

# the Ethical Times

## Political Activities and the Ethics Law

By Rob Casimir

It's September 2020, and the experts have reached their consensus: we have been, are, and ever will be in an election season. Which means it's a great time to brush up on the conflicts of interest law's guidelines on political activities!

So, first things first: when we're talking conflicts of interest, we're talking about situations in which an outside, private interest interferes (*conflicts*, if you will) with your ability to perform your public, government job. The good news is, most City employees manage a number of private interests easily and ethically, without any overlap with their official City duties. Working a second job, volunteering at a religious or community organization, pursuing your stamp collection, or even, yes, getting involved with political campaigns – all great and worthwhile activities, and all doable provided they are done the right way.



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(One note: this article covers activities related to someone else's campaign for elective office. Running for office will be covered in another article.)

### What kinds of political activity can a City public servant pursue?

It turns out, quite a lot! We'll get to the restrictions later in this article, but in general, so long as those rules are followed, a public servant can:

- Donate to a campaign (City or non-City)
- Volunteer for a campaign
- Work as a paid campaign staff member
- Donate, volunteer, or work for the campaign of *their City superior*
- Work on election day as a poll worker – no moonlighting waiver required (Why? Because the City's Board of Elections is a [government agency](#))

Note that some City agencies require their employees let them know about any outside paid and/or volunteer activities. It's always a good idea to consult your employee handbook or talk to your agency's General Counsel about this sort of thing.

Okay, so you want to do some politics, and your agency is cool with it. What conflicts of interest considerations do you need to keep in mind?

Basically, these six things.

### **1. City employees may not use City resources for any campaign activities**

This is the first, and also the simplest, rule: never use *any* City resources on behalf of a political campaign. So don't print even *one* campaign flier on the agency's copier. Don't send *one* thank-you email to a campaign donor from your fancy .gov email account. Don't make *one* call to coordinate a campaign event with your City-issued phone. Here in New York, it really is a zero-tolerance policy when it comes to any and all campaign-related use of City resources. If you don't want ants, don't leave crumbs; if you don't want City offices turning into unofficial campaign headquarters, you can't give an inch to politicking with them.

### **2. City employees may not use City time for any campaign activities**

Let's say you're at your cubicle (either at the office or whatever passes for a cubicle in your teleworking setup) and itching to make a phone call on behalf of your candidate. You know you can't use a City cell phone, since that's a City resource, but what about your personal phone? If you're still clocked in at your City job, then no, you can't do anything on behalf of a political campaign, even with your own phone. Think of your City working time as its own kind of resource, funded by everyone's taxes and meant to be deployed only for a City purpose, and you'll see that even if you never used a single physical resource for a campaign, turning that taxpayer-funded working time towards a political purpose would be the same kind of misuse.

### **3. City employees can't use the City power they have over others to advance a political cause**

It may not always feel like it – believe me, I get it – but any City position comes with

some degree of power over others. Sometimes this power is over subordinates who we supervise, sometimes it's over members of the public with whom we interact in our City capacity – for many public servants, it's both.

As Spider-Man's Uncle Ben famously nearly said, with municipal power comes municipal responsibility. The City subordinates and members of the public over whom we wield power must never be put in a position where they feel they need to placate the powerful (or, "powerful") person's *political* desires in order to ensure their *municipal* needs are being met. Even if you never meant to pit one against the other, even if you're just a passionate partisan, you must still consider how it might feel to be the subordinate asked by his boss to attend a weekend rally, or the vendor who's handed a political pamphlet by the City employee assessing her contract proposal. It would, in both cases, probably feel coercive.

For this reason, the City Charter prohibits the solicitation of political donations or actions from subordinate employees and from those with whom we interact in our City capacities.

### **4. City employees endorsing candidates or parties can't reference their City titles**

We all get those fliers in the mail saying such-and-such person has "endorsed" a candidate. Often, these fliers identify the person giving the endorsement, include a picture of them, and offer a quote. For instance, we could imagine a candidate with a popular health plan being endorsed by a group of doctors, who are photographed in white coats and stethoscopes and quoted as saying "We're doctors, and we believe this candidate is the prescription this City needs!"

But could a DOHMH Drug Policy Analyst give the same quote? Could he be shown wearing a DOHMH vest? Could the endorsement reference his City title?

The answer to these are yes, no, and no, respectively. While there's nothing wrong with making a reference to one's experience, including degrees or field of work, the City title itself (like the agency-branded vest) belongs to the City. As such, it's a violation of the law to wield it for or against a candidate or party.

There is an exception to this, which is that *elected* City officials can use their titles as part of an endorsement of another candidate. By definition, an elected official's title is political. The elected official had to participate in the political process to get the job, and will need to do so again to get re-elected. This means shaking hands at campaign rallies, making political speeches, raising money and, yes, endorsing other candidates. While they can't do any of those political activities with City time or City resources, they may use their titles.

### 5. Policymakers have an additional restriction

Some appointed City public servants are officially designated as "policymakers." Policymakers are prohibited from asking *anyone in the world* to contribute money to candidates for City elective office, or to any current City elected official running for any elected office. Why this extra rule? Even though they aren't elected, policymakers have a lot of power in City government, and they're visible in ways the rest of us aren't. The big decisions they make for the City should never even appear to be colored by personal interests in City electoral politics.

How would you know if you're a "policymaker?" Your agency would send

you a letter designating you as one – congrats, big shot! There is also a list of [every agency-designated policymaker](#) on the COIB website.

### 6. When you're uncertain about something, call COIB's Attorney of the Day

The rules for political activities might look straightforward when laid out in stark bold letters, as they have been here. But in the real world, the facts matter, and once you start putting these rules up against all the variables of your particular set of circumstances, questions can arise. What if my City job involves scheduling for an elected official who is running for re-election? What if the campaign wants me to represent it before City agencies? Can I hold a position with a county committee?

Whenever you have questions about anything conflicts-of-interest-related -- political or otherwise -- we hope you'll give our Attorney of the Day Hotline a call at (212) 442 -1400. When you call, you'll be able to speak confidentially, even anonymously,



with an expert attorney. The hotline is available Monday to Friday, 9am to 5pm. You can also send us your question [online](#).

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### COIB and COVID-19

COIB is operational and here for you. The Attorney of the Day is available to answer your ethics questions at (212) 442-1400 or via the [legal advice request form](#).

We encourage New Yorkers to follow DOHMH at [@nycHealthy](#) and/or text COVID to 692-692 to receive updates.

## Recent Enforcement Cases

### **Superior-Subordinate Financial Relationship; Misuse of City Position.**

For six years, while serving as an Administrative Engineer Level IV and an Administrative Engineer Level V at the NYC Department of Environmental Protection (DEP), a DEP supervisor shared with his DEP subordinate the costs of a one-time Personal Seat License (PSL) fee and annual season tickets for the New York Football Giants. The DEP supervisor paid a \$3,500 fine to the Board. (In a prior joint settlement with the Board and DEP, the DEP subordinate agreed to resign from DEP for this and another related violation.)

**One Year Appearance Ban.** Before leaving his position at the NYC Department of Transportation (DOT), a DOT Policy Analyst for Accessibility was advised by DOT's Senior Counsel for Ethics and Operations that he was prohibited from communicating with DOT on behalf of his new employer within one year of leaving City service. Despite receiving this advice, three months after his departure from DOT, the former Policy Analyst sent a text message to the DOT Commissioner asking for a meeting between the Commissioner and his new employer, a company that sells charging stations for e-bikes and e-scooters. The former Policy Analyst paid a \$1,000 fine to the Board.

### **Job-Seeking, One Year Appearance Ban.**

A Community Coordinator at the NYC Mayor's Office of Housing Recovery Operations (HRO) applied and interviewed for one position, expressed interest in and discussed salary for a second position, and accepted that second position with Almas Construction, LLC, while he was working with Almas on its Build It Back (BIB) projects for HRO. After leaving HRO, the former Community Coordinator contacted the Board for advice and was told not to communicate with his former City agency on behalf of his new employer for one year after leaving City service. Despite receiving this advice, the former Community Coordinator communicated with HRO employees on seven occasions within his first post-employment year to facilitate Almas's work on BIB projects. The Board imposed a \$5,500 fine, of which \$5,000 was forgiven based on the now-former Community Coordinator's documented financial hardship.

### **Misuse of City Time & City Resources; Prohibited Appearance.**

A DOT Supervisor of Electrical Installation and Maintenance owned an electrical contracting firm. Over the course of one-and-one-half years, the Supervisor used his DOT email account to send or receive thirteen emails related to his electrical business, six of which he sent during his DOT work hours. The Supervisor also occasionally used his DOT smartphone and a DOT printer, scanner, and copier to perform work related to his electrical business. On one occasion, the Supervisor used a DOT vehicle to drive to a hearing at NYC Environmental Control Board (ECB) during his DOT work hours. At this hearing, the Supervisor testified before an ECB Hearing Officer to dispute a violation issued to his private business by the New York City Department of Buildings. The Supervisor paid a \$2,000 fine to the Board. In setting the fine amount, the



## Recent Enforcement Cases

Board considered that the Supervisor was previously advised by the Board not to use City time or City resources in connection with his private business and not to appear before another City agency on behalf of his private business.

**Misuse of City Resources & City Position.** The Director of Compliance Services in the Office of the General Counsel at the NYC Department of Education (DOE) sent an email from her DOE email account to several high-ranking DOE officials, asking that her daughter be permitted to attend the eighth-grade graduation ceremony despite her academic challenges and be given other related accommodations. In the email, the Director of Compliance Services referenced her DOE title and signed off with her official DOE signature, which included her DOE title. The Director of Compliance Services paid a \$250 fine to the Board.

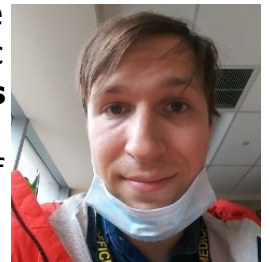
**Misuse of City Position; Prohibited Voting.** The Board issued a public warning letter to a member of Manhattan Community Board 8 (CB 8) for taking two actions that benefitted a not-for-profit sports, swim, and fitness organization that was a client of his private architectural business. In September 2019, CB 8 considered an application by the organization to convert six public parking spaces in front of one of its facilities into a “no standing except school buses” zone to enable buses to unload children more easily and safely. First, without disclosing that the organization was a client of his private business, the CB 8 member spoke in support of the organization during CB 8’s discussion of the application. Second, the CB 8 member voted in favor of the organization’s application. In issuing a public warning letter instead of a fine, the Board considered that the CB 8 member self-reported his conduct to the Board after being encouraged to do so by the Manhattan Borough President’s Office.

**Job-Seeking.** The Deputy Commissioner of Finance and Administration for the NYC Taxi and Limousine Commission (TLC) submitted her resume and interviewed for a position with Goodwill Industries International, Inc., while she was responsible for overseeing a TLC contract on which Goodwill was a subcontractor. The now-former Deputy Commissioner paid a \$700 fine to the Board. In setting the fine, the Board balanced the facts that the now-former Deputy Commissioner was a high-level public servant who ultimately obtained employment with Goodwill against the facts that she self-reported her conduct to the Board and was reassigned at TLC shortly after interviewing with Goodwill.

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

## THE PUBLIC SERVICE PUZZLER

Congratulations to the winner of our recent Public Service Puzzler, **James Toback** of OCME, who started work the first day of the stay-at-home order.



In this month’s [contest](#), we’re looking for hilarious Chapter 68-related captions to a cartoon. Send in your best punchline by **Friday, September 25<sup>th</sup> (deadline extended)**.



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