

*Ethics lights the way
to good government*

The Ethical Times

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Brave New World, Same Old Rules

By
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Q. Is there anything in the existing ethics laws about social media? Are they going to make new rules?

A. Social media is a new and ubiquitous part of modern life, and has revolutionized many of the ways people socialize, do business, organize politically, and connect with each other. And it is because of this revolutionary feeling, this *new-ness* of the experience, that some people assume there must be some sort of new, social-media-focused ethics law right around the corner. Surely this new reality – where much of the City’s 300,000-strong municipal workforce is regularly using social media – warrants a new set of rules.

Or does it?

Recall the lesson of the baby and the bathwater; what the City of New York has, in Chapter 68 of the City Charter, is one very effective government ethics baby. Though the Conflicts of Interest Law was written and passed into law long before the world had ever heard of Facebook, Twitter, Instagram, Snapchat, LinkedIn, Google+, or Tumblr, its statutes apply as readily to the social media space as to any other mode of communication. The laws apply whether you’re writing a letter, sending a fax, making a phone call, writing a text, or posting a status update. It’s the behavior of the public servant – not the underlying technology – that these laws govern, and as long as this remains the case, our Law will continue its applicability even as our technology advances.

As an example: Section 1-13 of the COIB Rules prohibits the use of City resources for any non-City purpose. And the same rule that prevents City employees from using their agency’s copier to make fliers for a side business also prevents them from stealing City time posting inspirational pictures to the Instagram account of a personal fitness company they run on the side. While some agencies have adopted the Acceptable Use Policy (AUP) which sets forth guidelines for limited personal use of City resources, *any* commercial or political use of City time, tech, or resources is already a violation of the Conflict of Interest Law.

Section 2604(b)(3) of the Conflicts of Interest Law prohibits misuse of City position for the private benefit of the City employee, or any associated party, including those with family and financial ties to the public servant. And it’s part of what prevents City officials from having their City staffers write content for that official’s personal or political social media accounts; if everyone on social media is managing a personal brand, then having, in effect, a City-funded writer’s room producing content for your personal/political accounts would absolutely be a misuse of City personnel. Federal analogues to this rule are why the former President of the United States, for example, separated the state-run @POTUS account from a personal/political @BarackObama account run by non-government staffers. At the local level, we see similar separation between accounts representing a particular municipal office, which are the property of the City, and those accounts which belong to the elected official personally.

The Conflicts of Interest Law also contains several prohibitions on gift-giving and tipping, regardless of whether the object of value is being transferred in the “real” world or a digital one.

The above-mentioned prohibition on the misuse of position for personal, private gain prevents City supervisors from taking items of value from any employee whose terms and conditions of employment they might affect. This means that a \$100 magical scarecrow offered from, say, a government ethics trainer to a particular Farmville-obsessed supervisor would need to be declined. If the overly-eager trainer-gamer just purchased and planted the scarecrow on that supervisor’s digital land without his consent, then the item needs to be paid for. By refusing these offers, supervisors avoid any appearance of having misused their official power and can remain more objective when evaluating their staff.

A similar rule applies to gifts not given from one City employee to another, but come from outside firms seeking – or already have – some sort of business dealings with the City. Specifically, Section 2604(b)(5) of the Conflicts of Interest Law contains the “Valuable Gift Rule,” which lays out a \$50 limit (and that’s aggregate

and cumulative over the course of a twelve-month period) on gifts to City employees from these outside firms. Whether it's a vendor claiming that they *just really enjoyed* your tweet about Seinfeld using an iPad, and that's why they paid to promote it, or the more classic example of being offered a free lunch, all these items add up and count toward that \$50 limit, regardless of the individual from the firm that is making the offer.

Of course, plenty of City agencies have written into their Codes of Conduct that they don't want their employees accepting *anything* from clients or vendors, even if it technically doesn't violate the Valuable Gift Rule. And actually, Section 2604 (b)(13) of the Conflicts of Interest Law mirrors these agency policies when it comes to gratuities. The "Tip Rule," as it's frequently called, prohibits City employees from taking anything from anyone simply for performing their official City duties. So if that vendor is paying to promote your hilarious "Seinfeld with an iPad" tweet specifically because of how great it was to work with you on that last project, then you have violated the gratuity rule by accepting this additional compensation from a non-City source.

Some prohibitions in the Conflicts of Interest Law map more simply onto the digital space. Section 2604(b)(4) prevents the disclosure of confidential City information in any form, whether that information is contained in a stack of physical papers or a link to Dropbox. The prohibition on seeking a job with firm that you deal with in your official capacity as a City employee, outlined in Section 2604 (d)(1), applies whether you are floating a resume to that company's representative in person or on LinkedIn.

However, in most cases, preventing conflicts of interest in the social media space is as simple as seeking

out the currently existing guidance. For the text of the law, plain language guides, FAQs, fliers, videos, and much more information on these topics, visit www.nyc.gov/ethics or contact the Training Unit of the NYC Conflicts of Interest Board. Or give us a call through our Attorney of the Day program from Monday to Friday, 9am to 5pm, for confidential advice on all things conflict of interest. Whether you're requesting advice in writing, seeking a waiver, or just looking for peace of mind by asking an anonymous question, the staff of the Board wants to help you prevent conflicts before they ever become a problem.

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Recent Enforcement Cases

► At the New York City Department of Health and Mental Hygiene ("DOHMH"), a Supervising Exterminator agreed to serve a 40-day suspension without pay, valued at approximately \$4,867, for driving a DOHMH vehicle while off duty to a bar. After leaving the bar approximately seven hours later, and now impaired, he resumed driving the vehicle and caused a multi-car accident. The DOHMH vehicle was rendered inoperable and irreparable.

► The Board fined a New York City Health + Hospitals ("H+H") Supervisor of Stock Workers \$2,500 for misusing an H+H computer, email account, and printers during his H+H work hours to:

- design campaign flyers for his wife's campaign for a New Jersey county committee position;
- print approximately five to ten

copies of those flyers in an H+H print shop;

- on at least ten occasions since 2010, design and print material such as fundraiser flyers and event tickets for the not-for-profit organization that his wife served as President; and
- create and edit a flyer for the political campaign of another individual.

► A DOHMH – Office of Chief Medical Examiner ("OCME") Forensic Mortuary Technician agreed to pay a \$2,000 fine – \$1,500 to DOHMH-OCME and \$500 to the Board – for appearing before DOHMH-OCME on three occasions to remove bodies from OCME morgues in her private capacity as a funeral director.

► A New York City Department of Sanitation ("DSNY") Supervisor agreed to serve a five-workday suspension, valued at approximately \$1,906, for misusing his assigned DSNY vehicle on approximately ten occasions to transport produce to a restaurant in Brooklyn as a favor to the restaurant owner. In determining the penalty, the Board took into consideration that there was no evidence that the Supervisor profited personally from these violations.

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

Cinthia J. Kong, Program Analyst for the B2H Medicaid Waiver Program at Administration for Children's Services.

You can read Ms. Kong's bio in the February issue of the Public Service Puzzler.



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*Contact Gavin Kendall, at
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*A searchable index of all the COIB
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