

Advisory Opinion No. 92-22

An elected public official has requested an opinion as to whether it would be a conflict of interest under Chapter 68 of the City Charter for him to serve as an ex officio member of the board of directors of a not-for-profit organization which receives funding from the City. He has also inquired whether, in his official capacity, he may vote on this entity's budget or otherwise recommend allocations from the City's budget to this entity.

Charter Section 2604(a) prohibits a regular employee, including an elected official, from having an interest in a firm engaged in business dealings with the City. A position as ex officio member of a not-for-profit organization would constitute an interest pursuant to Charter Section 2601(12).

This prohibition is limited, however, by Chapter 68, which permits a public servant to have a position with a not-for-profit organization which is interested in business dealings with the City. The public servant is, however, subject to certain restrictions: he or she is not allowed to take a direct or indirect part in

such business dealings, and the entity cannot have

direct or indirect business dealings with the public servant's agency. See Charter Section 2604(c)(6).

The Charter goes on to provide a specific exemption for elected officials with respect to taking actions affecting an interest not otherwise prohibited by Section 2604(a). Pursuant to Charter Section 2604(b)(1)(a), an elected official is allowed to take an action affecting his or her interest in a firm which is not prohibited by Charter Section 2604(a), provided the official discloses the interest to the Board and on the official records of the City Council in the case of matters before that body.

It is our opinion that Chapter 68 does not prohibit this elected official from serving as an ex officio member of the not-for-profit entity. In addition, since this position is not an interest prohibited by Chapter 68, he is not prohibited from voting on this entity's budget or from recommending allocations from the City's budget to this entity, as long as he has disclosed his interest to the Board and the City Council.

Sheldon Oliensis  
Chair

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Robert J. McGuire

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Dated: September 8, 1992