicants reviewed by the Comptroller's Office. On March 16, 1993, at a meeting with Roger Anderson, the Comptroller's Bureau Chief for Debt Management, Michael Geffrard from the Mayor's office, and Mark Page from the Office of Management and Budget, Ms. Bradbury put forward a list of possible candidates for promotion to co-manager and for demotion from co-manager. Along with a number of other candidates, Fleet Securities appeared on the list of firms to be promoted to co-manager based upon its past performance as a selling group member. Fleet Securities ranked first among the 31-member selling group in the number of bonds ordered and third in the number of bonds allocated.

Throughout this period, Ms. Bradbury had significant contact with Ms. Holtzman concerning the RFP process. In fact, Ms. Holtzman reviewed and commented on the RFP before it went out and participated in the selection process leading to her Office's recommendation and selection of senior managers and co-managers in at least two areas. Ms. Holtzman and Ms. Bradbury met extensively about the selection of senior managers. Ms. Bradbury consulted with Ms. Holtzman concerning the appointment of certain co-managers. Specifically, Ms. Bradbury discussed with Ms. Holtzman the appointment of minority-owned and women-owned firms to co-manager positions.

Ms. Holtzman testified that she did not speak with Ms. Bradbury about Fleet Securities, and Ms. Bradbury could not recall ever having spoken with Ms. Holtzman about Fleet Securities.

On or about March 10, 1993, a week prior to the announcement of the City's new underwriting team, Mr. O'Malley called Mr. Murphy and told him that Fleet Securities was "going to be getting good news" in the near future. Mr. Murphy understood that the good news to which Mr. O'Malley referred was that Fleet Securities had been chosen as a co-manager. Mr. Murphy immediately passed this good news on to Mr. John Robinson, FFG's Executive Vice President, and Ms. O'Connor, asking them to "keep this news confidential until it was publicly announced."

On March 17, 1993, the Offices of the Mayor and Comptroller announced the names of the financial institutions that would comprise the City's underwriting management team. Fleet Securities was selected, for the first time, as co-manager on a New York City bond issue.

Shortly thereafter, after confirming with Mr. O'Malley that it would be appropriate to do so, Mr. Murphy wrote letters to Mayor Dinkins, Ms. Holtzman, Ms. Bradbury and Carol O'Cleirecain, the City's Commissioner of Finance, expressing his "appreciation for [Fleet Securities] having been designated as a co-manager in the City's general obligation syndicate" and calling the selection a "tremendous manifestation of trust in our company."

On April 1, 1993, Ms. Holtzman and the Mayor personally signed the public notice of the bond offering, or "tombstone," listing Fleet Securities as co-manager.

14. The April 14 Meeting: the Bank Agrees to Consider the Committee's Request for Additional Time

Ms. Holtzman and the Committee next met with Fleet Bank on April 14, 1993, less than two weeks after the appointment of Fleet as co-manager and after the quiet period had lapsed. Mr. Murphy opened the meeting with an overview of the Loan's history to date. Mr. Murphy then announced, based on his own determination, that the Committee needed to make an additional reduction to bring the balance at or less than 50% of the original amount at minimum. Mr. Murphy introduced Adele

Ruggiero, from the Bank's Managed Asset Department, who repeated the Bank's long-outstanding requests for a full accounting of the September 1992 fundraiser and an updated personal financial statement for Ms. Holtzman, which had been requested during the period Ms. Ruggiero characterized in a memorandum as the March 1993 "Black-Out" period.

The Committee advised the Bank that all of the Committee's efforts were going to be concentrated on obtaining financial support for the Comptroller's race and that the Committee would therefore be unable to schedule a fundraiser to repay the debt until after the November election. Ms. Ruggiero took this plan "under consideration" indicating she "needed to speak with [her] superiors before responding."

15. Public Disclosure of Fleet Bank Loan and Removal of Fleet Securities as Co-Manager

On April 23, 1993, the press reported that the Comptroller's Office had recommended Fleet Securities as a co-manager seven months after Ms. Holtzman's Senate campaign obtained a loan from Fleet Bank. That day, Ms. Holtzman "recused [herself] from any involvement in decisions of the [Comptroller's] Office regarding Fleet Bank and/or its affiliates." In doing so, Ms. Holtzman stated that she "regret[ted] deeply" any "appearance" of "conflict of interest" her actions may have caused. Ms. Holtzman further pointed out that Mr. Bradbury had recommended the promotion of Fleet Securities without knowing of the campaign loan and that Ms.

Holtzman herself had not been involved in the selection of Fleet Securities.

After the press reports, Mayor Dinkins appointed an ad hoc committee to investigate the process that resulted in Fleet Securities' selection as co-manager. On May 13, 1993, the committee, consisting of Deputy Mayor Barry Sullivan, Corporation Counsel Peter Sherwood, Mayoral Counsel George Daniels, Director of the Mayor's Office of Public Finance Michael Geffrard, and Deputy Director and General Counsel of the Office of Management and Budget, Mark Page, recommended "that Fleet Securities not be promoted from the selling group to the management group." Though Fleet Securities was "fully qualified" to be a co-manager, "the appearance of a favor is a serious matter that requires decisive action to safeguard the City's reputation of integrity." The committee noted Ms. Holtzman's acknowledgment of an "appearance of conflict of interest" and stated that "[t]his appearance, unaddressed, could damage the City's standing in the credit market and the public's confidence in our underwriter selection process." The committee stated further "as public servants we have an obligation not only to avoid conflicts of interest, but to avoid even the appearance of conflicts." Mayor Dinkins promptly adopted the committee's recommendation and removed Fleet Securities as a co-manager on the bond issue.

16. Fleet Bank's Continuing Collection Efforts

Following the press reports and Ms. Holtzman's recusal, Fleet Bank and Ms. Holtzman continued to attempt to restructure

the Loan. From May through August 1993, Fleet Bank began to press the Committee even harder and more frequently for a repayment plan. Additional meetings were held, which Ms Ruggiero described as "intense," noting that "[w]e differed in opinions on a lot of things". During the course of these negotiations, "there were many requests [by Fleet Bank] for pay downs, assignments of collateral in the form of marketable securities and/or [Ms. Holtzman's] home."

Finally, on August 2, 1993, Fleet Bank notified the Committee that the Loan was in default and issued a demand for immediate repayment of \$240,400, the outstanding principal. Fleet Bank also issued a demand to Ms. Holtzman, as guarantor, for payment of the outstanding principal. On August 13, 1993, Fleet Bank, the Committee, and Ms. Holtzman agreed to extend the term of the Loan, conditioned upon a significant reduction of the outstanding principal by July 1, 1994, and the provision of collateral to secure the debt.

Discussion

Section 2604(b)(2) of the New York City Charter broadly prohibits a public servant from having "any financial or other private interest ... in conflict with the proper discharge of his or her official duties." Section 2604(b)(3) of the Charter prohibits a public servant from "us[ing] or attempt[ing] to use his or her position ... [for] ... private or personal

advantage."² The question we decide in this case is whether Respondent Holtzman violated (i) Section 2604(b)(2) by exercising authority over the selection of managers for a City bond underwriting from applicants that included the securities affiliate of a bank that had made a loan to Respondent's campaign, or (ii) Section 2604(b)(3) by continuing to exercise such authority and then permitting the application of a purported "quiet period" policy suspending negotiations regarding repayment of the Loan. We conclude in both respects that she did.

1. Section 2604(b)(2)

Section 2604(b)(2) reaches all forms of private conduct by public servants that may reasonably cause the public to question the public servant's undivided loyalty to the City. In

² The relevant provisions of the New York City Charter in full provide:

Section 2604(b)(2):

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.

Section 2604(b)(3):

No 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.

sweeping language it prohibits a public servant from engaging in any transaction or acquiring any private interest that conflicts with the public servant's official duties. The prohibitions embodied in Section 2604(b)(2) apply without regard to the public servant's good faith or subjective belief about whether a conflict of interests exists, or independent evidence that official action was in fact affected by personal interest. Thus, when a private interest is acquired by a public servant, a violation of Section 2604(b)(2) arises whenever, with knowledge of the private interest, the public servant retains the interest or fails to recuse himself or herself from the official duties with which the private interest may conflict.

Our prior advisory opinions establish that Section 2604(b)(2) applies whenever a private interest of a public servant may reasonably be viewed as potentially influencing an official act. As we have said, an appearance of impropriety exists when the transaction in question "suggest[s] that official actions were being taken as a result of a private benefit."

Conflicts of Interest Board ("COIB") Advisory Opinion No. 92-33, at 5 (Nov. 23, 1992). In the context of political fundraising, the Board has observed that "an appearance of impropriety may be created if the nature of the official's involvement is perceived to be coercive or provides an inappropriate opportunity for access to such official." COIB Advisory Opinion No. 91-10, at 2 (Nov. 18, 1991); accord COIB Advisory Opinion No. 93-15, at 5 (May 20, 1993) (holding that "a perception [of conflict] could

seriously undermine the public's confidence in the fairness and impartiality of its elected officials, and is therefore prohibited under Section 2604(b)(2) of the City Charter").

We have emphasized in particular the importance of avoiding even an appearance of bias by high-ranking officials in departments considered to be especially sensitive. See COIB Advisory Opinion No. 90-5 (Apr. 16, 1990) ("[H]igh-level officials have a special obligation to avoid even the appearance of impropriety"); see also Board of Ethics Advisory Opinion No. 445 (June 15, 1978) (emphasizing the "particularly sensitive" position held by an employee of the Comptroller's office charged with recommending adjustments in real property tax assessments, and concluding that "[a]lthough the employee's specific [private sector] responsibilities would not be in [the same] area [as his official duties], any employment with a financial consultant would create either the possibility or the appearance of an actual conflict with his official duties"); Board of Ethics Advisory Opinion No. 159 (Oct. 8, 1970) ("In a sensitive agency such as the Department of Social Services, it is especially important that all employees whether on a policy level or otherwise, avoid any situation which may result in a conflict of interest or even the appearance of impropriety").

Whether an appearance of impropriety exists is to be determined from the perspective of the public at large. See, e.g., In re Opinion No. 653 of the Advisory Comm. on Professional Ethics, 132 N.J. 124, 623 A.2d 241, 244 (1993); see also Formal

Opinion No. F86-6, 1986 N.Y. Op. Atty. Gen. 24 (Sept. 24, 1986) (characterizing the issue as whether the "public reasonably [might] question[] whether the [officials] exercised their [public] responsibilities solely in the public interest"); Gaynor-Stafford Indus., Inc. v. Water Pollution Control Authority, 192 Conn. 638, 650-51 & n.15, 474 A.2d 752, 759 & n.15, cert denied, 469 U.S. 932 (1984) (noting that an official has a "duty to apprise himself of all facts and circumstances surrounding the matter which might lead a reasonable disinterested person to question the public official's impartiality"). Thus, it is unnecessary for purposes of applying Section 2604(b)(2) for us to consider Respondent's good faith or whether Respondent had a subjective belief that her private interest was not in conflict with her official duties. It is sufficient for these purposes that Respondent was on actual notice of the Bank loan and that the Bank's securities affiliate had expressed to her an interest in serving as a manager of the bond underwriting, and thus stood to gain from the discretion exercised by Respondent in the selection of underwriters, a process in which the affiliate actually benefited by being awarded a co-manager role. A failure by a high-level City official, such as Respondent, to apprehend the significance of these facts -- of which Respondent had actual knowledge -- is not countenanced under the Charter. The Charter requires that public officials exercise reasonable care in ascertaining all the relevant facts necessary for compliance with its ethics provisions. See New York City Charter, Section 2604(a)(6) ("For

the purposes of subdivisions a and b of section twenty-six hundred six, a public servant shall be deemed to know of a business dealing with the city if such public servant should have known of such business dealing with the city"); see also Report of the New York City Charter Revision Comm'n, Vol. II, at 173 (Dec. 1986-Nov. 1988) ("[A]ctual knowledge is not required to find a violation occurred"). This standard has been applied to charges of conflict-of-interests involving other public officials in New York, see, e.g., In re Sims, 61 N.Y.2d 349, 474 N.Y.S.2d 270 (1984), as well as officials in other jurisdictions. See, e.g., Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847 (1988); Gaynor-Stafford Indus., Inc. v. Water Pollution Control Authority, supra; In re Pekarski, 536 Pa. 346, 639 A.2d 759, 762 (1994).

On the record before us, the appearance of impropriety created by Respondent's interest in the Bank loan and involvement in the selection of bond underwriters should have been apparent to Respondent. By 1990, Respondent had had a number of contacts with various Fleet Securities and FFG principal officers. In August 1990, Respondent attended a press conference concerning the participation of Norstar, the predecessor of Fleet Securities, in a City program called HOME. A month later, Respondent's office issued a press release about Fleet Bank's participation in the City's Small Business Loan Program. As a candidate for the Senate, she had met with a group of Fleet Securities senior executives in June 1992 and heard directly that

Fleet Securities strongly desired further City bond business, making it apparent that they intended to submit an application in response to any appropriate RFP. She had discussed various fundraising matters with FFG Vice-President Jim Murphy. When she applied for the campaign loan, the Campaign contacted the same Jim Murphy with whom Respondent had previously met regarding fundraising; he was not a loan officer and, in fact, was an officer of Fleet Securities, not Fleet Bank. After the failed fundraiser, her staff met several times with representatives of Fleet Bank regarding repayment of the campaign loan; they refused to schedule another fundraiser for more than a year and managed, on the occasion of each meeting, to negotiate a short extension of the loan. Finally, after the Senate election, Respondent met with representatives from Fleet Bank on December 15, 1992, with regard to the repayment of the campaign loan, and, after consulting with her attorney, she signed a personal guarantee on December 29, as part of an understanding with the Bank to extend the loan until February 1, 1993.

Meanwhile, Fleet Securities had, in response to the December 22 RFP, submitted its application to be a co-manager. From that date until March 17, Respondent continued to discharge her responsibility over the selection process while she was personally liable to one of the applicants' affiliates and while she was interested in renegotiating repayment terms with that affiliate to avoid enforcement of Respondent's personal guaranty.

Although Respondent had formally delegated decision-making authority over the selection to Darcy Bradbury, the Deputy Comptroller for Finance, that delegation hardly constituted a recusal, since the final authority for the selection of underwriters remained with Respondent and so far as the Bank, its affiliate and the public were concerned, the selection was made by the Respondent. On these facts, we have little difficulty concluding that from the perspective of a reasonable disinterested observer, Respondent's "private interest" in the bank loan in which her personal assets were at risk was "in conflict with the proper discharge of ... her official duties" in overseeing the bond underwriting selection process, and thus her failure to recuse herself violated Section 2604(b)(2).

2. Section 2604(b)(3)

Section 2604(b)(3) embodies a strong public policy that public authority is to be exercised solely for the public good. It is a violation of this section for a public servant knowingly to use or attempt to use his or her public office in any manner which is reasonably likely to result in a private gain, either to the public servant or to others having a specified relationship with the public servant. The prohibitions of Section 2604(b)(3) apply without regard to whether the public servant intended personally to benefit from the use of public office, or whether official authority is expressly invoked in a private transaction, or whether a benefit is actually conferred upon the public servant. Here we conclude that Respondent made "use [of] her

position as a public servant ... for ... private or personal advantage" in at least two ways: first, Respondent's exercise of authority over the decision to select Fleet Securities as co-manager of a City bond issue was reasonably likely to influence Fleet Bank to act favorably toward Respondent with respect to the Loan; second, Respondent's exercise of authority over the selection process foreseeably led to a further impermissible use of office in the form of the "quiet period" which forestalled the Bank's efforts to compel repayment of the Loan.

Respondent should have known that so long as she retained ultimate authority over the selection of underwriters, she was in a position to exert an unacceptable degree of influence over the Bank. See COIB Advisory Opinion No. 94-17 (July 11, 1994) (Board determined pursuant to 2604(b)(3) that a public servant had to recuse himself from his commission's consideration of a project, not receive relevant documents, not be involved even indirectly and not vote since by acting he could be perceived to be conferring an indirect advantage on a not-for-profit corporation with which public servant had a professional relationship). Although Section 2604(b)(3) does not require that Respondent's participation in the selection process actually caused the Bank to alter its position regarding the Loan, here the Bank's conduct during and after the selection process suggests that Respondent may in fact have been given special consideration. After the issuance of the RFP the Bank was informed that Respondent's policy precluded Respondent from

dealing with the Bank, and the Bank acquiesced, even though its representatives regarded the policy as "unconscionable." It is noteworthy that in its meeting with Respondent just a few weeks earlier in mid-December 1992, the Bank's negotiating stance was described as "hostile" and "accusatory." Later, after Fleet Securities had been selected to be co-manager, the Bank was willing to accommodate Respondent's special requirements. On April 14, 1993, when the Bank's representatives, along with Murphy, met with Respondent and others, the Bank agreed to consider the Committee's request to postpone additional fundraisers until after the general election in November 1993.

The suspension of negotiations with the Bank resulting from the invocation of the so-called "quiet period" policy followed from Respondent's continued involvement in the selection process and constituted a further knowing misuse of office. Respondent was on notice that her "quiet period" policy -- which technically applied only to communications regarding the selection process with underwriting firms that responded to the RFP -- had in this case been applied to curtail communications with Fleet Bank regarding repayment of the delinquent loan. The bank mailed McDonald (Respondent's attorney) a letter advising that the loan was being downgraded and transferred to the Managed Asset Division because of the quiet policy. The letter, dated February 12, 1993, explained that the action was being taken as a consequence of the Bank's "inability to negotiate such a restructure until after March 1, 1993 because of Ms. Holtzman's

position as Comptroller and her involvement in choosing banks for city underwriting." Respondent was mailed a copy of the letter, and although Respondent's recollection was that she did not read it, she did not deny that her office received it.

Respondent knew of the Loan and the need for on-going communications with Fleet Bank regarding the pending loan extension deadline of February 1, 1993. After January 25, 1993, when Respondent's attorney communicated the "quiet period" policy to the Bank, the Bank suddenly ceased pressuring Respondent for repayment of the Loan. If nothing else had already done so, this unexpected silence should have alerted Respondent to the reason the Bank had stopped pressuring her, or at least should have caused her to ask Mr. McDonald or Ms. Levin if they could explain the silence.

Although we conclude that Respondent violated Section 2604(b)(3) by exercising authority over the selection of underwriters at a time when one of the applicants' affiliates was threatening to collect on the delinquent Loan, Respondent's conduct went well beyond merely exercising such authority. By failing to relinquish her authority over the selection process, Respondent rendered it all but certain that the "quiet period" policy would be applied to communications with the Bank and by permitting the "quiet period" to be so applied, Respondent, under color of the authority of her office, defeated the Bank's legitimate efforts to obtain repayment, in violation of Section 2604(b)(3).

3. Federal Preemption

Respondent claims that, as applied to her conduct here, the jurisdiction of the Board under Chapter 68 of the Charter is preempted by Federal law, specifically the Federal Election Campaign Act ("FECA"). For the reasons stated below, the Board concludes that there is no Federal preemption in this case.

There is a strong presumption against Federal preemption, especially in areas which have traditionally been governed by state or local law. Congressional intent to preempt in such areas must be "clear and manifest." See New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 115 S. Ct. 1671 at 1676 (1995) (unanimously holding that ERISA did not preempt New York's system of surcharges favoring Blue Cross). A "tenuous, remote or peripheral connection" with the subject matter of the Federal Act is not sufficient. Id. at 1680.

In enacting FECA, Congress intended to ensure unitary regulation of fundraising by candidates for Federal office by "providing complete control over and disclosure of campaign contributions and expenditures in campaigns for Federal elective office." S. Rep. No. 93-689, 93rd Cong., 2d Sess. (1974), reprinted in 1974 U.S.C.C.A.N. 5587. Nowhere did Congress express an intent to preclude institutions of local government from disciplining its public servants for misusing their public office, an area historically regulated by the states and localities. For example, Senator Cannon, the sponsor of the bill

that became FECA, acknowledged that the Act was not intended to preempt the so-called "little Hatch Acts" enacted by various states to regulate the political activities of their civil servants. 120 Cong. Rec. 34386 (daily ed. Oct. 8, 1974).

In a decision which resonates for this case, the Court of Appeals for the Second Circuit, construing FECA, has held that FECA did not preempt state laws regulating corporate waste in the context of corporate political contributions. In that case, a shareholder had filed suit against a corporation's directors alleging that the directors had committed waste of corporate assets in violation of state law by making excessive political contributions through a political action committee. Stern v. General Electric Co., 924 F.2d 472 (2nd Cir. 1991).

In Stern the court pointed out that FECA limited its preemption to state laws "with respect to election to Federal office," 2 U.S.C. § 453, and concluded that "[t]he narrow wording of this provision suggests that Congress did not intend to preempt state regulation with respect to non-election-related activities." Id. at 475. The Court reasoned that state laws governing corporate waste directly implicated non-election-related activities and consequently were not preempted by FECA.

The conflicts of interest provisions at issue here, Sections 2604(b)(2) and 2604(b)(3) of the Charter, similarly involve non-election-related activities. Consequently, they also

are not preempted by FECA under the authority of Stern v. General Electric.

The Stern court further concluded that Congress had not occupied the field of corporate political spending to such a degree as to leave no room for state regulation in areas not involving election-related activities. Ibid. And the Court found that no actual conflict existed between FECA and state corporation law. Id. at 476.

More so than in the regulation of corporate activities, the regulation of local public officials in the discharge of their public duties has historically been, and has continued to be, a matter of local concern. In fact, state regulation of the qualifications of its officials "is a decision of the most fundamental sort for a sovereign entity." Gregory v. Ashcroft, 501 U.S. 452, 460, 111 S. Ct. 2395, 2400 (1991). As Justice O'Connor stated, "[t]hrough the structure of its government, and the character of those who exercise government authority, a state defines itself as a sovereign." Id. Nothing in the language or legislative history of FECA suggests that Congress intended the preemption provision of the Act to reach so far as to displace general local regulation of local public officials, especially when those regulations have only an indirect, tenuous effect on Federal campaign financing.

The Board's exercise of jurisdiction over Respondent's failure to recuse herself from the selection of co-managers for

the City's bond issue, and over the use of a "quiet period" to hold off her lender, is narrowly tailored to further New York's substantial, indeed compelling, governmental interest in protecting public confidence in the integrity of its municipal government. See Barry v. City of New York, 712 F.2d 1554, 1560 (2d Cir.), cert. den., 464 U.S. 1017 (1983) (upholding a statute designed "to deter corruption and conflicts of interest among City officers and employees, and to enhance public confidence in the integrity of its government" on the grounds that these aims represent "a substantial, possibly even a compelling, state interest"); Golden v. Clark, 76 N.Y.2d 618, 626, 564 N.E. 2d 611, 615, 563 N.Y.S.2d 1,5 (1990) ("increas[ing] citizens' confidence in the integrity and effectiveness of their government" is a "legitimate governmental purpose"); Watkins v. New York State Ethics Commission, 147 Misc. 2d 350, 355-56, 554 N.Y.S.2d 955, 960 (Albany Co. 1990) (holding that there is a "compelling state interest in deterring governmental corruption and in fostering public confidence in our system of government").

Neither of the restrictions at issue - the prohibition on misusing one's public office for personal gain and the requirement that a public servant recuse himself or herself when faced with a potential conflict of interest - undermines or conflicts with Congress' intent in enacting FECA. FECA was intended by Congress to prevent public servants from being disadvantaged in the fundraising process by their official

position; it was not intended to accord them an advantage over private citizens running for Federal office.

The conduct at issue in these examples is distinct from the campaign; the generally applicable regulations at issue have only a tenuous effect on campaign activities; and the areas regulated have historically been matters of local concern. Such conduct thus falls outside the election-related activities encompassed within FECA's preemption provision. The Board's responsibility to oversee the integrity of the City's public officials does not cease when an official decides to campaign for Federal office.

Sanctions

The Board has found that Respondent violated Sections 2604(b)(2) and 2604(b)(3). Section 2606(b) provides that, upon determining that there has been a violation of Section 2604, the Board may:

impose fines of up to ten thousand dollars and to recommend to the appointing authority, or person or body charged by law with responsibility for imposing such penalties, suspension or removal from office or employment.³

³ Charter Section 2606(b) also requires the Board to consult "with the head of the agency involved, or in the case of an agency head, with the mayor" before imposing a fine for violations of Charter Section 2604. As the Respondent was an elected official, this requirement does not apply here.

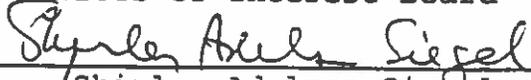
We do not impose a fine for Respondent's violation of Section 2604(b) (2) because Section 2606(b) states that a fine may not be imposed for conduct in violation of Section 2604(b) (2) unless the Board has promulgated a rule identifying the conduct as prohibited by this section and the Board has promulgated no such rule.

On the basis of the Board's finding that Respondent's conduct violated Section 2604(b)(3), the Board imposes a fine of \$7,500.00.

So Ordered.

Dated: April 3, 1996

Conflicts of Interest Board*



Shirley Adelson Siegel



Benito Romano



Bruce A. Green

* Sheldon Oliensis, Chair, and Jane Parver, a member of the Board, took no part in the Board's consideration of this matter. For purposes of issuing a decision and final order, two members of the Board constitutes a quorum. Chapter 68, Section 2602(h).