

Appearance of Impropriety
Agency Heads
Endorsements

Charter Sections: 2604(b)(2), (b)(3)
Opinions Cited: 91-1, 95-2, 98-6

Advisory Opinion No. 2000-3

The Commissioner of the New York Police Department (the “NYPD”)¹ requested an opinion as to whether it would violate the conflicts of interest provisions of Chapter 68 of the City Charter for him to write and personally sign a letter (the “Letter”) that would serve as the introduction to a special limited edition of a book entitled N.Y.P.D.: An Illustrated History (the “Book”). The Book is being published to raise funds for the NYPD Museum (the “Museum”), a private not-for-profit entity affiliated with the NYPD.

Background

The Museum is a 501(c)(3) not-for-profit corporation administered by a volunteer

¹ Charter Section 2603(c)(3) provides that the Board’s advisory opinions will be made public “with such deletions as may be necessary to prevent disclosure of the identity of any public servant.” The Commissioner, however, agreed to waive confidentiality in this case, as the opinion would have had little instructive value had the NYPD not been identified.

Executive Committee and Board of Trustees. The Museum's mission is to collect, preserve, and interpret objects related to the history of the NYPD and to educate the public about the NYPD. The Museum is supported primarily through private funding. The City, through the Department of Cultural Affairs, granted the Museum one million dollars in capital funds to construct its facility. By virtue of the powers granted to him under the New York City Administrative Code §14-107, the NYPD Commissioner has authorized the Museum to utilize the NYPD's logos, symbols, and emblems. Furthermore, the City provides the Museum with its personnel, that is, NYPD officers staff the Museum in administrative, security, and community affairs capacities. Admission to the Museum is free.

The Book is a historical guide to the NYPD prepared for the Museum and paid for with Museum funds. All proceeds from the sale of the Book will go to the Museum. Signed original copies of the Letter will appear only in the first 1,000 volumes of the Book, and these special limited editions of the Book will sell for \$50.00. Standard editions of the Book will sell for \$12.99. In the Letter, the Commissioner will express pride in the NYPD and its history and invite readers to visit the Museum.

The Letter will not appear anywhere other than in the limited special editions of the Book and will not be used for separate fundraising purposes. The Commissioner will not participate in the Book's promotion.

Discussion

Charter Section 2604(b)(2) provides: "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.”

Charter Section 2604(b)(3) provides: “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.”

The Board has discussed endorsements by City officials in several of its advisory opinions.

In Advisory Opinion Number 91-1, the public servant wished to appear, with a reference to his title, in an advertisement for a for-profit entity. The public servant stated that he would donate to charity his compensation for appearing in the advertisement. However, the Board determined that use of the public servant's name, title, and likeness in an advertisement promoting only the interests of a for-profit entity may create an appearance that the public servant's official position is being used to advance a private interest.

In Advisory Opinion Number 95-2, the Board determined that it would violate Chapter 68 for a Commissioner to use his official title to promote a book published by a not-for-profit entity, which had no business dealings with the City. Even though the Commissioner would provide his endorsement without compensation and the book provided information that would be useful to constituents of his agency, the Board determined that such endorsement might suggest to the public that the City is recommending the purchase of one book over others on the same subject. However, the Board also stated that, if appropriate safeguards were in place to protect against the

appearance that a private organization is receiving preferential treatment, there may be circumstances where the City's endorsement of privately generated materials is not only appropriate but essential to promote a City purpose.

In its Advisory Opinion Number 98-6, the Board determined that it would violate Chapter 68 for a Commissioner, even without his title, to endorse a for-profit documentary film that featured an organization funded by his agency, because it might appear both that his agency was recommending the purchase of the film and that the featured organization would receive preferential treatment from his agency. Furthermore, the Board stated that a City interest would not be advanced by this endorsement.

The facts here present the sort of special circumstance envisioned in Advisory Opinion Number 95-2, namely, one where “the City’s interest must be the clear determinant for the endorsement.” The Commissioner has been asked to lend his support to an entity whose sole mission is to educate the public about his agency, the NYPD, and to celebrate its work. It is plainly in the City’s interest to support the Museum, which itself directly supports the NYPD, and indeed the NYPD does so in other ways, including lending City employees to staff the Museum. Furthermore, there do not appear to be entities with the same or even a similar mission in competition with the Museum for the Commissioner’s support.

Conclusion

Because the Museum has a mission unlike that of any other similarly situated entity, and because it exists to promote a major City agency, namely, the NYPD, the Board has determined that the Commissioner’s Letter endorsing the Museum would not

violate Chapter 68.

Date: November 1, 2000

Benito Romano
Acting Chair

Bruce A. Green

Jane W. Parver