

Advisory Opinion No. 91-3

The Conflicts of Interest Board has been asked whether it would be a violation of the conflicts of interest provisions of Chapter 68 of the New York City Charter for a member of a community board to participate in the community board's discussions, and vote, concerning matters in which either the member has an economic interest or which involve a City agency where the member is employed.

Discussion

For the purposes of Chapter 68, community boards are City agencies and community board members, who serve without compensation, are public servants.¹ See Charter Sections 2601(2), 2601(19).

A community board member is not prohibited by Chapter 68 from having an ownership interest in or a

¹ Charter Section 2800 provides for a community board for each community district, consisting of not more than fifty people appointed by the borough president for staggered terms of two years, at least half of whom are appointed from nominees of the Council Members elected from Council districts which include any part of the community district. All such Council Members are non-voting members of the community board.

position with a firm which may be affected by the community board's action on a matter. See Charter Section 2604(a)(1)(a). No member may vote, however, on any matter before the community board "[w]hich may result in a personal and direct economic gain to the member or any person with whom the member is associated."² See Charter Section 2604(b)(1)(b). Pursuant to Charter Section 2601(5), a person "associated" with a public servant includes a spouse, child, parent or sibling; a person with whom the public servant has a business or financial relationship; and any firm in which the public servant has an interest.

By statute, up to twenty-five percent of appointed members of community boards can be City employees. See Charter Section 2800. When a community board member is employed by another City agency, we agree with the view of the Board of Ethics in its Opinion No. 359-A (1975) that it would be "[u]nseemly and inappropriate for an employee of a City agency to cast a formal vote [on a community board] which might be in opposition to a

² In its Opinion No. 305 (1973), which this opinion supersedes, the Board of Ethics, this Board's predecessor, held that a member of a community board could vote on matters before his or her community board in which he or she had a financial or other private interest, provided that the member fully disclosed to the board, by written notice, the nature and extent of such interest. This ruling is inconsistent with Charter Section 2604(b)(1)(b), which, as part of revised Chapter 68, became effective on January 1, 1990.

position theretofore or thereafter taken by his or her agency." See Charter Section 2604(b)(2), which provides that no public servant shall have any private interest, direct or indirect, which is in conflict with the proper discharge of the public servant's official duties.

While a community board member is specifically prohibited under the revised Chapter 68 from voting on matters in which he or she has a direct economic interest, the member may discuss such matters with other members and at community board meetings. See Report of the New York City Charter Revision Commission, Vol. II (December 1986-November 1988) at 175.

We also find that it is consistent with Chapter 68 for a community board member to participate in discussions of matters which have been or may be considered by a City agency where the member is employed, although it is possible that the member may be perceived either as a spokesman for, or critic of, his or her City employer. It must be recognized that City employees have a First Amendment right, albeit qualified, to express their personal views publicly on matters of public concern. ³ See Pickering v. Board of

³ We note that community board members who are City employees have been permitted to participate in such discussions since Board of Ethics Opinion No. 305, which reversed that Board's Opinion No. 229 (1972) which held that a member of a community board who is

Education, 391 U.S. 563 (1968). In general, a reasoned balance can be struck if the public servant is allowed to speak, but not allowed to vote.

Conclusion

For the reasons set forth above, we conclude that it would be a violation of Chapter 68 for a community board member to vote on a matter before his or her community board in which the member, or anyone with whom the member is associated, has a personal and direct economic interest or when the matter has been or may be considered by a City agency employing the member.

It is also our opinion that a community board member's participation in the board's discussions of such matters does not create a conflict of interest under Chapter 68, provided that, before participating, the member discloses to the other members of the community board the nature and extent of his or her private interest.

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also a City employee "[s]hould be careful to disqualify himself on any matter before the [community] board which relates in any way to his official duties as a City employee." That part of Opinion No. 305 is consistent with revised Chapter 68.

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Dated: May 7, 1991