

*Ethics lights the way
to good government*

The Ethical Times

A Publication of the New York City Conflicts of Interest Board
Clare Wiseman, Editor



Post-Employment

By Rob Casimir

In November of 2010, the people of New York voted to make conflicts of interest training mandatory for all City employees. Since then, the Training Unit of the Conflicts of Interest Board has conducted over 2,500 live, in-person training sessions at more than 50 City agencies, and to an *overwhelmingly* positive response.

Which was a little...surprising. I mean, I've always had an interest in government but, even I have to admit, if someone asked me to produce a list of my favorite pastimes – well, I'm just not sure "one hour mandatory municipal ethics training" would have made the cut. My expectations going in were that public servants would be excited about this "opportunity" for discussion in the same way they might be excited by an "opportunity" to discuss their utility bill over the phone.

But I was wrong. I was completely wrong.

It turns out that – when given the time and the space to ask questions and share their opinions in a comfortable, low-pressure, and truly judgement-free context – City employees will do exactly that. People like being heard, and having someone from the Conflicts of Interest Board in the room with them who is willing to explore their ideas on all the *whats*, *hows*, and *whys* of our law truly seems to have stoked a real interest in (and support for!) the work of the Board.

Which makes sense: ethical behavior, as a concept, isn't something that too many people are going to be *against*. From the free, expert advice provided by the Advice Unit, to the crucial transparency Annual Disclosure provides, to the Enforcement Unit, which imposes very real consequences upon those who violate the law – these are things that folks can get behind.

And it's worth noting, too, that the law itself is designed to support – not harass – our fellow public servants. The relevant sections of Chapter 68 of the New York City Charter are not "gotcha" rules but a clear set of guidelines: standards through which public servants can communicate to the larger public that their trust in local government has not been misplaced.

To that end, the prohibitions themselves are fairly easy to un-

derstand. We don't take valuable gifts or gratuities, because that might call into question a public servant's objectivity or create a perception among citizens that tips are anticipated in return for services. A public servant who uses his or her government office for private gain is betraying the public trust in that office. And certain political or financial relationships are prohibited because of the potential for coercion that comes with them.

But there is one area of the Conflicts of Interest Law where I sometimes receive a little bit of skepticism from my fellow public servants: the Post-Employment Restrictions.

"How can the City tell me who I can and can't talk to when I'm no longer an employee?"

"Is it true that I can't interview with anyone I ever worked with?"

"Someone told me I'm not allowed to write a memoir, because that's confidential City information. Is that true?"

And, believe it or not:

"If I have to wait one year after leaving the City before I can get a new job, won't I just starve to death? How do I feed myself if the City won't let me get a job?"

We'll start with the good news: Chapter 68 of the New York City Charter does not require anyone to starve. But! It does contain a few rules that seek to level the playing field and prevent some former public servants, who might still be capable of misusing their former public position, from doing exactly that.

So let's take a few moments and review some of the Post-Employment Restrictions a public servant will want to be aware of when transitioning out of City employment:

Job Hunting

New York City public servants may not engage in job-seeking activities with firms – or parents or subsidiaries of firms – with which they deal in an official capacity for the City of New York. The idea is, if I am making official decisions regarding a firm with which I am also seeking a

position, my objectivity may be affected. I might make decisions that are ostensibly in the public interest, but that are motivated (or could appear to be motivated) more by the desire to avoid upsetting decision-makers at that firm. This could happen consciously or even subconsciously, but in both cases this concurrent job hunting is interfering with my capacity to carry out the responsibilities of my current position.

Remember, though, that the restriction applies to only those firms with which you deal in an official capacity. If the company has no matters before YOU, you face no restriction on interviewing with them (barring the usual caveats about City time and resources). For the purposes of this provision, “job-seeking activities” includes passing your resume to a firm, asking your contact at the firm if they know of any vacancies or positions that might be available soon, or even “subtly” hinting that perhaps there may be a chance in the future that you might be leaving the public sector and could potentially be looking for a soft place to land if the price was right, wink wink, nudge nudge. By the way, “firm” does not include other government agencies; you are free to pass your resume or interview with other government entities at any time.

Confidential Information

You may not disclose to any individual or employer any information that is confidential and that was obtained in the course of your work for the City of New York and its agencies. The idea is simple: when a doctor retires, the change of her employment status does not change the confidential status of her patients’ records. In the same way, when a City employee leaves the public sector to retire or seek a new job, that does not in any way affect the confidential status of the client records, personal information, proprietary metrics, or any other information that is confidential. The surest way to inquire into wheth-

er or not certain information is confidential is to call your agency’s General Counsel and ask.

One-Year Appearance Ban

This is, perhaps, the provision that has caused the most confusion among public servants. To be sure, the vast majority of City employees are familiar with the rule and will likely have no problem complying with it should the time come.

However, in some agencies the idea of a nebulous-yet-draconian “one year ban” seems to float about, traded back and forth between public servants who (thankfully) aren’t planning on leaving any time soon and, thus, may not have the motivation to seek out and understand the actual rule. But this rule is an important one, and here’s what it says: for one year after leaving City service, former public servants may not communicate with their former City agency on behalf of a private employer or private enterprise.

So it isn’t a one-year ban on having a job. Or a one-year ban on working in the same sector as your former agency. Or even a one-year ban on working at a firm that has business before your former agency. It’s much simpler: a one-year ban on compensated appearances before your former agency.

That means a public servant could leave his or her City job today and start working at a firm, even one that deals with his or her now-former agency, tomorrow. They could work at that firm on matters involving the same sort of projects they handled for the City, and, in fact, could even (behind the scenes) work on the firm’s new business with the former City agency. None of this would violate the one-year ban.

But the reality and even the perception of a “revolving door” – when public servants take a new job but continue to linger about the halls, turning their inside information and relationships at

the agency into disproportionately favorable outcomes – has serious effects on the public’s faith in government. Citizens don’t want to see public servants using their government office for selfish ends while working for the City or shortly after leaving.

To that end, public servants may not communicate with their former agency on a new employer’s behalf, with “communication” including in-person or teleconferenced meetings, telephone calls, e-mails, letters, carrier pigeons, dead drops, or any other form of appearance for the first year after leaving City service.

It should be noted, though, that this prohibition applies to compensated appearances: unpaid, purely social appearances, such as at a former colleague’s retirement party or baby shower, are fine, provided they do not transform into a business appearance halfway through.

Particular Matter Bar

The most narrowly defined of the post-employment provisions, the Particular Matter Bar prevents former public servants from ever working on a “particular matter” they were “personally and substantially” involved in while with the City.

So, in the above example: three months after leaving the City, a former public servant may work on new matters involving his or her current firm and the formerly-served City agency, but couldn’t appear back at the agency, and couldn’t work on something he or she had previously been substantially involved with on the City side. An example of this might be a public servant who is personally and substantially involved in drafting a Request for Proposals leaving the City, taking a job at a private firm, and then helping that firm bid on the very same RFP.

If you are not sure whether or not

your work on a project made you “substantially involved” for the purposes of this provision, please reach out to the Board through its Attorney of the Day service, which can provide the specific advice necessary to avoid any potential conflicts.

For Additional Advice

As always, City employees can seek additional advice on this topic from the Board’s website at www.nyc.gov/ethics, through the Attorney of the Day at (212) 442-1400, or by scheduling a live training through Director of Training Alexander Kipp at kipp@coib.nyc.gov. See you then!

Rob Casimir is a renowned Trainer at the New York City Conflicts of Interest Board

Recent Enforcement Cases

▶ An employee of the City’s Office of Labor Relations (OLR) was fined \$150 for misusing her position and OLR letterhead in a personal dispute with her residence’s management company. The OLR employee used OLR letterhead to send her management company a letter protesting audit results and a rental surcharge. She stated in the letter that she worked for the “Mayor’s Office” and signed it with her City title, “Employee Assistance Program Specialist”, and “Mayor’s Office of Labor Relations.” The City’s conflicts of interest law bars City employees from invoking their City position to obtain an advantage in a personal matter, which is considered a misuse of City position. The law also prohibits using City letterhead for any non-City purpose.

▶ The Board publicly issued a letter to a Deputy Chief Financial Officer at a City hospital, warning him that his use of his New York City Health and Hospitals Corporation (HHC) email account to receive 50 emails related to his 2014 campaign for

New York State Assembly violated the City’s conflicts of interest law. Of the 50 emails, 49 appeared to be marketing email blasts from the Deputy Chief’s campaign committee, and one was a draft campaign speech that the Deputy Chief sent to himself from his personal email account. City employees are strictly prohibited from using any City resources to campaign for political office.

▶ A supervisor at the City’s Department of Environmental Protection (DEP) received a one-day suspension and lost one day of annual leave for asking to borrow \$136 from a subordinate. The subordinate agreed, and the supervisor repaid the loan within one day. The City’s conflicts of interest law prohibits City workers from soliciting loans from their subordinates (a misuse of their City position). The law also bars financial relationships between superior and subordinate employees.

Congratulations! to the winner of the Conflict of Interest Board’s September Public Service Puzzler contest: Thomas Sepe, of the Department of Environmental Protection. Look for the October Puzzler coming next week!



Click [here](#) to Follow Us on Twitter!

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

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

**Phone: 212-442-1400
Fax: 212-442-1407
TDD: 212-442-1443
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>