

Ethics lights the way
to good government

The Ethical Times

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



Disclosure and Recusal

by
Alex Kipp

Question: *I've worked for the City for 20 years, ten of those at the agency I'm at now. I'm also a homeowner. My unit deals with construction companies. A couple of weeks ago I hired a contractor to do some concrete work on my house. Now, of course, my unit's got pretty strict rules against having financial relationships with contractors that deal with the agency. And when I hired him, he didn't. Now he does, and he hasn't finished the job at my house yet. Do I have to break the contract with him and hire another contractor?*

Answer: I suppose that is an option (if, indeed, you can break the contract without getting sued), although there may be easier avenues to pursue.

First of all, it's probably a good thing your agency has strict rules against your being financially involved with contractors it deals with. The agency's reputation could pretty quickly go down the tubes if it started to look like its inspectors or contracting officers (any employee, really) were steering business or giving special attention to contractors with whom they had private dealings. In fact, taking any official action at your City job that affects your contractor's City-related matters would not only violate your agency's rules but would also be a violation of the City's Conflicts of Interest Law.

This is an important point. A violation of the law not only occurs if you try to use your position in some "corrupt" way—looking the other way on an inspection, disclosing confidential information, you name it—but when you take ANY action that affects your contractor's business with the City. This places a pretty high burden on you as a public servant. The perception of public integrity is crucial if you want to preserve the public trust. You are in a particularly prickly situation as a homeowner who happens to deal with construction people in your City job because you seem to be on a potential collision course with one of these perception issues any time you get work done on your house.

So, what do you do? Well, one option is to never hire a contractor and do all the work yourself. That doesn't seem practical. Neither does breaking the contract.

This is where two of the most important concepts in public integrity laws might be useful to you: *disclosure* and *recusal*. First, when you see a potential problem like this arise, disclose it. It's often said that "sunshine is the best disinfectant" when it

comes to issues like these. Disclosing the matter puts it out in the open and shows the world your concern for the integrity of your position. How do you disclose it? Call the Conflicts of Interest Board and ask to speak to the Attorney of the Day. When do you disclose it? The earlier, the better. Just to be on the safe side, if I was in your situation, I would've called when I first realized that my contractor might seek business with my agency. In your case, I would call ASAP, and I would also let my supervisor at my agency know about the situation, so that s/he doesn't assign me to any of that contractor's City projects.

It's likely that part of what the Attorney of the Day tells you will involve our second term—*recusal*. This basically means you don't take any action in your City job that would affect matters that this contractor has before ANY City agency. By agreeing to *recuse* yourself from any of those matters, you effectively remove any questions that might arise about potential conflicts between your City job and your private financial interests with this contractor. But remember: recusal isn't automatic; it's something your boss has to approve. Disclose the situation to your supervisor, and request to be relieved of all responsibility over the contractor. An approval is likely, but not automatic, as there might be situations where recusal is just plain impossible. (For example, if you're the sole expert in your agency on the kind of thing this contractor does, then you're probably the only one who can handle the contractor's matter and recusal would not be possible.)

The point, of course, in all this is to help you protect your professional integrity, the integrity of your agency, and that of the City. That integrity isn't harmed when you hire a contractor to work on your private residence, as long as you don't misuse your City position or contacts to do it. But when that contractor starts dealing with your agency, and you start working with that contractor in your agency capacity, people could easily start questioning the integrity of your official conduct. *Disclosure* and *recusal* may give you a relatively painless means to keep that from happening. (And it's probably easier than breaking your contract.) Give us a call at COIB if you want to know more. The number is 212.442.1400.

Alex Kipp is Director of Training & Education at the New York City Conflicts of Interest Board

Recent Enforcement Cases

► A former DOE principal paid an \$1,800 fine for leaving work for over half a school day to pick up a car he had purchased in New Jersey. He also had a subordinate teacher accompany him. Both the principal and the teacher were being paid to work for DOE during their absence. Because of this absence, the teacher was unable to teach an afternoon class. The AWOL principal therefore directed a second teacher to cover the absent teacher's class. The City's conflicts of interest law prohibits public servants from using City time and City resources for non-City purposes and from using their positions for personal advantage, which includes having subordinates perform personal favors.

► An Assistant Superintendent of Welfare Shelters at the Department of Homeless Services was suspended for using his position as a shelter supervisor to attempt to obtain repayment of \$3,500 in personal loans he had made to a contract security guard working in the shelter. The Assistant Superintendent asked the contract agency that employed the security guard to take disciplinary action to compel the security guard to repay the loans. As a City official who deals with the contract agency on behalf of DHS, it was a misuse of position for him to ask that contract agency to intercede on a matter of personal finance.

► A Department of Education translator paid a \$2,500 fine for using his DOE computer to access, save, and/or store over 150 files relating to his private translation business and his outside teaching position at the United Nations. The City's conflicts of interest law prohibits employees from using City resources to perform work for their private businesses.

► The Kings County District Attorney agreed to pay a \$15,000 fine in

connection with his receipt of improper meal expense payments from the Kings County District Attorney's Office ("KCDA") and for having subordinates advance their personal money to pay his meal expenses pending their reimbursement by KCDA. The Kings County District Attorney used office funds to pay for his weekday meals from January 2014 through May 2014, totaling \$2,043 (which he repaid in July 2014); used office funds to pay for his dinner and weekend meals from January 2014 through February 2015, totaling \$1,489 (which he repaid in August 2015); and had members of his security detail use their own money to purchase these and other meals, totaling \$1,992. KCDA reimbursed the members of the District Attorney's security detail for their cash advances, sometimes after a delay. The District Attorney periodically reimbursed KCDA for these expenses per an arrangement with KCDA's Fiscal Office. The Kings County District Attorney acknowledged that his conduct violated the City's conflicts of interest law provision that prohibit the City's elected officials and other public servants from using, or attempting to use, their City positions to obtain any financial gain, privilege, or other private or personal advantage for the public servant, and from using City resources for any personal, non-City purpose. The Kings County District Attorney also acknowledged that, by permitting an office policy pursuant to which subordinate staff regularly advanced their own money to cover his personal expenses, he entered into a prohibited financial relationship with his subordinate employees.

► A Member of the New York City Water Board was fined \$1,000 for sponsoring a political fundraiser for the Mayor's re-election campaign. The invitation to the fundraiser/birthday party included the

Water Board Member's name as a host and requested campaign donations in amounts ranging from \$100 to \$2,500. Public servants with "substantial policy discretion," such as Members of the Water Board, are prohibited by the City's conflicts of interest law from requesting any person to make political contributions for any candidate for City elective office.

► An Administrative Staff Analyst at the Administration for Children's Services ("ACS") accepted a six-workday suspension for showing his ACS identification card to ACS employees present at a family court proceeding involving his family member for the purpose of complaining and obtaining information about the case. The City's conflicts of interest law prohibits public servants from using a City resource – which includes their City identification – for any personal non-City purpose.

► A Sewer Treatment Worker at the Department of Environmental Protection ("DEP") accepted a ten-workday suspension for 31 instances of unauthorized use of a DEP-issued E-ZPass for travel when he was not working, avoiding \$171.74 in tolls. The City's conflicts of interest law prohibits public servants from using a City resource for any personal, non-City purpose.



***Look for the winner of the August
Public Service Puzzler in the next issue
of the Ethical Times!***



**Click 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 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/>

