

*Ethics lights the way
to good government*

THE ETHICAL TIMES

A publication of the New York City Conflicts of Interest Board

Alex Kipp, Editor



Thinking of Starting an Outside Business?

By
Bre Injeski

Question: *I work full-time for a City agency, and I want to start a company that I plan to own and operate with my wife. I understand that my company cannot contract with the City directly, but would it be OK for my company to be a subcontractor on a City contract?*

Answer: Perhaps. As you probably know, the City's conflicts of interest law—contained in Chapter 68 of the City Charter—prohibits full-time public servants from owning a firm that has business dealings with any City agency, not just the public servant's own agency. What you might not know is that "business dealings" are not limited to prime contracts with the City, and a firm may have business dealings with the City as a subcontractor.

The Conflicts of Interest Board looks at several factors to determine whether a subcontractor on a City contract itself is deemed to have business dealings with the City. Those factors include: whether the subcontractor receives any payment from the City directly; whether the subcontractor reports to the City on any matters; and whether the subcontractor's work on the City contract is done at a City site. Recently, for example, a Probation Officer at the Department of Probation also owned and operated a private firm that provided security services at City agency sites. The security services were provided through subcontracts on City contracts, and under the terms of those subcontracts, the Probation Officer's firm was required to regularly submit reports to the City. In this situation, the Board determined that the Probation Officer's firm had business dealings with the City, and the Board accordingly fined the Probation Officer for this violation of Chapter 68.

You should be aware that an ownership interest may exist under lesser circumstances than the sole or joint proprietorship you described. If your spouse or unemancipated child owns a firm, you are still deemed to have an ownership interest in the firm. This means you cannot do an end run around Chapter 68 if your wife were to be the sole owner of the firm—you would still be in violation of

Chapter 68 if the firm were to have business dealings with the City.

City business dealings or not, you should also be aware that the City's conflicts of interest law imposes the following restrictions on public servants, which are particularly relevant to those who own an outside business:

Do not communicate (write, call, e-mail, etc.) with any City agency on behalf of the firm, except about ministerial matters. A "ministerial matter" is an administrative act that is carried out in a preset way and does not involve substantial personal discretion by a public servant.

Do not perform your work for the firm on City time.

Do not use City equipment, letterhead, personnel, e-mail, or other City resources in connection with your work for the firm.

Never use your City position to obtain any advantage for the firm. For example, you may not advertise the firm at your City workplace or promote it to the people you deal with in your City job.

Always preserve the confidentiality of the City's confidential information.

The Chapter 68 restrictions exist to ensure that your ownership interest does not conflict—or even *appear* to conflict—with your City duties. That said, the Conflicts of Interest Board understands that a conflict of interest does not always appear whenever a public servant has an ownership interest in a firm that has business dealings with the City. In appropriate circumstances, the Board will grant an order to permit a public servant to maintain an otherwise prohibited ownership interest. An order **must** be sought (or the interest must be divested) if the firm in question has business dealings with the City.

To get an order from the Board, you must first receive written approval from your agency head, detailing why your ownership interest would not conflict with your City duties. You must submit that written ap-

proval to the Board along with your request for an order. If the Board sees no conflict, you will be granted an order permitting you to maintain your ownership interest, subject to the above restrictions. If the Board's order does not permit you to keep your ownership interest *or* if you do not seek an order, you will be in violation of Chapter 68 if you maintain your ownership interest in a firm that does business with the City.

If you are unsure whether you have an ownership interest in a firm or if that ownership interest creates a conflict of interest, call the Conflicts of Interest Board at 212-442-1400 and ask for the "attorney of the day." You can also e-mail us through our website (<http://www.nyc.gov/ethics>) by clicking on "Contact COIB." All calls and e-mails are confidential, and you may contact us anonymously. □

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(This article originally appeared in The Chief Leader.)

Recent Enforcement Cases

- ▶ The Board fined a former DOT Traffic Signal Maintainer \$1500 for working for a firm doing business with DOT.
- ▶ The Board issued a public warning to a New York City Department of Education teacher for using her position for financial gain by tutoring two students from her school for compensation. Because the teacher terminated the relationship upon hearing that it was improper, and because she returned the money, the Board took no further action.
- ▶ The Board fined the former Chair of the Civil Service Commission \$15,000 for misusing City resources & personnel for his private law practice.
- ▶ The Board issued a public warning letter to a DOE Vice Principal for entering into a financial relationship with two subordinates.

▶ The Board and the Department of Probation concluded a 3-way settlement with a DOP Probation Officer who owned a business that conducted business with the City and appeared before the City on behalf of that business. The Officer was fined \$5000.

▶ The Board fined an Administration for Children's Services Child Protective Specialist Supervisor \$2,000 for moonlighting with a firm doing business with the City.

▶ The Board fined a former Associate Juvenile Counselor for the Department of Juvenile Justice \$4,750 for using his City position to obtain a private loan from a subordinate.

▶ The Board and DOE concluded a 3-way settlement with a DOE Principal who used her City position to solicit and obtain monies from subordinates and used DOE funds to partially pay back one of the loans. The Principal was fined \$1,000 by the Board and required by DOE to immediately resign as Principal and be reinstated as a teacher, resulting in a \$52,649 reduction in pay, and irrevocably resign from DOE at the end of the school year.

▶ The Board and NYCHA concluded a 3-way settlement with a NYCHA Chief of Support Services for submitting her sister's resume for a job at NYCHA. She was suspended for five days without pay, valued at \$1,105.

▶ The Board fined a City Planning Commissioner \$4000 for voting in favor of the Downtown Brooklyn Plan, which would benefit a parcel of land included in the Atlantic Yards Project, a development project in which the Commissioner was an investor.

▶ The Board fined a Deputy Director of Personnel at the New York City Department of Homeless Services \$1500 for renting an apartment for six months to her subordinate.

▶ The Board fined an FDNY Assistant Commissioner \$2000 for using City resources and personnel to repair and transport his personal motorcycle.

▶ The Board fined a former Chief of Staff to a City Council Member \$1000 for using City resources and personnel on the City Council Member's reelection campaign.

▶ The Board fined a District Manager of a Community Board \$2000 for accepting valuable gifts in the form of mattress and box spring sets from a hotel owner doing business with the City.

▶ The Board and HRA concluded a 3-way settlement with an HRA Staff Analyst who misused City time and his City computer to conduct his private real estate practice. He was suspended without pay for 30 days, valued at \$4550.

Recent Advisory Opinions

AO 2007-3: Organizations required to register as lobbyists may invite and provide free admission for public servants to specific events, provided that the Organization is the sponsor of the event, public servants are invited in their official capacities, and all conditions of the Lobbyist Gifts Rule (Rule 1-16) are met. □

*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 Alex Kipp, Director of Training
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