

Spouse's Ownership Interest -
Charter Sections 2601(16)
2604(a)(1)(b)
2604(a)(3), (a)(4)

Advisory Opinion No. 94-3 and Order No. 42

The Conflicts of Interest Board (the "Board") has received a request from a public servant for an opinion as to whether it would be a violation of Chapter 68 for his spouse to lease premises owned and controlled by the agency for which he works. For the reasons stated below, it is the opinion of the Board that it would not be a conflict with the public servant's official duties for his wife to lease these premises from the City.

Background

In January, 1990, the public servant's spouse entered into an agreement with the private owner of a building in the Bronx to develop the building into a retail food and dry goods store. The agreement further provided the public servant's spouse with an option to buy the premises at a later date. At the time she

entered into this agreement, neither the public servant's spouse nor the public servant was aware that the premises might be acquired by the agency employing the public servant. In June, 1990, the property was acquired by that agency for nonpayment of taxes. Since, by that time, the spouse's store was already operating in the building, she requested that the agency sell or lease the premises to her. The public servant's spouse has recently been informed that she will be allowed to lease the premises.

The public servant works in a Manhattan borough office of his agency. Because of the nature of his job, he will not be in a position to influence City personnel in the Bronx office of the agency. In fact, he has stated that he does not have any dealings with employees in the Bronx office and that he has not been involved in any way with assisting his wife in her dealings with that office or with the agency generally.

Discussion

The definition of an "ownership interest" in Charter Section 2601(16) includes an interest held by

the spouse or unemancipated child of the public servant. Accordingly, the public servant's spouse's ownership interest in the store is also deemed to be held by the public servant for purposes of Chapter 68.

If the City leases the Bronx premises to the public servant's spouse, the interest would be prohibited by Charter Section 2604(a)(1)(b), which provides that no regular employee shall have an interest in a firm which such regular employee knows is engaged in business dealings with the City.

Charter Section 2604(a)(3) provides, among other things, that the Board may issue an order permitting a public servant to retain an otherwise prohibited ownership interest, "where, subsequent to a public servant's acquisition of an ownership interest, the entity in question engaged in business dealings which caused the interest to become prohibited."

The Board may issue an order permitting the retention of the interest in question, if the Board concludes that the interest would not be in conflict with the proper discharge of the public servant's

official duties. See Charter Section 2604(a)(4). In analyzing whether or not an order should be issued, the Board is directed to 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 public servant's official duties grant him only limited authority. He would not be in position to influence City officials who might be involved in the lease of City-owned property to his wife. Further, he works in the Manhattan division of his agency and does not have any contact with the agency's employees in the Bronx, where the property is located. Finally, the public servant has agreed that he will not be involved in any way with the property.

Conclusion

The potential conflict in this case developed through no action of the spouse or the public servant.

Further, the public servant has agreed not to be involved, vis-a-vis his City job, with the lease or any other matter arising out of the property. Accordingly,

since it does not appear that the public servant can use his official position with the agency for which he works to gain any private advantage for himself or his wife with respect to the lease of the Bronx property, it is the opinion of the Board (and the Board's order pursuant to Charter Section 2604(a)(3)) that, under the circumstances here present, the public servant's wife may, consistent with Chapter 68, lease the property from the City.

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Chair

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Dated: February 22, 1994