

Post-Employment Restrictions  
Brooklyn Public Library  
Charter Sections: 2604(d)(2)  
2604(d)(4)  
2604(d)(6)

**Advisory Opinion No. 97-1**

A public servant 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 employment with the Brooklyn Public Library (the "BPL"). Specifically, the public servant has asked the Board whether, if he accepts employment with the BPL, his work for the BPL would be affected by Charter Sections 2604(d)(2) and (d)(4), which impose limits on the ability of former public servants to appear before their former agencies and to work on particular matters in which they were involved while they were employed by the City.

For the reasons discussed below, it is the opinion of the Board that the BPL should be treated as an arm of City government for purposes of Charter Section

2604(d)(6). Accordingly, the Board has determined that it would not be a violation of Chapter 68 for the public servant to be employed by the BPL and, in carrying out his duties, to appear before his former City agency less than one year after the termination of his City employment and to work on particular matters with which he was involved while employed by the City.

#### Background

The public servant is employed by a City agency (the "Agency") and has been offered a newly-created position with the BPL as the Intergovernmental Affairs Manager. He will engage in community outreach, and meet with community boards to provide information on the BPL and to obtain support on issues affecting the BPL. He will also be a liaison between the BPL and all levels of government -- City, State and Federal. Further, he will attempt to resolve complaints about the BPL received by elected officials.

The New York State Legislature, on April 15, 1902, enacted legislation entitled "[a]n act to incorporate the Brooklyn public library and to permit libraries in the borough of Brooklyn of the city of New York to

convey their property thereto, and limiting and defining the powers thereof." This legislation incorporated the libraries in the borough of Brooklyn and consolidated all library sites as the BPL. The BPL is empowered to acquire both real and personal property through gift, grant or devise. By law, the City must provide for maintenance of the libraries in the BPL system in the annual budget. City bonds may be issued to carry out the provisions of this law. See also, Chapter 22, New York Unconsolidated Laws, City and County Libraries.

In addition, the purpose of the BPL, as enunciated in its mission statement, is "to ensure preservation and transmission of society's knowledge, history and culture and to provide the people of Brooklyn with free and open access to information for education, recreation and reference."

The BPL is governed by the New York State Department of Education, through the Board of Regents, and must comply with the Education Law of New York State. The Brooklyn Public Library received its Regents Charter on November 30, 1886.

While the facts discussed above are significant in determining the governmental nature of the BPL, these facts alone are not sufficient. The primary factor, in the Board's view, is the government control exercised over the operations of the BPL. There are 25 members of the Board of Trustees for the BPL, three of whom are ex officio members, the Mayor, the Comptroller, and the Brooklyn Borough President. Of the remaining 22 trustees, one-half are selected by the Mayor and one-half are selected by the Brooklyn Borough President. Trustees are not paid, serve four year terms, and may be reappointed every four years.

The BPL has a line on the City's expense and capital budgets, and virtually all of the funds for the operations of the BPL come from governmental sources. The BPL receives 85% of its expense budget from the City, 11% from the State and 4% from grants, private donations and miscellaneous revenues such as late fines. The City pays for BPL's overhead expenses such as heat, light, and power.

BPL employees are in the New York State Employees' Retirement System; at retirement, they will receive a New York State pension. A current or former City

employee hired by the BPL may transfer City pension time to the State pension system and this will be credited towards the State pension.

#### Discussion

Charter Section 2604(d) of Chapter 68 contains a number of provisions restricting the conduct of public servants who have left, or are contemplating leaving, City service. These provisions are intended to prevent public servants from exploiting public office for personal gain, exerting special influence on government decision-making, or subordinating the interests of the City to those of a prospective employer. For example, Charter Section 2604(d)(2) provides that former public servants may not appear before their former City agencies within one year after the termination of their City service. Charter Section 2604(d)(4) prohibits former public servants from ever working on particular matters with respect to which they were personally and substantially involved as public servants.

Charter Section 2604(d)(6), however, contains an exemption from the post-employment restrictions. This

provision is commonly referred to as the "government-to-government exception," and provides that "[t]he prohibitions on negotiating for and having certain positions after leaving city service, shall not apply to positions with or representation on behalf of any local, state or federal agency." Charter Section 2604(d)(6).

In Advisory Opinion Nos. 93-13 and 94-7, the Board considered whether two different local development corporations were effectively arms of local government for purposes of Charter Section 2604(d)(6). In making this determination, the Board set forth a number of factors to be considered, including: (1) the manner in which the corporation was formed; (2) the degree to which the corporation is controlled by government officials or government agencies; and (3) the purpose of the corporation. See Advisory Opinion Nos. 94-7 at p. 5 and 93-13 at p. 5. In Advisory Opinion No. 94-21, the Board applied the same criteria in determining whether a business improvement district was an arm of local government for purposes of Charter Section 2604(d)(6). See Advisory Opinion No. 94-21 at p. 6.

In applying the factors set forth in Advisory Opinion Nos. 94-21, 94-7, and 93-13, the Board notes that the BPL was formed through legislation; its New York State Regents Charter was approved on November 30, 1896. Its mission is a public one: that of providing a free public library system in Brooklyn. There is virtually complete governmental control over the activities of the BPL, inasmuch as three of the 25 members of the Board of Trustees are ex officio representatives of City government -- the Mayor, the Comptroller, and the Brooklyn Borough President, and the remaining 22 members of the Board of Trustees are selected by either the Mayor or the Brooklyn Borough President.

The BPL has a line on both the City's expense and capital budgets and is subject to budgetary control by the Mayor's Office of Management and Budget. In addition, all of the BPL's budget, except 4% which is generated from fines and grants, comes from governmental sources. Further, the City is required by law to provide for the maintenance of the BPL. The New York State Department of Education regulates the BPL through the Board of Regents. The Comptroller's Office

audits BPL's expenditure of City funds to ensure that appropriate procedures are being followed. The City pays for BPL's overhead expenses such as heat, light and power. Finally, BPL employees participate in the New York State Employees' Retirement System and receive City health benefits. In short, the BPL has all the significant indicia of a local government entity.

#### Conclusion

The Board has thus determined that the manner in which the BPL was formed, the fact that the BPL is effectively controlled by the City, and the BPL's stated purpose all lead to the conclusion that it should be treated as a governmental agency for purposes of Charter Section 2604(d)(6).<sup>1</sup> Therefore, the public servant may appear before the Agency and work on particular matters in which he was personally and substantially involved as a public servant while employed by the BPL.

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<sup>1</sup> Charter Section 2601(2) excludes from the definition of agency "any corporation or institution maintaining or operating a public library." Thus, while the Board has determined that the BPL is an arm of City government to which the post-employment restrictions of Chapter 68 do not apply, it should be noted that the BPL is not subject to Chapter 68.



This opinion is limited to the particular facts of this case and does not necessarily mean that, for the purposes of the post-employment provisions of the conflicts of interest laws, other not-for-profit organizations, including public library systems in other boroughs, will be treated as local government agencies. Determinations as to whether such organizations are considered arms of local government are made by the Board only on a case-by-case basis.

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