

Blind Trust  
Not-for-Profit Organizations  
Charter Sections 2604(a)(1)(b)  
2604(b)(2), (3), (4)  
2604(c)(6)

Advisory Opinion No. 94-26

A high-level public servant has requested an opinion from the Conflicts of Interest Board (the "Board") as to whether a blind trust established on his behalf complies with the Board's blind trust rule, Board Rules § 1-05 (the "Rule" or the "Blind Trust Rule"), and, in addition, whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, he may serve as an officer, director, or trustee of various not-for-profit organizations. For the reasons discussed below, it is the opinion of the Board that the blind trust agreement complies with the Blind Trust Rule. It is also the opinion of the Board that the public servant's involvement with the not-for-profit organizations would not violate Chapter 68.

Blind Trust Agreement

Charter § 2604(a)(1)(b) provides that no regular

employee of the City shall have an interest in a firm which the employee knows is engaged in business dealings with the City. An "interest" in a firm may be either a position with the firm or an ownership interest in the firm. Charter § 2601(12). However, "ownership interest" excludes an interest in a blind trust that holds an ownership interest and that meets the requirements of the Board's Blind Trust Rule. See Charter §§ 2601(6) and (16).

The Blind Trust Rule, Board Rules § 1-05, sets forth the requirements for the establishment of blind trust instruments, including the qualifications of the trustees and the contents of the instrument. The Rule contains, among other things, provisions designed to ensure that trustees have the authority and the ability to function independent of the public servant and anyone else who may benefit from the trust, including family members. See Rule § 1-05(a)(1)(i) - (iii). These provisions require, among other things, that a trustee be independent of any interested party, not be an employee of any interested party, not be employed in a firm where an interested party has a substantial investment, not be in partnership with an interested

party, and not be a relative of an interested party. The Board's review of the blind trust agreement here at issue, in light of those requirements, reveals that the agreement complies with the provisions of the Board's Blind Trust Rule, including the requisite provisions which ensure that the trustee has the authority and ability to function independent of the public servant and members of his family, some of whom remain active in the ownership and management of the public servant's businesses. See Advisory Opinion No. 94-18, in which, pursuant to the Blind Trust Rule, the Board reviewed and approved the use of a blind trust to hold various investments of a high-level public servant.

#### Working For Not-For-Profit Organizations

The public servant serves as an officer, director, or trustee of a number of not-for-profit organizations, some of which have no business dealings with the City and some of which do, although none of the organizations has business dealings with the public servant's agency. The public servant receives no compensation for his services from any of these organizations.

As to those not-for-profit organizations that have no business dealings with the City, under the Charter, the public servant may serve as an officer, director, or trustee of those organizations, provided that he works for these organizations at times when he is not required to perform services for the City; he does not use his official City position or City resources to obtain a private advantage for himself or the organization; and he does not disclose or use for private advantage any confidential information concerning the City. See Charter §§ 2604(b)(2), (3), and (4), respectively.

As to those not-for-profit organizations that do have business dealings with the City, the public servant may work for these organizations, but he must take no direct or indirect part in those business dealings; the not-for-profit organizations must, as here, have no direct or indirect business dealings with the public servant's own agency or any agency subject to his supervision, control, or regulation, unless the head of the public servant's agency (or the Mayor if the public servant is the agency head) determines that the activities are in furtherance of the purposes and

interests of the City; the public servant must work for the organizations at times during which he is not required to perform services for the City; and the public servant must receive no salary or other compensation in connection with these outside activities. See Charter Section 2604(c)(6).

#### Conclusion

For the reasons stated above, it is the Board's opinion that the provisions of the blind trust agreement comply with Board Rules § 1-05. It is also the opinion of the Board that it would not violate Chapter 68 for the public servant to work for the not-for-profit organizations, provided he does so in accordance with the conditions discussed above.

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