

the Ethical Times

Open Containers

How we React to Violations, and What it Says about Us

By Roy Koshy

Years ago, I was a house manager at a New York City comedy theater that served beer and wine. Now, at the time, NYC had a very strict [open container law](#) that prohibited the consumption of alcoholic beverages in any public place. So part of my job was making sure that patrons didn't leave with open containers, because if they got caught it's not just them who could get into trouble. The venue where they purchased the alcohol could also [find itself](#) in [hot water](#) with the state Liquor Authority.

I was very good at my job. When I noticed some ne'er-do-well approaching the exit with an open container, or (worse still) actually making it out the door, drink in hand, I would leap into action:

"Hey buddy! You can't take that drink outside!"

"Okay..."

"Buddy, it's not OK, it's the LAW!"

The patron would return inside with their drink, and I would return to the main office, look in the mirror, and give myself a congratulatory nod, because I had just saved the theater.


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Flash forward to one year later. I am visiting the beautiful city of New Orleans for the very first time. I went to the famed French Quarter, and saw many people walking around all day and all night with alcoholic drinks. Naturally, I assumed that some manager was going to come out and admonish all of these people, and I was thankful it was not me. But no manager appeared.

It turns out that New Orleans has [a very different open container law](#), so people are allowed to carry and consume alcoholic drinks





in the street so long as they're in a plastic go-cup or bottle. This realization surprised and thrilled me. Not only were these open containers not my problem, they weren't *anybody's* problem! Better yet, I was on the side of fun for once and I could drink in public!

My joy soon turned to regret. As I stood on the street and stared into my beverage, I realized that my approach as a house manager in New York had been flawed. I had been operating under the assumption that everyone knew all the rules. Therefore, anybody who'd been trying to leave my theater with an open container must have been flaunting those rules on purpose. I realized that just like I, in New Orleans, didn't know that I *could* carry an open container in the street, many of my patrons at the New York theater weren't aware that they *couldn't*. Where I had seen disrespectful troublemakers before, I now saw well-meaning citizens just trying to have a good time. And now when I saw my own reflection, I no longer saw a crusading hero, but a bully with a tear in his eye.

Back here in NYC, I decided to take that tear and let it water the seeds of empathy when it comes to ethics in government. How do we react when we hear of a City employee violating the conflicts of interest law? Do we react with disdain, as if this public servant broke the law because he or she is indeed corrupt, or do we imagine how that public servant made this choice?

Let's take gratuities as an example (but please, don't take any gratuities): The law [prevents us](#) from accepting anything other than our City salaries for doing our City jobs, because members of the public shouldn't feel

pressured to pay public servants extra to get them to do things they're already supposed to do. This is a very clear and simple concept on paper. Now, let's imagine a friendly interaction between a public servant and a member of the public looking for information on filing an application to host a basketball tournament. Everything goes smoothly, and the tournament is a big success. The member of the public is so appreciative that he thanks the public servant by giving him a case of Gatorade left over after the tournament, and the public servant is genuinely moved by this gracious action. I know that I was raised to be thankful when people were doing something nice for me, and it would be rude to reject a kind gesture. Maybe this public servant was raised similarly? So if the public servant accepts the case of Gatorade, is it necessarily true that that servant had a purely nefarious motive?

Let's go one step further. We understand the value of the gratuities prohibition: it ensures that the public does not question the integrity of the services we provide and has confidence that these services will never be contingent on tips. However, isn't there also a risk of alienating this very satisfied citizen by refusing his token gesture? Does it really advance the cause of good government to deny someone's spontaneous offer of a few extra bottles of sports drink?

While this particular dilemma does not mean we should ignore or get rid of the gratuities rule, it is worth understanding the real situations in which many City workers find themselves. They often make decisions based on not only the information they have (or don't have), but on many other factors, including their direct interactions with the public as



well as their own definition of being an ethical human being.

In my work as an Education & Engagement Specialist here at COIB, I've developed a more enlightened approach when discussing the conflicts of interest law with other City employees:

"Hey buddy! The law says you can't accept gratuities!!"

"Yeah, we know. No one should even think about accepting gratuities."

"Hey! Maybe that person who is being offered a gratuity is being put in a weird place and doesn't want to alienate the public, yet they want to maintain the public's trust in City government!"

"Okay..."

"Buddy, it's NOT OKAY for you to judge this public servant!"

"I wasn't judging this fictional public servant you just made up—"

"Yeah! That's what I thought! Does anyone have any questions?"

"Yes, can you please leave the premises?"

On second thought, perhaps you're better off contacting COIB directly for advice. Just call (212) 442-1400 during business hours, and ask for the Attorney of the Day, or visit COIB's official website at nyc.gov/ethics.



Roy Koshy is an Education & Engagement Specialist at the New York City Conflicts of Interest Board.

Recent Enforcement Cases

Misuse of City Position and Resources A NYC Police Department (NYPD) Sergeant sought and obtained NYPD permission and a Board order to own a for-hire vehicle company which is regulated by the NYC Taxi and Limousine Commission (TLC) and a waiver to allow him to appear before TLC on behalf of his company. The Board specifically cautioned the Sergeant, however, that when appearing before TLC, he must not use his City position to obtain any advantage for himself or his company, that he must not identify himself as a City employee, except in response to a direct inquiry, and that he must not use City resources, including his badge, in connection with his work for his company.

Two weeks after the Board issued the order and waiver, the Sergeant went to TLC to renew his TLC license. When he learned that he could only make his license renewal payment online, he:

- Stated to TLC staff: "I'm NYPD. I should not have to follow protocols";
- Showed his NYPD badge and identification, stating to a TLC supervisor that they "both work for the City and you should take care of this"; and
- Stated that he would take official action against TLC employees.

In setting a \$6,000 fine, the Board took into account that the Sergeant had disregarded specific written instructions from the Board on avoiding misuse of his City position and City resources.

Misuse of City Resources From 2015 to 2017, a New York City Health + Hospitals Director of Administrative Services in the Office of Corporate Support Services regularly used her assigned Health + Hospitals vehicle

Recent Enforcement Cases



to make unauthorized personal trips, most of which were in close proximity to her home. She agreed to pay a \$6,000 fine to the Board.

Misuse of City Resources A NYC Department of Health and Mental Hygiene (DOHMH) Public Health Advisor II submitted three fraudulent letters on DOHMH letterhead in an attempt to convince the judge adjudicating his divorce to rescind an order compelling him to purchase more expensive health insurance. DOHMH suspended the Public Health Advisor for twenty-five days, valued at approximately \$3,979. The Board deemed the DOHMH penalty sufficient to resolve the Public Health Advisor's conflicts of interest law violations and imposed no additional penalty.

Misuse of City Resources While at Queens County Housing Court on a personal matter, a Probation Officer for the NYC Department of Probation (DOP) wore her DOP shield during an appearance before an administrative judge to create the false impression that she was there on official City business. By doing so, the Probation Officer misused a City re-

source – her DOP shield – for a non-City purpose in violation of the City's conflicts of interest law. In a joint settlement with the Board and DOP, the Probation Officer agreed to forfeit four days of annual leave to DOP, valued at approximately \$1,092.

Misuse of City Resources The Board, in conjunction with the NYC Department of Correction (DOC), concluded three joint settlements with DOC workers as a result of its investigation of vehicle misuse at that agency. All three used their DOC "take-home" vehicles to make a number of personal trips over the course of a year:

- A DOC Assistant Chief made 7 personal trips, mostly to shopping centers and to drive a family member to school. She agreed to pay a \$2,500 fine to the Board; forfeit seven days of annual leave, valued at approximately \$5,320; and reimburse \$182.20 to DOC for the mileage incurred during her instances of personal travel.
- A DOC Assistant Commissioner made 13 personal trips. He agreed to pay a \$2,750 fine to the Board; forfeit seven days of annual leave, valued at approximately \$4,209.87; and reimburse \$155.84 to DOC for the mileage incurred during his instances of personal travel.
- A DOC Assistant Commissioner made 4 personal trips, as well as additional local personal trips that violated DOC policy. She agreed to pay a \$750 fine to the Board; forfeit seven days of personal leave, valued at approximately \$3,754.80; and reimburse \$552.96 to DOC for the mileage incurred during her instances of personal travel.

Recent Enforcement Cases

Misuse of City Resources A NYC Department of Sanitation (DSNY) Sanitation Worker left his assigned collection route with a DSNY sanitation truck to haul waste from his home. In a joint settlement with DSNY and the Board that resolved his conflicts of interest violation, as well as unrelated disciplinary charges, the Sanitation Worker agreed to serve a ten-workday suspension, valued at approximately \$3,092.

Misuse of City Time & Resources A NYC Housing Authority (NYCHA) Customer Information Representative Level II used her NYCHA email account, sometimes during her NYCHA work hours, to exchange 50 emails related to her Avon business. In a joint settlement with the Board and NYCHA, the Customer Information Representative agreed to serve a four-workday suspension, valued at approximately \$836.

Misuse of City Time & Resources The Board issued a public warning letter to a NYC Department of Correction (DOC) Correction Officer for misusing a limited amount of DOC time and resources to seek a paid position as a headquarters delegate for the Correction Officers' Benevolent Association, Inc. (COBA). Over the course of two months, she sent 6 emails from her DOC email account, scanned 3 documents on a DOC photocopier, and stored 7 documents on her DOC computer, all relating to her campaign for the COBA position. Some of these instances of misuse of resources occurred during her DOC work hours.

In deciding to issue a public warning letter rather than impose a fine, the Board considered the limited amount of City time and City resources used by the Correction Officer. The

Board also considered that the close link between union membership and City employment may have led the Correction Officer to believe, mistakenly, that she was permitted to use City time and City resources to seek a paid union position.

A [searchable index](#) of all the COIB Enforcement Dispositions and Advisory Opinions is available courtesy of New York Law School.

Congratulations!

To the winner of our recent Public Service Puzzler, **Nigel C.O. Manuel** of the Department of Buildings.

This month, fill out an Annual Disclosure-themed [March Madness bracket!](#)

Submissions are due this Friday, March 29th.



Schedule a Chapter 68 Class

COIB's Education & Engagement Unit can arrange a class in Chapter 68 for you and your staff

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