

Advisory Opinion No. 92-25

The Conflicts of Interest Board has been asked for its opinion as to whether a high-level, part-time City commissioner may, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter:

(1) participate pro bono in a not-for-profit public project by giving uncompensated professional advice to its sponsors and by serving as an officer of the not-for-profit organization which would be formed to finance and operate the project, in light of the project's possible business dealings with his and other City agencies;

(2) contract to provide his professional services to a private project which had come before his agency for approval, but from the consideration of which he had recused himself; and

(3) serve as a director and officer of a political action group which helps raise funds for and elect candidates for elective office.

For the reasons expressed below, it is the opinion of the Board that each of these proposed activities would, if undertaken, violate the provisions of Chapter

68.

I. Not-for-Profit Public Project

It is the opinion of the Board that the commissioner's serving as an uncompensated advisor to the public project and as an officer for the not-for-profit organization which would be formed to finance and operate the project would violate Chapter 68 of the City Charter because of the likelihood that the project would come before the commissioner's agency for approval and would also be engaged in business dealings with other City agencies, thereby giving the appearance of a conflict of interest. It is the Board's view that these activities would violate Charter Section 2604(b)(2), which provides that no public servant shall engage in any business, transaction or private employment or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties. Furthermore, if the project ever comes before the commissioner's agency for approval, he should disclose his prior involvement to his agency and recuse himself from any involvement in the consideration of or vote on the project.

It is also the opinion of the Board that the

commissioner's contacts with a borough president's office to encourage support for the project raises the possibility that his official position will be used by supporters of the project, such as local civic groups, either directly or indirectly, to obtain approval of this project. Commissioners in this agency are significant members of the City government, who are involved in the policy and programs of other City agencies. As a result, many public servants may feel influenced to act favorably upon matters involving a commissioner even though these do not arise out of his or her official duties. This perception may exist whether or not a commissioner puts improper pressure upon the City employee. See Charter Section 2604(b)(2).

Furthermore, if the commissioner were to become involved in organizing and serving as an officer of the not-for-profit organization which would be responsible for raising funds to finance and operate the project, such activity would inevitably require his involvement in the organization's business dealings with the City, which is also prohibited by Chapter 68. See Charter Section 2604(c)(6)(a), which provides that a public servant may only serve as an officer of a not-for-profit organization interested in business dealings

with the City if, among other things, the public servant takes no direct or indirect part in such business dealings.

In addition to the foregoing, the commissioner, as a high-level appointed official, could, under some circumstances, be prohibited from engaging in fundraising activities for this organization. See this Board's Advisory Opinion No. 91-10, which prohibits such an official from soliciting contributions from persons or firms likely to come before the public servant's agency or be affected by the public servant's official actions.

II. Contract for Services on Private Project

It is also the opinion of the Board that it would be inconsistent with Chapter 68 for the commissioner to contract to provide his professional services to the private project. Notwithstanding the commissioner's recusal from his agency's consideration and approval of the project owner's application, his pre-existing interest in the project and his subsequent commencement of negotiations with the owner of the project, shortly after the agency's approval of the owner's application, might create an appearance that he used his official position to obtain a private or personal advantage for himself or for a private firm. See Charter Section

2604(b)(3).

III. Political Action Group

It is also the opinion of the Board, based on the fact that the political action group is a political fundraising organization, that it would be a conflict of interest for the commissioner to serve as an officer or board member of the group. See Charter Section 2604(b)(12), which prohibits public servants with "substantial policy discretion,"* such as this commissioner, from directly or indirectly soliciting contributions for candidates for City elective office.

See also Personnel Order No. 88-5, which prohibits management-level City employees from serving as officers in any political organization. Moreover, the commissioner's membership in the group would violate Chapter 68 in that he could not effectively recuse himself from the group's primary activity, which is fundraising.

Sheldon Oliensis
Chair

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* For purposes of Charter Section 2604(b)(12), a public servant is deemed to have substantial policy discretion if he or she has major responsibilities and exercises independent judgment in connection with determining important agency matters.

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Dated: October 13, 1992