

Position With For-Profit Corporation

Charter Sections 2604(b)(2), (3) and (4)

Advisory Opinion No. 95-20

Staten Island Borough President Guy V. Molinari has requested an opinion from the Conflicts of Interest Board (the "Board") as to whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, he may accept an appointment as Chair and Public Interest Director of the Federal Home Loan Bank of New York (the "Bank"). For the reasons discussed in this opinion, the Board has determined that Borough President Molinari may serve as Chair and Public Interest Director of the Bank.

Background

The Federal Home Loan Bank System (the "System") is a national network of twelve federally-chartered, privately-owned, for-profit, wholesale banks that make loans and provide other services to several thousand community-based financial institutions across the nation. The System's mission is to facilitate the extension of credit through its financial institution customers to provide access to housing, particularly for low and moderate-income households. Each of the System's banks has its own board of directors,

management and staff. Borough President Molinari has been appointed by the President of the United States as Chair and Director of the System's New York Bank. The Board has been advised that elected officials throughout the United States have served, and currently serve, as officers of the System's banks.

As Chair of the Bank, the Borough President would attend two meetings per month for which he would be compensated at a rate of \$1200 per meeting. As the Bank's Public Interest Director, Borough President Molinari would be expected to monitor the Bank's financial records to ensure that the Bank fulfills its mission of promoting affordable housing in low-income communities. The Borough President has advised the Board that the time commitment required in connection with these duties would not be substantial. The Bank currently has no business dealings with the City.

Discussion

The Board has previously considered whether public servants may, while maintaining their City positions, serve as directors of for-profit corporations, including those which do not engage in business dealings with the City. In Advisory Opinion No. 93-5,

the Board listed some of the factors which it considers in deciding whether a particular public servant may serve in such a position. For example, in that opinion, the Board recognized that "in certain cases, a public servant's acceptance of a directorship would not compromise official duties and may even produce valuable benefits for the City." In addition, the Board noted that Chapter 68 permits "certain types of directorships that do not, in and of themselves, ordinarily involve a conflict between private interests and public responsibilities." See Advisory Opinion No. 93-5.

Charter Section 2604(b)(2) provides that no public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties. The circumstances of Borough President Molinari's proposed service as Chair and Director of the Bank indicate that such service would not interfere with his official duties as an elected official. In fact, such service has a City purpose -- the promotion of affordable housing in low-income

communities. Furthermore, the Borough President's service as an officer and director of the Bank could enhance his effectiveness as an elected official by providing him with an opportunity to address the concerns of many City residents who may be in need of affordable housing.

As noted above, the Borough President has advised the Board that he would not be required to spend a substantial amount of time performing his duties for the Bank. Thus, this work would not interfere with the time he devotes to his responsibilities as an elected official of the City. See Charter Section 2604(b)(2).

Since the Bank's mission is consistent with the City's interests, as described above, and the Bank has no business dealings with the City, the Borough President's service with the Bank would be unlikely to create the appearance that he was improperly using his official position to advance any private interest of the Bank. See Charter Section 2604(b)(3), which provides that a public servant may not use or attempt to use his or her official position to obtain any financial gain or other private advantage, direct or indirect, for any firm with which the public servant is

associated. Nevertheless, in the course of performing his duties for the Bank, the Borough President may not disclose any confidential information to which he is privy as a result of his City position. See Charter Section 2604(b)(4).

Conclusion

Based on the particular circumstances of this case, as described above, it is the opinion of the Board that Borough President Molinari may serve as Chair and Public Interest Director of the Bank since such service would neither conflict with his official duties as an elected official nor create the appearance that he is improperly using his official position to advance any private interest of the Bank. See Charter Sections 2604(b)(2) and (b)(3).

Sheldon Oliensis
Chair

Jane W. Parver

Benito Romano

Shirley Adelson Siegel

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