

CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD

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June 18, 2013

Commissioner Veronica M. White
New York City Department of Parks and Recreation
The Arsenal
Central Park
New York, NY 10065

Re: Conflicts of Interest Board Case No. 2013-353 (Washington Square Park Conservancy)

Dear Commissioner White:

This is in response to your letter, dated May 8, 2013, to the Conflicts of Interest Board (the "Board"), and subsequent communication between your office and Board staff, requesting an opinion as to whether, consistent with the conflicts of interest provisions of Chapter 68 of the New York City Charter, New York City Department of Parks and Recreation ("Parks") employees may engage in fundraising on behalf of the City Parks Foundation, Inc. ("CPF") in support of the Washington Square Park Conservancy (the "Conservancy").

The Board is advised that CPF is a not-for-profit corporation founded in 1989; that CPF's corporate purposes include the restoration, maintenance, management, and programming of parks and facilities under the jurisdiction of Parks; that CPF is authorized to provide services affecting Parks, including financial, preservation, development, and other services, and to make contributions or grants of services, funds, or in kind; that Parks' limited budget necessitates alternative sources of funding in order to provide additional maintenance and restoration services for public art and monuments; and that the Board previously approved Parks officials soliciting donations on behalf of CPF in COIB Case Nos. 2003-669, 2007-534, 2009-002, and 2012-443 to support a number of Parks programs including the New York Tree Trust, Heather Garden Endowment, Monuments/Artwork Program, Imagination Playground, Friends of the Arsenal, the Citywide Festivals Program, and online fundraising for the Adopt-A-Park program.

You advise that Parks now seeks advice concerning the formation of the Conservancy,

for which CPF would serve in an identical capacity; that the Conservancy was formed in the Summer of 2012 and filed its application for designation as a 501(c)(3) entity in Spring 2013; that CPF is temporarily serving as the fiscal sponsor of the Conservancy until the Conservancy finalizes its 501(c)(3) status; that the Conservancy intends to work, in partnership with the City and the surrounding community, to promote the restoration, preservation, and enhancement of Washington Square Park, one of the oldest and most heavily-used parks in the City, for the benefit and use of the surrounding community and all of New York City; that the Conservancy will raise funds for special revitalization projects in Washington Square Park, for high quality public programming, and for supplemental horticultural staff and equipment; that the Conservancy also intends to raise an endowment for the long-term preservation of Washington Square Park and to protect the recently-completed \$30 million renovation of Washington Square Park, and that these efforts will assist Parks in meeting its duty under §533 of the City Charter to manage and care for parks and public places.

You further advise that Parks plays a substantial role in the operation of the Conservancy; that, specifically, Parks' Administrator of Washington Square Park, Sarah Neilson, serves as both a Parks official and as the Executive Director of the Conservancy; that as Administrator of Washington Square Park, Ms. Neilson oversees and manages all aspects of Washington Square Park, organizes and implements strategic plans for the park, works with Parks' Capital Projects Division to prioritize and address reconstruction issues, builds and expands partnerships with community groups and corporate and not-for-profit organizations, coordinates volunteer programs and activities, plans park events and programs, oversees permits, and monitors Washington Square Park's budgets and expenditures; that as Executive Director of the Conservancy, Ms. Neilson oversees day-to-day operations of the Conservancy, including preparing funding proposals to donors and foundations, convening board and committee meetings, working with vendors and consultants, developing relationships with partner organizations, recruiting new board members, and overseeing donor-funded park improvement projects and initiatives; that Ms. Neilson reports to the Conservancy's board of directors as well as to Parks; and that the Conservancy's board of directors, currently in formation, will include at least three *ex officio* representatives of Parks, including the Administrator for Washington Square Park, the Parks Manhattan Borough Commissioner, and the Parks Commissioner.

You advise that Parks now seeks the Board's "pre-clearance" for Parks officials to fundraise in their official capacities on behalf of the Conservancy; that all these solicitations would be made in accordance with the Board's Advisory Opinion No. 2003-4, including the requirement that, in the unusual case where a Parks official is making a targeted solicitation on behalf of the Conservancy, the official will not participate on behalf of Parks in any pending or about-to-be pending matters that could involve persons or entities that will be asked for donations; and that Parks will disclose all donations made for the Conservancy in a public report to be filed with the Board every six months pursuant to Advisory Opinion No. 2003-4.

You further advise that, due to Parks' limited budget, public monies allocated for public spaces and general Parks services are not always sufficient for more than the basic level of services; that alternative sources of funding are necessary to provide additional maintenance and staffing services for City parks and other public spaces; and that allowing Parks officials to raise private funds on behalf of the Conservancy will help Parks "improve its public efforts related to [Washington Square] Park."

The Board has, by letters dated July 24, 2007, September 24, 2007, January 29, 2009, September 23, 2009, and September 24, 2012, approved a number of Parks projects supported by Parks-affiliated private not-for-profit entities, for which Parks staff may solicit donations. Specifically, the Board approved fundraising for Riverside Park Fund, Inc., Forest Park Trust, Greenbelt Conservancy, Historic House Trust, Battery Conservancy, Bronx River Alliance, CPF, Randall's Island Sports Foundation, Inc., the Imagination Playground, Friends of the Arsenal, and Adopt-A-Park. See Conflicts of Interest Board Case Nos. 2003-669, 2007-534, 2009-002, 2009-593, and 2012-444.

Charter Section 2604(b)(2) prohibits a public servant from engaging in any business, or having any private interest, that conflicts 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. Pursuant to Charter Section 2601(5), a person "associated" with a public servant includes a spouse, child, parent, or sibling; a person with whom the public servant has a business or financial relationship; and any firm in which the public servant has an interest.

In Advisory Opinion No. 2003-4, the Board determined that, with certain provisos, public servants could raise funds for the benefit of the City and for certain not-for-profit entities closely affiliated with the City, so long as the activities of these not-for-profit entities support the purposes and interests of the City, rather than personal interests of the soliciting public servant. In order to ensure that fundraising for such "City affiliated" not-for-profits meets that objective, the Board noted that it would accept from City agencies and offices lists of those entities and the purposes for which they propose to seek private funding, and would determine on a case-by-case basis whether these submitted entities and purposes are appropriate for fundraising by public servants. See Advisory Opinion No. 2003-4 at 2.

In determining whether the not-for-profit and its purposes are appropriate for official fundraising by public servants, the Board indicated that it would consider factors such as: (1) any appearance of favoritism toward particular not-for-profit entities created by such fundraising; (2) the impact on the beneficiary organization's competitors, if any; (3) the relationship between the mission of the beneficiary organization and City programs; (4) the importance to the City of the organization's activities; (5) the extent to which the fundraising is

undertaken, or appears to be undertaken, in an "official" capacity; (6) the official's personal interest in or relationship to the beneficiary organization; and (7) whether fundraising for the organization is consistent with the public servant's official duties or appears to further only personal or political interests. See Advisory Opinion No. 2003-4 at note 1.

Finally, whether solicitations are sought on behalf of the City or on the behalf of a City affiliated not-for-profit organization, City officials may not solicit from a prospective donor "who the official knows or should know has a specific matter either currently pending or about to be pending before the City official or his or her agency, where it is within the legal authority or the duties of the soliciting official to make, affect, or direct the outcome of the matter." See Advisory Opinion No. 2003-4 at 20.

Here, it is the view of the Board that the activities of CPF, as the fiscal agent for the Conservancy, and of the Conservancy itself, plainly support the purposes and interests of the City, rather than personal interests of staff members of Parks, so that it is appropriate that Parks officials may raise funds through the Conservancy for the purposes described above, and that CPF is an appropriate fiscal agent for such funds.

You are accordingly advised that, based on your representations, it would not violate Chapter 68 for employees of Parks, acting in their official City capacities and using both City time and City resources, to engage in fundraising on behalf of the Conservancy, in the manner and under the conditions described above. See Charter Sections 2604(b)(2) and (b)(3) and Advisory Opinion No. 2003-4.

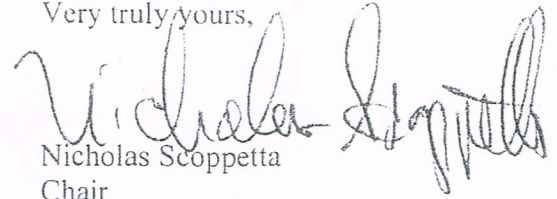
All such fundraising must comply in all respects with the requirements of Advisory Opinion 2003-4, including but not limited to the requirements that:

- All solicitations must make clear that the donor will receive no special access to City officials or preferential treatment as a result of a donation;
- No City official may solicit from a prospective donor who the official knows, or should know, has a specific matter either currently pending or about to be pending before the City official, where it is within the legal authority or the duties of the soliciting Official to make, affect, or direct the outcome of the matter; and
- Parks must disclose all donations over \$5,000 made through CPF on behalf of the Conservancy in a public report to be filed with the Board every six months. See Charter Sections 2604(b)(2) and (b)(3) and Advisory Opinion No. 2003-4.

Finally, you are advised that this approval is limited to fundraising for the Conservancy and in support of City parks and further that any material changes in the charter or by-laws of the CPF must be presented to the Board for its consideration as to their impact, if any, on this approval.

The advice 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 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,

A handwritten signature in black ink, appearing to read "Nicholas Scoppetta". The signature is fluid and cursive, with a large initial "N".

Nicholas Scoppetta
Chair

Anthony Crowell
Andrew Irving
Burton Lehman
Erika Thomas-Yuille

cc: Sharmila Rampersaud, Esq.