

Advisory Opinion No. 92-37

The Conflicts of Interest Board (the "Board") has received a request for an opinion as to whether a former public servant, who served her agency as deputy commissioner, may, consistent with the post-employment restrictions of Chapter 68, work on two projects which involve appearances before her former agency within a year of her termination from City employment and which concern particular matters with respect to which she was personally and substantially involved.

This former public servant has assumed the position of executive director of a not-for-profit organization, and she seeks to be involved in two programs which require contact with her former agency.

The Board has received a detailed letter from the Commissioner of the former public servant's City agency in which he approves the former public servant's involvement in these projects as furthering the interests of the agency and the City.

Charter Sections 2604(d)(2) and (4) provide, respectively, that no former public servant shall appear before his or her former agency within one year

after termination of City employment, and that no former public servant shall appear before the City or receive compensation for services rendered in relation to any particular matter with respect to which such person had participated personally and substantially. The Board has, however, granted waivers of these prohibitions pursuant to Charter Section 2604(e), when, after having received the written approval of the former public servant's agency head, the Board determines both that a former public servant's proposed activities would not conflict with the purposes and interests of the City and that exigent circumstances justify such a waiver. See Advisory Opinion No. 91-8, which provided that the Board would grant waivers of the post-employment restrictions of Charter Section 2604(d) only when a former public servant can demonstrate compelling reasons to justify such a waiver.*

The Board has determined, based on the representations of the former public servant and the representations and approval of her former agency's Commissioner, that the former public servant's proposed

*The waiver in Advisory Opinion No. 91-8 was granted in order to enable a former public servant to work with his former agency on meeting court-ordered deadlines on a particular project.

activities would not conflict with the purposes and interests of the City and that the circumstances justify a waiver of the prohibitions contained in Charter Sections 2604(d)(2) and (4).

The Board notes with disapproval that the former public servant did not request the Board's opinion prior to having accepted the position with the not-for-profit organization, notwithstanding that both she and officials from her former agency were aware that her new position would almost certainly entail involvement in the two projects at issue. The former public servant's solicitation and negotiation for a position with the not-for-profit organization, prior to leaving City service, raise the possibility that a violation of Charter Section 2604(d)(1) has occurred. A public servant is prohibited from soliciting or negotiating for a position with a firm that is involved in a particular matter with the City, while the affected public servant is actively considering, or is directly concerned in, such particular matter on behalf of the City. See Charter Section 2604(d)(1)(ii).

The Board notes that in the future, any request for a waiver of the prohibitions contained in Charter Sections 2604(d)(2) and (4) must be submitted to the Board before the affected public servant negotiates for

the position giving rise to the request. This will allow the Board to properly review and evaluate each such request, and to provide guidance in a timely and efficient manner.

Sheldon Oliensis
Chair

Benjamin Gim

Beryl R. Jones

Robert J. McGuire

Shirley Adelson Siegel

Dated: December 15, 1992