

the Ethical Times

The Why Behind the Law On Outside Jobs

By Isaiah Tanenbaum

Money may not buy happiness, but a little bit of spending cash rarely hurt anybody. With that in mind, many public servants seek second jobs to supplement their City salary. Chapter 68, the City's ethics law, [has a provision](#) to avoid any conflicts of interest from these outside positions, which reads:

[N]o regular employee shall have an interest¹ in a firm which such regular employee knows is engaged in business dealings with the city[.]

What's the upshot of this? As we say in our [FAQ](#):

*Full-time City employees² may not work for **any** company or not-for-profit organization that has "business dealings" with **any** City agency, unless they receive permission from their agency head and the Board.³*



1 "Interest" is defined as a "position."

2 For part-time employees, the prohibition is only on working for firms that have business dealings with their own agency.

3 The Board can waive certain provisions of the law on an individual, case-by-case basis, as outlined in [§2604\(e\)](#).

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That is quite broad! It means that I, a full-time COIB employee, couldn't even work weekends in Macy's Santaland, wrapping gifts and wearing elf ears. Why? Because Macy's has City business dealings: in particular, the complicated permits required to hold the Thanksgiving Day Parade and Independence Day Fireworks. So any job at Macy's, no matter how small, is statutorily off-limits to me as a City public servant.

But hope is not lost! I can [apply online for a moon-lighting waiver](#), which is typically granted in situations where the public servant's City job in no way intersects with the proposed outside job. My agency head, and then the Conflicts of Interest Board, investigates and confirms that, yes, I have no power at my City job to affect Macy's City business (or any power, really), and Macy's isn't putting Santa's newest elf in charge of the parades and fireworks. This all takes some time but, waiver in hand, I'd at last be free to live my dream of working retail during the holidays.

But if there wasn't any conflict, why make me go through this circus? Couldn't we write a more reasonable restriction that only prohibits *real* conflicts of interest and leaves the rest of us alone? Let's try!

Imagine that I negotiate my agency's paper purchases from Patty's Paper Products, Inc. The main kind of "self dealing" we want to prevent would be me holding a position at Patty's as their government sales rep, making sales calls to myself at my government office ("did you get my fax, Isaiah?" "sure did, Isaiah!"). So we'll write a law to prohibit only that:

No regular employee shall have a position in a firm with which such regular employee personally interacts in the employee's capacity as a public servant.

FAST FACTS

- A full-time City public servant cannot hold an outside job with any firm that has business dealings with any City agency.
- Public servants wishing to hold such a position can apply for a moonlighting waiver.
- The agency head and the COIB need to sign off on all waiver requests.
- This law is written to be clear and to apply to all public servants, while using the moonlighting waiver process to navigate individual exceptions.
- The alternative would be far more cumbersome and confusing.

But do we really need to prohibit ANY position at Patty's? What if Patty's is a really big company? I could work the night security shift at their upstate paper mill without coming anywhere near those purchasing contracts I negotiated at my City job. So let's clarify:

except a position that does not interact with the public servant's official duties.

That's not bad, but, depending on how I got the second job at Patty's, it might look like Patty's offered me the position as some sort of kickback for official decisions I made about Patty's ("if you really want me to spring for the cardstock, you'll offer me a job at your paper mill!"). We can address that, too:

as long as it is clear that the position was not offered as a reward for some official action taken by the public servant.

OK! But doesn't it still seem just a little weird that I, a person with some power over Patty's in my City position, am working as Patty's employee in my off hours? Or, what if Patty's wants me to prepare reports or other work product that goes before my agency?

That's definitely going to create at least an appearance of impropriety and/or special advantage to Patty's. I probably need to recuse myself from any of Patty's dealings with my City agency:

provided that the public servant takes no official action that affects the firm's business dealings with the agency served by the public servant and that the public servant takes no part in the firm's dealings with the agency served by the public servant.

Whew. We're almost there. But what if I don't interact with Patty's Paper, but someone else in my unit does? What if that person reports to me? Better account for that possibility:

nor may the public servant supervise any City business that might affect the firm.

This is starting to get a bit complicated, but we're not done. Many City employees frequently interact with multiple City agencies. Think of the DOHMH nurse assigned to a DOE school, or the NYPD detective who works with staff from OCME and District Attorney's Offices. We need to add another clause to account for these types of City positions:

nor may a public servant have an interest in a firm where such interest is, or might come, before any City agency with which that public servant regularly interacts as part of the public servant's City duties.

And what about those City officials whose power and influence are so broad that they might have power over many different parts of City government? Arguably for them, and only them, we'll want that original, broader standard, so in it goes:

Furthermore, no public servant who is in a senior policymaking position with discretion over one or more City agencies shall have an interest in a firm which such public servant knows is engaged in business dealings with any City agency.

Our full revised "outside jobs" rule now reads:

No regular employee shall have a position in a firm with which such regular employee personally interacts in the employee's capacity as a public servant, except a position that does not interact with the pub-



lic servant's official duties, **as long as** it is clear that the position was not offered as a reward for some official action taken by the public servant, **provided** that the public servant takes no official action that affects the firm's business dealings with the agency served by the public servant **and** that the public servant takes no part in the firm's dealings with the agency served by the public servant; **nor** may the public servant supervise any City business that might affect the firm, **nor** may a public servant have an interest in a firm where such interest is, or might come, before any City agency with which that public servant regularly interacts as part of the public servant's City duties. **Furthermore**, no public servant who is in a senior policymaking position with discretion over one or more City agencies shall have an interest in a firm which such public servant knows is engaged in business dealings with any City agency.

Our original goal was to eliminate hassle by prohibiting only the "real" conflicts, but in order to do this we had to create a Frankenstein law with numerous sub-clauses and terms of art, all which will need to be defined and interpreted. The end result is a law that is more, rather than less, confusing. Basically the opposite of what we had hoped.

And so we must return to the rule laid out in Chapter 68: a broad, but simple, prohibition on holding any position with a firm that does business with any City agency. With that universal baseline established, we can evaluate and grant individual exemptions using the moonlighting waiver process.

A little cumbersome? Perhaps.

But better than the alternative.

As always, the COIB's Advice attorneys can offer you free, confidential, even anonymous advice on moonlighting or any other Chapter 68 issue. Just call (212) 442-1400 Monday to Friday, 9:00 to 5:00, or visit our website at nyc.gov/ethics.



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Recent Enforcement Cases

Misuse of City Position & Superior-Subordinate Financial Relationship An Assistant Vice President at NYC Health + Hospitals, who was the Associate Executive Director of Coney Island Hospital, was driven to and from work nearly every day for six months by a subordinate who lived near her. While the superior did bear some of the costs of the arrangement, the total she contributed was less than half of the total of the subordinate's driving expenses. The superior offered to pay more but the subordinate refused the offer. In addition, on approximately ten days when this subordinate was absent from work, the superior had another subordinate drive her home and contributed nothing to the subordinate's driving expenses. The AVP paid a \$1,000 fine to the Board.

Misuse of City Resources An Evidence and Property Control Specialist Level II for the NYC Department of Health and Mental Hygiene (DOHMH) Office of Chief Medical Examiner (OCME) created four fraudulent reference letters on OCME letterhead. She submitted the fraudulent letters to a mortgage company to try to get mortgage for a home in Texas. These letters, on which she had forged an OCME coworker's signature, falsely stated that the Specialist could continue working for OCME remotely while living in Texas. In a joint disposition with the Board and DOHMH, the Specialist agreed to resign her position at OCME. This penalty reflects DOHMH's consideration that Respondent's position at OCME demanded a high level of integrity, insofar as her duty was to ensure the chain of custody of items held in evidence by OCME or the New York City Police Department. The Board concluded that resignation was sufficient to resolve the Specialist's Chapter 68 violations and imposed no additional penalty.

Misuse of City Resources A NYC Department of Parks and Recreation (DPR) Associate Park Service Worker was issued a DPR E-ZPass for the sole purpose of commuting to and from his worksite on Randall's Island. On 396 occasions, he used it to pay for a total of \$2,178 in personal tolls unrelated to his commute. In a joint disposition with the Board and DPR, he agreed to reimburse \$2,178 to DPR; forfeit 15 days of annual leave, valued at approximately \$2,810; and serve a one-year termination probationary period.

Superior-Subordinate Financial Relationship A DPR Parks Supervisor and his subordinate DPR employee entered into a prohibited financial relationship when the subordinate sold his used car to the Supervisor. For this violation, the Supervisor paid a \$700 fine in a joint settlement with the Board and DPR; in a separate settlement with the Board, the subordinate paid a \$500 fine.

Recent Enforcement Cases

Misuse of City Resources A now-former Department of Corrections (DOC) Chief of Security used his DOC vehicle for 14 personal trips unrelated to his commute, mostly brief trips from the Bronx to the Ridge Hill Mall in Yonkers. He agreed to pay a \$4,000 fine to the Board. In a separate case, a DOC Deputy Warden in Command used her DOC vehicle to make 22 personal trips unrelated to her commute, primarily to shopping malls on Long Island. In a joint resolution with the Board and DOC, the Deputy Warden agreed to pay a \$1,500 fine to the Board, which fine amount took into account that she already forfeited 7 days of annual leave to DOC, valued at \$7,916, and paid DOC \$104.32 for mileage incurred during her personal trips.

Misuse of City Time & Resources A now-former Deputy District Attorney with the Kings County District Attorney's Office (KCDA) misused City time and resources to perform work for the 2013 reelection campaign of his boss, the Kings County District Attorney. Specifically, he used his KCDA computer and KCDA email, sometimes during his KCDA workday, to prepare the District Attorney for a Campaign television appearance and to communicate with him regarding various aspects of the Campaign such as endorsements, fundraising, and strategy. The former Deputy District Attorney paid a \$4,500 fine to the Board.

Misuse of City Time & Resources A now-former KCDA Executive Assistant District Attorney paid a \$800 fine for misusing his KCDA computer and KCDA email account to send three emails during his KCDA work hours to assist the District Attorney's efforts to obtain Campaign endorsements from members of the Brooklyn LGBTQ community. In determining the appropriate penalty, the Board took into account that he engaged in relatively limited use of City time and resources at the request of his superior.

Misuse of City Time & Resources A NYC Health + Hospitals Executive Secretary used City time and resources for her Avon business. Specifically, mostly during her City work hours, she used her Health + Hospitals email account and computer to exchange 68 emails related to the sale of Avon products. She also stored and accessed 17 Avon-related documents, including invoices, on her Health + Hospitals computer. The Executive Secretary agreed to pay a \$2,000 fine.

Moonlighting; Misuse of City Time & Resources Since 1989, the now-former Executive Director for Bridge Inspection and Management at the New York City Department of Transportation (DOT) served as an adjunct professor at a number of local private universities, all of which had business dealings with the City and some of which had business dealings with DOT. During that time he also had a contract with a textbook publishing company that had business dealings with the City. Not only did the Executive Director hold these prohibited positions, between 2005 and 2018, the Executive Director misused his DOT email account and DOT cell phone to send and receive 2,929 emails related to his adjunct professorships. These emails were regularly and extensively sent at times when the Executive Director was required to be performing work for DOT. In imposing a \$5,000 fine, the Board took into account that DOT had already suspended the Executive Director for thirty days, valued at approximately \$11,805 and retired from DOT during the pendency of DOT's related disciplinary action.

Misuse of City Position, Personnel, & Resources On twenty occasions, a NYC Department of Homeless Services (DHS) Supervising Special Officer had a subordinate DHS Peace Officer use a DHS vehicle to drive him to various personal destinations after work. On several of these occasions, the subordinate, with the Special Officer's knowledge and approval, remained on the clock to perform these non-City tasks, and even collected overtime. DHS suspended the Supervising Special Officer for forty-five days, which had an approximate value of \$7,584. The Board imposed no additional penalty.



Recent Enforcement Cases

Misuse of City Position A NYC Department of Citywide Administrative Services (DCAS) Custodian II accepted Christmas and Valentine’s Day gifts from a City Custodial Assistant who was his subordinate. The aggregate value of the gifts was over \$50. In a joint disposition with the Board and DCAS, the Custodian agreed to serve a five-workday suspension, valued at approximately \$734, to address his violations of the City’s conflicts of interest law and additional unrelated disciplinary charges.

Misuse of City Time & Resources Prior to his retirement, a now-former Associate Education Officer for the NYC Department of Education (DOE) used his DOE email account during work hours to send a farewell missive to 306 colleagues. In this email, he stated his intentions to run for City Council, providing a link to his campaign webpage. For this misuse of City time and a City resource (his DOE email account) for his political campaign, he paid a \$450 fine.

Misuse of City Resources For over six months, a Special Officer of Security at the NYC Department of Homeless Services (DHS) used a counterfeit NYC Health + Hospitals Police parking placard to park his personal vehicle illegally in a loading zone with a “no standing” restriction. He also gave his co-worker, another DHS Special Officer, a second counterfeit Health + Hospitals parking permit. The co-worker used her counterfeit placard to illegally park in the same “no standing” zone for a month and a half. In a joint disposition with the Board and DHS, the first Special Officer agreed to serve a 25-day suspension, valued at approximately \$2,958; forfeit 15 days of annual leave, valued at approximately \$2,335; and serve a nine-month termination probationary period. The second Special Officer agreed to serve a 14-calendar-day suspension, valued at approximately \$1,288, and to serve a nine-month probationary period. The Board determined that these penalties sufficed to resolve the Special Officers’ Chapter 68 violations and imposed no additional penalty.

Job-Seeking A Vice President in the Capital Program Department at the NYC Economic Development Corporation (EDC) attempted to initiate discussions about potential employment with a construction company, Judlau/OHL, while he was working with Judlau/OHL on a project for EDC. Judlau/OHL informed EDC of this misconduct, whereupon EDC terminated his employment. Taking into account the Vice President’s single job-seeking violation and that he self-reported it to the Board, the Board accepted the Vice President’s termination as sufficient to address his violation and imposed no additional penalty.

Job-Seeking The Director of Multifamily Disposition and Finance Programs at the NYC Department of Housing Preservation and Development (HPD) submitted his resume to a developer while he was supervising the developer’s active projects with HPD. Only after the developer asked the Director to confirm that he had recused himself from its active projects with HPD did the Director seek advice and formally recuse himself from dealing with the developer. He then withdrew himself from consideration for the job and self-reported his misconduct to the Board. The Director paid a \$500 fine, which penalty took into account the steps he took to limit the impact of his single violation.

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

Congratulations!

To the winner of our recent Public Service Puzzler, **Michael Levario** of the Mayor’s Office of Appointments.



Play Advice Attorney in [the current Puzzler](#), and help a public servant with a fruit basket dilemma. **The deadline for entries has been extended to 10/16.**

Schedule a Chapter 68 Class

COIB’s Education & Engagement Unit can arrange a class in Chapter 68 for you and your staff

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