

*Ethics lights the way  
to good government*

# The Ethical Times

A publication of the New York City Conflicts of Interest Board

Alex Kipp, Editor



## **Conflicts and Second Jobs**

*By Jessie Beller*

**Question:** *I am a full-time employee at a City agency, and I would like to get a part-time job at a private company. Is this okay?*

**Answer:** Here's the first part of your answer: you must first check to see if the private company does business with any City agency. Business dealings with the City include receiving City funds or having contracts with the City. **Note that it is your responsibility as a public servant to determine if your outside employer has any City business dealings.** Common examples of organizations with City business dealings are private universities such as Fordham and NYU, large retailers such as Macy's and Home Depot, and social services organizations such as Catholic Charities. If you are not a full-time public servant (meaning that you work fewer than twenty hours per week for the City), the prohibition on outside employment is only for private firms or organizations with business dealings with your own agency, not the entire City.

If the private company does have business dealings with the City, it **would violate** the City's conflicts of interest law for you to "moonlight" at the company, unless you receive **written permission** from the Conflicts of Interest Board. Getting this written permission (called a "waiver") from the Board is a two-step process. First, you must receive written approval from your agency head, detailing why your second job would not conflict with your City duties and the specific work hours and days for both your City job and your second job. Second, the Board must determine that your outside position would not be a conflict of interest. When determining whether to grant a waiver, the Board considers, among other factors, the hours involved and whether there is any possible relationship between your City duties and your outside job. If the Board sees no conflict, you will be granted a waiver, likely subject to certain commonsense limitations.

Whether or not the company where you want to work has business dealings with the City, the conflicts of interest law requires the following:

**-You must perform your outside work on your own time, not on City time.**

**-You may not use City equipment, City supplies, City resources, City letterhead, or City employees for your outside work.**

**-You may not use City confidential information in your outside job.**

Never disclose confidential information. Never use confidential information for your own advantage, or to benefit your outside

employer. Confidential information is any information that a member of the general public cannot obtain.

**-You may never use your City position to help your outside employer.**

This means that you may not use your City position to provide an advantage or benefit to your outside employer. For example, you cannot use your City position to help your outside employer obtain permits or contracts from City agencies.

**Here are some other rules for some of the jobs we are most frequently asked about:**

### Teaching

Teaching waivers are very common, as many public servants hold adjunct or part-time teaching positions at local colleges and universities. As we discussed above, many private universities, such as NYU and Fordham, have some business dealings with the City. Therefore, most public servants who are teaching (or otherwise working) for a college or university in the City will require a waiver. However, there is an exception to the waiver requirement: if you teach at one of the CUNY or SUNY colleges, your second job will not require a waiver. But, even if you do not need a waiver, you are still required to follow the rules we set out above, meaning that you cannot teach on City time, you cannot use City resources to teach your course, and you cannot use City confidential information. You also cannot teach your subordinates, if you have any, regardless of where you teach.

Additionally, it would be a violation of Chapter 68 for a public servant to teach a course for compensation about the workings of his or her agency. When considering a teaching waiver application, the Board looks at whether you could have reasonably been assigned to teach the course as part of your City duties. Since you cannot get paid by a private entity to do the same job you do for the City, you cannot in your outside job teach a subject you could be asked to teach for your agency.

### Working for a Political Campaign

Public servants, provided they follow certain restrictions, do not need a waiver to work for a political campaign even for a candidate who receives Campaign Finance Board funding, as long as you do not communicate with any City agencies, including the Campaign Finance Board, on behalf of the campaign. But, again, you must follow the rules we set out above: you must work for the campaign on your own time and using non-City resources; you cannot use City confidential information; and you cannot use your City title or position to benefit the campaign. Also, you cannot ask a subor-

dinate to work on the campaign or to make any political contributions.

### **Outside Practice of Law**

Besides the strict limitations on City time and resources we discussed above, Chapter 68 imposes three specific restrictions on the outside practice of law:

- You cannot represent clients who have any business dealings with the City.
- You cannot work on any City-related matters.
- You cannot represent your superior or your subordinate, even if you work for free.

Additionally, a lot of City agencies impose stricter rules on the outside practice of law and may prohibit it entirely, so we encourage you to check with your own agency first before you start.

If you are unsure whether your proposed outside job creates a conflict of interest, call the Conflicts of Interest Board at 212-442-1400 and ask for the "attorney of the day." You can also e-mail us through our website (<http://www.nyc.gov/ethics>) by clicking on "Contact COIB." All calls and e-mails are confidential, and you may contact us anonymously. □

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### **Recent Enforcement Cases**

- ▶ The Board fined an FDNY firefighter \$1000 for attempting to use his position to avoid receiving a parking ticket for illegally parking near a fire hydrant.
- ▶ The Board and NYCHA concluded a three-way settlement with a NYCHA Caretaker who purchased a fraudulent, counterfeit, or otherwise unauthorized NYCHA parking permit from a NYCHA Painter and then submitted a photocopy of the parking permit to the Department of Finance in an attempt to avoid paying a parking ticket. The Caretaker received a twenty work-day fine, valued at approximately \$2882, to be imposed by NYCHA, and is required to serve a one-year General Probationary Evaluation Period.
- ▶ The Board issued a public warning letter to the Commissioner of DoITT for using his position to obtain a financial gain for a not-for-

profit organization that he served as an unpaid member of the Board of Directors.

- ▶ The Board adopted the Report and Recommendation of an Administrative Law Judge at OATH, issued after a full trial that, while employed by the DOE, a then-Assistant Principal misused her position by using funds from the general school fund account for her own personal financial gain. The Board fined her \$7500.
- ▶ The Board and ACS concluded a three-way settlement in which an ACS Principal Administrative Associate was suspended for 30 days without pay, valued at \$3495, and required to provide full restitution to ACS of \$290.80, for using ACS transportation vouchers to pay for a car service to transport her from work to her private residence without authorization from ACS.
- ▶ The Board fined the former Director of the Forensic Biology Department of OCME \$2500 for using City resources and his City position to perform work related to a private consulting venture.
- ▶ The Board fined an Administrative Project Manager for Parks \$600 for accepting the gifts of two meals, valued collectively in excess of \$50.00, from Kiska Construction, a firm doing business with EDC. Kiska had been awarded three major contracts by EDC at the High Line; at Parks, the Administrative Project Manager served as the Project Administrator for the High Line Project.
- ▶ The Board fined a former Mediator for the Department of Consumer Affairs \$750 for appearing before DCA within one year of his resignation from DCA.
- ▶ The Board and DOE fined, in a three-way settlement, a Principal \$1000 for using her DOE position to enable her brother to obtain multiple substitute teaching assignments at her school.
- ▶ The Board fined the Deputy Assistant Director for Technical Services at NYCHA \$2000 for performing work for his employer while on City time and using his City computer, despite having received written advice from the Board on two occasions advising him that he could not use City time or City resources for any outside employment.
- ▶ The Board fined a former DOE Paraprofessional \$800 for entering the classrooms of two DOE teachers and attempting to sell them clothing during her City work hours.
- ▶ The Board fined a former DOE Principal \$3000 for misusing her City position to financially benefit her sister and niece.
- ▶ The Board and DOC, in a three-way settlement, fined an attorney in the DOC Office of Trials and Litigation \$1800 for, while on City time, using his City computer to store and edit documents related to his private law practice.
- ▶ The Board issued a public warning letter to a Parks Supervisor of the District 14 Pa-

rade Grounds for lending \$5000 to her supervisor, the Chief of Operations at Parks. The Board fined the supervisor who borrowed the money \$1000.

▶ The Board issued a public warning letter to a DOE Education Administrator who entered into six contracts with a publishing firm that does business with DOE through textbooks sales. □

### **Recent Advisory Opinions**

**2008-5:** It will violate Chapter 68 for a lawyer who is a regular City employee to engage in compensated criminal defense work in State Court within the City. In addition, a lawyer who is a regular City employee may not accept fees for referring a criminal case within the City.

**2008-6:** Elected officials and agency heads, and their designees, may in their official capacities, using City time and resources, solicit and otherwise encourage private contributions to not-for-profit organizations, after a personal determination by the elected official or agency head that the not-for-profit's work supports the mission of their City office or agency, with certain stipulations, qualifications, and reporting requirements. Please see the full Opinion for details. □

*Interested in more information?  
Get in touch with COIB's Training & Education Unit to arrange a class in Chapter 68 for you and your staff.  
Contact Alex Kipp, Director of Training, at [kipp@coib.nyc.gov](mailto:kipp@coib.nyc.gov)*

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