



CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD

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March 20, 2008

Patricia E. Harris
First Deputy Mayor
Office of the Mayor
New York, NY 10007

Re: Conflicts of Interest Board Case No. 2008-035 (Daniel L. Doctoroff)

Dear Ms. Harris:

This is in response to your letter to the Conflicts of Interest Board (the "Board") dated January 14, 2008, requesting a waiver pursuant to the conflicts of interest provisions of Chapter 68 of the City Charter to permit Mayor Michael R. Bloomberg to appoint, or continue the appointment of, former Deputy Mayor for Economic Development and Rebuilding Daniel L. Doctoroff to several public agency boards, and to permit Mr. Doctoroff to continue his involvement in a number of City projects, in light of his resignation from City service to accept a position at Bloomberg L.P., a firm whose majority owner is Mayor Bloomberg.

Background: By prior letter, dated December 18, 2007, you sought the Board's waiver to permit Mr. Doctoroff to continue to be involved in certain matters through January 11, 2008, his last day on the City's payroll, in light of his imminent employment by Bloomberg L.P., which has a landlord-tenant relationship with Vornado Realty ("Vornado"). In that letter, you also sought the Board's advice concerning, and a waiver for, Mr. Doctoroff's continued involvement in those matters after he left City service. By its letter dated December 21, 2007 (see COIB Case No. 2007-869), the Board issued a waiver permitting Mr. Doctoroff to continue his involvement in those matters for the balance of his City service, provided that he recused himself at Bloomberg L.P. from its ongoing lease negotiations with Vornado and, for one year after leaving City service, from all dealings with Vornado on that or any other subject. However, the Board advised in that letter, that it had not considered, and made no determination concerning, how the post-employment restrictions of Chapter 68 might apply to Mr. Doctoroff.

Your current inquiry: By your January 14, 2008, letter, you have supplemented your previous inquiry, advising that Mr. Doctoroff left the City payroll effective January 11, 2008, and have asked the Board to determine whether waivers

may be issued to permit Mayor Bloomberg to appoint Mr. Doctoroff, or continue his appointment, to certain boards and to allow Mr. Doctoroff to continue in his service to the City while serving as the President of Bloomberg L.P. More particularly, you have sought the Board's advice about a number of projects (collectively, the "Projects") on which it is proposed that Mr. Doctoroff would continue to be involved, and you have provided the following information regarding those projects and his proposed activity:

- 1) ***PlaNYC 2030.*** You advise that in 2007, the PlaNYC "for a greater, greener New York" was established as Mayor Bloomberg's "far-reaching plan to fight global warming and create a more livable city." Launched on Earth Day in April 2007, PlaNYC "set a new standard for what local governments can do in the global fight against climate change." As part of this program, Mayor Bloomberg called for congestion pricing to reduce traffic and ensure funding for mass transit improvements, one million trees to be planted throughout the five boroughs within ten years, and a 30% reduction in the City's carbon footprint by 2030. Together, 127 separate initiatives form PlaNYC. The Administration would like Mr. Doctoroff to serve as an unpaid advisor on this project to provide generalized policy advice and guidance on the implementation of PlaNYC. The PlaNYC initiative now resides in the portfolio of Deputy Mayor for Operations Edward Skyler, and it is proposed that Mr. Doctoroff would work closely with him and the Mayor in the provision of any such advice and guidance.

- 2) ***Moynihan Station.*** The Board's December 21, 2007, waiver letter permitted Mr. Doctoroff to continue his role in the Moynihan Station negotiations for the duration of his City service, subject to certain conditions. You advise that, as the Administration's earlier letters on this subject outlined, Mr. Doctoroff has been instrumental in developing the plan for Moynihan Station; he convened all relevant stakeholders on behalf of the City, including railroads and private sector and governmental entities, and "has been invaluable to resolving emerging issues in the design process;" although substantial design decisions are being made, they are not yet finalized, and his role in this regard "will continue to be of the utmost importance." You represent that, on behalf of the City, he "has been essential in leading the financing discussions among the City, State, and the joint venture developers, Vornado and The Related Companies, and setting forth a financing framework." In addition, as advised in the Administration's previous letters, obtaining money from the federal government is key to completing the project as the stakeholders seek to address outstanding financial issues. Accordingly, while in City service, Mr. Doctoroff was also involved in dealing with federal

legislators and executive branch officials. You advise that negotiations with the joint venture have moved forward since your last writing, but remain at a critical juncture, and are expected to conclude in the next few months. Thus, the Administration still believes that without Mr. Doctoroff's continued involvement in this extraordinarily complex negotiation process, the City's position would be severely undermined and therefore his removal from the process at this time would be imprudent. Indeed, you advise that any progress made in favor of the City in these negotiations threatens to be lost if Mr. Doctoroff is removed from the process. The responsibility for the Moynihan Station project now resides in the portfolio of Deputy Mayor for Economic Development Robert Lieber. Thus, while Mr. Doctoroff will continue to assist with these negotiations without compensation, he will not be the City's sole representative and will not have the final authority to bind the City with regard to the project. That authority will reside with Deputy Mayor Lieber as well as other agencies, including the Office of Management and Budget, with whom Mr. Doctoroff will work closely while undertaking these negotiations. When the negotiation process has ended, and the deal has been finalized, Mr. Doctoroff will cease all involvement with regard to this matter.

- 3) ***Queens West.*** The City has agreements with the Port Authority of New York and New Jersey and with the State of New York to purchase approximately 30 acres of waterfront property in the Hunters Point section of Queens. The City proposes to erect a mixed-use development with approximately 5,000 units of housing, at least 60% of which will be affordable to middle-income New Yorkers. Under its proposal, the City will invest hundreds of millions of dollars to acquire the property, construct infrastructure, and provide housing subsidies. The City is currently exploring a variety of financing models for the project, including one possible model where a not-for-profit corporation would be formed to issue tax-exempt bonds; contract with architects, construction and property managers, and other firms; and provide development services under the direction of a City-controlled governing board. Whatever financing model is selected, the City's goals will be to keep costs down and enable higher numbers of affordable units. The Administration would like Mr. Doctoroff to serve as an unpaid advisor on this project. Mr. Doctoroff would work under Deputy Mayor Lieber in this advisory role and would exercise no formal governmental authority.

- 4) ***Hudson River Park Trust (HRPT).*** HRPT is a public benefit corporation with authority over the planning, design, construction,

operation, and maintenance of the Hudson River Park, a public park running along the Hudson River from the Battery to 59th Street. The HRPT board has 13 members, five of whom are appointed by the Mayor, five by the Governor, and three by the Manhattan Borough President. The Mayor appointed Mr. Doctoroff in 2002 for a four-year term. Although his term has expired, no replacement was appointed, and he currently serves as a hold-over member. Mr. Doctoroff is also currently serving a two-year term as Vice Chair of the HRPT board; the authority to designate the Chair and Vice Chair alternates every two years between the Mayor and the Governor. You advise that the Administration would like Mr. Doctoroff to remain on HRPT board as a member, but not as Vice Chair. You advise that his continued service will help the City realize the completion of the park and related piers and ensure that the visioning process to tie the park into the redevelopment efforts from Lower Manhattan to Hudson Yards and northward is carefully crafted and implemented.

- 5) ***Governors Island Preservation and Education Corporation (GIPEC)***. GIPEC is a joint New York State-New York City corporation that oversees the preservation, development, and management of Governors Island in cooperation with the National Park Service. The Board is further advised that GIPEC is a subsidiary of the Empire State Development Corporation (“ESDC”), a public benefit corporation. GIPEC is responsible for the planning, redevelopment, and ongoing operations for 150 acres of Governors Island. The GIPEC board has 12 members, half of whom are appointed by the Mayor, and half by the Governor. Mr. Doctoroff was appointed to the GIPEC board in 2003 for an indefinite term. Mr. Doctoroff currently serves as Chair following his election by his fellow board members on the advice of the Mayor, but an appointee of the Governor will soon take over as Chair. You advise that the Administration would like Mr. Doctoroff to remain on the GIPEC board for at least several months during this period of transition. Indeed, you advise that Mr. Doctoroff has been intimately involved with the strategic visioning for Governors Island since the federal government ceded control of it, and he has helped initiate bold and innovative campaigns to generate interest in the Island. GIPEC has been entertaining numerous conceptual proposals for potential development that have ignited the public’s interest and garnered much media attention. Mr. Doctoroff’s precipitous withdrawal at this time would, in the Administration’s view, hamper the long-sought development of this unique location.

You advise the Board that Mayor Bloomberg is aware of and approves your making this request for waivers, having previously advised the Board that because of the Mayor's ownership interest in Bloomberg L.P., he has assigned to you, as First Deputy Mayor, the responsibility for reviewing these matters and determining the necessity of a request for waivers and for determining whether such waivers would further the purposes and interests of the City. You advise that, for the reasons set forth above, it is your belief that granting waivers to enable the Mayor to continue his appointments of Mr. Doctoroff to the HRPT and GIPEC boards, and to allow Mr. Doctoroff to continue his involvement in the Projects as described above, would further the purposes and interests of the City. You further propose that, to ameliorate any possible appearance of a conflict with respect to the Moynihan Station matter, Mr. Doctoroff will fully recuse himself, in his capacity as President of Bloomberg L.P., not only from the negotiations currently underway with Vornado regarding additional space but also, for a period of one year from the date that the negotiations with the Moynihan Station joint venturers are concluded, from all dealings with Vornado regarding any matter.

Applicable Law

Charter Section 2604(b)(2) prohibits a public servant from engaging in any "business, transaction or private employment," or from 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 or attempting to use his or her City position to obtain any private advantage for the public servant or for any person or firm "associated" with the public servant. Charter Section 2601(5) defines those "associated" with a public servant to include any "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." The Board has determined that the appointment of a person to a community board, an uncompensated position, conveys an "advantage" on the appointed person within the meaning of Charter Section 2604(b)(3), so that a public servant may not appoint to a community board a person with whom he or she is associated. See Advisory Opinion No. 93-21, p. 5.

Charter Section 2604(d) sets forth the following restrictions on the activities of public servants who leave City employment:

Charter Section 2604(d)(3) prohibits elected officials and certain high-ranking appointed officials, **including deputy mayors**, from appearing for one year after leaving City service *before any agency in the branch of City government* served by such person. For the purposes of this provision, the legislative branch consists of the Council and the offices of the Council, and the executive branch consists of all other agencies of

the City, including the Office of the Public Advocate. "Appear" means to make any communication, including personal appearances, telephone calls, and letters, *for compensation*, other than those involving ministerial matters. See Charter Section 2601(4). 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 does not involve substantial personal discretion. See Charter Section 2601(15).

Charter Section 2604(d)(4) provides that no former public servant shall appear, *whether paid or unpaid*, before the City, or receive compensation for any services rendered, "in relation to any particular matter involving the same party or parties with respect to which particular matter such person had participated personally and substantially as a public servant through decision, approval, recommendation, investigation or other similar activities." "Particular matter" means any case, proceeding, application, request for a ruling or benefit, determination, contract limited to the duration of the contract as specified therein, investigation, charge, accusation, arrest, or other similar action which involves a specific party or parties, including actions leading up to the particular matter. See Charter Section 2601(17).

Charter Section 2604(d)(5) provides that no public servant shall, after leaving City service, disclose or use for private advantage any confidential information gained from public service that is not otherwise made available to the public.

Charter Section 2604(d)(6) provides that the "prohibitions on negotiating for and having certain positions after leaving city service, shall not apply to positions with or representation on behalf of any local, state or federal agency." The Board has interpreted this provision to apply not only to positions with government itself, but also to positions with entities which, though legally distinct from government, are effectively "arms of government." In determining whether entities such as local development corporations and business improvement districts would be deemed "arms of government," the Board has looked at three factors: 1) how the entity was formed, 2) the degree to which the entity is controlled by government officials or agencies, and 3) the purpose of the entity. See Advisory Opinion Nos. 93-13 and 94-21. The Board has also interpreted Charter Section 2604(d)(6) to permit a City agency, under certain circumstances, to enter into a *paid* consulting contract with one of its former employees less than one year after the employee leaves the agency. The Board noted, with respect to this "consulting back" exception, that the beneficiary of the former public servant's proposed work must be the public at large and that the proposed consulting arrangement must not give rise to an actual or potential conflict of interest. In order to show that the beneficiary of the work is the public at large and to avoid giving rise to an actual or potential conflict of interest, (1) the former agency must have a pressing need for the former employee's services, (2) the former agency must contract directly with the former employee, not through a firm employing the former public servant, and (3) the

contracting wage must be comparable to that of the employee's salary at the time he or she left the service of the agency. See Advisory Opinion No. 93-12.

Charter Section 2604(e) provides 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.

Discussion

1. Mr. Doctoroff's continued service on the HRPT and GIPEC Boards

By virtue of Mr. Doctoroff's new position as President of Bloomberg L.P., a firm in which Mayor Bloomberg holds a majority interest, Mr. Doctoroff is necessarily "associated" with Mayor Bloomberg within the meaning of Charter Section 2601(5). Accordingly, Charter Section 2604(b)(3) prohibits the Mayor from using his position to benefit Mr. Doctoroff. Since even an unpaid position on the boards of the HRPT or the GIPEC is a "benefit" to Mr. Doctoroff within the meaning of Chapter 68 (see Advisory Opinion No. 93-21, discussed above), Mayor Bloomberg's proposal to continue Mr. Doctoroff in his holdover status on the HRPT board and for Mr. Doctoroff to continue to serve at the Mayor's pleasure on the GIPEC board would violate Section 2604(b)(3), absent a waiver from the Board.

In such circumstances, a waiver of such a conflict of interest, as permitted by Charter Section 2604(e), is not lightly granted. However, the Board is persuaded that a waiver is warranted here, where Mayor Bloomberg is continuing his appointment of Mr. Doctoroff to *uncompensated* positions and where you have demonstrated to the Board's satisfaction that Mr. Doctoroff's has had significant and critical involvement in the Hudson River Park and Governors Island matters and that his continued involvement in those projects would be in furtherance of the City's purposes and interests. For these reasons, the Board concludes that Mayor Bloomberg's proposal to continue Mr. Doctoroff's appointments on the HRPT and GIPEC boards would not conflict with the purposes and interests of the City.

2. Appointment of Mr. Doctoroff as an Unpaid Consultant

Mayor Bloomberg's proposed appointment of Mr. Doctoroff, who as noted above is clearly "associated" with him as defined in Charter Section 2601(5), to be an unpaid consultant to the City with respect to the Moynihan Station, Queens West, and PlaNYC matters, does not in the Board's view confer a "benefit" on Mr. Doctoroff in the same way as his appointments to the HRPT and GIPEC boards. Accordingly, no violation by the Mayor of Charter Section 2604(b)(3) is involved in that proposal. However, given Vornado's role as both Bloomberg L.P.'s landlord and one of the

Moynihan Station joint venturers, absent a waiver pursuant to Section 2604(e), the Mayor's appointment of Mr. Doctoroff to continue acting for the City in the Moynihan Station matter would violate the Mayor's obligation under Charter Section 2604(b)(2) to avoid engaging in "any business, transaction or private employment" or maintaining any "financial or private interest" which is "in conflict with the proper discharge of" his official duties. The same would be true were it to appear that any interest of Bloomberg L.P. were involved in the Queens West project or the PlaNYC project. Accordingly, if such were the case, a waiver would also be necessary to permit the Mayor's proposed retention of Mr. Doctoroff as an unpaid consultant on these projects. Here, however, Mr. Doctoroff will ameliorate any conflict with respect to the involvement of Vornado in the Moynihan Station matter by recusing himself at Bloomberg L.P. from the current negotiations with Vornado regarding additional space and, for one year from the date of the conclusion of the negotiations with the Moynihan Station joint venturers, from all dealings with Vornado regarding any subject. Accordingly, while such a waiver is, as noted above, not lightly granted, the Board is again persuaded that the purposes and interests of the City would be served by granting such a waiver, subject to the above-stated recusal and also subject to the requirement that in these three unpaid advisory roles Mr. Doctoroff will recuse himself from all matters involving Bloomberg L.P. or Vornado, except that he may be involved with Vornado on the Moynihan Station matter. Furthermore, the waiver with respect to Moynihan Station will be for a limited period ending June 30, 2008. If it is proposed that Mr. Doctoroff's activities with respect to Moynihan Station are to continue after June 30, 2008, you must return to the Board prior to that date for its further advice.

3. Mr. Doctoroff's Proposed Appearances Before the City

The Board notes that the two entities (HRPT and GIPEC) on whose governing boards you propose Mr. Doctoroff to continue to sit were each formed by government, each has a governing body composed of or appointed by government officials, and each exists to serve a public purpose. Accordingly, the Board concludes that these two entities are each an "arm of government" within the meaning of such opinions as Nos. 93-13 and 94-21. Accordingly, if in his capacity as a member of the board of HRPT or GIPEC, Mr. Doctoroff should find it necessary to appear before any agency of the City, such appearances would fall within Charter Section 2604(d)(6), the "government-to-government" exception to the post-employment prohibitions of Chapter 68, so that, for example, Mr. Doctoroff's communications with the City *on behalf of either of these entities*, even regarding particular matters on which he may have worked as Deputy Mayor, will not violate Charter Section 2604(d)(4).

Mr. Doctoroff's proposed activities with respect to PlaNYC, Queens West, and Moynihan Station likewise fall within the exception of Charter Section 2604(d)(6), since these activities are covered by the "consulting back" paradigm set forth in such opinions as No. 93-12, discussed above. Indeed, this doctrine contemplates former public servants who continue to provide service as consultants to the City *for*

compensation, whereas here Mr. Doctoroff's proposed service would be uncompensated. Since his proposed activities with respect to PlaNYC, Queens West, and Moynihan Station fall within Section 2604(d)(6), such activities as his communications with the City regarding particular matters concerning those projects on which he may have worked as Deputy Mayor will not violate Charter Section 2604(d)(4).

You are accordingly advised that, based on your representations and written approval, the Board has determined that Mayor Bloomberg's proposal for Mr. Doctoroff to continue to work on the Projects, as set forth above, would not conflict with the purposes and interest of the City, provided that, as you condition your approval, Mr. Doctoroff fully recuses himself at Bloomberg L.P. from the current negotiations with Vornado regarding additional space and, for one year from the date of the conclusion of the negotiations with the Moynihan Station joint venturers, from all dealings with Vornado regarding any subject. Further, as noted above, the Board's determination, and its waiver, is granted only on the condition that Mr. Doctoroff will recuse himself at any of the Projects from any matters involving Bloomberg L.P. or Vornado, except that he may be involved with Vornado on the Moynihan Station matter.

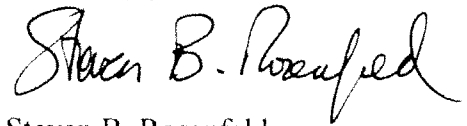
Finally, as also noted above, the Board's determination, and its waiver, with respect to Mr. Doctoroff's activities regarding Moynihan Station is granted only through June 30, 2008, so that if Mayor Bloomberg wishes Mr. Doctoroff to continue in that capacity after that date, you must prior thereto seek the Board's further advice.

While the advice set forth above will permit Mr. Doctoroff to appear before City agencies, subject to the conditions stated, on behalf of HRPT and GIPEC, and to serve as a consultant to the City with respect to Moynihan Station, Queens West, and PlaNYC, he is of course prohibited from appearing, *on behalf of Bloomberg L.P. or any other private entity*, before *any* agency of the Executive Branch until January 12, 2009 (*see* Charter Section 2604(d)(3)), and he is likewise permanently barred from appearing before the City, whether paid or unpaid, *on behalf of Bloomberg L.P. or any other private entity*, in relation to any particular matter with respect to which he participated personally and substantially as Deputy Mayor and from providing any compensated services for any private party with respect to any such matters (*see* Charter Section 2604(d)(4)). Nor may he disclose or use for the private advantage of himself, Bloomberg L.P., or any other entity, any confidential information gained from his public service which has not otherwise been made available to the public (*see* Charter Section 2604(d)(5)).

The waiver determination conveyed in this letter is conditioned on the correctness and completeness of the facts supplied to us. If such facts are in any respect incorrect or incomplete, the waiver that the Board has granted 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,

A handwritten signature in black ink that reads "Steven B. Rosenfeld". The signature is written in a cursive, flowing style.

Steven B. Rosenfeld
Chair

Monica Blum
Kevin B. Frawley
Angela Mariana Freyre
Andrew Irving