

Advisory Opinion No. 93-4

A high ranking public servant has requested an opinion from the Conflicts of Interest Board (the "Board") as to whether, consistent with Chapter 68 of the City Charter, he may maintain his position as Executive Director of a not for profit organization (the "Not for Profit Organization") which receives funding from the City.

The Not for Profit Organization provides social services through several programs, two of which are funded by City agencies (the contracts for the programs are hereinafter collectively referred to as the "City Contracts").

The public servant has served as Executive Director of the Not for Profit Organization for many years, and receives a salary for his services. The public servant advised the board of directors of the Not for Profit Organization of his acceptance of his City position and, at his suggestion, the board of

directors took action to preclude him from receiving future compensation in connection with the City Contracts. In addition, the administration of the City Contracts was transferred to another employee of the Not for Profit Organization.

Subsequent to its consideration of the public servant's request, the Board was advised that the Not for Profit Organization will be assigning the two City Contracts to a new not for profit organization (the "New Entity"), separate from the Not for Profit Organization. The New Entity will take over the administration of the City Contracts. The public servant will have no relationship, direct or indirect, with the New Entity, and will play no role in its administration of the City Contracts.

It is the opinion of the Board, based on the assignment of the City Contracts to the New Entity and the public servant's agreement to have no relationship with the New Entity, that the public servant may retain his position as Executive Director of the Not for Profit Organization without violating the provisions of Chapter 68. However, if the assignment is not completed in the manner described to the Board, and the two City Contracts remain with the Not for Profit Organization, it is the opinion of the Board that the

public servant would violate Chapter 68 if he retained his position as Executive Director while continuing to serve as a public servant.

Charter Section 2604(a)(1)(b) provides that no public servant who is a regular employee of the City shall have an interest in a firm which such public servant knows is engaged in business dealings with the City. An "interest", in turn, is defined to include a position as an officer or employee of a corporation or other form of enterprise. See Charter Sections 2601(11), (12) and (18).*

Charter Section 2604(e) provides that a public servant may hold a position otherwise prohibited under Charter Section 2604(a)(1)(b), if the head of the agency or agencies involved approves such position, and

* Chapter 68 expressly permits a public servant to serve as an officer or director of a not for profit corporation interested in business dealings with the City, if certain conditions are satisfied. See Charter Section 2604(c)(6). These conditions include a proviso that the public servant receive no salary or other compensation in connection with such activities. See Charter Section 2604(c)(6)(d). The proviso refers to any salary or other compensation for the public servant's activities on behalf of the not for profit, and not simply to compensation relating to, or derived from, the not for profit's business dealings with the City. Therefore, even if the public servant in this case received no compensation related to, or derived from, the proceeds of the City Contracts, he would still not satisfy the conditions set out in Charter Section 2604(c)(6).

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Board determines that the holding of such position would not conflict with the purposes and interests of the City.

By letter to the Board, the public servant's agency head approved the public servant's position as Executive Director of the Not for Profit Organization.

The Board has been advised that the Not for Profit Organization has transferred administration of the City Contracts to another employee, and that the public servant has agreed to recuse himself from participating in decisions relating to, or receiving compensation from, the City Contracts. The Board has recognized that in certain cases, a potential conflict of interest may be avoided by a public servant recusing himself or herself from further involvement in a particular matter, either in his or her official capacity as a public servant, or in his or her private capacity as an officer, director or employee of a non-governmental organization. Thus, in its Advisory Opinion No. 92-9, the Board determined that Barry F. Sullivan could retain certain interests in First Chicago Corporation ("First Chicago") after his appointment as Deputy Mayor

for Finance and Economic Development. This determination was based, in part, on Mr. Sullivan's retirement from his position as Chief Executive Officer of First Chicago, his current status as a consultant to that firm, and a series of measures designed to insulate him from certain business relationships between First Chicago and the City.

In any case where recusal is considered as a means of avoiding conflicts of interest, the recusal must be effective. In other words, the public servant must be able to effectively insulate himself or herself from further involvement in the matter at issue, to avoid the appearance that government decision-making is in any way compromised by divided loyalties. In the instant case, the public servant is a co-founder of the Not for Profit Organization and has served as Executive Director for many years. As Executive Director, he has overall responsibility for, and jurisdiction over, all of the Not for Profit Organization's staff and programs. The City Contracts involve substantial sums of money and represented a significant portion of the public servant's responsibilities as Executive Director. As a

result, it would be difficult, if not impossible, for the public servant to effectively insulate himself from all further involvement in these Contracts.

In addition, the Board notes that funding for the City Contracts is subject to the approval of the agency which employs the public servant. If the City Contracts were not assigned to the New Entity, the public servant's continuing role as Executive Director could give rise to an appearance that he is using his position as a public servant to help secure approval of funding for the Not for Profit Organization, in violation of Charter Section 2604(b)(3). Charter Section 2604(b)(3) provides that no public servant shall use his or her official position to

obtain any financial gain or privilege, for the public servant or for any person or firm associated with the public servant.

Sheldon Oliensis
Chair

Benjamin Gim

Beryl R. Jones

Robert J. McGuire

Shirley Adelson Siegel

Dated: January 20, 1993