

*Ethics lights the
way to good gov-
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The Ethical Times

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Alex Kipp, Editor



Personal Use of City Resources

By Phil Weitzman

Take a second to look at the following list. What do all of these items have in common?

- Bitcoin
- Political Robocalls
- Road trips to Maryland
- Karate lessons
- Running coaching

Each item on the list featured prominently in a recent COIB enforcement case involving personal use of City resources. Just like the diverse private interests of the City workforce, COIB enforcement cases involving City resources run the gamut, from experiments with Bitcoin on the City network, to interstate road trips in the City car, to organizing private teaching and coaching practices during City time, to lending names and City titles to political messages. Of course, there's nothing wrong with having an active private life – one could even argue that everybody wins when City employees are actively engaged in their communities as private citizens. But private activities should be just that, and should never be undertaken with City time or resources. Accordingly, the Conflicts of Interest Law places strong restrictions on our use of City resources for our private activities.

What is the standard for personal use of City resources? The Board's rule, as written, states that *any* personal use of City resources violates the law. However, this *no-personal-use* standard often feels a bit strict, and in fact, the drafters of the Conflicts of Interest Law and the Board have always indicated that certain kinds of personal use are more concerning than others, particularly *business* and *political* uses. In recognition of the fact that not all kinds of personal use are created equal, the Board, in conjunction with several other City agencies, clarified its expectations by creating the Acceptable Use Policy (AUP). As a matter of policy, if a City employee's personal use of City resources does not violate the AUP, such use will not violate the Conflicts Law.

Under the terms of the AUP, *minimal, incidental* personal use of City resources is OK, provided that the use is not for a *political* or personal *money-making* (aka *business*) purpose. For example, taking a look at our list at the beginning of this article again – each enforcement case we referenced involved not just personal use of City resources, but personal use that violated the AUP, because the use was either *political* (the robocall), *moneymaking*

(bitcoin, coaching, lessons), or *beyond 'minimal and incidental'* (the road trip).

Good examples of *permissible* personal use would include making a quick phone call on the City phone about where to meet your friend for dinner after work, sending a fax to your doctor, or making a photocopy of your child's report card. Again, as long as there's no *business* or *political* purpose, and as long as the use is *minimal and incidental* (and as long as the use is OK with your supervisor) you should be fine.

There's an important caveat about the AUP: individual agencies could still choose to apply a stricter standard. While City agencies can never be *less* strict than the Conflicts Law, they retain discretion to be *more* strict. This means that personal use of City resources could land you in trouble with your agency, even if the Board would not pursue its own enforcement case. While many agencies have explicitly adopted the AUP, some have not, so be sure to check to see whether your agency has a stricter policy before relying on the AUP.

There's one final factor to keep in mind: certain kinds of City resources can *never* be used for *any* personal purpose, even in the smallest amounts. Put differently, *any* personal use of certain City resources is automatically excessive. For instance, using your subordinates for your personal purposes is never OK. The Board recently fined a DOE principal \$2,400 for using his subordinates to go to the bank to make personal deposits for him, go to the cleaners, pick up his breakfast and lunch, and do personal shopping for him at a wholesale club, a supermarket, and a liquor store. Similarly, personal use of City letterhead is always a violation: a NYCHA Vice-Chairman was recently fined \$2,000 for writing two personal reference letters, praising a real-estate broker and recommending parole for a family friend, on NYCHA letterhead.

In fact, there's one type of City resource that is so sensitive that it has its own separate provision of the Conflicts Law: confidential information. The Conflicts Law prohibits us from disclosing confidential information *at all*, or using confidential information for the benefit of ourselves or our associates. City employees who have access to large databases of personal information are at particular risk of giving in to temptation and breaking this rule. Recent enforcement cases are representative: one involved an HRA employee who served a thirty-day suspension and then agreed to resign after admitting to conduct that included using the Wel-

fare Management System to look up the status of Medicaid benefits for five different family members; another case involved an ACS employee who received a five-day suspension for using the state CONNECTIONS database to repeatedly check on an investigation involving her ex-husband.

So, in general, the Conflicts of Interest rules provide you some reasonable latitude to use City resources incidentally when things relating to your private activities happen to come up during the workday. But keep an eye out for the pitfalls we discussed, and if you're ever unsure, ask someone first! You can reach out to your agency counsel or human resources department, or call COIB's legal advice line directly at (212) 442-1400. All calls to COIB are confidential, and you may call us anonymously.

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Recent Enforcement Cases

► A Housing Inspector at the Department of Housing Preservation and Development (HPD) was fined \$1,750 for attempting to make a sale for his private coffee and tea business during a housing inspection. While inspecting a Section 8 recipient's apartment, the Housing Inspector gave the tenant a card for his private business as a "Distributor of Organic and Gourmet Coffee and Teas" and attempted, albeit unsuccessfully, to sell the tenant coffee and tea. Under the City's Conflicts of Interest Law, public servants are barred from soliciting private business from a member of the public whose interests may be affected by the public servant's official action, regardless of whether the sale is successful. This was a joint resolution with HPD of related disciplinary charges.

► An Analyst at the Department of Design and Construction (DDC) paid a \$1,000 fine and will serve an indefinite

probation for: i) entering into a financial relationship with a superior DDC employee by borrowing a total of \$800 from her DDC supervisor over the course of four months; and ii) using her position in the DDC Agency Chief Contracting Office to obtain and to attempt to obtain free tickets from the Metropolitan Museum of Art and the New York City Center, both of which are DDC contractors that she dealt with in her DDC capacity. Through her pursuit of the tickets, the Analyst violated Conflicts of Interest rules against using one's position for personal gain. In addition, by accepting three free tickets to the Museum, she violated a separate Conflicts of Interest rule that prohibits City employees from accepting a gift valued at \$50 or more from a firm engaged in business dealing with the City and DDC's \$0 gift rule. This was a joint resolution with DDC.

► A Supervising Stock Worker at the Department of Citywide Administrative Services (DCAS) paid a \$500 fine for entering into a financial relationship with a subordinate DCAS employee by paying the subordinate \$60 to repair a pole in a closet in his home. This matter was a joint resolution with DCAS of related disciplinary charges□

Congratulations! to the winner of the Conflict of Interest Board's July Public Service Puzzler contest: *Adam Zaranko, a Senior Policy Advisor for the Mayor's Office of Recovery and Resiliency.*

You can read more about Mr. Zaranko, check out his winning caption entry, and get the details for August's Public Service Puzzler by clicking [here](#).



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