

Advisory Opinion No. 93-27 and Order No. 40

The Conflicts of Interest Board (the "Board") has received a request from a public servant for an opinion as to whether he can retain his ownership interest in and position as Secretary/Treasurer with a private, for-profit corporation (the "Corporation"). The Corporation does not currently have any business dealings with the City but the public servant would like the Corporation to be able to solicit contracts with agencies other than the agency which employs the public servant.

Charter Section 2604(a)(1)(b) prohibits a regular City employee from having an interest in a firm which is engaged in business dealings with the City. If the Corporation pursues contracts with City agencies, the public servant's position as Secretary/Treasurer would be prohibited by this section. The public servant has thus asked the Board to determine whether his position with the firm conflicts with the purposes and interests of the City and, if the Board determines that it does not, grant a waiver under Charter Section 2604(e), which would allow him to retain this position.

The Board has determined that it would not

conflict with the purposes and interests of the City for the public servant to retain this position. Since the public servant's duties with the City consist mainly of internal contract audits, his work for the Corporation would not conflict with his official duties for the City by, for example, enabling him to steer City business to the Corporation. In addition, the public servant has stated that his duties for the Corporation will be conducted during his personal time.

Further, the public servant's agency head has already given his written approval of the position, stating that it does not pose a conflict with the purposes and interests of the City.

The public servant's ownership interest in the Corporation is also prohibited by Charter Section 2604(a)(1)(b). However, Charter Section 2604(a)(3) provides that, in certain circumstances, a public servant who holds an ownership interest prohibited by Charter Section 2604(a)(1)(b) must either divest the interest or disclose the interest to the Board and comply with its order.

When a public servant discloses a prohibited interest to the Board, Charter Section 2604(a)(4) provides that the Board shall issue an order setting forth its determination as to whether or not such

interest, if maintained, would conflict with the proper discharge of the public servant's official duties. In making this determination, the Board shall take into account the nature of the public servant's official duties, the manner in which the interest may be affected by any action of the City, and the appearance of conflict to the public.

The nature of the public servant's position and duties with the City are such that it is unlikely that he would be able to use his position to obtain an advantage for the Corporation in its business dealings with the City. For this reason, the public servant's ownership interest in the Corporation presents no conflict with the proper discharge of his official duties, and we do not require divestiture of that interest.

Accordingly, it is the determination of the Board (and the Board's order pursuant to Charter Section 2604(a)(4)) that the public servant may retain his interest in the Corporation under the circumstances described herein.

Beryl R. Jones  
Acting Chair

Benjamin Gim

Robert J. McGuire  
Sheldon Oliensis  
Shirley Adelson Siegel

Dated: October 12, 1993