

the Ethical Times

If I Can Make It Here Ownership Interests

By Gavin Kendall

We talk a lot about second jobs, but what if I *am* the second job? I don't want to just work for someone else (I do that enough at the City); I want to go into business for myself. That way I can tell myself what to do, ignore me, do something else, and then give myself a raise for being such an innovative maverick. I have no plans to leave my City job to achieve my entrepreneurial dreams. I want to do both! I already know that I can't use any amount of City time or City resources for any outside business (including a business that I happen to own). But are there other requirements I need to keep in mind as I embark on my journey of weekend self-employment?

It turns out that yes, there are. **It's a violation of Chapter 68 for full-time City employees to have an ownership interest in a company that does business with the City** (part-time employees can't have an ownership interest in a firm that's doing business with their own City agency). Let's break that down a bit.

What's an ownership interest? If I own more than 5% or \$50,000 of a company, then I'm considered an owner. If my spouse, domestic partner, or unemancipated child owns more than 5% or \$50,000 of a company, I am also considered an owner because of my association with those close family members. Finally, if I, my spouse, domestic partner, or unemancipated child has managerial control over a firm, guess what? I'm

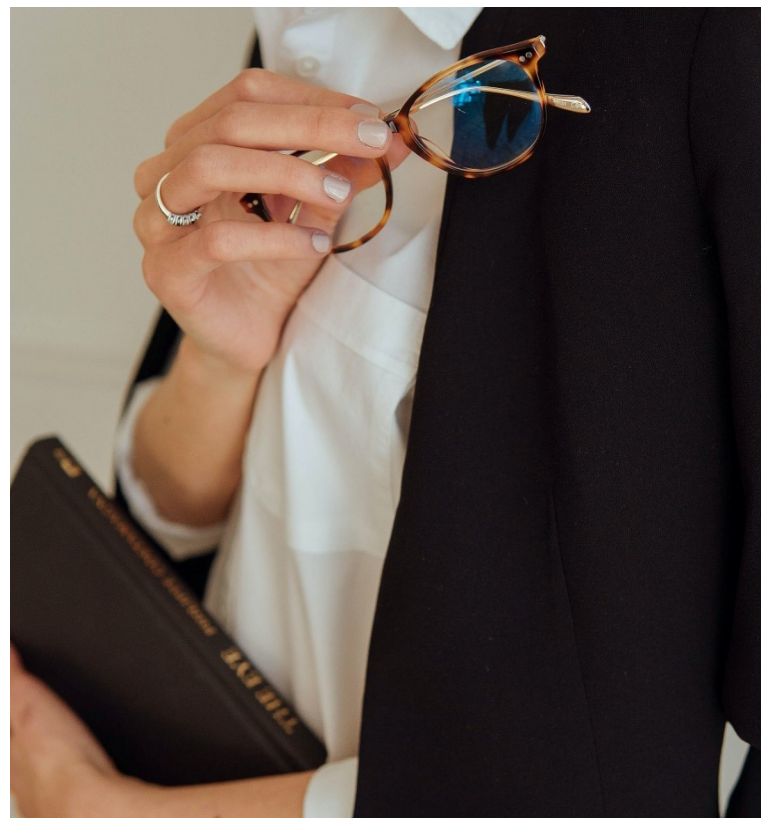
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an owner – if I'm the one calling the shots, it doesn't make much difference if I don't happen to hold stock in the company.

(Good news: "ownership interest" does not include investments in pension plans, mutual funds, deferred compensation plans, or qualified blind trusts.)

What qualifies as business with the City? Contracts, negotiations, grants, some kinds of permits, and more. However, certain kinds of routine City interactions (like



applying for a business license, basic work permits, and regular inspections) aren't considered "business" for the purposes of this rule.

If I have an ownership interest in a company that does *not* have business with the City, I may still want to confirm my agency's internal policies. Some City agencies want to know about, and approve, *any* secondary income their employees are earning. Some want to know even about volunteer activities. Others don't make a big fuss. It varies, but it's always a good idea to check with my [agency ethics liaison](#) beforehand.

So, keeping all these restrictions in mind, is it possible for a public servant like me to, say, invest \$75K in my friend Mike's BBQ restaurant? Yes, assuming my agency is cool with it. And, of course, the restaurant can get the usual permits and whatever inspections are required. BUT it couldn't bid on a DOE contract or apply for a City grant unless I either divested my share of the venture or I obtained an Order from the Board allowing me to own a business that does business with the City (more on Board Orders below).

There are three big caveats to this restaurant ownership interest idea of mine:

1) As a City employee, I definitely couldn't use my official City position to pull strings for my restaurant in some way. For example, no telling my subordinates (in this hypothetical

world where I have \$75K to throw around, I also have subordinates) that they would be "well advised" to buy their lunches at Big Mike's BBQ.

2) While the *restaurant* I own can make routine communications with the City, *I* can't do the communicating. A different part of Chapter 68 prohibits me from representing any private interest before City agencies for compensation – obviously, that compensation would include my ownership cut of the restaurant's profits. This means, for example, that I couldn't be the one giving a DOHMH restaurant inspector a tour of Big Mike's, or filing an appeal if I don't agree with the letter grade she gives us. If I wanted to rep my restaurant before the City in any way, I'd first need to seek agency head permission and a waiver from the Board.

3) Most City employees do not own restaurants on the side, not because of Chapter 68, but because it takes 100+ hours per week of work to get a restaurant up and running. So if I was going to do this type of thing, I'd want to think about my work-work-life balance, or see if Big Mike is cool with me being a silent partner.

Now, what if my restaurant wants to do business with the City? Maybe we do want to bid on that DOE contract to provide BBQ in all school lunches (finally!). It's possible to apply for a **Board Order** that would allow me



to have an otherwise-prohibited interest in a firm that does business with the City. Orders are usually granted in situations where the Board sees no real conflict between one's City duties and their outside ownership interest – for instance, if my City position is very far away from the DOE's BBQ Advisory Board (a man can dream), it's considerably more likely that the Order will be granted than if I was its chair, or if I worked for DOE in any capacity.

If I do successfully obtain an Order, it'll remind me never to use any City time or City resources or misuse my City position in any way that would benefit my private interest. It may have other restrictions I need to follow as well.

The upshot of all this? Public servants have to be extra careful to keep their private businesses totally separate from their City positions, but how to do so while keeping that business afloat may not always be obvious. So whether it's your friend bugging you to invest in his start-up, a spouse turning their hobby into the next big thing, or maybe you're the next Ron Popeil with a dozen gadgets in the garage waiting to hit the market, please call us for advice. Our Advice Attorneys are available to answer any questions related to ownership interests (or anything else about Chapter 68). Just call The COIB Advice Hotline at (212) 442-1400, Monday through Friday, 9am to 5pm, or visit COIB's website for the [confidential advice webform](#).



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Recent Enforcement Cases

Misuse of City Position. In April 2019, the Chancellor of the NYC Department of Education (DOE) used a ticket to take his wife, who was not a DOE employee, to a DOE-exclusive event that was part of a DOE partnership with the producers of the Broadway musical *Hamilton*. The all-day event at the Richard Rodgers Theatre was emceed by a *Hamilton* cast member and included student performances, a question-and-answer session with the *Hamilton* cast, and a matinee performance of *Hamilton*. The Chancellor used a ticket for his wife that typically would have been distributed to DOE employees; he paid \$10 for the ticket, which was the price listed on the tickets for DOE students and chaperones. In using this ticket for his wife, the Chancellor used his City position to benefit his wife, a person with whom he is "associated." The now-former Chancellor paid a \$1,100 fine to the Board.

Misuse of City Resources & City Personnel; Misuse of City Position. A Steamfitter Supervisor in the Division of Facilities Management at the NYC Department of Citywide Administrative Services (DCAS) directed an on-duty DCAS subordinate to sign out a DCAS vehicle and drive him between his DCAS office in lower Manhattan and a union office in Long Island City, Queens, to handle a personal matter. By doing so, he used City personnel and a City vehicle for a personal, non-City purpose. Also, by having his subordinate drive him to a personal destination, he used his City position to obtain a personal benefit. In a joint settlement with the Board and DCAS, the Steamfitter agreed to serve a fifteen workday suspension and forfeit five days of annual leave, valued at a total of approximately \$7,708, to address these violations and other conduct that does not implicate Chapter 68. The Board accepted the agency-imposed penalty as sufficient and imposed no additional penalty.

Recent Enforcement Cases

Lifetime Particular Matter Ban Violation. After leaving City service, the former Director of Superfund Programs for the NYC Department of Environmental Protection (DEP) provided paid consultant services in connection with a contract that she was responsible for administering when she was at DEP. As DEP's Director of Superfund Programs, she was responsible for administering a contract between DEP and Louis Berger & Associates, P.C., related to the investigation and remediation of the Gowanus Canal and Newtown Creek Superfund sites. During 2018, the former Director provided consultant services to DEP as a subcontractor of Louis Berger under the contract and was paid \$26,080 by Louis Berger for those services. In doing so, the former Director violated the "lifetime particular matter ban," which prohibits former public servants from performing paid work in relation to any particular matter involving the same parties, such as a contract, in which the former public servant personally and substantially participated while working for the City. The former Director paid a \$7,000 fine to the Board.

Misuse of City Resources; Misuse of City Time. The Board issued a public warning letter to an Associate Investigator in the Investigation Division at the NYC Department of Correction (DOC) who used his DOC email account to send three emails, one of which he sent during his DOC work hours, asking recipients to vote for him to serve as Vice President of his union, a position that pays a stipend of \$450 a month. In doing so, he used his City email account and City time to seek a private paid position. After he was elected Vice President, the Associate Investigator used his DOC email account to send an email in reply to a request for a quote, stating that the union was endorsing a specific candi-

date for a City elected office. In doing so, he used his City email account to engage in political activity.

Misuse of City Resources. The Board issued a public warning letter to a DOE teacher who used his DOE email account to exchange 30 emails related to his private tutoring website. In these emails, the teacher communicated with his website administrator regarding internal billing and website issues. In doing so, he used his City email account to perform work for a private business.

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

2020 Annual Report

How many times last year did COIB give advice to public servants about Chapter 68? How did COVID-19 alter our mandated trainings? Did Annual Disclosure maintain its 99%+ filing rate?

These answers, and more, can be found in COIB's [2020 Annual Report!](#)

THE PUBLIC SERVICE PUZZLER

We've [mixed up](#) some terms and definitions, leaving one left over.

[Send us that term \(and its definition\)](#) by 5:00

on Wednesday, May

19th, and you may be featured in next month's issue!



This month, we profile Mary Lane of the NYC Department of Finance, who's a certified crochet instructor!