

CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

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Advisory Opinion No. 2026-2

The Conflicts of Interest Board (the “Board”) received a request from the office of an elected official for guidance as to whether a public servant who is appointed by the elected official to serve on the board of directors of a public benefit corporation is subject to the designation and determination requirements of Board Rules Section 1-13(e). The official also sought guidance on the application of the post-employment restrictions of Chapter 68 of the New York City Charter to the public servant’s continued work at the public benefit corporation after leaving City service.¹

The public benefit corporation to which the subject public servant was being appointed was created by New York State to fulfill certain responsibilities of the City and the State. It is a state public authority subject to the provisions of the Public Authorities Accountability Act and oversight by the New York State Authorities Budget Office. It is also subject to the New York State Freedom of Information Law and the New York State Open Meetings Law. According to its by-laws, all of the public benefit corporation’s board members are appointed by a State or City elected official, either by direct appointment or through service as *ex officio* members by virtue of other government appointments, and serve on the board without compensation.

¹ The advice contained in this advisory opinion applies only to the public servant who is the subject of the request. See Charter Section 2603(c)(4).

Board Rules Section 1-13(e) permits an agency head to designate a public servant to perform work on behalf of a “not-for-profit corporation, association, or other such entity that operates on a not-for-profit basis,” provided that certain enumerated conditions are met. The rule further requires that for a designated public servant to be involved in the City business dealings of the not-for-profit entity the agency head must obtain a written Board determination.

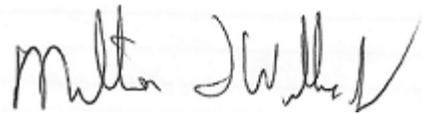
Public benefit corporations are “public corporations” and as such are distinct from the private not-for-profit entities identified Board Rules Section 1-13(e). See New York General Construction Law Section 65. Accordingly, Board Rules Section 1-13(e) does not apply where a public servant is appointed to perform work for a public benefit corporation.

The City Charter contains post-employment restrictions governing certain conduct of public servants after leaving City service, including Charter Section 2604(d)(2) (the post-employment communication restriction) and Charter Section 2604(d)(4) (the lifetime communication and compensation restriction in relation to particular matters). Charter Section 2604(d)(6) provides however that these two restrictions shall not apply to a former public servant with a position at “any local, state, or federal agency.”

Historically, the Board has applied this “government-to-government” exception to work for certain entities that it deems to be sufficiently governmental in nature, referring to such an entity as an “arm of government.” In determining whether an entity qualifies as an arm of government the Board has considered: (1) the manner in which the corporation was formed; (2) the degree to which the corporation is controlled by government officials

or government agencies; and (3) the purpose of the corporation. See, e.g., Advisory Opinion No. 1993-13.²

The Board has determined that the public benefit corporation to which the subject public servant has been appointed is an arm of government. The public benefit corporation was created by the State for a governmental purpose and all of the members of the public benefit corporation's board are appointed by State or City elected officials. As such, the subject public servant's proposed service on the public benefit corporation's board is a position with "any local, state or federal agency" as described in Charter Section 2604(d)(6) and thus exempt from the post-employment restrictions of Charter Sections 2604(d)(2) and 2604(d)(4).



Milton L. Williams Jr.
Chair

Wayne G. Hawley
Ifeoma Ike
Amy E. Millard

Dated: January 30, 2026

² The advice contained Advisory Opinion No. 1993-13 applies only to the public servant who is the subject of the request. See Charter Section 2603(c)(4).