

Advisory Opinion No. 93-6

A public servant has requested an opinion from the Conflicts of Interest Board (the "Board") as to whether an elected official violated the provisions of Chapter 68 of the City Charter, by holding a fundraising event during the official's term of office, at a time when the official was not an active candidate for re-election. The public servant has also requested an opinion as to whether it was proper to list the names of several public servants on the invitation to such event.

Fundraising Event

The event in question was held at a public facility, to honor the elected official. Although described as a personal event, the Board has been advised by the New York City Law Department that the event was a fundraiser, to raise money for the official's re-election. The official is serving a term of office that has not yet expired and, at the time of the event, the official was not an active candidate for

re-election.

Chapter 68 prohibits certain public servants from soliciting political contributions for a candidate for City elective office, or for an elected official who is a candidate for any elective office. Specifically, Charter Section 2604(b)(12) provides that

"No public servant, other than an elected official, who is a deputy mayor, or head of an agency or who is charged with substantial policy discretion as defined by rule of the [Conflicts of Interest Board], shall directly or indirectly, request any person to make or pay any political assessment, subscription or contribution for any candidate for an elective office of the city or for any elected official who is a candidate for any elective office;" Charter Section 2604(b)(12) (emphasis added).

Since elected officials are expressly excluded from the scope of this prohibition, the official in question is not prohibited from soliciting political contributions for the official's re-election.*

* "Elected officials" are defined as the Mayor, the President of the City Council, the members of the City Council, the City Comptroller, and the five Borough Presidents. See Charter Section 2601(10).

Under both the State Election Law and the City's Campaign Finance Law, campaign funds may be solicited and collected throughout an entire election cycle for the public office held by the official. It is therefore not significant that this event was held during the official's term of office, and at a time when the official was not an active candidate for re-election.

For the foregoing reasons, it is the opinion of the Board that the holding of the fundraising event did not, in and of itself, violate the provisions of Chapter 68.

Invitation

The fundraising event in question was sponsored by a group styled as "Friends of" the elected official, which the Board has been advised is a political fundraising committee established for the official's benefit and subject to the reporting requirements of the State Election Law. Under the State Election Law, political committees (with certain exceptions) are required to file periodic statements of receipts and expenditures with or at such place as shall be directed by, the State Board of Elections. See State Election Law, §§ 14-102, 14-110. In addition, the State

Election Law places certain limits on political contributions, and provides that contributions to committees may not be converted to "a personal use which is unrelated to a political campaign or the holding of a public office or party position." See State Election Law, §§ 14-114 and 14-130. The State Board of Elections is authorized and empowered to enforce these provisions, and is specifically authorized and empowered to conduct investigations, compel the production of books and records, and examine the administration of elections within the State, including campaign financing and campaign finance reporting. See State Election Law, §§ 3-102 and 3-104.

The invitation to this event listed several prominent citizens as "Friends of" the elected official, including former high-ranking City and State employees. Additional civic and business leaders were listed as members of an event "Club" and an event "Committee". The invitation solicited contributions in various amounts, with a \$1,000 contribution entitling the donor to be listed in the "Club" and to attend a special dinner. While the "Committee" does not have a minimum contribution level assigned to it, no evidence has been presented indicating that the "Committee" is

anything other than a list of lesser contributors (members' names are distinguished from, and given less prominent treatment than, both the "Friends of" the elected official and the event "Club").

The list of members of the "Club" included a public servant who, at that time, managed a division within a City agency, and a public servant who serves on a City board. The list of members of the "Committee" included

a public servant who manages a division within another City agency.

In its Advisory Opinion No. 91-10, the Board concluded that high level appointed officials may actively solicit funds on behalf of charitable organizations, provided that such solicitations are not directed to persons or firms likely to come before the officials' agencies or be affected by their official actions, and provided further that such solicitations are free of any implication that officials are obtaining any direct or indirect personal benefit, and do not otherwise create a perception that their City offices are being misused as a "lure or as pressure." Id. This conclusion was based, in part, on the recognition that it is "in the City's interest to

encourage the voluntary financial support of community groups, educational institutions and charities, inasmuch as their good works help sustain the life of the City and indeed are indispensable to it." Id.

The solicitation of funds on behalf of political candidates stands on a different footing. As noted above, Charter Section 2604(b)(12) expressly provides that no public servant (other than an elected official) who is charged with "substantial policy discretion" as defined by rule of the Board, shall directly or indirectly request that any person make or pay any political contribution to any candidate for City elective office or for any elected official who is a candidate for any elective office. The Board, in turn, has defined a public servant who is charged with substantial policy discretion as

"[one who has] major responsibilities and exercises independent judgment in connection with determining important agency matters. Public servants with

substantial policy discretion include, but are not limited to: agency heads, deputy agency heads, assistant agency heads and public servants in charge of any major office, division, bureau or unit of an agency." Rules of the Board, Section

1-02.

This limitation on political fundraising stems from a strong concern that "actual or implied coercion may exist when people in policy making positions raise money for political campaigns." See Volume Two, Report of the New York City Charter Revision Commission, December 1986 - November 1988, at 179.

Although the two public servants listed as members of the "Club", and the public servant listed as a member of the "Committee", were each public servants charged with substantial policy discretion, it is the opinion of the Board that the listing of their names on the invitation does not constitute a violation of Chapter 68. These individuals were listed on the invitation along with dozens of other contributors, in a manner that is common for fundraising events in both the public and private sectors, in invitations, programs and commemorative journals. The inclusion of a name within such a list is not generally viewed as a request by the named individual for a contribution, or a suggestion that those who do business with the contributor's agency or firm are expected, or would be well-advised, to make a contribution in order to insure favorable treatment. As such, it is the Board's opinion that the mere listing of these public servants'

names, in the manner presented in the invitation, does not rise to the level of a direct or indirect request that any person or firm make or pay a political assessment, subscription or contribution in violation of Charter Section 2604(b)(12).

The Board notes that a different conclusion would have been drawn if it appeared that the elected official's office, or the "Friends of" the elected official, sought to pressure individuals or firms into making contributions through the use of the public servants' names, or that any individual or firm was accorded or denied favorable treatment by their agencies

as a result of having made, or having failed to make, such a contribution.

Sheldon Oliensis
Chair

Benjamin Gim

Beryl R. Jones

Robert J. McGuire

Shirley Adelson Siegel

Dated: February 1, 1993