

Advisory Opinion No. 92-38

A former public servant has requested an opinion as to whether, consistent with Chapter 68 of the City Charter, the former public servant could work on a contract between her present employer, a private consulting firm, and a subsidiary of a State public authority (the "State Entity"), for a demand study for certain services required by persons with disabilities (the "State Study").

The former public servant was employed as a Strategic Planner by a City agency until December 1991.

While employed by this agency, the former public servant conducted studies, pilot programs and analyses related to certain issues facing the City under the Americans with Disabilities Act. Her work also included preparing memoranda on projected City-wide demand for the services which are the subject of the State Study.

Because of her general knowledge of and experience with these services, the private consulting firm requested that she become involved in its contract with the State Entity. The former public servant, while employed by the City agency, attended a preliminary

meeting where the State Entity discussed a draft Request for Proposals for the State Study. The former public servant indicated that she did not participate in the drafting or awarding of the contract resulting from this Request for Proposals or otherwise have any involvement with her present employer with respect to the State Study while she was employed by the City agency.

Chapter 68 of the City Charter sets out certain restrictions on the activities of former public servants, after they leave City service. Charter Section 2604(d)(2) provides that no former public servant shall, within a period of one year after the termination of such person's service with the City, appear before the agency served by such public servant.

"Appear" means to make any communication, for compensation, other than those involving ministerial matters. See Charter Section 2601(4). A "ministerial matter" means an administrative act, including the issuance of a license, permit or other permission by the City, which is carried out in a prescribed manner and does not involve substantial personal discretion. See Charter Section 2601(15).

Charter Section 2604(d)(4) provides that no former public servant shall appear, whether paid or unpaid, before the City, or receive compensation for any services rendered, "[i]n relation to any particular matter involving the same party or parties with respect

to which particular matter, such person had participated

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personally and substantially as a public servant through decision, approval, recommendation, investigation or other similar activities." Charter Section 2604(d)(5) provides that no public servant shall, after leaving City service, disclose or use for private advantage any confidential information concerning the City gained from public service which is not otherwise made available to the public.

It is the opinion of the Board that it would not be a violation of Chapter 68 for this former public servant to work on the project undertaken by her present employer for the State Entity, with respect to the State Study. While the former public servant attended a preliminary meeting where the State Study was discussed, her involvement was not substantial. Thus, the former public servant's participation in the project, and her receipt of compensation for work performed for the private consulting firm on the project, would not be prohibited by Charter Section 2604(d)(4). It should be noted that the former public servant is prohibited by Charter Section 2604(d)(2) from appearing before her former City agency on any matter for one year after termination of her City service, except for communications concerning ministerial matters. In addition, Charter Section

2604(d)(5) prohibits her from disclosing or using for private advantage any confidential information concerning

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the City gained from her public service at the City agency and which is not otherwise available to the public.

Sheldon Oliensis,
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Dated: December 22, 1992

