

Advisory Opinion 93-21

A public servant has written to the Conflicts of Interest Board (the "Board"), requesting an opinion as to whether, consistent with Chapter 68 of the City Charter, a member of the City Council may nominate a family member to a Borough President for appointment to a community board, and whether the Borough President may accept such a nomination and make the appointment.

In addition, the public servant has requested an opinion as to whether a Council member may nominate employees of other elected officials, excluding employees of the nominating Council member or the appointing Borough President, and whether the Borough President may accept such nominations for appointment.

Background

The City Charter provides for the establishment of community districts, to facilitate City planning at the community level, encourage participation in City government, and allow City agencies to more efficiently organize the delivery of municipal services to the five boroughs. See Charter Section 2700. Each community district lies within the boundaries of a single

borough, and each is intended to coincide with historic, geographic and identifiable communities from which the City has developed. See Charter Section 2701(a)(1).

The Charter goes on to establish a community board for each community district, consisting of not more than fifty members appointed by the Borough President for staggered terms of two years, at least one-half of whom are to be appointed from nominees of City Council members whose Council districts include any part of the community district. See Charter Section 2800(a).

Community boards are authorized and empowered to employ staff (within the limits of budgetary appropriations), adopt by-laws, hold public and private hearings on matters relating to the welfare of the district, prepare plans for the growth and development of the district, prepare and submit expense budget priorities for the district, and review capital projects to be located in the district. See Charter Section 2800(d).

The statutory provisions creating and setting out the powers of community boards (Charter Sections 2800 and 2801) do not limit or define who may be nominated for membership. However, Charter Section 1135 does provide that no person employed by a Borough President

or a Council member may be appointed to serve on a community board to which such Borough President may make appointments or to which such Council member may recommend appointments.

Nomination of Family Members

For the following reasons, it is the opinion of the Board that it would be a violation of Chapter 68 for a member of the City Council to nominate a family member to the Borough President for appointment to a community board. For purposes of this Opinion a "family member" shall include a spouse, child, parent or sibling of the City Council member.

Charter Section 2604(b)(3) provides that no public servant shall use or attempt to use his or her official position 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. A person or firm "associated" with a public servant includes a spouse, child, parent or sibling; a person with whom a public servant has a business or other financial relationship; and each firm in which the public servant has a present or potential interest. See Charter Section 2601(5).

Charter Section 2604(b)(3) is intended, among other things, to prevent City employees from abusing the public trust by exerting official influence to secure financial gain or special treatment for family members, or for persons with whom the employee enjoys a business or financial relationship. It is also intended to preserve public confidence in government by helping to insure that official actions or decisions are motivated solely by the public interest, rather than private relationships or affiliations. ¹

¹ Charter Section 2604(b)(3) derives from former Charter Section 2604(c)(2), which provides that

No member of the board of estimate or the council or other officer or employee of the city or any city agency, whether paid or unpaid ... shall use or attempt to use his position to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for himself or any person, firm, corporation or other entity with which he is associated; he shall be deemed "associated" with each person who is a close relative by blood or marriage, with each person with whom he has a business or other financial relationship and with each firm, corporation or other entity in which he has a present or potential interest, direct or indirect.

Former Charter Section 2604(c)(2) was added in 1975, to make clear that public servants were forbidden from using their official influence to obtain special privileges or treatment for persons or firms with whom they may be associated - regardless of whether or not there is any direct business or financial relationship involved. See Preliminary Recommendations of the State Charter Revision Commission for New York City (June 1975), at p. 169.

Based on these considerations, the Board previously determined, in its Advisory Opinion No. 90-6, that it would be a conflict of interest for an elected official to refer the resume of a family member for City employment.

We see no reason to distinguish the nomination of a family member for appointment to a community board, from referral of a family member for City employment. While membership on a community board is an uncompensated position, there is a certain degree of power and prestige in holding such a position, and such appointments must be deemed to confer private or personal advantages.² Inasmuch as family members are associated with public servants for the purposes of Chapter 68, such nominations by Council members would violate Charter Section 2604(b)(3).

This conclusion is further supported by Charter Section 1135. If a Council member is prohibited from nominating a member of his or her staff for appointment

² As an example of the power and prestige conferred by community board membership, it should be noted that community boards are authorized to conduct public hearings on, and submit recommendations concerning, a wide variety of matters under the City's Uniform Land Use Review Procedure (ULURP), including site selection for certain capital projects, designations of zoning districts under the City zoning resolution, and certain sales, leases or other dispositions of City property. See Charter Section 197-c.

to a community board, then by analogy the Council member should not be permitted to nominate a member of his or her family. In both situations, the Council member would be using the power of public office to secure an advantageous appointment for individuals closely tied to him or her through financial or personal relationships. Furthermore, in both situations, the Council member could utilize the relationship to exert improper influence on the deliberations of the community board.

Nomination of Employees of Other Elected Officials

In addition to the nomination of family members, the public servant has also requested an opinion as to the propriety of a Council member nominating an employee of another elected official, other than those specified in Charter Section 1135, supra, for membership on a community board. It is the opinion of the Board that such nominations would need to be considered on a case-by-case basis, in order to assess their propriety under the City Charter. While such nominations are not specifically prohibited under Chapter 68, there are situations in which such a nomination would raise serious concerns about actual or potential conflicts of interest, under Charter Sections

2604(b)(3) and 2604(b)(2).

As an example, if a Council member has a relationship with the employee that rises to the level of an "association" under Charter Section 2604(b)(3), the nomination would (at the very least) create an appearance that the Council member was using his or her public office to secure a personal advantage for the employee, in violation of Charter Section 2604(b)(3).

As a further example, if the nomination was made under circumstances in which it appeared that the nominating Council member offered to make the nomination in exchange for some official action by the other elected official (e.g., a reciprocal arrangement in which the Council member and the other elected official would each nominate an individual from the other person's staff), such conduct could constitute a transaction in conflict with the proper discharge of the Council member's official duties, in violation of Charter Section 2604(b)(2).³

Accordingly, whenever a Council member proposes to

³ 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 interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties.

nominate an employee of another elected official for membership on a community board, the Board should be contacted and provided with the factual circumstances of the nomination. The Board will examine the facts and circumstances and determine the propriety of such a nomination under the relevant provisions of Chapter 68.

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