

The Ask



By Roy Koshy

Picture this: Your boss stops by your desk and asks:

"Hey, have you seen that new [HBO TRUE CRIME DOCUMENTARY] yet?"

"Oh yeah, it was riveting! Truth is truly stranger than fiction!"

"But did you see that [HULU FICTIONAL SERIES BASED ON HBO TRUE CRIME DOCUMENTARY] yet?"

"Of course, it was crazy! Fiction based on truth is truly stranger than the truth, which is already stranger than regular fiction!"

"Absolutely! I decided to take a break from all this real-life inspired strangeness over the weekend, and I binged all the

episodes of [UPLIFTING NETFLIX REALITY TV SERIES]. Have you seen it?"

"No, I haven't yet."

"You must check it out so we can talk about it. Oh, and Netflix is saying they might cancel it soon, so be sure to fill out this online petition to save the show!"

"Sure thing, boss!"

What if, instead, your boss stops by your desk and asks:

"Hey, did you see that news article about [STORY ABOUT CRUMBLING CIVILIZATION] this morning?"

"Oh yeah, the world is a scary place!"

"I agree. And then did you see what [ELECTED OFFICIAL] said in response?!"

"I did. The people supposedly running the world are scary too!"

"Absolutely! I decided to DO something about it, and I'm volunteering for [CANDIDATE FOR ELECTIVE OFFICE], because they've promised to fix it all! Have you decided who you're voting for this year?"

"No, I haven't yet."

"Oh, I strongly recommend that you check out their campaign platform, and maybe you can even canvas this weekend! If you want, of course."

"Umm...yeah...uh... sounds good boss. See you this weekend."

Let's assume the best: your boss genuinely wants to bond over his favorite show, and possibly save it; he also wants to bond over a shared sense of outrage at the state of the world, and possibly fix it. We can just as easily assume the worst: your boss wants to leverage his power over you to compel you to be his TV discussion buddy as well as support his chosen candidate. Or maybe it's a little bit of both. Regardless, the television suggestions are merely annoying, while the electioneering is a stark violation of Chapter 68, the City's conflicts of interest law.

Why? Why does the law prohibit a boss from asking a subordinate to petition for a candidate, but not prohibit that same boss from asking their subordinate to petition for the renewal of a TV show?

Broadly, the law prohibits public servants from using City time, City resources, or their City position for political activities – that is, any action in service of a campaign to elect someone or any campaign-related activities (it also prohibits using these for a second job or private business activity). This ensures that public servants do not even appear to be compromised by any political (or financial) motivations that would interfere with their ability to carry out their City duties impartially and with the taxpayers' needs at heart. Additionally, the law explicitly prohibits public servants from compelling, inducing, or requesting that their subordinates make any political contributions or engage in any political activities, and the law makes no exception for asking nicely. Finally, the law defines a superior very broadly: not just a public servant's direct boss, but anyone who can affect the terms and conditions of their employment, such as by assigning work, writing evaluations, and approving leave and overtime requests — generally, anyone with a say over whether and how that person is employed by the City or not.

Taken together, these provisions are concerned with the inherent power dynamic that exists between superiors and subordinates in a work environment, with extra energy directed at business and political ends.

But, I hear you say, that still doesn't quite answer the question: Why doesn't the law prohibit superiors from recommending films and TV shows to their subordinates? As mentioned above, we still have a power differential inherent in the

boss/employee relationship, so wouldn't it follow that any suggestion from the boss could be coercive?

Well, let's reiterate: if my superior has any financial interest in a recommendation – for example, she is employed by the show's production company on the side, or her spouse has an ownership interest in one of the streaming services she's constantly pushing at me – she is indeed prohibited from taking any action on behalf of the above using City time, City resources, or her City position (including polite suggestions to her subordinates).

However, if there is no private financial stake for my boss, then my not bingeing that show, petitioning for its renewal, or subscribing to that service is only disappointing my boss on a personal level. The law, rightly, doesn't wade into the murky waters of whether that disappointment rises to the level of an "interest" unless

and until there is a specific financial or political impact.

Of course, you can always remind your boss that the conflicts of interest law does not prohibit him from gifting you a streaming service subscription. He probably won't do it, but it's not a violation to give it a shot!

And if you're ever looking for advice on these or other Chapter 68-related questions, it's not only allowed, but a very good idea to reach out to our Advice attorneys for confidential, even anonymous, guidance. Just call 212-437-0707 or email us at aod@coib.nyc.gov.

As for me, I'll be waiting for a gift card from my boss, so I can purchase [SPECIAL EDITION BLU-RAY OF PRESTIGIOUS ART-HOUSE FARE]. Any day now...



Roy Koshy is an Education & Engagement Specialist at the New York City Conflicts of Interest Board.



Recent Enforcement Cases

Prohibited Gratuities. A Coordinating Manager for New York City Health + Hospitals/Jacobi was responsible for overseeing medically necessary transfers from Jacobi to other facilities. She accepted cash from a nursing home for each of 37 Jacobi patients she referred to that nursing home. At first, she received \$100 per referral; the payments later increased to \$150 per referral. She also received New York Yankees tickets from that nursing home and attended the nursing home's holiday party at The Surf Club on the Sound in New Rochelle. Additionally, the Coordinating Manager accepted gift cards from a second nursing home and cash and gift cards from a third nursing home and rehabilitation center. The Board determined that a \$15,000 fine was the appropriate penalty for these violations. Based on the Coordinating Manager's demonstration of financial hardship, the Board required her to pay \$500 of this sum and forgave the remainder of the penalty. In a settlement, the Coordinating Manager agreed to pay the \$500 fine.

Misuse of City Time. A Parent Coordinator for the New York City Department of Education ("DOE") assigned to P.S. 335 had a second job as a site coordinator and cheer coach with a community-based organization that ran an after-school program at P.S. 335. Over the course of eight months, the Parent Coordinator recorded working nearly 70 hours of overtime for DOE while she

was working for the after-school program. The now-former Parent Coordinator agreed to pay a \$4,000 fine.

Misuse of City Resources. On 118 days, the Director of the Special Investigations Unit at the New York City Department of Correction ("DOC") used a DOC pool vehicle and DOC E-ZPass to commute between a parking lot in the Bronx and his assigned work location. The vehicle and E-ZPass were intended to be shared by DOC staff to do investigative work on Rikers Island, and the Director was not authorized to use them for his commute. On days when the Director did not work for DOC, the pool vehicle and E-ZPass remained in the Bronx parking lot and were unavailable for use by other DOC personnel. The Director also used the DOC pool vehicle and E-ZPass to run personal errands in Long Island City, Flushing, and Manhattan. During these trips, the Director incurred 257 E-ZPass charges totaling \$1,234.81. The Director agreed to pay a \$4,000 fine to the Board, which took into account that the Director had already repaid DOC \$1,234.81.

Visit our [search engine](#) for all COIB Enforcement Dispositions.



nyc.gov/ethics

Phone: (212) 442-1400

Fax: (212) 437-0705