

Spouse's Ownership Interest  
Imputed to Public Servant  
Prohibited Ownership Interest

Charter Sections      2601(16)  
                                 2604(a)(1)(b), (a)(3) and (a)(4)  
                                 2604(b)(3) and (b)(4)

Advisory Opinion No. 97-3 and Order No. 64

The Conflicts of Interest Board (the "Board") has received a request for an opinion from Mr. Michael Handy as to whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, he may retain his imputed ownership interest in Ms. Edna Handy's, his spouse's, consultant business, the Legal Skills Center (the "Firm"), which intends to engage in business dealings with the City.

For the reasons stated in this opinion, the Board has determined that it would not violate Chapter 68 for Mr. Handy to retain his imputed ownership interest in the Firm. The Board has also determined that the Firm may, subject to the conditions specified in this opinion, engage in business dealings with the City.

Background

Mr. Handy has advised the Board that his official City responsibilities involve acting as the liaison to the City's veterans' community and the military services operating in the City. Mr. Handy has further advised the Board that the Firm, his spouse's business, was established seven years ago and has not, to date, engaged in any business dealings with the City. Mr. Handy has advised the Board that the Firm now would like to engage in business dealings with the Department of Citywide Administrative Services ("DCAS") to provide diversity training services.

DCAS is responsible for providing specialized training to City personnel. Some of this training is paid for by DCAS and is provided free to Mayoral agencies. Other training is paid for by City agencies or outside entities. To provide this training, DCAS hires consultants. DCAS has advised the Board that it is planning to develop a bidders' list to be used when it provides larger training sessions for a fee.

DCAS has advised the Board that it wants to know the skills of those on its bidders' lists to ensure high quality presentations. The bidders' lists will include those whose training skills are known to DCAS, as well as others with national reputations. The Board

has been advised that Ms. Handy has a national reputation and that the Firm would be placed on the bidders' lists, if deemed appropriate by DCAS. To ascertain whether her training skills offered by the Firm are acceptable, DCAS plans to hire Ms. Handy to teach a trial class. DCAS has advised the Board that it first made contact with Ms. Handy through another consultant to DCAS.

#### Discussion

##### A. Applicable Provisions Regarding Ownership Interests

Charter Section 2604(a)(1)(b) provides that no public servant who is a regular employee of the City shall have an ownership interest in a firm which is engaged in business dealings with the City. Pursuant to Charter Section 2601(16), as modified by Board Rules Section 1-11, an "ownership interest" includes an interest in a firm held by the public servant, or the public servant's spouse, or unemancipated child, which exceeds five percent of the firm or an investment of \$29,000 in cash or other form of commitment, whichever is less, and any lesser interest in a firm when the public servant or the public servant's spouse or

unemancipated child exercises managerial control or responsibility regarding any such firm. Mr. Handy, in this case is, therefore, deemed to have an ownership interest in a firm which intends to engage in business dealings with the City and, since the percentage of ownership exceeds 5%, this interest is prohibited by Charter Section 2604(a)(1)(b).

A public servant who holds an ownership interest which, subsequent to the public servant's acquisition of the interest, enters into a business dealing which would cause the ownership interest to be prohibited by Charter Section 2604(a)(1)(b) shall either divest the interest or disclose to the Board the interest and comply with the Board's order. See Charter Section 2604(a)(3). In this case, Mr. Handy has disclosed to the Board his imputed ownership interest in the Firm which interest, because of the Firm's proposed business dealings with the City, is prohibited by Charter Section 2604(a)(1)(b).

When a public servant discloses an interest to the Board, the Board, pursuant to Charter Section 2604(a)(4), shall issue an order setting forth its determination as to whether the interest, if maintained, would conflict with the proper discharge of

the public servant's official duties. In making such determination, the Board shall take into account, among other things, the nature of the public servant's duties, the manner in which the interest may be affected by any action of the City, and the appearance of a conflict to the public.

B. Factors Supporting an Order

In determining whether to issue an order permitting a public servant to maintain an imputed ownership interest, which would otherwise be prohibited by Charter Section 2604(a)(1)(b), the Board considers a number of factors, including, but not limited to: the nature and type of the ownership interest; the length of time the public servant's spouse has maintained the ownership interest; the extent to which the public servant's official responsibilities could affect the ownership interest; whether and to what extent the public servant has any involvement with his or her spouse's ownership interest; and the manner in which the City business will be awarded to the public servant's spouse's firm.

The Board has determined, in accordance with Charter Section 2604(a)(4), that it would not conflict with the proper discharge of Mr. Handy's official

duties for him to maintain his imputed ownership interest in the Firm. In making this determination, the Board notes that the Firm is a consulting business and has a number of non-City clients. Further, the Firm has been in existence for seven years and is only now seeking to engage in business dealings with the City. Thus, it does not appear that the Firm was created solely to engage in business dealings with the City.

Mr. Handy's responsibilities are not related to the contracting process. Further, Mr. Handy has no role in the selection of contractors for DCAS, and he is not in a position to influence the procurement procedures of any City agency. Finally, if the Firm is awarded City business, it would be done through a formal bidding process or through a purchase order arrangement with DCAS.

#### Conclusion

Having thus considered the factors enumerated above for granting an order, the Board has determined, and it is hereby ordered, that Mr. Handy may retain his imputed ownership interest in the Firm. See Charter Section 2604(a)(4). During his employment with the

City, however, Mr. Handy may not take any direct or indirect part in any business dealings which the Firm has with the City, and he must recuse himself from any matters involving the Firm. Such recusal includes, but is not limited to, not participating in discussions concerning the Firm with anyone at his City agency or the Firm, not attending meetings with City officials or others to discuss the Firm, and not receiving copies of relevant documents. Furthermore, Mr. Handy must not use or attempt to use his official position or title to obtain any private or personal advantage for himself, his spouse, or the Firm, and he must not disclose or use for private advantage any confidential information concerning the City. See Charter Sections 2604(b)(3) and (b)(4), respectively.

The Board's decision in this matter is conditioned on the correctness and completeness of the facts supplied to us. If such facts are in any respect incorrect or incomplete, this decision may not apply.

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