

Ethics lights the way
to good government

The Ethical Times

A Publication of the New York City Conflicts of Interest Board

Roy Koshy, Editor



Worst Prom Ever

By
Gavin Kendall

When I was in high school I ruined my junior prom photos. (This was back in the early 90s before the Digital Age could help us resolve, i.e., erase, our photographic faux pas.) I already had a strike against me because I had a reputation for hamming it up in just about every school photo ever taken of me, but this one was a complete accident, I swear. Just as the picture was snapping, I could feel my eyes start close. My mind started racing, “did I just close my eyes? Or am I just being paranoid because I don’t want to ruin this photo, like people are probably expecting me to?”

“Relax, you’re just being paranoid,” I said to myself, putting my worry to rest.

Boy howdy was I wrong! When we got the photos back, I looked like someone had spiked the sorbet punch. Eyes were half open with a weird, crooked smile. And yes, my prom date wasn’t thrilled, as you can probably imagine. I still remember bounding into the classroom where our Assistant Principal was distributing the photo packages we had bought from the photographer, who she happened to be married to. And then...wait, what? Yes, my Assistant Principal was married to the photographer who the school hired to take prom pictures. Additionally, we students bought packages of his photos directly from him. You want me to talk more about that? But the real story is about me messing up my prom photos and how I should have used a little more...No? You still want to hear about this ownership interest and teacher-student financial relationships? Ok, fine.

Well, first of all, my East Texas hometown and school didn’t have any ethics laws, so getting into a financial relationship with my Assistant Principal’s spouse didn’t present any issues, at least from a legal perspective. Had I gone to a New York City Department of Education school, there definitely would have been some compliance issues. Let’s look at those by treating the situation at my hometown high school as if it had happened at a New York City public school.

In New York City, a public servant’s spouse’s ownership interest in a private business is imputed to the public servant. Therefore, if the spouse’s business does business with any City agency, it’s like the public servant herself is doing business with the City. Owning a business that does business with the City (or being married to someone who own a business that does business with the City) is a prohibited ownership interest under the City’s conflicts of interest law. Public servants wish-

ing to maintain such a prohibited interest must disclose it to the Board and apply for an Order, permitting the ownership interest.

My old Assistant Principal would, therefore, have had to disclose her husband’s ownership interest to the Board. The Board could have then issued an Order determining whether or not her ownership interest was permissible, weighing factors such as the Assistant Principal’s official duties, the kinds of business her husband’s photography business does with the City, and the proximity between the Assistant Principal’s City duties and the husband’s City-related business.

So let’s say that the Board hammers out all those details with my Assistant Principal and determines the ownership interest to be permissible. Would her spouse now be able set up some business with the Assistant Principal’s school and shoot those prom photos? Not likely. It is very rare that these Orders allow a spouse with a permissible ownership interest to do business with the same agency that employs the public servant. And when I say rare I mean almost never. So, in this case, the photographer might be able to set up portrait sessions with other City agencies but probably not with DOE, and certainly not with the school where the Assistant Principal works, as it puts the Assistant Principal at risk of another kind of violation.

What kind? Unlike East Texas, in New York City public servants aren’t allowed to use their positions to benefit themselves, their relatives, their spouses, or their financial associates. By selling her husband’s photo packages to her DOE students, our Assistant Principal would have acted in her official capacity to provide a direct benefit to her husband’s company, a clear violation of the conflicts of interest law. And, in fact, making any decision as a DOE Assistant Principal related to her husband’s business might trigger a violation: recommending the business to parents, recommending the business to her principal for official school use, etc. While a Board Order might cure the prohibited interest violation, it’s difficult to imagine the Order permitting this kind of prohibited conduct.

But wait! What other kinds of prohibited conduct can we think of? Maybe the Assistant Principal decides that the students on the yearbook staff or school newspaper need a little instruction on the finer points of image creation. She, of course, knows a talented professional that could help out with this problem. So let’s say the Assistant Principal hires her husband as a consultant, or teaching artist, to teach photography classes to her students. This is a clear misuse of her office because she is using her DOE position to get a

personal benefit for a close relative which includes a spouse. Maybe in a small town like where I'm from he may be the only photographer that could provide those services, but in a place like New York City there are plenty of options. Also, by hiring her spouse she is now supervising a close family associate which triggers another misuse of office violation and also an illegal financial relationship between a superior and subordinate.

So to sum up, this ain't East Texas. New York City sets a high standard with its ethics rules to maintain a public service culture where public duties come first, uncompromised by private interests. That's a good thing. But rules sometimes need a little interpretation and explanation. That's why we have our Advice Unit on call Monday through Friday 9am to 5pm to answer your questions. And if you want to hear more about my disastrous prom night, find me after a class sometime when I'm visiting your agency.

Galvin Kendall is an Education & Engagement Specialist at the New York City Conflicts of Interest Board

Recent Enforcement Cases

► **Misuse of City Position; Superior-Subordinate Financial Relationship.** A now former Associate Public Health Sanitarian for DOHMH admitted that she violated the conflicts of interest law by soliciting and receiving loans from subordinates on several occasions:

- In the first instance, she solicited and obtained the use her subordinate's credit card to make \$2,000 worth of personal purchases.
- In the second instance, she asked for and received a \$1,000 cash loan from the same subordinate. The Associate Public Health Sanitarian repaid both these loans to her subordinate.
- In the third instance, she solicited

and obtained the use of the credit card of another subordinate to make personal purchases totaling \$4,482. In this case, the Associate Public Health Sanitarian did not repay the money.

As a penalty, the Board required the former Associate Public Health Sanitarian to repay the \$4,482 she owed to the second subordinate and to pay a \$1,000 fine.

► **Misuse of City Time & Resources.** Since her hiring in 2014, a Criminalist at DOHMH-OCME maintained her own private online retail business. Over the course of three months in 2016, she used City time and her City computer to visit the website for her online retail business 375 times. She also used her City email account to draft 17 emails to promote that business, although she did not send them. In a joint settlement with the Board and DOHMH-OCME, the Criminalist agreed to pay a \$700 fine (\$500 to the Board and \$200 to DOHMH-OCME) and to serve a two-workday suspension, valued at approximately \$495, for her violations. In determining the penalty, the Board and DOHMH-OCME took into consideration prior cases with similar facts, as well the short duration of most of the Criminalist's improper internet usage.

► **Misuse of City Resources.** After receiving a personal summons, a DOE teacher used his school's official fax cover sheet to submit a request to the New York City Office of Administrative Trials and Hearings ("OATH") to waive the fine. Given the minimal nature of this one-time violation, the Board chose not to impose a fine. However, it published a warning letter in order to provide guidance to public servants in similar situations.

► **Misuse of City Position & Misuse of City Resources.** A DPR Park Supervisor made known to his subordinates that a pipe in his home had frozen and he was unable to fix it. Later that workday, two of his DPR subordinates arrived at his home in a DPR vehicle. One of the subordinates then attempted to fix the pipe for twenty minutes while the Supervisor was present. The Supervisor now admits that, by having his subordinates use a DPR vehicle to come work on his home, even though his home was near their workplace, he misused both the vehicle and DPR personnel. Further, the Supervisor admits that, by accepting household repair work from his subordinates, he misused his City position to benefit himself. For these violations of the conflicts of interest law and the DPR Standards of Conduct, the Supervisor agreed to forfeit six days of annual leave, valued at approximately \$1,625, and serve a one-year probationary period. In determining the appropriate penalty, DPR and the Board considered the isolated nature of the violation as well as the relatively small amount of time and resources misused.

► **Misuse of City Position & Misuse of City Resources.** For a period of two months, the now former DPR Director of Central Communications permitted her spouse, a DPR Urban Park Ranger, to park the spouse's personal vehicle in a DPR parking space without proper authorization. In addition, the former Director made a DPR vehicle available to her spouse so she could continue her commute to her assigned DPR location. This was also done without proper authorization. The former Director of Communications acknowledged that she violated the conflicts of interest law by using her City position to benefit her spouse. Both acknowledged that they violated the conflicts of interest law by misusing a DPR parking

space and a DPR vehicle for a personal non-City purpose. In three-way settlements with the Board and DPR, the former Director of Central Communications (now an Associate Urban Park Ranger) agreed to pay a \$750 fine and the Urban Park Ranger agreed to pay a \$500 fine. Both fines were split evenly between the Board and DPR.

Congratulations! to the winner of the Conflict of Interest Board's June Public Service Puzzler contest:

Laura Godfrey, Assistant General Counsel/Disciplinary Advocate Officer at the NYC Department of Consumer Affairs

You can read Laura's bio in the July issue of the Public Service Puzzler.



[Click to Follow Us On Twitter!](#)

Interested in more information? Get in touch with COIB's Education & Engagement Unit to arrange a class in Chapter 68 for you and your staff.

Contact Gavin Kendall at kendall@coib.nyc.gov

**The New York City
Conflicts of Interest Board
2 Lafayette Street, Suite 1010
NYC 10007**

**Phone: 212-442-1400
Fax: 212-437-0705
www.nyc.gov/ethics**

A searchable index of all the COIB Enforcement Dispositions and Advisory Opinions is available courtesy of New York Law School here:

<http://www.nyls.edu/cityadmin/>

