

the Ethical Times

Limitations of Chapter 68

By Rob Casimir

The New York City Conflicts of Interest Law is not the Magna Carta. It is not the Declaration of Independence or the Treaty of Westphalia. No Hammurabis will be chiseling Chapter 68 into stelae anytime soon; the document is not epoch-defining – on occasion it's barely *terminology*-defining ("particular matter," anyone?) – and on a good day, with just the right font, you can fit most of its important prohibitions onto a two-page leaflet.

Almost certainly, there are things missing from the Conflicts of Interest Law that you might prefer it include: pre-employment limits, perhaps, or an independent budget for the agency. Ideally, the law would at the very least enumerate and proscribe all possible "unethical" behavior. But actually writing an ethics law is a little like the adage about project management: concise, complete, and followable – you can pick *two*. Given that impossible challenge, the crafters of Chapter 68 focused on "concise" and "followable," while trying to prohibit (or allow) as much as they could. In this way, the average public servant is able to read the law (or even just that two-page summary) and get a broad sense for the *sort* of behavior that could land them in hot water. But that means some things get left out.

Take the Misuse of Position prohibition – (*extremely vaudevillian voice*) *please!* – which states in **City Charter Section 2604 (b)(3)** that:

IN THIS ISSUE

- 1 **Featured Article: Limitations of Chapter 68**
- 3 **Recent Enforcement Cases**
- 4 **New Public Service Puzzler**

No public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.

We see here that you, the public servant, can't use your government power or authority for your own personal gain, which I think makes sense: you're imbued with whatever official status you have so that you can carry out your official duties and serve the public. If the purpose of an ethics law is to propagate clear standards which increase the level of trust between citizens and their local government (and it is), then that mission is *a little bit undercut* when a citizen sees a public servant wave their badge for free parking or an egg-and-cheese.



But what if you're using your position to obtain a benefit for someone that *isn't* you? The law says that one cannot use their official position to benefit themselves "**or any person or firm associated with the public servant.**" What does that mean? With whom is a public servant "associated?"

Flip that dog-eared copy of Chapter 68 on over to **City Charter Section 2601(5)**, and you'll find that:

A person or firm "associated" with a public servant includes a spouse, domestic partner, child, parent or sibling; a 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 idea is that, in the same way a public servant might be motivated to seek out illicit benefits for themselves, there are (God-willing) other people in their life to whom they may also feel compelled to deliver benefits.

Let's say you're a health inspector. You show up to your assigned work location, only to discover it's a restaurant owned and operated by your brother. I think you, I, and the law all agree that you should not conduct that inspection. It would be fair to assume you have some material or emotional investment in the success of your brother, and as such may consciously or unconsciously inject

some bias into your work for the City. So you would *disclose* the relationship to your supervisor, and *recuse* yourself from any matters involving your brother in the future, allowing some other, disinterested inspector to take your place. Easy enough.

Now, it *could* be that you quite dislike your brother, and the opportunity to hold public health standards over his head like a Petty Osiris is actually quite appealing to you, and so – boy, oh boy – your brother better buckle down for the most thorough inspection since the first hot dog was sold off a rusty street cart in old New Amsterdam. Which would be great for the health-conscious diners of New York! But if the law were to try to account for that possibility, it would have to dive into the weeds of your mind, pick apart your relationship to your brother, and unpack a whole lifetime's worth of grievances and favors. The law doesn't want that kind of rules overhead and analysis, and let's be honest, you don't either. It's easier to just prohibit the inspection and move on.

Ok, that's all pretty clear. But let me ask you: what if the restaurant owner wasn't one of the enumerated categories in Charter Section 2601(5), but was a *really good friend*? Maybe it's someone you've known for decades. Do you need to pull out the phone and get someone else to come and handle the inspection? Does the analysis change if it's a sorta mediocre friend? What if it's your old college professor? A former romantic partner? You walk in for the inspection and discover the restaurant is owned by DJ Khaled, whose music you love. Does the New York City Conflicts of Interest Law require you to disclose *this* relationship and recuse yourself from the inspection?

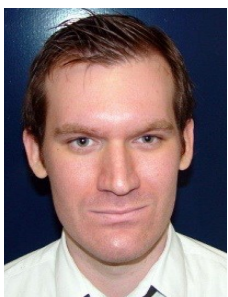
No, it does not, and for the same reason which keeps the Law from being the magical, epochal *Omnibus Code of Fairness and Ethics* which some people sometimes envision – in drawing bright lines, some categories which would undoubtedly appear in a platonically



ideal ethics law (“Of course you can’t inspect your own friends!”) will fail to be satisfyingly enclosed (“How, exactly, do we define, legally and to an actionable level of precision, the concept of ‘friend?’”).

And that’s okay! Because when it comes to ethical public service here in New York, Chapter 68 is just the starting point. The minimum standard. Every agency has their own Code of Conduct to handle more specific or granular situations (including those above) which might not be a Chapter 68 issue but may still be – or appear to be – unethical enough to warrant some sort of disclosure or recusal.

And on an individual level, City employees aren’t left alone to guess at a solution. When the bright line of the law starts to get a little muddled by the reality of a fact pattern that doesn’t fit quite cleanly enough, public servants can find peace of mind by checking in with any number of supervisors, HR departments, general counsels, and even hotlines, such as the COIB’s own *Attorney of the Day Helpline*, where from Monday to Friday, 9am-to-5pm, City employees can get confidential, even anonymous, legal advice on any and all ethics-related questions. Just call (212) 442-1400 or fill out the [webform](#).



Ethics in government is everyone’s responsibility, and the law, while imperfect, is a great guide on how to get started and do your part.

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Recent Enforcement Cases

Prohibited Post-Employment Appearance. In 2018, a NYC Department of Education (DOE) Principal left DOE and began working as a consultant for Boricua College, advising on outreach, enrollment, and recruitment. Within his first year of leaving DOE, the former principal contacted DOE employees, including his former supervisor, 20 times about Boricua’s professional development services and potential partnerships between Boricua and DOE. The former principal agreed to pay a \$7,500 fine to the Board.

Misuse of City Position. In January 2017, the Deputy Commissioner of the Information Technology Bureau at the NYC Police Department (NYPD) had NYPD transfer to her supervision a fellow NYPD employee to whom she had loaned \$75,000 (the “Debtor”), give the Debtor a higher-ranking NYPD title, and provide the Debtor with a 12% salary increase commensurate with this new title. The Deputy Commissioner forgave the loans she had given the Debtor in a gradual process that lasted from May 2017 to January 1, 2018, during which time she remained the Debtor’s supervisor. The Board issued an Order after a full hearing before an Administrative Law Judge at the NYC Office of Administrative Trials and Hearings (OATH), imposing a \$2,000 fine – the amount recommended by the OATH Administrative Law Judge – on the now-former Deputy Commissioner.

Misuse of City Resources. In 2018, a Community Affairs Representative at the NYC Public Advocate’s Office (PAO) volunteered for a political campaign. On six occasions, the Community Affairs Representative drove a PAO vehicle to locations in New York City and Long Island for campaign-related purposes, including to prepare for and staff campaign events. To resolve these violations, the now-former Community Affairs Representative paid a \$1,100 fine.

Recent Enforcement Cases

Prohibited Appearances. A Member of Manhattan Community Board 12 (CB 12), which covers the neighborhoods of Inwood and Washington Heights, also works as Chief Administrative Officer and Community Liaison for the Armory Foundation, a not-for-profit organization based in Washington Heights that leases much of the Fort Washington Avenue Armory from the City. Community activists have alleged that the Armory Foundation fails to ensure that the residents of northern Manhattan have sufficient opportunity to use Armory facilities. In 2021, CB 12 responded to these allegations by considering a resolution that called for greater oversight by the City Council of the operations of the Armory Foundation; the Armory Foundation opposed the resolution. The Member spoke against the adoption of the resolution at two CB 12 meetings and two meetings of the CB 12 Housing and Human Services Committee. To resolve these violations, the Member agreed to a \$1,500 fine.

Misuse of City Position. In 2019, the Commissioner of the NYC Administration for Children's Services (ACS) sought approval from the NYC Department of Finance (DOF) to combine two condominiums he owned into a single tax lot. While that application was pending, the ACS Commissioner emailed the DOF Commissioner to request to speak with him concerning "a personal matter." The DOF Commissioner agreed to a call later that day. After the call, the ACS Commissioner sent the DOF Commissioner an email identifying the application and thanking him for "looking into this." Later that day, DOF informed the ACS Commissioner that the application had been returned to his expeditor to be resubmitted. The now-former ACS Commissioner agreed to pay a \$1,000 fine to the Board for misusing his City position by using his direct access to a fellow Commissioner for a personal matter.

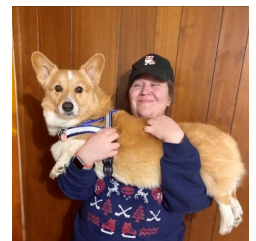
Misuse of City Position. An IT Director at the NYC Department of Health and Mental Hygiene (DOHMH) had oversight over the agency's contracts with a technology services vendor. In 2019, the IT Director asked the vendor's Managing Partner whether they were hiring and if he could refer a candidate for possible employment. Someone who owed the IT Director \$15,000 (the "Debtor") sent her resume to the Managing Partner, which resulted in the Debtor being hired for a vendor project. The IT Director agreed to pay a \$3,500 fine to the Board.

Prohibited Interest & Misuse of City Position. In 2018, a DOE Principal used her City position to award a \$1,100 contract to her husband's music and video production company to produce a video of a pep rally at her school. In 2021, the Principal obtained an order from the Board to end her prohibited ownership interest, conditioned on the company not doing any more business with the Principal's school and the Principal not participating in the company's future business dealings with the City. To resolve her violations, the Principal agreed to pay a \$3,000 fine to the Board.

A [searchable index](#) of all COIB Enforcement Dispositions Opinions is available courtesy of New York Law School.

THE PUBLIC SERVICE PUZZLER

Congratulations to **Elisabeth Topaltzas**, who we assume has left DORIS to take care of Bradley, her corgi, full-time.



In the current [contest](#), we've got a tricky ethics-related Wordle for you to solve. We're even extending the deadline to the end of the day on **Monday, March 7th**.