

Advisory Opinion No. 93-26

The Conflicts of Interest Board (the "Board") has received a request for an opinion from the office of Charles J. Hynes, District Attorney of Kings County, asking whether it would be consistent with the conflicts of interest provisions of Chapter 68 of the City Charter for the District Attorney and his employees to engage in activities involving solicitations and fundraising on behalf of Government Together for Legal Lives, Inc ("GCTLL"), a not-for-profit corporation which raises funds for the support of social and educational programs of the District Attorney's Office.

The District Attorney has specifically requested the Board's opinion concerning the propriety of solicitations by GCTLL of grants and gifts from:

- (1) Not-for-profit corporations and foundations;
- (2) For-profit corporations not engaging in substantial business in Kings County;
- (3) For-profit corporations engaging in substantial business in Kings County;
- (4) Individuals not residing in Kings County and without substantial business or property interests there; and
- (5) Individuals residing in Kings County or

having substantial business or property interests there.

The Board has also been asked whether it would be appropriate for the District Attorney, his deputies, assistants and staff to solicit funds for GCTLL and, if so, the extent to which these individuals may engage in these activities, and whether GCTLL should include any written limitations, disclaimers, or caveats in its solicitations to any of the possible classes of contributors listed above. Lastly, the Board has been asked whether the District Attorney himself may sit on the Board of Directors of and serve as an officer for GCTLL.

The District Attorney has provided the Board with descriptions of some of the programs for which GCTLL will solicit support, GCTLL's proposed fundraising activities and GCTLL's proposed staffing and organization. These descriptions are summarized below.

GCTLL supports the District Attorney's educational and social programs. Among these programs is Project Legal Lives, a collaboration among the District Attorney's Office, the court system, and Brooklyn schools, both public and private. Project Legal Lives also is supported by grants from various federal agencies. The Project uses the services of District

Attorney staff members and local teachers who voluntarily plan and present a law-related curriculum to 700 Brooklyn students in over 200 elementary and junior high schools. The curriculum involves, among other things, instruction in the classroom, participation in moot trial competitions, and visits to courts, police stations and the District Attorney's Office.

Among the other programs for which GCTLL would raise funds is the Drug Treatment Alternative-to-Prison ("DTAP") program of the District Attorney's Office, which is a prosecutorial diversion program. DTAP offers non-violent second felony offenders opportunities to enter residential drug treatment and education programs rather than face prosecution under New York State criminal law. DTAP is partially funded by a grant from the New York State Division of Criminal Justice Services. GCTLL would raise other funds to support such activities as job training and subsidized housing for DTAP graduates.

In addition, GCTLL will support programs that assist residents of Brooklyn who are not American citizens to understand and exercise their rights; crime prevention and crime victim assistance programs for senior citizens; the District Attorney's efforts to sensitize his employees to social and cultural issues;

and the development of other community outreach and community service programs.

The Board also has been advised that on April 29, 1993, the Kings County District Attorney and the Brooklyn Development Association held a joint reception for representatives of approximately 60 foundations and corporations doing business in Brooklyn, but not with the District Attorney's Office. At this reception, GCTLL was introduced as the not-for-profit corporation organized to solicit support for and direct support to the programs described above.

Future solicitations on behalf of GCTLL will be conducted by its officers and directors and other uncompensated volunteers. In addition to monetary support, solicitations will seek the use of computer and office equipment and educational materials.

GCTLL was organized under the New York Not-for-Profit Corporation Law; it has tax-exempt status under Section 501(c)(3) of the Internal Revenue Code; and the directors and officers of GCTLL will serve without compensation except for the reimbursement of expenses.

The District Attorney of Kings County intends to serve GCTLL as a director and officer, and the District Attorney will not receive any compensation. The District Attorney's Office will exercise no control over GCTLL, whose board will be independent under its

bylaws. Furthermore, a board of outside directors, who are not employees of the District Attorney's Office, will be elected soon. Mr. Hynes would be the only Board member from the District Attorney's Office on what will eventually be a large board.

For at least the first three years of operation, it is anticipated that GCTLL will operate out of office space and use equipment and facilities provided without cost by the District Attorney's Office. GCTLL may employ paid staff members in the future.

It is the opinion of the Board that it would be consistent with the conflicts of interest provisions of Chapter 68 for GCTLL to solicit grants and gifts, provided that such solicitations are conducted in accordance with the Board's Advisory Opinions Nos. 91-10 and 93-15, which discuss the conditions pursuant to which elected officials and high-level appointed public servants may engage in fundraising on behalf of not-for-profit organizations, and Advisory Opinion No. 92-21, which addresses the propriety of City agencies soliciting or accepting gifts from the private sector to support agency programs and initiatives.

It is thus the opinion of the Board, that GCTLL's solicitation of gifts from any of the potential contributors listed in the letter to the Board would not violate the conflicts of interest provisions of

Chapter 68, provided that such solicitations are conducted in accordance with the guidelines contained in the aforementioned advisory opinions. Accordingly, solicitations from other not-for-profit organizations and foundations are proper, provided they are general in nature and not directed at any person or firm having any pending matters, including investigations, prosecutions or appeals, involving the District Attorney's Office, or where it is reasonably foreseeable that such a matter will be pending in the future.

The fundraising activities proposed by the District Attorney meet these requirements, particularly since an independent not-for-profit organization, GCTLL, has been created for the explicit purpose of fundraising for City-related projects in which the District Attorney's Office is or expects to become involved. See Advisory Opinion No. 92-21 supra. In addition, it is unlikely that any of the potential sponsors identified at this time will have an interest in the resolution of matters handled by the District Attorney's Office. Furthermore, to the extent that the District Attorney's Office does have outstanding contracts, the parties to those contracts will not be solicited by GCTLL.

As for the District Attorney himself, it would be

a conflict of interest for him to actively engage in fundraising for GCTLL. See Advisory Opinions Nos. 91-10 and 93-15. Accordingly, the District Attorney should not engage in any active fundraising for GCTLL, as defined in Advisory Opinions Nos. 91-10 and 93-15. The District Attorney may, however, engage in passive fundraising. He may, for example, serve as the chair or as a member of an honorary committee or be honored at an event where his involvement is limited to having his name listed on the invitation and attending the event.

Other employees of the District Attorney's Office may engage in active fundraising for GCTLL, provided that they are not soliciting persons or firms likely to come before or engage in business dealings with the District Attorney's Office; their solicitations are free from any indication that they are obtaining personal benefits; and the employees do not appear to be using their positions as a lure or pressure. See Advisory Opinions Nos. 91-10 and 93-15.

In addition, any public servant, whether employed by the District Attorney's office or another City agency, engaged in fundraising on behalf of GCTLL must observe and abide by the provisions of Charter Sections 2604(b)(2), (b)(3) and (b)(4), which mandate that such fundraising be conducted only at times when the public

servant is not required to perform services for the City; that the public servant not use his or her official position to secure any private advantage for himself or herself, or for any person or firm with whom the public servant is associated; and that the public servant not disclose, or use for private advantage, any confidential information concerning the City and obtained as a result of public employment.

Furthermore, it is the opinion of the Board that GCTLL, in its written solicitations, should include language which expressly states that contributions will not affect any future business dealings or the disposition of other matters between the District Attorney's Office and the contributor. See Advisory Opinion No. 92-21.

As to the District Attorney's request for an opinion concerning the District Attorney's serving as a director or officer of GCTLL, Charter Section 2604(c)(6) provides that a public servant may serve as an officer or director of a not-for-profit organization which has business dealings with the City,¹ provided that: the public servant takes no direct or indirect

¹ Pursuant to Charter Section 2601(8), "business dealings with the city" means any transaction with the City involving the sale, purchase, rental, disposition or exchange of any goods, services, or property, any license, permit, grant or benefit, and any performance of or litigation with respect to any of the foregoing.

part in such business dealings; the not-for-profit entity has no interest in any business dealings with the agency served by the public servant, except where it is determined by the head of the agency that such activity is in furtherance of the purposes and interests of the City; all such activities are performed at times during which the public servant is not required to perform services for the City; and the public servant receives no salary or other compensation in connection with such activities.

Since GCTLL engages in business dealings with the District Attorney's Office and Mr. Hynes, as the District Attorney and as a director or officer of GCTLL, would be involved in such business dealings, Mr. Hynes presumptively may not serve GCTLL in these capacities. However, Charter Section 2604(e) provides that:

A public servant or former public servant may hold or negotiate for a position otherwise prohibited by this section, where the holding of the position would not be in conflict with the purposes and interests of the city, if, . . . the board determines that the position involves no such conflict. Such findings shall be in writing and made public by the board.

Accordingly, the Board has determined, based on the District Attorney's representations regarding the GCTLL, its structure and proposed programs and funding, that the District Attorney's holding these positions

would not conflict with the purposes and interests of
the City.

Sheldon Oliensis
Chair

Benjamin Gim

Beryl R. Jones

Robert J. McGuire

Shirley Adelson Siegel

Dated: November 15, 1993