



CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

2 Lafayette Street, Suite 1010
New York, New York 10007
(212) 442-1400; (212) 437-0705 (Fax)

www.nyc.gov/ethics

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Political Activities

Charter Sections: 2604(b)(2), 2604(b)(3), 2604(b)(4),
2604(b)(12), 2604(d)(2)

Board Rules: 1-13(a), 1-13(b)

Opinions Cited: 91-17, 92-25, 93-24, 95-13, 95-24, 2001-1,
2001-2, 2003-1, 2003-6, 2009-1, 2009-5,
2009-6, 2012-5, 2016-1, 2017-1 (Revised)

Advisory Opinion No. 2017-4

The Conflicts of Interest Board (the “Board”) has received a request for advice from a City elected official asking whether various conduct that occurs in the context of a political campaign is permissible pursuant to Chapter 68 of the New York City Charter, the City’s conflicts of interest law. Because the Board anticipates similar questions in the current City election year, the Board publishes this Opinion to provide guidance to public servants and to the public about whether certain campaign-related activities would violate Chapter 68.

I. Relevant Law

A. Chapter 68

Pursuant to Charter Section 2604(b)(2), Board Rules Sections 1-13(a) and 1-13(b) prohibit the use of City time and City resources for any non-City purpose.¹

Charter Section 2604(b)(3) prohibits a public servant from using or attempting to use “his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.”

Charter Section 2604(b)(4) prohibits a public servant from disclosing confidential City information and also from using such information for the public servant’s private advantage.

B. Advisory Opinions

The Board is frequently asked questions by public servants about the application of Chapter 68 to campaign and political activities and has addressed many of the issues raised in public Advisory Opinions:

- **Advisory Opinion No. 91-17:** A public servant charged with substantial policy discretion may serve as a member of a county political party committee.
- **Advisory Opinion No. 92-25:** A public servant charged with substantial policy discretion is prohibited from serving as an officer or board member of a political action committee that raises funds for candidates for elective office of the City or for current City elected officials.

¹ Charter Section 2604(b)(2) states that a public servant may not engage in any business, transaction, or private employment, or have any financial or other private interest, that is in conflict with the proper discharge of his or her official duties.

Board Rules Section 1-13(a) states that “it shall be a violation of City Charter § 2604(b)(2) for any public servant to pursue personal and private activities during times when the public servant is required to perform services for the City.

Board Rules Section 1-13(b) states that “it shall be a violation of City Charter § 2604(b)(2) for any public servant to use City letterhead, personnel, equipment, resources, or supplies for any non-City purpose.”

- **Advisory Opinion No. 93-24:** Chapter 68 does not prohibit public servants from serving as paid consultants to political campaigns.
- **Advisory Opinion No. 95-13:** The spouse of a public servant charged with substantial policy discretion may host fundraisers on behalf of candidates for City elective office, provided that the public servant is not an active participant in the fundraising.
- **Advisory Opinion No. 95-24:** City Council Members may conduct non-partisan voter registration drives using City employees and resources.
- **Advisory Opinion No. 2001-1:** A public servant charged with substantial policy discretion, other than an elected official, may not directly or indirectly raise funds on behalf of any candidate for an elective office of the City;² this means that, if the public servant is himself or herself a candidate for elective office of the City, he or she may not solicit campaign contributions from anyone, and others may not solicit campaign contributions on the public servant's behalf.
- **Advisory Opinion No. 2001-2:** Community school board members violate Chapter 68 if they solicit funds in support of their candidacies for elective office from their district superintendent or their board secretary or if they target other personnel from their district for campaign contributions.
- **Advisory Opinion No. 2003-1:** A district attorney's office is not an "elective office of the City" within the meaning of Chapter 68; consequently, public servants charged with substantial policy discretion may fundraise on behalf of candidates for election to the office of district attorney.
- **Advisory Opinion No. 2003-6:** A public servant may work for a political campaign, including their superiors' campaigns, and does not need a waiver from the Board to do so, provided that a public servant who works for compensation may not appear before any City agency on behalf of the campaign.
- **Advisory Opinion No. 2009-1:** Elected officials whose duties require them to be constantly available to respond to the needs of constituents and to public emergencies may use their assigned City vehicles within the five boroughs for the pursuit of political activities, without reimbursement to the City, provided that the elected official is in the vehicle and the use is not otherwise a conflict of interest.

² Charter Section 2604(b)(12) provides: "No public servant, other than an elected official, who is a deputy mayor, or head of an agency or who is charged with substantial policy discretion as defined by rule of the board, shall directly or indirectly request any person to make or pay any political assessment, subscription or contribution for any candidate for an elective office of the city or for any elected official who is a candidate for any elective office."

- **Advisory Opinion No. 2009-5:** The post-employment restriction of Charter Section 2604(d)(2) does not prohibit a former public servant from soliciting political endorsements from individuals employed by his or her former City agency because such endorsements are made in an individual's personal capacity.³
- **Advisory Opinion No. 2009-6:** A public servant charged with substantial policy discretion is prohibited from soliciting funds for a political action committee that contributes to candidates for elective office of the City or for current City elected officials.
- **Advisory Opinion No. 2012-5:** There is an absolute ban on the use of City time and resources for political activities; this ban is interpreted and applied to scenarios involving the use of schedulers, campaign inquiries, body and advance personnel, and City photographs.
- **Advisory Opinion No. 2016-1:** An elected official may not accept as a "gift to the City" payment from a third party for the entire cost of out-of-town travel that includes political as well as governmental activities.
- **Advisory Opinion No. 2017-1 (Revised):** Public servants may not use official City social media accounts for political purposes and may not use City time or City resources to operate a campaign's social media account.

Certain principles run consistently through each of these Advisory Opinions: while public servants may engage in many political activities, they must keep those activities separate from their official City duties. This means, most significantly, that public servants may not use their City positions to benefit a political campaign, and they may not use any City time or resources for campaign-related activities. See Advisory Opinion No. 2012-5 at 2. With these principles in mind, the Board turns to the elected official's questions.

II. Discussion

The elected official's questions involve three main subjects: (a) the use of City wireless networks; (b) the use of official City logos and iconography on campaign websites; and (c) the use of private individuals' contact information.

³ Charter Section 2604(d)(2) provides: "No former public servant shall, within a period of one year after termination of such person's service with the city, appear before the city agency served by such public servant."

A. Use of City Wireless Networks

The elected official asked the Board whether it would violate Chapter 68 for an elected official to send or read campaign e-mails or make or receive campaign phone calls on a personal device that is utilizing a wireless network or internet connection owned or operated by the City.

Chapter 68 prohibits the use of City-owned wireless networks or internet connections for non-City purposes. While Chapter 68 does not prevent a *de minimis* amount of internet use for personal activities, such as reading the news or making a personal dinner reservation, the use of a City wireless network or internet connection for any business or political purposes is strictly prohibited. See Advisory Opinion No. 2012-5 at 2; *COIB v. I. Ross*, COIB Case No. 2013-913 (2014).⁴ All public servants, including elected officials, must take steps to avoid using their City office's wireless network or internet connection for any business or political purpose.

The City provides some wireless connections—such as those available at LinkNYC kiosks—to make the internet widely accessible to the general public free of charge. Because the City purpose of these wireless connections is to make the internet widely accessible to the general public, a public servant would not violate Chapter 68 or Board Rules Section 1-13(b) by using such publicly-accessible internet connections on the same terms as any other member of the public. This means that a public servant may use the internet connection freely accessible from a LinkNYC kiosk to make campaign phone calls or send e-mails related to an outside business.⁵

⁴ In *I. Ross*, the Board found that a public servant's use of a City wireless network to perform work for her outside travel business violated Charter Section 2604(b)(2), pursuant to Board Rules Section 1-13(b).

⁵ The elected official also asked about the use of the "guest" networks at City offices, including the elected official's City office, that permit office visitors to access the internet. In contrast to wireless networks that are available to make the internet widely accessible to the general public, these guest networks are intended to be accessible only to those who are visiting the office on official business. As a result, these wireless networks are *not* accessible to the public in the same way that a LinkNYC kiosk is available to the public. Accordingly, public servants are prohibited from using the guest networks at City offices for political or business purposes. See Board Rules Section 1-13(b).

B. Use of City Seals and Logos on Campaign Websites

The elected official also asked whether, after an election, an elected official can update his or her campaign website to feature a government logo and the elected official's government contact information and thus use the campaign's website as a City website.

Because City logos and graphics are City resources, an elected official may use official City logos and graphics on a website only if the website is an official City website.⁶ See Board Rules Section 1-13(b); *COIB v. K. Stewart*, COIB Case No. 2012-162 (2012); *COIB v Vega*, COIB Case No. 2016-090 (2017).⁷ However, just as the Board held with regard to an elected official's social media accounts, see Advisory Opinion No. 2017-1 (Revised) at 5 n. 5, an elected official may convert his or her preexisting personal or campaign website to become a government website, which would then become permanently the property of the City. An elected official considering such a change should seek the Board's advice before doing so.

C. Use of Contact Information

1. *Individual Contact Information*

It is the Board's understanding that, over the course of a day, elected officials may receive dozens of business cards containing an individual's contact information. Some of these are given at meetings or events that the elected official attends in his or her City capacity; others, at campaign activities and events. The elected official asked the Board whether the business cards and related

⁶ The Board recognizes that City logos and graphics may be used on non-City websites on a limited, temporary basis, such as by not-for-profit organizations that partner with the City on specific projects and events, and that these temporary uses can advance a City purpose. Any public servant who has a question about whether Chapter 68 permits a particular use of a City logo or graphic is advised to seek the Board's advice.

⁷ In *K. Stewart*, the Board found that a public servant violated Charter Section 2604(b)(2), pursuant to Board Rules Section 1-13(b), and Charter Section 2604(b)(3) by using the City logo to create and use a fake parking placard that she used in her personal vehicle to avoid receiving parking tickets. In *Vega*, the Board found that a public servant violated Charter Section 2604(b)(2), pursuant to Board Rules Section 1-13(b), by using the New York City Police Department logo on behalf of his private business.

contact information that he or she receives may be shared with the elected official's political campaign, which would enter that contact information onto the campaign's mailing list. Recognizing in practice that it may be difficult to separate the two, an elected official should nonetheless strive to separate such contact information received in an official City context from contact information received in a campaign context and take steps to ensure that individual contact information received in an official City context is not used for political purposes.

The elected official also advised that some e-mail services automatically add to the elected official's personal contacts any e-mail addresses that are sent or received on mobile phones and asked whether the campaign can use this electronic contact information.

Chapter 68 requires elected officials and their staffs to manage their official City e-mail accounts in such a way that prevents contacts obtained in connection with those official City e-mail accounts from being used for campaign purposes. Accordingly, elected officials are urged to take steps to ensure that their official City contacts are not used to advance the elected official's campaign. See Charter Section 2604(b)(2), pursuant to Board Rules § 1-13(b), and Charter Section 2604(b)(3).

2. Transferring Lists of Contact Information

The elected official further asked whether an elected official's City office may transfer its City-maintained list of contact information, such as constituent e-mail addresses, to the elected official's political campaign.

A list of contact information maintained by an elected official's City office for use by that office to disseminate official City communications is a City resource and therefore cannot be used for any non-City purpose. See Charter Section 2604(b)(2), pursuant to Board Rules Section 1-13(b). As a result, an elected official or staff of an elected official may not transfer a City-maintained list of

contact information to a campaign. Indeed, when an individual contacts an elected official's City office and asks to be placed onto a campaign's mailing list, the elected official's City staff may not forward that communication to the campaign but may instead only provide campaign contact information to the individual. See Advisory Opinion No. 2012-5 at 7.⁸

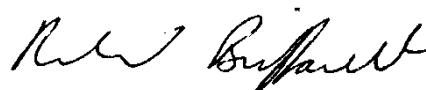
III. Conclusion

Chapter 68 prohibits the use of City-owned wireless networks or internet connections for any business or political purposes. An exception is made only for City-owned wireless connections that make the internet widely accessible to the general public free of charge, such as those available at LinkNYC kiosks.

Chapter 68 prohibits an elected official from using City logos and graphics on a website, unless the website is an official City website.

⁸ By contrast, an elected official may accept from his or her campaign the campaign-maintained list of e-mail addresses or contact information, and the elected official may use the contact information on that list in pursuit of his or her official City duties.

Chapter 68 prohibits an elected official's City office from sharing its City-maintained list of contact information, such as constituent e-mail addresses, with the elected official's political campaign. Elected officials are urged to take steps to ensure that individual contacts received in an official City context, such as business cards and related contact information, are not used to advance the elected official's campaign.



Richard Briffault
Chair

Fernando A. Bohorquez, Jr.
Anthony Crowell
Jeffrey D. Friedlander
Erika Thomas

Dated: August 17, 2017