

Consulting for Business Improvement District

Charter Sections: 2604(a)(1)(b)
2604(b)(6)
2604(e)

Advisory Opinion No. 95-15

The Conflicts of Interest Board (the "Board") has received a request for an opinion from a public servant as to whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, she may work part-time as a consultant for a business improvement district (the "BID"). For the reasons discussed below, it is the Board's opinion that the public servant may not accept the position with or work for the BID.

Background

The public servant has advised the Board that the BID, like other business improvement districts located in the City, is a special tax assessment district created to assist the delivery of services to businesses in a particular area. The Board has also been advised by the BID's president that the BID is contractually bound to perform various services for its district, such as augmenting City-provided services, including sanitation and security services, as well as providing advertising and promotional services. The

BID's president has stated that the BID is City-funded and that, of its fifteen board members, four are City officials or their representatives (an employee of the Department of Business Services, on behalf of the Mayor; the City Council member where the BID is located; the president of the borough where the BID is located; and the Comptroller). The BID is not controlled by the City, in that a majority of its board consists of local property owners or merchants, and, further, the board sets its own priorities and makes its own spending decisions.

The public servant has also advised the Board that the BID wishes to use her services in the following ways: to act as a liaison to City agencies (not including the agency which she serves) by, among other things, representing the BID at hearings; making telephone calls concerning complaints; working with various City agencies on the BID's proposed expansion; and ensuring that all the BID's contractual obligations with the City are fulfilled. Moreover, the BID's president has advised the Board that the BID has been seeking to employ the public servant because she "knows her way around the City" and she knows "how to get

things done" in the City. In addition, the public servant would also work on BID projects such as preparing its draft budget, planning and preparing special events, writing grant proposals, obtaining corporate sponsorship for special events, and preparing reports and correspondence.

Furthermore, the public servant has advised the Board that her City agency is not located in the same borough where the BID is located and that her official City duties do not involve matters concerning the BID. She also has represented that she would work for the BID only at times when she was not required to perform services for the City.

Discussion

Charter Section 2604(a)(1)(b) provides that no public servant who is a regular employee of the City, such as the public servant who has requested this opinion, shall have a position with or an ownership interest in a firm which the public servant knows is engaged in business dealings with the City. "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. See Charter Section 2601(8). Since the BID is clearly engaged in business dealings with the City, as described above, the public servant's consulting position with the BID would be prohibited by Charter Section 2604(a)(1)(b). A public servant may, however, hold a position otherwise prohibited by that Charter section if, after receiving the written approval of the head of the City agency or agencies involved, the Board determines that the position would not conflict with the purposes and interests of the City. See Charter Section 2604(e).

In the instant case, the public servant has not obtained the written approval of her agency head. If such approval were secured, the public servant nevertheless could not accept the consulting position with the BID and perform the duties of that position, as they have been described to the Board, in a manner consistent with Chapter 68.

As stated above, a significant part of the public servant's responsibilities for the BID would involve appearing before and communicating with various City

agencies. These appearances, made on behalf of the BID, would violate Chapter 68. See Charter Section 2604(b)(6), which provides that no public servant who is a regular employee of the City shall, for compensation, represent private interests before any City agency or appear directly or indirectly on behalf of private interests in matters involving the City. "Appear" means to make any communication-- in person, by telephone or by letter-- for compensation, other than those involving ministerial matters. See Charter Section 2601(4). A "ministerial matter" is an administrative act, including the issuance of a license, permit or other permission by the City, which is carried out in a prescribed manner and which does not involve substantial personal discretion. See Charter Section 2601(15).

To the extent that the public servant's duties at the BID would, by necessity, involve appearances which appear to be non-ministerial, i.e., seeking City action in response to complaints or ensuring compliance with City contracts, the public servant would not be able to perform these duties without violating Charter Section 2604(b)(6). It would not be appropriate for the Board

to grant a waiver in these circumstances, because a significant part of the public servant's duties at the BID would involve these kinds of substantive appearances before and communications with various City agencies.

Conclusion

For the reasons stated above, it is the opinion of the Board that it would be a violation of Chapter 68 for the public servant to accept the consulting position with the BID and to perform the duties of that position. See Charter Sections 2604(a)(1)(b) and (b)(6).

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Chair

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