

Advisory Opinion No. 93-9

A 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 on the board of directors of two not-for-profit organizations in light of his position as District Manager for a Community Board (the "Community Board").

The public servant has advised the Board that he is a member of the board of directors of a not for profit organization ("Not for Profit A") which is engaged in business dealings with the City. Not for Profit A is not located in the district served by the Community Board, and has no business dealings with the Community Board. The public servant represents that he receives no compensation for his work on behalf of Not for Profit A, that such work is performed at times when he is not required to perform his official duties, and that he takes no part in any of the business dealings between Not for Profit A and the City.

In addition, the public servant has advised the Board that he is a member of the board of directors of

a second not for profit organization ("Not for Profit B"), which is located within the district served by the Community Board, and which must come before the Community Board for letters of support for funding of programs, and for land use related matters.

It is the opinion of the Board, based on the public servant's representations, that it would not be a violation of Chapter 68 for the public servant to maintain his position on the board of directors of Not for Profit A. Charter Section 2604(c)(6) permits a public servant to serve as a director of a not-for-profit organization which has business dealings with the City, provided that (i) the public servant takes no direct or indirect part in such business dealings; (ii) the organization has no interest in any business dealings with the public servant's agency; (iii) all work performed by the public servant as a director is performed at times when he or she is not required to perform services for the City, and (iv) the public servant receives no compensation for this work.

For the following reasons, it is also the opinion of the Board that it would be a violation of Chapter 68 for the public servant to continue to serve on the board of directors of Not for Profit B while

maintaining his position as District Manager for the Community Board.

The Community Board must issue letters of support for programs offered by Not for Profit B, and must also decide on certain land-use issues affecting this organization. As the principal staff member of the Community Board, the public servant is expected to provide professional advice and guidance on such matters, in the interests of the population served by the Community Board. As a director of Not for Profit B, however, he is expected to help that organization attain its own goals and objectives, even if these are in opposition to the interests of the community at large. His continued relationship with Not for Profit B could therefore prevent him from performing his official duties objectively and impartially, in violation of Charter Section 2604(b)(2). Charter Section 2604(b)(2) provides that 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.

In addition, because Not for Profit B must seek Community Board support for funding, the public servant's dual role could also create an appearance

that he is using his official position to secure an advantage for a private party. By continuing to serve as a director, any actions of the public servant taken in support of funding for Not for Profit B could be seen as favoring that organization, in preference to other social service providers seeking support from the City. Charter Section 2604(b)(3) prohibits a public servant from using his or her official position to obtain any financial gain or other private advantage for the public servant or for any person or firm associated with the public servant.

Finally, the public servant is prohibited from serving as a director of Not for Profit B because he would not be able to effectively insulate himself from the business dealings which Not for Profit B has with the Community Board. As District Manager, the public servant represents the Community Board in relation to the delivery of municipal services within the community board district. He also functions as the supervisor of all Community Board staff and as the principal liaison between residents of the district, members of the Community Board, and service providers such as Not for Profit B. In this capacity, it would be difficult, if not impossible, for the public servant to completely insulate himself from all involvement in the business

dealings between Not for Profit B and the Community Board. Charter Section 2604(c)(6) permits a public servant to serve as a director of a not for profit organization, but only if certain conditions are satisfied. These conditions include a proviso that the public servant take no direct or indirect part in any business dealings between the organization and the City. See Charter Section 2604(c)(6)(a).

Sheldon Oliensis
Chair

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Robert J. McGuire

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Dated: February 17, 1993