



CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

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Elected Officials

Ex Officio

Not-For-Profit Organizations

Charter Sections: 2604(c)(6) and (e)

Advisory Opinion No. 99-1

The Conflicts of Interest Board (the "Board") has received requests for opinions from two public servants who are also elected officials. They ask whether they may serve as ex officio members of not-for-profit organizations and, if so, whether they must first obtain a waiver from the Board pursuant to Charter Section 2604(e).¹ They also ask whether they may designate members of their staff to serve as ex officio members or directors of not-for-profit organizations in their place. For the reasons discussed below, it is the opinion of the Board that it would not be a violation of Chapter 68 for an elected official to serve as an ex officio member of a not-for-profit organizations without first obtaining a waiver from the Board. Further, elected officials may, in writing, designate members of

¹ This provision reads: "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 interest 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. Such findings shall be in writing and made public by the board." Charter Section 2604(e).

their staff to serve on their behalf as ex officio members or directors of not-for-profit organizations, provided that they comply with the conditions set forth in this opinion.

Background

In Advisory Opinion No. 92-22, the Board determined that elected public officials could serve as ex officio members on the board of directors of not-for-profit organizations which receive funding from the City. In addition, the elected official could vote on the not-for-profit organization's budget and could recommend allocation from the City's budget to the organization, provided that the elected official disclosed his or her interest to both the Board and his or her agency. The Board based that conclusion on the provisions of Charter Section 2604(b)(1)(a), which permits an elected official to take an action affecting his or her interest in a firm in which he or she has a position even though the action would be prohibited by Charter Section 2604(a),² provided that the official discloses the interest to the Board and, in the case of a member of the City Council, also discloses the action on the official records of the Council in the case of matters before the Council. Left unanswered in Advisory Opinion No. 92-22,

² Section 2604(a) provides in relevant part: "[N]o regular employee shall have an interest in a firm which such regular employee knows is engaged in business dealings with the City" An elected official is a "regular employee." Charter Section 2601(20). An "interest in a firm" may be either an ownership interest in the firm or a position with the firm.

however, were the questions of whether elected officials must request a waiver pursuant to Charter Section 2604(e) to serve in an ex officio position with an organization which is engaged in business dealings with the City and whether they may designate members of their staff to serve ex officio in their place.

Both public servants are elected officials who serve as ex officio members of various not-for-profit organizations. In some cases, the elected officials designate members of their staff to attend meetings of the organizations as representatives of the elected official. Often, the not-for-profit organization not only engages in business dealings with the City but also with the elected official's agency. When this is the case, sometimes the elected official or his or her designee may be involved in the not-for-profit organization's business dealings with the City. This is particularly true when there exists a formal or informal "partnership" between the agency and the not-for-profit organization.

Discussion

Charter Section 2604(c)(6) provides that a public servant may serve as a director or officer of a not-for-profit organization which is engaged in business dealings with the City, provided that the public servant takes no direct or indirect part in such business dealings. In addition, Charter Section 2604(c)(6) provides that the public servant may perform the volunteer work only on non-City time;

Charter Section 2601(12). Serving on a board of directors constitutes a position with a firm. Charter Section 2601(18).

that the not-for-profit organization may not have business dealings with the City agency served by the public servant, except where it is determined by the agency head that such activity is in furtherance of the purposes and interests of the City; and that the public servant may not receive a salary or other compensation for his or her work for the organization.

When a public servant serves as an ex officio member of a not-for-profit organization, but is not able to conform with the provisions of Charter Section 2604(c)(6), the Board has sometimes granted waivers pursuant to Charter Section 2604(e).

It is the opinion of the Board that under Charter Section 2604(b)(1)(a) no waiver is required for elected officials to serve ex officio as a member of the board of a not-for-profit organization. Further, it is the opinion of the Board that elected officials may designate members of their staff to serve in their place, where service upon the board is part of the elected official's and the staff member's official duties. Such designation must be in writing. While this designation need not be submitted to the Board, it must clearly state that ex officio membership on the board of the not-for-profit organization is a part of the elected official's and staff member's official duties. In the future, questions regarding ex officio positions of elected officials and their staffs need be submitted to the Board only when there is uncertainty as to whether serving as an ex officio is in the scope of the public servant's duties.

This opinion is limited to the ex officio representation by elected officials and those staff members designated, in writing, by the elected official to serve as their representatives on the board of directors of the not-for-profit organization as part of the elected official's and staff member's official City duties. This opinion does not extend to those situations where an elected official does not sit on a board or directors as part of his or her official duties or where other public servants may sit as ex officio representatives on the board of directors of not-for-profit organizations. Any other public servant who serves as an ex officio representative member for a not-for-profit organization must seek guidance from the Board before doing so. Thus, for example, a Commissioner or other employee in a City agency may not serve as an ex officio representative on the board of a not-for-profit organization without seeking guidance from the Board first.

The Board's decisions on matters such as these are conditioned on the correctness and completeness of the facts supplied to us. If such facts are in any respect incorrect or incomplete, the advice we have given in this opinion may not apply.



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Acting Chair

COIB Advisory Opinion No. 99-1
February 15, 1999
Page 6

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February 15, 1999