

## **CHAPTER 2.58. CONFLICTS OF INTEREST**

### **2.58.010. Definitions.**

The following words shall have the following meanings:

- A. "Contract" or "contractual relationship" means any agreement or business relationship between the borough, division of the borough, or service area, whether such contract or agreement is expressed or implied. Sales of retail items or establishment as an approved source of supply of materials or goods are also included in the meaning of contract or contractual relationships.
- B. "Municipal officer" or "employee" means an officer or employee of the borough, whether paid or unpaid, and includes any members of any boards or commissions of the borough other than service area boards.
- C.
  - 1. "Service area board members" means those persons, whether elected or appointed, who serve upon boards of the various service areas as may from time to time be established within the borough.
  - 2. "Service area officers or employees" means an officer or employee of the service area involved in the contractual relationship, but does not include officers or employees of service areas other than the one with which a contractual relationship is sought or entered.
- D. "Service area officer or employee" means an officer or employee of a service area, whether paid or unpaid.
- E. "Substantial interest" means a pecuniary or material benefit accruing to the person as a result of a private, business or professional transaction with the borough, or service area. The person shall be deemed to have an interest in the affairs of:
  - 1. His or her spouse, spousal equivalency, minor children or dependents;
  - 2. A firm, partnership or association of which such person is a member or employee;
  - 3. A corporation of which the person is an officer, director or employee. A person shall be deemed to have an interest in the affairs of a nonprofit corporation of which the person is an unpaid director, solely by virtue of the directorship.
  - 4. A corporation in which a person owns more than five percent of the stock, or which is controlled directly or indirectly by such person.

(Ord. No. 2003-39, § 1, 12-17-03; Ord. No. 99-74, § 1, 1-18-00; Ord. No. 83-65, § 1(part), 1983)

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### **2.58.020. Limitations on contracting.**

Unless the provisions of this chapter have been complied with, no contract or contractual relationship may be created between the borough and any of its officers, employees or assembly members, or where such person has, or would have, a substantial interest in the contract in a capacity other than his or her position with the borough. Nor may such persons with a substantial interest participate in the consideration, award or administration of any contract with the borough in which the person has a substantial interest.

(Ord. No. 83-65, § 1(part), 1983)

**2.58.030. Limitations on contracts with service area.**

Unless the provisions of this chapter have been complied with, no contract or contractual relationship may be created between a service area and any of its service area board members, service area officers, or employees of the service area, or where such person has, or would have, a substantial interest in the contract in a capacity other than his or her position with the service area. Nor may such persons with a substantial interest participate in the consideration, award or administration of any contract with the borough in which the person has a substantial interest.

(Ord. No. 83-65, § 1(part), 1983)

**2.58.035. Contracts or sales not constituting substantial interest.**

The following shall not constitute a substantial interest prohibited by this chapter:

- A. A contract with a person, firm, corporation or association in which the person has an interest solely by reason of employment as an officer or employee thereof, if the remuneration of such employment will not be directly affected as a result of such contract, and the duties of such employment do not directly involve the procurement, preparation or performance of any part thereof;
- B. A contract in which the person has an interest if such contract was entered into prior to the time he was elected or appointed as such service area board member, service area officer or employee, but this exception shall in no event authorize a renewal of any such contract;
- C. A contract with or sale by a corporation in which the person has an interest by reason of stockholdings when:
  - 1. The stock of the corporation is listed on either the New York or American Stock Exchanges, or
  - 2. Less than 5 percent of the outstanding stock of the corporation is owned or controlled directly or indirectly by such board member, officer or employee;
- D. A contract or sale in which a service area board member, service area officer or employee has an interest, if the total consideration payable thereunder, when added to the aggregate amount of all consideration payable under contract in which such person had an interest during the fiscal year, does not exceed the sum of \$100.00.
- E. A person shall not be deemed to have an interest in the affairs of a nonprofit corporation of which the person is an unpaid director, appointed by the borough to fill a seat designated for a borough or service area officer or employee to represent the borough's interests on that board, solely by virtue of the directorship.

(Ord. No. 2003-39, § 2, 12-17-03; Ord. No. 83-65, § 1(part), 1983)

**2.58.040. Voting on certain questions prohibited.**

- A. No assembly member or member of any service area board or commission may vote on any question on which he or she has a substantial direct or indirect financial interest unless an assembly member is not excused from voting as provided in KPB 22.40.140.
- B. The following do not constitute a vote on a question on which an assembly member, a service area board member or commission member has a substantial financial interest:
  - 1. A vote to adopt or approve a variance request, a conditional use request, or an amendment to a zoning text or map, unless the assembly member, service area board member or commission member is directly or indirectly the applicant initiating the request;

2. A vote on the question of recommending, approving or directing a condemnation proceeding;
3. A vote on a question of granting or modifying a franchise, or a vote on a question of setting the rates charged or charged by a corporation, firm or partnership whether under franchise or not and whether authorized by law, ordinance or contract to set or alter such rates, provided the assembly member, service area board member or commission member has an interest in such franchise or rate-setting solely by reason of employment as an officer or employee of such corporation, firm or partnership, and the remuneration of such employment will not be affected as a result of such franchise grant or modification or such rate-setting, and the duties of such employment do not directly or indirectly involve the negotiation or setting of the terms of the franchise or rates; or
4. Provided he has an interest solely by reason of the ownership of stock in the corporation if it is listed on the New York or American Stock Exchanges ownership direct or indirect of less than 5 percent of the outstanding stock or shares in the subject corporation.

(Ord. No. 99-74, § 2, 1-18-00; Ord. No. 83-65, § 1(part), 1983)

#### **2.58.050. Ability to contract upon disclosure of interest.**

- A. Notwithstanding the provisions of Section 2.58.020, municipal officers, employees or assembly members may engage in business or contractual relationships with the borough upon compliance with the provisions of this section.
- B. Notwithstanding the provisions of Section 2.58.030, a service area board member, director or employee of the service area board may engage in business or contractual relationships with the service area upon compliance with the provisions of this section.
- C. Any of the persons described in subsections A and B in this section may engage in the authorized transactions if the conditions have been met:
  1. At least 10 days before the business relationship or contract is entered into or sought or bid upon, whichever event is earliest, the person shall file a notice of intent to do business with the borough or service area board. The notice will be upon the form to be prepared by the administration.
  2. The notice of intent to do business shall fully disclose the conflict between the person who is otherwise prohibited from entering into such contractual relationship, and shall fully disclose the nature of the proposed business relationship and specify the department or service area with whom the contract will be made. The notice of intent to do business shall be sworn under oath as to the information supplied therein.
  3. Such notice of intent to do business shall be filed with the office of the clerk, and a copy shall be provided by the clerk to the particular department, service area board, or other division of the borough with whom the person intends to enter into the business relationship or contract.
  4. The notice of intent to do business shall be kept on file with the borough clerk until such time as any business or contractual relationship that arises in connection with the notice is completed. The notice will be available for public inspection.
- D. Filing a notice of intent to do business or enter into a contractual relationship with the borough, department or service area board shall in no way affect the prohibition on voting or participating in decisions as set forth in Section 2.58.040.

(Ord. No. 83-65, § 1(part), 1983)

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#### **2.58.055. Prohibition of contracts involving conflicts seriously affecting of duties.**

If the award of a contract involving a conflict would create a situation in which an assembly member, service area board member, municipal officer, or employee could not adequately perform the duties of his or her office due to the conflict, then the conflict of interest is absolute and the contract must be awarded to another person.

(Ord. No. 83-65, § 1(part), 1983)

#### **2.58.058. Prohibition of dual service on assembly and borough boards and commissions, and on assembly members' eligibility for employment by the borough.**

- A. No assembly member may serve on any borough board or commission except that assembly members are authorized to serve on the borough Board of Equalization.
- B. An assembly member shall not be eligible for employment for which a wage is paid by the borough until one year has elapsed from the date the member leaves the assembly. This does not preclude appointment of assembly members within the one-year period to borough boards or commissions for which a per diem amount, but no wage, is paid. While an assembly member may not simultaneously serve as an assembly member and borough mayor, nothing in this provision shall render an assembly member ineligible to run for borough mayor and, if elected, to serve as borough mayor at any time.

(Ord. No. 2021-25, § 1, 8-3-21; Ord. No. 2002-33, § 1, 9-3-02; Ord. No. 85-95, § 1, 1986)

#### **2.58.060. Penalty for violations.**

Any violation of the provisions of this chapter shall be punished by a fine of not more than \$500.00 or by imprisonment for not more than 30 days, or by both such fine and imprisonment. Each act of violation shall constitute a separate offense.

(Ord. No. 83-65, § 1(part), 1983)

#### **2.58.070. Common law superseded.**

The provisions of this chapter supersede the common law on conflicts of interest arising out of substantial interests that may apply to borough officers, employees, and elected officials.

(Ord. No. 99-74, § 3, 1-18-00)