

*Ethics lights the way
to good government*

The Ethical Times

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Clare Wiseman, Editor



Criminal Minds – Pay to Play – Double Dipping

By
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Have you ever thought of becoming an actor? Would you even know where to start? Is it about talent or who you know? Luck vs. Skill? Maybe you should walk up to one of the numerous productions shooting around Foley Square and pretend to be an extra? Or maybe not. As an actor myself I'd recommend taking a class. It's usually the best way to learn some skills and make a few connections. In fact, a lot of classes are taught by casting directors. Who better to work with than the people who cast the shows? That's a connection that could make me a star, right? Maybe, if I play my cards right. But where do we draw the line drawn between someone taking money from me for teaching a class (professional development and networking) and that same someone taking money from me for casting me in a paid show (pay-to-play)? It's a thin grey line in the entertainment industry that plays on dreams, opportunity, and questions of misuse of position.

Back in the spring of this year the television show "Criminal Minds" fired their casting director after it was reported that he was running an independent "workshop" business where actors were being hired primarily from the classes they paid him for. Even though these classes weren't billed as "auditions" they served as the only access aspiring actors had to the casting director of the show.

Historically, a casting director gets paid by a production company to cast the company's show. A couple of decades ago, however, casting directors began to realize that actors might pay to meet with them if they thought it would increase their chances of landing a role. Call it "premium access" to the casting director. Herein lies the question of ethics.

Now to be sure, sometimes these casting professionals actually teach things that can be valuable to someone trying to break into the business. Learning how to read copy, take direction, and follow casting etiquette can keep a new actor from making rookie mistakes. But most times, the amount of actual knowledge transference or skills practice seems small in comparison to the cost of the session. What is billed as "professional development" feels more like "pay-to-play." The feeling was strong enough for the producers of "Criminal Minds" that the casting director lost his job over it. Perhaps

having a set of clear standards meant to curb these questions of integrity would've led to different outcome.

In City government, the conflicts of interest law provides such guidance. Let's now look at what that law would have to say about a public servant engaging in such a use of official position to profit personally.

To do this, let's say our casting director is a City employee, working for the Department of Criminal Minds. The first problem we have is that City employees are prohibited from getting paid by entities other than the City for doing their City job. This employee's job is to hire employees at the Department of Criminal Minds. Holding workshops on "How to Get Hired at the Department of Criminal Minds" feels pretty close what he's already paid to do. It's as if a DOE Admissions Counselor had a side business where local parents paid her money to learn how to get their kids into her school. Related to this is the notion of "misuse of office." There is a population of people considering working for the Department of Criminal Minds, who would need to go through our City employee. By taking money from these potential applicants, the City employee is misusing his City position. And even if he thinks he's doing them a service by providing this knowledge, all sorts of questions are created: Does the student who took the most classes land the job over the student who only took one class? What chance does the applicant who didn't take any classes have? Would he even be able to make it to the actual interview process? This damages the integrity of the hiring director for the Department of Criminal Minds and the integrity of the entire hiring process.

When it comes to integrity in hiring, Hollywood seems like it still has a way to go. Luckily for those of us in City government, there are laws in place to keep the hiring process fair and free of conflicts. And there's a Legal Advice Unit at the Conflict of Interest Board that's ready to answer any questions you may have about these laws. You can reach the Attorney of the day at 212-442-1400 between 9am and 5pm, Monday through Friday. You can also email us through our website: <http://www.nyc.gov/ethics> All calls and emails are confidential, and you may contact us anonymously.

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Recent Advice Opinions

► Travel by elected officials that includes both a governmental purpose and a political purpose:

Advisory Opinion No. 2016-1 advises that an elected official may not accept as a “gift to the City” payment from a third party for the entire cost of out-of-town travel that includes political as well as governmental activities, even where the political activity adds no cost to the travel expenses. Instead, the cost of the trip must be allocated on a reasonable basis between its governmental and political purposes and the official may accept payment only for costs allocated to the governmental purposes.

The Board notes that nothing changes the long-standing requirement for all public servants to personally bear the extra costs incurred when a non-governmental purpose adds cost to a trip undertaken for a City purpose.

Recent Enforcement Cases

► A New York City Department of Environmental Protection (“DEP”) Engineering Technician misused multiple DEP-issued gasoline cards to purchase, over the course of a year, \$3,167.21 of gasoline for his personal use. This violation of both the Conflicts of Interest Law and DEP policy lead to the following penalties for the Technician: (1) his resignation from DEP; (2) his acceptance of DEP’s prior imposition of a 30-day unpaid suspension valued at approximately \$2,969; and (3) payment of \$3,167.21 in restitution to DEP.

► A Recreational Specialist for the Department of Parks and Recreation (“DPR”) misused City resources by removing a PlayStation 4 game console from DPR’s Red Hook Recreation Area and keeping it at his home for approximately six weeks while he was on a leave of absence. This was

a violation of the Conflict of Interest Law’s prohibition on the misuse of City resources for non-City purposes, as well as DPR personnel rules. This conduct resulted in a DPR-imposed forfeiture of 10 days of annual leave, valued at approximately \$1,578. The Board imposed no additional penalty.

► On several occasions, a Lieutenant with the New York City Police Department (“NYPD”) misused his official vehicle for personal, non-City travel and also, on two occasions, to transport an unauthorized passenger. The Board fined the Lieutenant \$800. In determining the amount of the fine, the Board took into consideration that the Lieutenant had been involuntarily transferred by NYPD for this misconduct.

► A School Construction Authority (“SCA”) Technical Inspector misused his position when he asked an employee of an SCA contractor to lend him sidewalk scaffolding material to use on a project at his home. The Technical Inspector took home the contractor’s material, an illegal gift. He did, however, return it after learning of SCA’s investigation of his conduct. A “three-way” disposition between the Technical Inspector, the Board and SCA yielded the following penalties: (1) a \$1,500 fine to be paid to the Board; and (2) a six-month extension of his probationary period by SCA. In determining the amount of the fine, the Board considered the power the Technical Inspector wielded over the contractor’s work and the grave appearance of impropriety created by soliciting such an entity for personal benefits.

► A DOE Teacher used a number of her students to help her package a cake that she sold to a colleague for \$100. In a separate incident, she used a student to help her cook and clean up after preparing a private dinner for her church that she and the student prepared in the school’s kitchen. The Teacher paid the stu-

dent \$10. By using students to assist her with her personal and business activities, the Teacher used her City position to obtain a personal benefit. By using the school classroom and kitchen to prepare a cake for sale and prepare a meal for a private event, she misused those City resources for a non-City purpose. She was fined \$150 for this misconduct.

► After a full trial, the Board fined a former Property Maintenance Supervisor from the New York City Housing Authority (“NYCHA”) \$42,000 for egregious misuse of her NYCHA position. The former NYCHA Property Maintenance Supervisor, who was assigned to Sotomayor Houses in the Bronx, used her City position to financially benefit Turkish Construction Corporation, a private construction company owned and operated by her husband. The Property Maintenance Supervisor misused her NYCHA position in the following ways:

- She made her husband’s company eligible to receive NYCHA small procurement contracts by adding it to the list of approved NYCHA suppliers. She did not inform her supervisor that she had done so, which ultimately resulted in the award to her husband’s company of 39 small procurement contracts totaling \$96,000 (each valued at less than \$5,000 and, therefore, requiring no competitive bidding.) For this misconduct she was fined \$6,000.

- She personally awarded eleven of the 39 procurement contracts to her husband’s company for work at Sotomayor Houses, totaling \$28,744. For this misconduct she was fined \$33,000. The ALJ noted that, because the Property Maintenance Supervisor awarded several of the contracts to her husband’s company within the same day or within a few days of each other, this suggested a deliberate attempt to keep each job below \$5,000, since going over that threshold would have triggered the need for a competitive bid.

- She recommended her husband's company for work at another NY-CHA housing development. For this misconduct she was fined \$3,000.

► The Board fined five current and former DOE employees for conduct that occurred when they worked in DOE's now-defunct Children First Network ("CFN") system. The five current and former DOE employees acknowledged that they misused resources in violation of the City's Conflicts of Interest Law by using DOE funds without a City purpose for expenses expressly prohibited by DOE regulations. The misconduct and fine amounts are listed below:

- A former CFN Network Leader used his DOE P-card to pay for \$79.59 worth of personal food and drink, primarily from Starbucks. He also misused the card to pay for a \$3,655 celebratory, end-of-year dinner for 27 principals, assistant principals, and himself, at a cost of \$130.54 per person. He was fined \$1,500.

- An Administrative Educational Analyst, while a CFN Deputy Cluster Leader, used his DOE P-card to pay for \$495.95 worth of personal food and drinks from places such as McDonald's, Starbucks, and La Bagel Delight. He was fined \$2,500.

- While he was a CFN Director of Operations, an Administrative Educational Analyst used his P-card, with permission of his supervisor, to pay a total of \$4,110 for a \$114.17-per-person, end-of-year celebratory event attended by 36 DOE employees, including his supervisor and himself, at Red Rooster restaurant. The event included a live jazz performance and lecture on jazz. He was fined \$750. His supervisor, a former CFN Network Leader, was fined \$1,000 for permitting his subordinate's use of DOE funds to pay for the celebratory event.

- An Administrative Educational Analyst, while she was a CFN Director

of Operations, used her P-card to pay \$1,858 for a \$53.08-per-person restaurant meal, attended by 35 DOE employees including herself. Although she represented that her superiors planned the event, she also admitted that, as Director of Operations, she was responsible for using her P-card in compliance with DOE regulations. She was fined \$500.

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

Michael Greenberg, a City Medical Examiner with the Office of Chief Medical Examiner.

You can read Mr. Greenberg's bio in the November issue of the Public Service Puzzler.



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*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 Gavin Kendall, at
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