

Advisory Opinion No. 90-2

Before Mayor David N. Dinkins appointed Dr. Woodrow Myers as Commissioner of the Department of Health and Dr. Billy E. Jones as Commissioner of Mental Health, Retardation and Alcoholism Services ("Mental Health"), First Deputy Mayor Norman Steisel asked the Conflicts of Interest Board (the "Board") for an opinion as to whether, consistent with Chapter 68 of the New York City Charter (entitled "Conflicts of Interest"), Dr. Myers and Dr. Jones could receive compensation from certain positions other than their City employment. For the reasons set forth below, it is the opinion of the Board that it would not be a violation of Chapter 68 of the Charter for Dr. Myers and Dr. Jones to receive compensation for their proposed outside employment as described herein.

Dr. Myers

The request on behalf of Dr. Myers, who is an internist as well as a public health expert, concerns his proposed appointment as Professor of Medicine in the Department of Medicine of Cornell Medical School (and possibly also as an attending physician on the

staff of New York Hospital, which is affiliated with Cornell Medical School), for which he would receive \$22,000 annually.

The Board has been advised that the Department of Health operates a methadone maintenance clinic in a building owned by Cornell Medical School. That clinic was established when the building in question was owned by the City, and continues there pursuant to the agreement transferring title to the property to the Medical School. The Board has also been advised that Cornell Medical School is subject to regulation by the City's Department of Health in certain areas. For example, radiation facilities used for research purposes by the Medical School or for treatment purposes by New York Hospital must be registered with the Department of Health.

Dr. Jones

The request on behalf of Dr. Jones, a psychiatrist, concerns the continuation of his appointment as an Adjunct Professor in the Department of Medical Sciences of the City University of New York ("CUNY") Medical School, a position he held when he was the Medical Director of Lincoln Medical and Mental Health Center before being appointed as Commissioner of Mental Health. The Board has been advised that two of

the affiliation agreements between CUNY and the Health and Hospitals Corporation ("HHC") provide for the training of CUNY Medical School students at HHC facilities. The Department of Mental Health also has a contract to provide work-study placements for CUNY students.

Dr. Jones would receive \$22,000 to \$25,000 annually for limited teaching at CUNY Medical School (which is primarily funded by the State), and for working with a new public education program there for urban children and adolescents which the Department of Mental Health will neither fund nor evaluate.

In addition, as a matter of fulfilling his professional obligations as a psychiatrist, Dr. Jones proposes to see the patients whom he currently treats for no more than one evening (approximately four hours) per week, for which he expects to receive \$8,000 to \$10,000.

Discussion

Prohibited Interests Under Charter Section 2604(a)

Pursuant to Charter Section 2604(a)(1)(b), "[n]o regular employee shall have an interest in a firm which such regular employee knows is engaged in business dealings with the City, except if such interest is with a firm whose shares are publicly traded...". A

"regular employee" is defined in Charter Section 2601(2) as any City employee whose primary employment is with the City. Pursuant to Charter Section 2601(8),

"business dealings with the City" means:
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 any of the foregoing, but shall not include any transaction involving a public servant's residence or any ministerial matter.

An "interest" in a firm includes a "position" with a firm. Charter Section 2601(12).

As City employees whose primary employment is with the City, Dr. Myers and Dr. Jones are "regular employees" who may not have an "interest" (which includes a faculty appointment) in a "firm" (which includes a university) engaged in business dealings with the City.

In the Board's view, both Cornell Medical School and CUNY Medical School are engaged in business dealings with the City, as that term is defined in Charter Section 2601(8). Accordingly, without waivers under Charter Section 2604(e), Dr. Myers and Dr. Jones may not hold their respective academic appointments

with these institutions.¹

Charter Section 2604(e)

Charter Section 2604(e) provides that a City employee may hold a position otherwise prohibited by

Charter Section 2604 when:

[t]he 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. Such findings shall be in writing and made public by the Board.

While Dr. Myers and Dr. Jones have received written approval from Mayor Dinkins that their outside employment would not conflict with the purposes and interests of the City, Charter Section 2604(e) also requires the Board to determine that the proposed positions of these agency heads do not involve conflicts of interest.

Prohibited Conduct Under Charter Section 2604(b)

Charter Section 2604(b)(2) provides that no public servant "[s]hall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in

¹Charter Section 2604(e) does not apply to Dr. Jones' treatment of his private patients, because that activity does not involve him in business dealings with the City.

conflict with the proper discharge of his or her official duties." Thus, in determining whether Dr. Myers and Dr. Jones may accept compensation from private employers, the Board must consider not only whether these private employers have business dealings with the City, but whether the outside employment will permit Dr. Myers and Dr. Jones to properly discharge their official duties.

We begin our analysis by noting that the question of whether a City agency head may accept compensation for a faculty appointment with a private medical school was addressed by this Board's predecessor, the Board of Ethics, in its Opinion No. 685 (September 29, 1988). In that opinion, the Board of Ethics determined that the Chief Medical Examiner could receive \$50,000 annually as Chairman of the Department of Forensic Pathology at New York University ("NYU"), although NYU Medical School had affiliation contracts with the City and NYU had other contracts with the City.

The Board of Ethics observed that this academic appointment would seem to make the Chief Medical Examiner an employee of an entity engaged in business dealings with the City, in violation of former Charter Section 2604(b)(2). This section prohibited a salaried City employee from being an attorney, agent, broker,

director, officer, employee or consultant for any entity "interested directly or indirectly" in business dealings with the City.

However, an exception to this prohibition, contained in former Charter Section 2604(f)(2)(c), permitted a City employee to work for an entity whose business dealings with the City represented an insubstantial and unimportant part of its total business, provided that the City employee did not have a financial interest or personal involvement in the entity's business dealings with the City.

The Board of Ethics concluded that this exception applied to Dr. Hirsch's academic appointment with NYU Medical School, since the City's contracts with NYU were only approximately four and one-half percent of its \$915 million annual budget and the Chief Medical Examiner would have nothing to do with these contracts.

For similar reasons, the Board of Ethics also permitted Dr. Hirsch to receive \$25,000 annually from a fund for the benefit of the Office of the Medical Examiner that is sponsored by voluntary contributions from a group of medical schools.

However, Charter Section 2604(f)(2)(c), the basis of the holding of the Board of Ethics in Opinion No. 685, was eliminated when revised Chapter 68 of the

Charter replaced the former Code of Ethics² as of January 1, 1990.

Charter Section 1100

Charter Section 1100, contained in Chapter 48 of the Charter, provides that a department head "[s]hall give his whole time to the duties of his office and shall not engage in any other occupation, profession or employment." Charter Section 1100 is not part of revised Chapter 68 and our duty under Charter Section 2603(c) is to render advisory opinions concerning "matters covered by this chapter." We believe, however, that this section may be relevant in determining when an agency head has a private interest that conflicts with the proper discharge of his or her official duties under Charter Section 2604(b)(2).

Dr. Myers and Dr. Jones negotiated their employment with the City against the backdrop of Board of Ethics Opinion No. 685, in which Charter Section 1100 was not considered. Accordingly, we deem it not appropriate to take this section into account in this opinion. It is the Board's intention to look into the extent, if any, to which Charter Section 1100 should be

² Except that pursuant to local law, the effective date of the new post-employment restrictions in Chapter 68 was extended for most City employees until March 31, 1990.

taken into consideration in future interpretations of the provisions of Chapter 68. If the Board determines to take Section 1100 into consideration in future cases, it will give ample notice to appointing authorities and it will not apply this determination retroactively to those in office or to those who had already concluded negotiations on terms of employment.

Conclusion

Based on the representations to the Board that the faculty appointment of Dr. Myers at Cornell Medical School and the faculty appointment of Dr. Jones at CUNY Medical School will not interfere with the effective performance of their official duties and, most importantly, will also result in a significant benefit to the City, we have determined that these positions do not present a conflict of interest under Charter Section 2604(b)(2). We also find that Dr. Jones' limited psychiatric practice does not conflict with his official duties.

Merrell E. Clark, Jr.
Chair

Robert M. McGuire

Beryl R. Jones

Dated: April 3, 1990

