

the Ethical Times

How the Cookie Crumbles Rules for Fundraising

By Isaiah Tanenbaum

My daughter's Girl Scout troop is getting ready to do their annual cookie sale. I'd like to help her out by selling some boxes at work, but is that a conflict of interest?

We get versions of the fundraising question a lot, whether it's about Girl Scout Cookies, walk-a-thons, or pledge drives for cherished public radio programs. The answer is layered, surprisingly complex, but ultimately worth the effort – rather like a Thin Mint itself. Let's take a bite, shall we?

First of all, City workers cannot use City resources, including email, computers, letterhead, and even time, for non-City purposes. While many agencies have signed on to the City's [Acceptable Use Policy](#) (which, as we [discussed](#) a few issues ago, allows for minimal, incidental, and personal uses of certain City resources), the AUP specifically excludes fundraising activities. Selling Girl Scout Cookies is fundraising, and as such falls outside of "acceptable use." A public servant is therefore well advised to keep any cookie sale efforts limited to their break time, or before and after work, and never use City resources, such as City computers, email, and printers, to facilitate or promote a sale.

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And keep in mind that some City agencies place additional restrictions on their employees' fundraising efforts, including disallowing them entirely on City premises, even during a break. So it's always a good idea to check with your supervisor or agency counsel first about what is and is not allowed at your particular workplace.

Ok, so you've double-checked with your supervisor, verified that you're clear to sell those cookies during a break, and then at lunch that supervisor stops by to order some cookies herself. Can she, or is this a prohibited superior-subordinate financial relationship? Because the financial relationship here





is actually between the superior and the Girl Scouts, it's allowed. Superiors are free to donate to subordinates' causes as they see fit.

However, the reverse is not true: just as a superior cannot accept personal gifts from a subordinate, so too can they not fundraise from one. No City worker should have to worry that their continued employment depends upon a donation to the boss's favorite charity. So don't put your subordinates in that position by asking for their money.

(And remember: if employees at multiple levels of your agency hierarchy report up the chain to you, they're all considered your subordinates, so you should tell all of them to buy their cookies from someone else.)

Finally, given the power dynamics at play, we can't ever fundraise from members of the public whose City business we oversee.

As was alluded to above, these rules are all for fundraising for a not-for-profit. If you'd like to sell your *own* cookies, Mary Kay, or anything else from which you, a close family member, or a business associate would profit directly, that's not fundraising; it's conducting a business. As personal profit raises even more significant conflicts concerns than just fundraising, the rules are likewise stricter. You can brush up on the laws regarding outside business ventures [here](#).

As always, COIB's Advice attorneys can offer you free, confidential, even anonymous legal advice on all Chapter 68 issues. Just call us at (212) 442-1400 Monday to Friday, 9:00 am to 5:00 pm, or visit COIB's website at nyc.gov/ethics.



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FAST FACTS

- **Using City time and resources for non-City purposes is generally forbidden.**
- **Some charitable fundraising, conducted outside of work hours, is allowed by many City agencies, but always check with a supervisor or agency counsel to be sure.**
- **Superiors may donate to a subordinate's pet cause.**
- **Superiors may NOT fundraise from subordinates.**
- **Nobody may fundraise from a member of the public whose City business they oversee.**
- **The rules for running outside businesses are more strict.**

Schedule a Chapter 68 Class

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

Contact Gavin Kendall at kendall@coib.nyc.gov

Phone: (212) 442-1400

Fax: (212) 437-0705



nyc.gov/ethics

Recent Enforcement Cases

Misuse of Position and City Resources

A now-former Senior Vice President and Chief Information Officer at NYC Health + Hospitals (H+H) oversaw a \$300 million contract with Epic Systems Corporation, a provider of electronic medical records software. Only individuals who have been certified by Epic can provide in-house support to medical facilities that use Epic's software. The now-former Senior VP's live-in partner (a non-City employee) wanted to obtain such a certification from Epic. To help her prepare to do so, he misused his high-level position by:

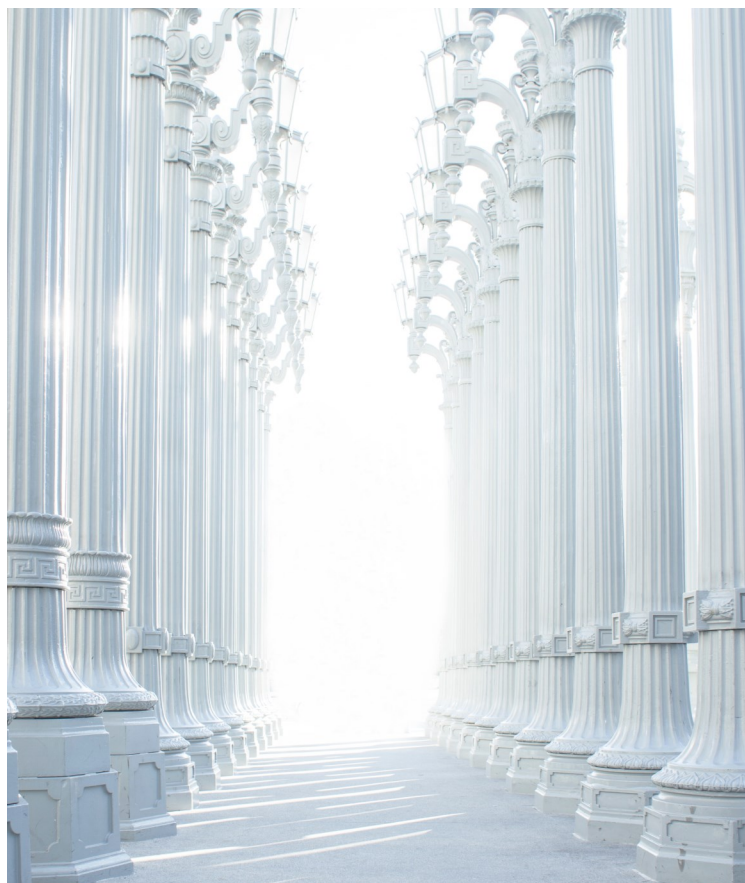
1. Requesting that Epic schedule certification training for his live-in partner at Epic's Wisconsin campus on the same dates as his own training.
2. Arranging for his live-in partner to have office space and a computer terminal at H+H Manhattan headquarters so she could work on projects required prior to taking the Epic certification exams. (His live-in partner used the H+H office and computer on multiple occasions for this purpose.)
3. Directing two of his H+H subordinates to assist with obtaining H+H credentials and identification that would allow his live-in partner to access the H+H office.
4. Directing a consultant who was retained to assist H+H employees with Epic training to provide guidance and assistance to his live-in partner.

The now-former Senior Vice President agreed to pay a \$9,000 fine to the Board.

Misuse of City Time and Resources A now-former First Assistant District Attorney at the Kings County District Attorney's Office (KCDA) misused her KCDA email account,

computer, and work hours to communicate with District Attorney Charles Hynes regarding his 2013 re-election campaign. In all, she sent five emails, four of them during her work hours. These prohibited emails related to campaign fundraising & contributions; her thoughts regarding a campaign mailer; and, on two occasions, her assistance with campaign debate preparation. The now-former First Assistant District Attorney agreed to pay a \$2,000 fine to the Board.

Misuse of City Time and Resources A now-former Architect II for the NYC Housing Authority (NYCHA) used his NYCHA email account and computer to exchange 48 emails, mostly during his NYCHA work hours, related to his private architectural practice. He also used his NYCHA computer during his NYCHA work hours to edit a project proposal related to his private practice. The now-former Architect II agreed to pay a \$1,250 fine.



Recent Enforcement Cases

Moonlighting; Misuse of City Time and Resources A now-former Health Program Planner/Analyst for H+H committed several violations related to her outside work as a Mental Health Clinician:

1. Her outside position was with Young Adult Institute (YAI), a not-for-profit that has contracts with multiple City agencies.
2. She used her H+H computer to access YAI's computer network 749 times in order view her YAI email account, access YAI payroll, and view YAI client records.
3. She used her H+H computer and email account to exchange fourteen emails related to her YAI job, mainly at times when she was required to perform work for H+H.

She agreed to pay a \$3,000 fine.

Misuse of City Resources A now-former Telecommunications Associate at the NYC Department of Sanitation (DSNY) was assigned a DSNY car and E-ZPass for the purpose of performing his official duties. He was not permitted to use the DSNY E-ZPass for his commute. Nevertheless, on at least 176 dates, he incurred 534 charges to his DSNY E-ZPass for his personal commute, for a total of \$3,211 in tolls that he never repaid to DSNY. The now-former Telecommunications Associate agreed to pay a \$5,000 fine to the Board.

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

New Videos



The Conflict Zone delves into the murky world of [superior-subordinate financial relationships](#), hi-fi records, and burritos.



Relive the Saturday morning adventures of municipal ethics hero, Attorney of the Day. [Now available as an action figure!](#)

And finally, a [bonus holiday poem](#) for our fellow City employees who, like us, were here on December 24th.

COIB's videos are available on [our YouTube channel](#) and [our website](#).

Congratulations!

To the winner of our recent Public Service Puzzler, **Nancy Sultan-Lormil** of the Department of Buildings.

Help Marvin the Meerkat [fix his New Year's Resolutions](#) to comply with Chapter 68. Submissions are due Friday, January 11th.

