

Advisory Opinion No. 92-7

A number of public servants have asked the Conflicts of Interest Board whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, they may serve as officers or directors of the cooperative corporations boards which own the apartments where they reside and in which they hold a financial interest in excess of \$25,000.

Discussion

In general, a public servant may not have an ownership interest in or a position with a corporation, or other type of firm, which the public servant knows is engaged in business dealings with the City.<sup>1</sup> See Charter Section 2604(a).

This prohibition does not apply to a cooperative

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<sup>1</sup> For the purposes of Chapter 68 an "ownership interest" in a firm includes an investment in such firm of \$25,000 or more held by the public servant or his or her spouse, while a "position" with a firm includes serving an officer or director of such firm. See Charter Sections 2601(12), 2601(16) and 2601(18).

corporation, however, although it is likely to be involved in business dealings with the City, because Chapter 68's definition of those business dealings specifically excludes "[a]ny transaction involving a public servant's residence." See Charter Section 2601(8). In addition, the legislative history of Charter Section 2604(b)(6) indicates that a public servant may represent his or her co-op board before the City without compensation. Report of the New York City Charter Revision Commission, Vol. II (December 1986-November 1988) at 177.<sup>2</sup>

Situations may arise, however, in which a public servant's service as a director of the board of a cooperative corporation or of a condominium may be prohibited under Charter Section 2604(b)(2) as a direct or indirect financial or other private interest which is in conflict with the proper discharge of his or her official duties. In addition, Charter Section 2604(b)(3) provides that no public servant shall use or attempt to use his or her position as a public servant to obtain any private or personal advantage, direct or

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<sup>2</sup> Charter Section 2604(b)(6) provides that no public servant shall, for compensation, represent private interests before any City agency, appear directly or indirectly on behalf of private interests in matters involving the City.

indirect, for the public servant or a person or firm associated with the public servant.<sup>3</sup>

Our predecessor agency, the Board of Ethics, had occasion to apply similar provisions of former Chapter 68 in three opinions which we find are consistent with revised Chapter 68, which became effective on January 1, 1990. Thus, in Opinion No. 233 (1972), the Board of Ethics held that a high-ranking City official could not serve on the board of a cooperative corporation in which he owned an apartment when his agency was directly involved with the administration of the real property tax. In Board of Ethics Opinion No. 255 (1973), another official was advised that he could serve on his co-op board because that would not conflict with his official duties. Similarly, in Opinion No. 425 (1978), the Board of Ethics ruled that the proposed chair of the Landmarks Preservation Commission could not serve as a director of a cooperative corporation which owned a landmarked building and would therefore be likely to have matters coming before his agency.

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<sup>3</sup> Charter Section 2601(5) defines "associated" to include each firm in which the public servant has a present or potential interest.

Conclusion

It is the opinion of the Board that it is not a violation of Chapter 68 for a public servant to hold an ownership interest in a cooperative corporation which owns his residence, notwithstanding the corporation's business dealings with the City.

Further, a public servant's service on the board of either of a cooperative corporation or a condominium does not, in and of itself, present a conflict of interest under Chapter 68, provided that the public servant does not directly or indirectly communicate with his or her own agency on behalf of such corporation. See Charter Section 2604(b)(3).

Agency heads and other high-level public officials should, however, be guided by the Board of Ethics opinion referred to above. Such public servants should also consult with the Board if in doubt as to whether their service on boards of cooperative corporations or condominiums creates a conflict, real or apparent, given the specific nature of their official duties.

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