

Advisory Board
Not-For-Profit Organizations
Waivers/Orders

Charter Sections: 2601(18)
2604(a)(1)
2604(b)(2)
2604(b)(3)
2604(b)(4)
2604(c)(6)
2604(e)

Advisory Opinion No. 98-8

The Conflicts of Interest Board (the "Board") has received two requests from public servants as to whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, they may volunteer with not-for-profit organizations ("NFPs") which engage in business dealings with the public servants' City agencies. One request concerns a public servant (the "Board Member") who serves on the advisory board of an NFP. The other request concerns public servants (the "Non-Policy Making Volunteers") who would volunteer their time to programs organized by various NFPs but who would not have any policy-making or administrative authority at the NFPs.

The Board has been asked whether the Board Member and the Non-Policy Making Volunteers have positions

with the NFPs and therefore are required to obtain the approval of their agency head pursuant to Charter Section 2604(c)(6)(b) to engage in their volunteer activities. In addition, the Board has been asked whether these public servants must obtain waivers from the Board pursuant to Charter Section 2604(e), if they wish to be involved with the business dealings which their NFP has with their City agency.

For the reasons discussed below, the Board has determined that the Board Member has a position with an NFP doing business with her agency. Therefore, she must obtain the approval of the head of her agency prior to accepting a position on the advisory board of the NFP. If the Board Member wishes to be involved with the NFP's business with her City agency, the public servant must also obtain a waiver from the Board.

The Board has also determined that the Non-Policy Making Volunteers would not have positions with the NFPs. Therefore, they may perform their volunteer work without obtaining either agency head approval pursuant to Charter Section 2604(c)(6)(b) or a waiver from the Board, provided that they comply with the conditions discussed in this opinion. Both the Board Member and

the Non-Policy Making Volunteers should also contact their agency counsel or agency personnel officer to determine whether their agency has any additional restrictions on their proposed volunteer activities.

Background

A. The Board Member

The Board Member has been serving for a number of years on the advisory board of an NFP which has engaged in business dealings with her agency. A number of years ago, the Board Member served as an advisor to the NFP concerning these business dealings on behalf of the NFP. The Board Member obtained the permission of her supervisor to serve on the advisory board and to be involved in the NFP's business dealings with the agency. The public servant did not obtain the approval of her agency head or obtain a waiver from the Board.¹

B. The Non-Policy Making Volunteers

The Non-Policy Making Volunteers seek to perform volunteer work for programs organized by various NFPs

¹ Ordinarily, the Board issues advisory opinions only as to prospective conduct. See Charter Section 2603(c)(2). In this case, however, the public servant raises significant issues of interest to public servants generally. In addition, the public servant may wish to engage in similar conduct in the future.

which engage in business dealings with their City agency. They would provide volunteer services for programs and activities such as literacy programs, sports programs, soup kitchens, and aid to the elderly and to the homeless. The Non-Policy Making Volunteers might make suggestions as to changes to these programs, but would not have the authority to decide whether to implement these changes.

The Non-Policy Making Volunteers would not have any policy-making or administrative powers or authority at the NFPs, nor would they have any fiduciary duties to the NFPs. For example, they would not serve on the board of directors or advisory board of an NFP, provide clerical services to the NFPs or direct any of the NFPs' programs. The Non-Policy Making Volunteers would have no involvement with the NFPs as part of their City positions.

The Board has been asked whether the Non-Policy Making Volunteers would have positions with the NFPs, pursuant to the provisions of Chapter 68, and whether they would be required to obtain approval from their agency head and/or waivers from the Board in order to perform their volunteer work.

Discussion

A. Relevant Charter Sections

Charter Section 2604(a)(1)(b) provides that no public servant who is a regular employee of the City shall have a position with² or ownership interest in a firm which is engaged in business dealings with the City.³ "Business dealings with the city" includes 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 the foregoing. See Charter Section 2601(8). Charter Section 2604(c)(6) contains the provisions which govern the activities of public servants who have volunteer positions with NFPs. Under certain circumstances,

² Charter Section 2601 (18) defines position as "a position in a firm, such as an officer, director, trustee, employee, or any management position, or as an attorney, agent, broker, or consultant to the firm, which does not constitute an ownership interest in the firm."

³ Regular employees of the City are those public servants who are regularly scheduled to work the equivalent of twenty or more hours per week. See Rules of the Board Section 1-06(a). Charter Section 2604(a)(1)(a) of Chapter 68 prohibits all public servants, whether or not regular employees, from having an interest in a firm which engages in business dealings with the agency served by the public servant.

Charter Section 2604(c)(6) permits public servants to have volunteer positions with NFPs which engage in business dealings with the City. Specifically, that provision permits a public servant to act as an "attorney, agent, broker, employee, officer, director or consultant" for an NFP, provided that the following conditions are met: 1) the public servant does not take any part, direct or indirect, in any of the NFP's business dealings with the City; 2) the NFP has no business dealings with the public servant's agency, unless the agency head determines that the public servant's activity will further the purposes and interests of the City; 3) the public servant performs work on behalf of the NFP on his or her own time and not during those times when the public servant is required to perform services for the City; and 4) the public servant receives no compensation for his or her work on behalf of the NFP.

If a public servant with a volunteer position at an NFP wishes to be involved in any business dealings the NFP has with his or her City agency, the public servant must obtain a waiver from the Board pursuant to Charter Section 2604(e). Charter Section 2604(e) provides that "[a] public servant or former public

servant may hold or negotiate for a position otherwise prohibited by this section, where the holding of the position would not be in conflict with the purposes and interests of the city, if, after written approval by the head of the agency or agencies involved, the board determines that the position involves no such conflict."

B. The Board Member

As the Board Member serves on the advisory board of an NFP, she has a position with that NFP. See Charter Section 2601(18). Since, during the time that the Board Member was on the advisory board, the NFP was engaged in business dealings with the Board Member's agency, she was required to obtain the approval of her agency head prior to serving on the advisory board. The agency head was required to determine whether the Board Member's service on the advisory board would be "in furtherance of the purposes and interests of the city." See Charter Section 2604(c)(6)(b). Permission from the Board Member's supervisor was not sufficient to meet the approval requirements of Charter Section 2604(c)(6), as her supervisor was not the "head of the agency" and thus was not authorized to approve the Board Member's service on the advisory board.

In addition, the Board Member was required to obtain a waiver from the Board prior to becoming involved with the NFP's business dealings with her City agency. Pursuant to Charter Section 2604(e), in order to obtain a Board waiver, a public servant, such as the Board Member, first must obtain the permission of her Agency head. This approval must be in writing and must state how the public servant's activity furthers the purposes and interests of the City. The Board, after reviewing the agency head's approval, must decide whether the public servant's position with the NFP and his or her involvement with the NFP's business dealings with her agency, constitutes a conflict with the purposes and interests of the City.

C. The Non-Policy Making Volunteers

The Board has determined that the Non-Policy Making Volunteers would not have "positions" with the NFPs under the provisions of the Charter, since they would not have any policy-making authority at the NFPs, they would not perform administrative functions and would not have any fiduciary duties to the NFPs. Essentially, the Non-Policy Making Volunteers would be aiding the populations served by the NFPs, not providing services to the NFPs.

Because they would not have positions with the NFPs, the Non-Policy Making Volunteers would not be required to obtain either approval from their agency head or a waiver from the Board in order to perform their volunteer work. However, the Non-Policy Making Volunteers could not volunteer for an NFP with which they have contact as part of their official City duties, unless they obtained agency head approval and a waiver from the Board.

The Non-Policy Making Volunteers must perform their volunteer work for the NFPs at times when they are not required to perform services for the City. They may not use their official City positions or titles to obtain any private or personal advantage for themselves or the NFP or anyone whom the NFP serves. Also, they may not use City equipment, letterhead, personnel or other City resources in connection with their volunteer work, other than those resources the City permits the NFP to use as part of the NFP's business dealings with the City.⁴ The Non-Policy Making Volunteers may not disclose or use for private

⁴ For example, Non-Policy Making Volunteers could coach basketball on a City-owned basketball court, provided that the City permits the NFP to use the basketball court.

advantage any confidential information concerning the City. See Charter Sections 2604(b)(2), (b)(3) and (b)(4), respectively.

In some instances, a public servant wishing to perform volunteer work may be uncertain as to whether this work involves administrative or policy-making authority, or fiduciary duties to the NFP, which would require agency head approval and possibly a waiver from the Board. In such instances, the public servant should contact the Board for further guidance.

Conclusion

A. The Board Member

It is the opinion of the Board, for the reasons stated above, that the Board Member may not serve on an advisory board of an NFP doing business with her agency merely by obtaining approval from her superior at the agency; she must obtain her agency head's approval prior to serving on the Board. In addition, if the Board Member wishes to be involved in the NFP's business dealings with the agency, the public servant must obtain written approval from the agency head for this involvement and a waiver from the Board.

B. The Non-Policy Making Volunteers

The Board has determined that, under the

conditions discussed above, the Non-Policy Making Volunteers would not have positions with the NFPs. Therefore, the Non-Policy Making Volunteers are not required to obtain either approval from their agency head or a waiver from the Board in order to perform their volunteer work.

Finally, with respect to both the Board Member and the Non-Policy Making Volunteers, the Board notes that their agencies may have other, stricter rules applicable to their volunteer activities.

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, the advice given in this opinion may not apply.

Bruce A. Green
Acting Chair

Jane W. Parver
Benito Romano

Dated: August 20, 1998