



COMMUNITY BOARDS

by

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A. Introduction

Community board members are chosen because of their professional and personal involvement with, and commitment to, the communities in which they live and work. They often have associations with individuals, businesses, or organizations which may have matters before their community boards. To protect the integrity of community boards' decision-making processes and to ensure that community board members do not use their positions as public servants to obtain a private advantage for any individual, business, or organization with which they are associated, Chapter 68 of the City Charter contains specific provisions relating to the official conduct of community board members. In addition, community board members are subject to many of the same restrictions that the ethics law imposes on public servants generally. The ethics law addresses those various conflicts of interest provisions.

In Advisory Opinion No. 2004-1, however, the Board determined that while community board members are subject to the provisions of Chapter 68, the so-called "public members" of community board committees are *not* public servants within the meaning of the Charter and are therefore not subject to the provisions of the City's conflicts of interest laws.

B. Participating in Discussions and Voting

A community board member is specifically permitted to have an interest in a firm which may be affected by an action on a matter before the community board, but the member should disclose the interest to his or her board.¹ A community board member may not, however, vote on any matter before his or her community board which could result in a personal and direct economic gain to the community board member or to anyone associated with the community board member.² "Associated," as defined in Charter § 2601(5), includes the public servant's spouse, domestic partner, child, parent, or sibling; a person with whom the public servant has a business or other financial relationship; and each firm in which the public servant has a present or potential interest.

In its Advisory Opinion Number 91-3, the Board determined that, while a community board

member could not vote on matters before the community board in which he or she had a direct economic interest or which concerned a City agency in which he or she was employed, the member could participate in discussions of such matters. Before participating, however, the member was required to disclose to the other members of the community board the nature and extent of his or her private interest in the matter. This opinion expanded upon the guidelines originally provided in Opinion Number 305 of the Board of Ethics, the Conflicts of Interest Board's predecessor agency.

In its Advisory Opinion Number 93-3, the Board determined that community board members could vote on budget priorities that affected the local development and public benefit corporations which they served as unpaid directors, provided that such votes would not result in a personal and direct economic gain to the community board member or to a person associated with the member.

In a summary judgment based upon stipulated facts, the Board fined a community board member \$4,000 for voting on a matter involving real property in which he and his siblings held an ownership interest. Because a vote expressing the community's preference for land use "may result" in a personal and direct economic gain to the community board member, the community board member with an interest in the property may not participate in the vote. *COIB v. Basis Capetanakis*, COIB Case No. 99-157 (2001). The respondent has appealed the Board's decision.

In Advisory Opinion No. 2003-2, the Board advised that a community board member who owned a business in the community district with a liquor license *could* vote on matters concerning liquor licenses applications of other businesses in the district, but could not vote on *his or her own* liquor license application or on those of people with whom he or she is associated.

C. Doing Business with the Community Board

Although Charter § 2604(a)(1)(a) permits a community board member to have an interest in a firm which may be affected by an action on a matter before the community board, a community board member may not have an interest in a firm which is directly engaged in business dealings with the community board itself.³ An interest may be either an ownership interest in a firm or a position with a firm.⁴ Ownership interests are discussed in more depth in Chapter 4. Note that *full-time* community board employees are prohibited from having interests in any firms which do business with *any* City agency, not just the community board for which they work. Orders and waivers are sometimes granted by the Conflicts of Interest Board permitting an otherwise prohibited interest.⁵ Waivers are discussed in more depth in Chapter 4.

For example, a member of a community board is also the owner of Print Fast, a printing company. The community board needs 1,000 pamphlets printed for an upcoming event and would like to contract with Print Fast to have the work done. Print Fast has a reputation in the community for fast service at fair prices. If Print Fast takes on the job, the community board member would have violated Charter § 2604(a)(1)(a) because Print Fast, a company in which he has an ownership interest, would then be engaged in business dealings with the community board.

In Advisory Opinion Number 92-31, a community board member who also had a private law practice requested an opinion as to whether she could be retained by the community board to represent it in connection with public improvement projects planned for an area served by the community board. The attorney had been a member of the community board for 14 years and had provided voluntary legal services to the community board in the past. The Board determined that the proposed engagement would violate Chapter 68 because, among other things, it could give rise to an appearance that the community board was rewarding a long-standing member with a private consulting contract instead of seeking qualified outside counsel to perform the work.

D. Representing Private Clients Before the Community Board

In addition to being prohibited from doing business with their community boards, community board members are also prohibited from representing private clients for compensation before their community boards or from appearing anywhere, directly or indirectly, in matters involving the community board.⁶ "Appear" means to "make any communication, for compensation, other than those involving ministerial matters."⁷ This includes attending meetings, making telephone calls, writing letters, and engaging in similar types of activities. 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 which does not involve substantial personal discretion."⁸ Thus, in Advisory Opinion Number 96-4, the Board determined that neither community board members nor their partners or employees in private firms may represent private clients before their community boards or community board committees or appear on behalf of these clients before their community boards.

For example, a community board member is also a partner in a law firm. One of her clients has applied to the community board for a variance on his property, and has asked the community board member to represent him before the community board in this matter. The community board member declines, stating that it would violate Chapter 68 to appear before her community board on behalf of a private client. However, the community board member asks one of her partners in her law firm to represent the client before the community board. This poses a problem under the conflicts of interest law because the community board member is so closely associated with the firm that her firm's appearance before the board would be considered an indirect appearance by the member herself. In this case, neither the community board member nor any member or employee of her private law firm may represent private clients before her community board, absent a waiver from the Conflicts of Interest Board under Charter § 2604(e).

In Advisory Opinion Number 98-9, the Board granted such a waiver, permitting a community board member's private law firm to appear before the community board, provided that the community board member recuse himself from any community board discussions concerning the firm's business before the community board and further recuse himself from working on the matter for the firm. In the same opinion the Board granted a waiver to a community board member who is also an architect, permitting him to appear before other City agencies and a Borough President's

Office in a matter before his community board, conditioned on the same recusal requirements. The Conflicts Board further held that, in applying for waivers, a community board member must certify to the Conflicts Board that his or her proposed conduct is not in conflict with the purposes and interests of the City and must also supply the Board with a complete set of facts describing the circumstances of his or her representation or his or her firm's representation of the client. The Board makes its determination on a case-by-case basis as to whether a waiver is appropriate, given the particular facts and circumstances of each case.

E. Chairing a Community Board or Chairing or Serving on Committees

1. Chairing Community Boards

In Advisory Opinion Number 96-8, the Board determined that a community board chair may have interests in firms or organizations which regularly have matters before the community board, provided that the chair steps down at meetings which involve discussions or votes on matters involving such private interests and that the chair refrains from making any decisions or taking any other official actions on matters involving his or her private interests. However, the chair may otherwise continue to participate at community board meetings, with proper disclosure, and discuss matters involving his or her private interests to the same extent as other community board members.

2. Chairing Committees

As a result of their private interests or employment, community board members are prohibited from chairing certain committees of their community boards. In Advisory Opinion Number 93-2, a community board member who was also a community school board member requested an opinion as to whether he could chair the Youth Services Committee of his community board, which would vote on matters that would also be voted upon by the school board. The Board cited several prior opinions of its predecessor agency, the Board of Ethics, and agreed with the view expressed in those opinions that it would be "unseemly" and "improper" for a community board member who was also an employee of a City agency to cast a vote which might be in opposition to a position taken by his or her City agency. In addition, the Board stated that "the same concerns which arise when a community board member votes on matters involving his or her other City agency also arise when a community board member chairs a committee which votes on matters which have been or may be considered by him or her in another official capacity on behalf of his or her other City agency." The Board noted that this was true because a committee chair could greatly influence a committee by controlling the agenda, recognizing speakers, and making rulings. Thus, the Board determined that it would be a violation of Chapter 68 for a community board member who was also a member of a local school board to chair the Youth Services Committee of his community board. The community board member could, however, participate in discussions of matters which involved the school board, provided that, before participating, he disclosed the nature and extent of his interest in the matters as a member of the school board.

In Advisory Opinion Number 95-18, the Board was asked to clarify the circumstances under

which a community board member may chair a committee which considers matters related to the community board member's private interests. In this advisory opinion, the Board explained that the restrictions which Chapter 68 imposes on community board members are intended to "insure that actions taken by a community board are not tainted by questions of self-interest or divided loyalty on the part of any member." Since there is a possibility that a community board member could use or appear to use his or her position as a committee chair for the private advantage of a firm in which the community board member has an interest, to avoid potential conflicts, the Board determined that a community board member may not chair a committee if that committee is likely to have matters before it which concern the community board member's private interests or employment.

In Advisory Opinion No. 2003-2, the Board advised that a community board member with an interest in a licensed liquor facility in the community district could not serve as the chair of the community board committee responsible for considering liquor license applications.

A community board member *may* chair a committee if that committee is unlikely to have matters before it concerning his or her private interests. However, if such matters come before the community board, the community board member may not serve as chair during any meeting where those matters are discussed.

3. Serving on Committees

The concerns about the ability of a committee chair to greatly influence the agenda of committee meetings are not present where a community board member merely serves as a member of a committee. Thus, a community board member is permitted to serve as a member of committees which are likely to have matters before them which concern the member's private interests and employment. However, as noted above, if community board members wish to participate in discussions about matters which concern their private interests or employment, they must disclose to the community board the nature and extent of the private interests.

F. Fundraising

Faced with severe budget restrictions, community boards, like many other City agencies, are finding it necessary to reach out to private individuals and organizations to gain financial support for their programs and initiatives. Generally, community boards may engage in fundraising, provided that they act in accordance with certain conditions which have been imposed by the Board.

In Advisory Opinion Number 95-27, the Board determined that a community board could solicit and accept donations from individuals and firms. The community board, however, should not solicit or accept donations from individuals, firms, or other organizations which have matters pending before the community board, or which have matters where the community board's involvement is imminent, or where a fundraising solicitation would be likely to be perceived as a promise of special treatment in return for a contribution. In addition, such fundraising efforts must comply with the conditions set forth in Advisory Opinion Number 92-21, the Board's general

opinion on the acceptance of donations by City agencies. In light of these rules, donors should be informed that giving donations or gifts will not affect the bidding process or result in special treatment from the community board; solicitation should be done by general appeal; specific entities should not be targeted; and "donation" staff should be separate from those officials who make decisions on agency contracts.

In Advisory Opinion Number 92-27, a community board requested an opinion as to whether it could 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 funds from foundations, civic organizations, and corporations, including a business corporation which owns land adjacent to the site. The Board determined that the community board could solicit funds for such a study from organizations and individuals who did not have any matters pending before the community board. Further, any solicitation of the business corporation which owns land adjacent to the site would be conditioned on: (i) the corporation having no involvement in the study, including input into the selection of the consultant; (ii) the community board's disclosure of 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 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.

G. Political Activities

Community board members may generally engage in political activities. They must, however, abide by the prohibitions contained in Chapter 68, which are designed to prevent public servants from using their official City positions to promote their private political interests. Community board members thus may not coerce any public servant to engage in political activities or request any subordinate to participate in a political campaign.⁹ In addition, community board members may not coerce anyone to make a political contribution or even request a subordinate public servant to make a political contribution.¹⁰ In Advisory Opinion Number 91-12, however, the Board determined that community board chairs and district managers were **not** public servants "charged with substantial policy discretion" and hence were not subject to additional restrictions on political activities applicable to certain high-ranking City officials.¹¹ Political activities are discussed in more depth in Chapter 6.

H. Restrictions on Who May be Appointed to Community Boards

In Advisory Opinion No. 93-21, the Board held that a member of the City Council could not nominate a close family member to a community board. The Board reasoned that community board positions hold "a certain degree of power and prestige," so that appointment to a community board would confer an "advantage" on the member's relative, in violation of Charter Section 2604(b)(3). The Board also noted that Charter Section 1135 prohibits an employee of a Council member or a borough president from being appointed to a community board to which the borough president makes appointments or to which the council member makes recommendations.

In Advisory Opinion No. 2003-3, the Board advised that a Council member could nominate *the spouse* of a member of his or her staff for membership on a community board, provided that the Council staff member did not participate in the nomination process. In the same opinion, however, the Board ruled that it would violate Chapter 68 for a member of a community board to be employed in the office of a member of the Council who has appointment power to that community board.

In Advisory Opinion No. 2004-3, in a ruling that affects both community board members and the employees of community boards, the Board determined that community board members are the “superiors” of the employees of the community board for the purposes of Chapter 68 and accordingly that it would violate Chapter 68 for anyone “associated” with a community board member, including the member’s spouse, domestic partner, parents, children, and siblings, to serve as staff to that member’s community board. The Board also determined that it would violate Chapter 68 for any other person with whom a board member has a financial relationship to serve as a staff member.

I. Complying Generally with Chapter 68

Community board members and their staffs are also subject to the same restrictions that Chapter 68 imposes on all other public servants, except as noted above. For a more detailed discussion of these provisions, see Chapters 2 through 6.

¹ Charter § 2604(a)(1)(a).

² Charter § 2604(b)(1)(b).

³ Charter § 2604(a)(1)(a).

⁴ Charter §§ 2601(12), (16), (18).

⁵ Charter §§ 2604(a)(3), (a)(4), (e).

⁶ Charter § 2604(b)(6).

⁷ Charter § 2601(4).

⁸ Charter § 2601(15).

⁹ Charter § 2604(b)(9).

¹⁰ Charter § 2604(b)(11).

¹¹ Charter §§ 2604(b)(12), (b)(15).

FOR ADDITIONAL INFORMATION, CONTACT

NEW YORK CITY CONFLICTS OF INTEREST BOARD
2 LAFAYETTE STREET, SUITE 1010
NEW YORK, NY 10007
212-442-1400 (TDD 212-442-1443)

OR VISIT THE BOARD'S WEB SITE AT

<http://nyc.gov/ethics>