

CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD

2 Lafayette Street, Suite 1010
New York, New York 10007
(212) 442-1400
Fax: (212) 442-1407 TDD: (212) 442-1443

December 10, 2001

The Honorable Rudolph W. Giuliani
Mayor
The City of New York
Office of the Mayor
New York, NY 10007

Re: Conflicts of Interest Board Case No. 2001-486

Dear Mayor Giuliani:

This is in response to your letter to the Conflicts of Interest Board (the "Board"), dated December 7, 2001, and conversation between your office and Board staff, requesting a waiver of the conflicts of interest provisions of Chapter 68 of the City Charter on behalf of yourself and three other public servants, Dennison Young, Jr., Michael Hess, and Anthony Carbonetti (these three collectively the "Public Servants"), in order that you four may form a business enterprise that will engage in business activity after you and the Public Servants leave government service on December 31, 2001.

You have informed the Board that you, Mr. Young, Chief Counsel to the Mayor; Mr. Hess, Corporation Counsel of the City of New York; and Mr. Carbonetti, Chief of Staff to the Mayor, are considering forming an entity (the "Firm") that will take the form of a corporation, a limited liability company, or a partnership; that each of you will receive an interest in the Firm; that each of you will each continue to devote substantially all of your time to your public responsibilities until you leave City service; and that until each of you leaves City service the Firm will be managed, to the extent necessary, by a former high-level City official who left City service over two years ago. You advise that each of the Public Servants is currently a City subordinate of yours, and that each of you does not intend to perform any work for the Firm, except as set forth below, nor receive any compensation from or through the Firm, before each of you leaves City service.

You further advise that you are exploring forming one or more business affiliations through the Firm to engage in various business activities, including management consulting services to governments and businesses, as well as a wide range of possible business, management, or financial services, none of which services will be available before December 31, 2001. You advise that exploration of one such potential affiliation, with Ernst & Young LLP ("E&Y"), has reached the stage where you have in

your official capacities formally recused yourselves, in recognition of the mandates of Chapter 68, from any involvement with E&Y. You advise that the Firm will not do business with the City so long as any of the four of you remain in City service, nor will the Firm or any of its members have any involvement in the City business of E&Y, which has existing contracts with the Financial Information Services Agency ("FISA"), the Economic Development Corporation, the Housing Development Corporation, and the School Construction Authority, in none of which contracts have you or the Public Servants had any personal or substantial involvement. You advise that the E&Y contract with FISA is a one-year requirements contract capped at \$9.9 million, and that contracts with the other entities, including their E&Y contracts, are not even reviewed by the Mayor's Office of Contracts. You advise that you and the Public Servants will continue your recusal from any City business with E&Y or its related entities so long as your discussions regarding affiliation continue, or until any decision not to affiliate is reached, and further that E&Y will otherwise continue its current, and any proposed, business dealings with the City without any prejudice on account of these ongoing discussions.

You also advise that the Firm may seek to form other business affiliations or joint ventures during the few remaining weeks of your public service, and that if the Firm, or any of you four, determines to engage in negotiations for such a business affiliation with an entity with business dealings with the City, you will recuse yourselves from such dealings and seek a waiver from the Board. You advise that, in any event, you will not contract with any clients to provide services until January 2002 or later.

You advise that you and the Public Servants will not reveal or use for personal advantage any confidential information learned in your governmental capacities; will not use City resources, or your City positions or titles, in furtherance of your private business activities; and will not, for one year after leaving City service, communicate for compensation with, in the case of you and Mr. Hess, the executive branch of City government, and, in the case of Mr. Young and Mr. Carbonetti, with the Office of the Mayor. You further state that based on the totality of the circumstances, in particular the imminent end of your term and the decision of the Public Servants likewise to leave City service on December 31, 2001; the minimal Firm activity proposed over the remaining month; and the limited business relationship between E&Y and the City, your lack of prior involvement in that relationship, and your determination to recuse yourselves completely from that relationship, the activities proposed by you and the Public Servants would not conflict with the purposes and interests of the City.

Charter Section 2604(b)(2) prohibits a public servant from engaging in any business, transaction, or private employment, or having any financial or other private interest, direct or indirect, that is in conflict with the proper discharge of his or her official duties. Charter Section 2604(b)(3) prohibits a public servant from using his or her City position or title for private or personal advantage, or for the advantage of any person or firm with which he or she is associated.

Charter Section 2604(b)(4) prohibits public servants from disclosing *or using* for private advantage any confidential information obtained as a result of City employment which is not otherwise available to the public.

Charter Section 2604(b)(14) prohibits a public servant from entering into a business or financial relationship with another public servant who is his or her superior or subordinate.

Charter Section 2604(d)(2) provides that "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...." Charter Section 2604(d)(3) provides, in part, that "[n]o elected official, nor holder of the position of...corporation counsel...shall, within a period of one year after termination of such person's employment with the city, appear before any agency in the branch of city government served by such person...." An "appearance," in turn, is defined as "any communication, for compensation, other than those involving ministerial matters." See Charter Section 2601(4).

Charter Section 2604(e) provides, however, that a public servant may hold a position or engage in conduct otherwise prohibited by Chapter 68 if the Board determines, after receiving the written approval of the head of the agency or agencies involved, that such position or conduct does not involve a conflict with the purposes and interests of the City. As noted above, you have provided your written approval in the instant case.

You are advised, based on your representations and your written approval, that the Board has determined, pursuant to Charter Section 2604(e), that it would not conflict with the purposes and interests of the City for you and your subordinates, the Public Servants, to form the proposed business relationship, and for you or the Public Servants to negotiate with E&Y, **provided that** you and the Public Servants recuse¹ yourselves from E&Y's business dealings with the City and continue such recusal unless and until a determination not to affiliate is made; **provided further** that you conduct all activities related to the Firm on your own time, without the use of City resources, and without the use of your City titles; and **provided that** you do not use or disclose confidential City information in connection with your private activities.

You are further advised that efforts by the Firm to form business affiliations or joint ventures with persons or entities, in addition to E&Y, that have or are seeking City business would similarly not violate Chapter 68, **provided the following**: First, while you and your colleagues at the Firm may have an initial communication with the prospective affiliate to determine whether that person or entity has any interest in the

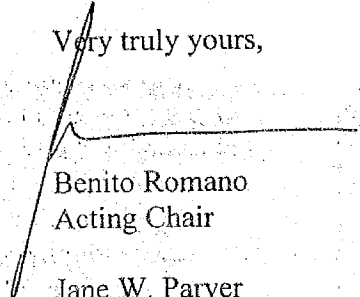
¹ Recusal means, in your City positions, that you may not consider matters involving E&Y, may not participate in discussions regarding E&Y, may not attend meetings regarding E&Y, and may not receive copies of documents regarding E&Y.

proposal presented, you and your public servant colleagues may initiate such communication with the prospective affiliate only if you first recuse yourselves from its City business. Second, after the initial communication, if you or your colleagues at the Firm determine to engage in a substantive discussion with that person or entity regarding the proposal, you do so only after you obtain a waiver from the Board (which waiver, if granted, will almost certainly require continued recusal). You are also advised that your proposed post-employment activities would not violate Chapter 68.

You are finally advised that nothing in Chapter 68 disqualifies, or otherwise prejudices, E&Y from continuing to do business with the City solely on account of your business relationship with E&Y, should one indeed occur.

The views expressed in this letter are conditioned on the correctness and completeness of the facts supplied to us. If such facts are in any respect incorrect or incomplete, the advice we have given to you may not apply. If at any time you would like further advice based on a change of circumstances or additional information, please contact us.

Very truly yours,


Benito Romano
Acting Chair

Jane W. Parver
Bruce A. Green

cc: Dennison Young, Jr.
Michael Hess
Anthony Carbonetti