

New York City Conflicts of Interest Board

Notice of Adoption of Final Rules

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE NEW YORK CITY CONFLICTS OF INTEREST BOARD by Sections 1043, 2603(a), and 2603(c)(4) of the New York City Charter, that the Conflicts of Interest Board has adopted Board Rules Section 1-18 governing the use of City title in promotional materials.

The proposed Rules were published in the City Record on June 18, 2020, and a public hearing was held on July 20, 2020. No comments were received. The Conflicts of Interest Board now adopts the following Rule.

Statement of Basis and Purpose

City Charter § 2604(b)(2) prohibits a public servant from engaging in “any business, transaction or private employment, or hav[ing] any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties.” As codified in Board Rules § 1-13(b), this means that a public servant may not use City resources, including his or her City title, “for any non-City purpose.”

The Conflicts of Interest Board adopts a new § 1-18 of the Board Rules to apply City Charter § 2604(b)(2) to promotional materials produced by or on behalf of a non-City product, program, or entity. The Board has addressed such promotional materials, including book blurbs and print advertisements, in four advisory opinions on endorsements: Nos. 1991-1, 1995-2, 1998-6, and 2000-3. These opinions reflect a determination by the Board that “the City’s interest must be the clear determinant” for a public servant to use his or her City title to promote non-City products, programs, or entities. A.O. No. 1995-2 at 4. Without such a clear City purpose, the use of City resources would “present[] a significant risk of creating the appearance that the public servant’s official position is being used to advance a private interest.” A.O. No. 1991-1 at 1.

The Board has often concluded, both in this context and others, that a City agency itself is in the best position to decide how best to advance its mission. Thus, in Advisory Opinion No.

2008-6, an opinion on official fundraising, the Board observed: “Elected and appointed officials are selected for, among other things, their good judgment, and the Board finds no basis in Chapter 68 to limit the discretion of these officials as to their official charitable fundraising if they are exercising discretion within their defined areas of responsibility.” A.O. No. 2008-6 at 10-11. As a result, the Board advised in this Advisory Opinion, subsequently codified in Board Rules § 1-14, that an agency head need not obtain the Board’s approval every time the agency wanted to fundraise on behalf of a not-for-profit organization.

In providing advice about an individual public servant’s use of City title for endorsements, the Board under normal circumstances defers to an agency head’s determination provided that a demonstrable nexus exists between the product, program, or entity and the agency’s mission. Accordingly, the Board codifies a rule that permits public servants, with the approval of their agency head, to use their City titles in promotional materials produced by or on behalf of a non-City product, program, or entity, provided that there is a demonstrable nexus between the product, program, or entity and the mission of the public servant’s City agency.

The determination of whether a demonstrable nexus exists depends on the specific circumstances of the endorsement and the nature of the public servant’s work for the City. For example:

- In A.O. No. 2000-3, the Board advised the Police Commissioner that he may write and sign a letter that would serve as the introduction to a book published to raise funds for the NYPD Museum, a not-for-profit organization with the sole mission of educating the public about the New York City Police Department.
- In confidential advice, the Board advised an elected official that the elected official could author a welcome letter for the first edition of a privately published freely distributed magazine promoting public transportation in the City. The Board advised the official that the official could write the letter for the purpose of promoting tourism and the use of public transportation within the elected official’s district.

- In confidential advice, the Board advised an elected official that the elected official could not appear in an advertisement for a hospital located within the elected official’s district. The Board provided similar advice to a high-ranking public servant’s proposed appearance in an advertisement for a for-profit business in A.O. No. 1991-1.
- In confidential advice, Board staff advised a high-ranking public servant that the public servant could author a testimonial for a book that demonstrated the City’s role in alleviating inequality and poverty.

To ensure that a public servant is not acting to benefit an associated person or firm—including a close family member such as a spouse, sibling, parent, or child, or any person or firm having a business or financial relationship with the public servant—the rule prohibits an endorsement where the public servant or the public servant’s agency head is associated, within the meaning of City Charter § 2601(5), with either the entity or an employee of the entity that is the subject of the endorsement. This means, for example, that if an agency head’s spouse wrote a book on a matter connected to the mission of the agency, an agency employee may not provide a promotional blurb for the book on behalf of the agency.

Text of the Rule

New material is underlined.

Section 1. Title 53 of the Rules of the City of New York is amended by adding a new section 1-18, to read as follows:

§ 1-18 Use of City Title in Promotional Materials

- (a) Pursuant to Charter § 2604(b)(2) and § 2604(b)(3), a public servant may use or permit the use of his or her City title and/or City agency in promotional materials produced by or on

behalf of a non-City product, program, or entity provided that all of the following conditions are met:

(i) a demonstrable nexus exists between the product, program, or entity and the mission of the public servant's agency;

(ii) neither the agency head nor the public servant is associated, within the meaning of Charter § 2601(5), with either the person or entity or an employee of the person or entity that is the subject of the endorsement or whose product or program is the subject of the endorsement;

(iii) the public servant's agency head approves in writing the use of the public servant's City title and/or City agency; and

(iv) if the promotional materials solicit donations for a not-for-profit organization, the public servant and public servant's agency comply with the requirements of Board Rules § 1-14.

(b) For purposes of this section, an elected official, including a District Attorney, is the agency head of the staff members in their office. The Speaker of the New York City Council is the agency head of the central staff of Council, and a Council Member is the agency head of the staff of their office.