

Advisory Opinion No. 92-27

A Community Board staff member has requested an opinion as to whether, consistent with Chapter 68 of the City Charter, the Community Board may solicit funds to hire a consultant to study waterfront-related commercial uses for a waterfront site located within its jurisdiction. The Community Board would solicit these funds from foundations, civic organizations and corporations, including a business corporation which owns land adjacent to the site. The business corporation could derive a benefit if the site were developed in a particular manner. However, it does not have any matter pending before the Community Board, has not had any such matters in recent years, and has played no role in preparing the guidelines for the study that is contemplated.

It is our opinion that the Community Board may, in general, solicit funds for such a study from organizations and individuals who do not have any matters pending before the Community Board, but that any solicitation from the business corporation which owns land adjacent to the site be conditioned upon

(i) the corporation having no involvement in the study, including input into the selection of the consultant;

(ii) the Community Board disclosing any support received from the business corporation in any reports or other communications concerning the study's findings and recommendations; and

(iii) if possible, the Community Board arranging for the personnel who are involved in the solicitation to be different from the personnel who might be expected to have dealings with the corporation if the substantive recommendations of the study are adopted.

Under the City Charter, Community Boards are directed to "[p]repare comprehensive and special purpose plans for the growth, improvement, and development of [their respective] community district[s]". Charter Section 2800(c)(9). In furtherance of this mandate, Community Boards are expressly authorized to utilize the services of consultants, including planners and other experts. See Charter Section 2800(f).

The Community Board in question has proposed to hire a consultant, who will investigate whether certain

types of commercial uses, including a marina or entertainment pier, are suitable for a portion of the local waterfront. The Community Board has requested funds for its study from both City and State governments, but has been unable to secure the necessary appropriations. It therefore proposes to solicit funds from various non-governmental sources.

In our Advisory Opinion No. 92-21, we addressed the issue of City agencies soliciting and accepting gifts from the private sector to support agency initiatives and programs. We noted that while gifts to the City should be encouraged, especially in a time of severe fiscal constraints, care must be taken to insure that acceptance of any gift does not impair public confidence in government or the integrity of government decision-making. We therefore identified certain factors to be considered in determining whether acceptance of a gift would be improper, or have the appearance of impropriety. These factors included: whether or not the donor has business dealings with the City; whether or not the donor has an interest in a matter awaiting determination by the subject agency; whether the donor is a sole supplier of certain goods or services; whether the donor's contracts with the subject agency have been disclosed; and the extent to

which the public servants accepting the gift on behalf of the subject agency are the same public servants who make decisions on the agency's contracts.

In applying these factors to the instant case, we conclude that the Community Board may solicit contributions from individuals and organizations for its proposed study, provided such individuals and organizations do not have any matters pending before it. This condition is critical, to avoid the prospect of a gift being used as an inducement for, or as a form of pressure to secure, official action in favor of a donor.

The Community Board may also solicit contributions from the business corporation which owns land adjacent to the site under study. While the corporation has no pending matter before the Community Board, and would not be in a position of inducing any immediate official action in its favor, it does own land adjacent to the site under study, and could derive a long-term benefit if the site were developed in a particular manner. For this reason, additional care must be taken to insure that any gift from the corporation does not influence the study or impair the integrity of any decision-making that results from the study. We therefore

conclude that any solicitation of contributions from the corporation must be conditioned upon the corporation having no involvement in the study, including input into the selection of the consultant, the Community Board disclosing any support received from the corporation in any reports or other communications concerning the study's findings or recommendations, and, if possible, the Community Board arranging for those personnel who are involved in the solicitation to be different from those who might be expected to have dealings with the corporation if the substantive recommendations of the study are adopted.

In addition to preventing direct influence through involvement with the study, these steps will help preserve the integrity of any review of the study's conclusions, by insuring that the conclusions are scrutinized against the backdrop of any financial support received from the corporation.

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Dated: October 26, 1992