

the Ethical Times

The Show Must Go On (But Not on City Time or With City Resources)

By Rob Casimir

It's summertime in the City, and this month's *Ask the Ethicist* is getting back to its roots, with one of New York's coolest municipal ethicists answering your questions on the hottest topics in government ethics. Is it a conflict of interest to call yourself one of the coolest municipal ethicists in New York? You'll have to read on to find out!



Dear City Ethicist,

I'm a City employee, and I've recently started a side gig as a stand-up comedian. Can I use my office as a practice space for my routines after work hours?

Sincerely,

Laughing with Lanyards

Dear Lanyards,

While the City would never suggest one of its citizens engage in an act of stand-up comedy, nothing in the conflicts of interest law

IN THIS ISSUE

- 1 **Featured Article: City Time & City Resources**
- 4 **Recent Enforcement Cases**
- 4 **New Public Service Puzzler**

prohibits public servants from being any kind of comedian they want: stand-up, sketch – even improv comedy is currently legal in New York City. As with all second jobs, however, public servants must be careful to avoid using any City resource – and that's not just the technology, the vehicles, or the office supplies, but even the space inside a City building – for anything other than serving the City. While some agencies have adopted an Acceptable Use Policy that allows for limited personal use of City resources, it is never acceptable to use any amount of the City's resources for outside business ventures. Sorry Lanyard, but if you want to start a comedy career, you're going to have to head down to the open mic and practice like all the up-and-comers who don't have access to a government office!

Dear City Ethicist,

I'm a City employee who has recently started booking close-up magic shows. While my technique is good and I'm getting positive responses, I've been finding it difficult to build the requisite audience in this media environment. Could I use a City copy machine to print a few flyers for my next magic show?

Abacadabra,

Magic Mike from Midtown

Dear Mike,

It sounds like you might have a bit of an SEO problem, but you've definitely got a Chapter 68 problem. Remember: using City resources for any business or moneymaking purpose is a conflict of interest and a betrayal of your fellow New Yorker who doesn't pay their taxes every year just so you can use government time and supplies to get an unfair edge against them in the magic market. Put another way, Mike: would you feel good paying your taxes if it was just going to a rival magician/mentalists sitting in their government office practicing tricks and printing out advertisements instead of handling their official responsibilities? Probably not. So remember: it really is zero tolerance for using any City resource for any business or for-profit reason.

Dear City Ethicist,

I'm a public school teacher, and, over the last year, in those small moments when the children are quiet and working on their assignments, I've put together a frankly dynamite curriculum that I've been using to great success to teach my students the different parts of speech: it involves a ventriloquist dummy ("Sammy"), a glass of water, and an 8.5" x 11" notepad. I can promise you these kids will never forget the difference between an adjective and an adverb. May I sell this revolutionary curriculum online at one of those teacher-to-teacher marketplaces?

Thanks in advance,

DUMBO Denise and Sammy

Dear Denise,

I refuse to address the dummy. That said, you've asked an interesting question: generally, you are allowed to do all sorts of freelance work in those hours where you're not required to be clocked in and serving the

City; that is your time, after all. In those cases where your outside work isn't for a firm/entity doing business with the City, you don't even need to get a waiver! So, there's certainly nothing wrong with – as a side business – developing and selling your own curriculum to whichever teachers want to pay for it with their money, as long as those teachers aren't your DOE superiors or subordinates. And as long as you don't use City time or City resources to run the business. But that's not the problem here. It sounds like you explicitly used City time and City resources to develop and deploy, for a City purpose, what is essentially a government asset: the curriculum you developed for the City. In the same way that I could not turn around and sell this (sterling) edition of *Ask the Ethicist* to a magazine after writing it for all my fellow public servants, a teacher who uses City time and City resources to develop an in-class curriculum has essentially written that curriculum for the City, and thus doesn't possess the requisite ownership to sell the product as one's own! The fix? Develop your content on your own time, and it'll be yours to sell!

Dear City Ethicist,

I have for fifteen years worked at a social services agency here in the City; additionally, full disclosure, I am able to scry the ley lines of creation and see the future. As you can probably imagine, I moonlight nights and weekends as a professional psychic. My question is: I spend all day working with confidential databases and protected client records. If I, in the process of channeling an elder spirit, accidentally divulge confidential City information about a client's housing or health record, is that a problem? There's certainly no ill intent on my part, but I understand protecting our fellow New Yorkers' pri-

vate information is important for building trust and convincing people to come forward and interface with their government.

I know I'll hear from you soon,

**Catherine the Community Coordinator/
All-Seer**

Dear Catherine,

I suspect you already know what I'm about to say: public servants may not disclose confidential City information or use it for a private advantage, even after they leave City service. Upholding the public's trust is one of the most essential duties of any public servant. It is for that reason that we are prohibited from disclosing confidential City information to any entity (living or un-dead) who is not entitled to see it. But you knew that.

Dear City Ethicist,

I work for the City, but on my own time I work as a promoter for one of the most dynamic, up-and-coming vaudeville-style revues on the East Coast. We've got incredible talent, talent so good you can't believe it, in all the hot genres: we've got magic, we've got comedy, we've got ventriloquism, we even got ourselves a stage psychic. What we don't have is good advertising or distribution to a mailing list of hundreds of thousands of City employees. So my question is: is it ethical to cynically plant a couple of questions in my favorite government ethics newsletter, with the hope that it will draw traffic to my entertainment group? (Oh, and because the revue has a City grant, I've already applied for and received a waiver for this job - I'm not a monster.)

Asking for Forgiveness and Not Advice,
Meta-narrative Matt from Manhattan

Dear Matt,

First of all, when it comes to your career as a public servant, it is always better to ask for advice - especially when the Conflicts of Interest Board runs the long-standing, award-winning Attorney of the Day Hotline, serving thousands of City employees annually by getting them the ethics answers they need on-the-spot and when they need them at (212) 442-1400. You don't even have to give your name! Calls are confidential! There is never, ever a reason to wing it or hear it through the grapevine when it comes to understanding the rules when there's the Attorney of the Day Hotline making it easier than ever to get that no-stress, no-risk answer to your question. That said, to the substance of your original question: there are some things you can do (like introducing yourself as "one of New York's coolest municipal ethicists") that are deeply troubling but not technically illegal. Chapter 68 is only 24 pages, after all; you always have the ability - and are encouraged - to hold yourself to a higher standard as a public servant. I would put your attempt to obtain free advertising into that "deeply troubling" category, if only because I can't tell the name, location, time, or

cost of your show, so if this was supposed to be advertising, it won't be very effective. Let's all try to do better next time: in the next edition of Ask the Ethicist!



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Recent Enforcement Cases

Prohibited Post-Employment Appearances. In July 2019, a New York City Department of Education (“DOE”) attorney left DOE to work for a private law firm. Shortly after his departure from City service, the former DOE attorney was personally advised by the DOE ethics liaison that the City’s conflicts of interest law prohibited him from communicating with DOE for one year after departure from City service. Several months later, while he was still within his first post-employment year, the former DOE attorney represented a client of his private law firm at a three-day hearing against DOE concerning a matter that had been pending at DOE while he worked there. By doing so, the former DOE attorney violated City Charter § 2604(d)(2). The Board issued an Order, after a full hearing before an Administrative Law Judge at the New York City Office of Administrative Trials and Hearings (“OATH”), imposing a \$6,000 fine – the amount recommended by the OATH Administrative Law Judge – on the former DOE attorney.

Superior-Subordinate Financial Relationship. In 2017, a Payroll Secretary asked an Assistant Principal, who also had a real estate company, if he could perform work for the company under the Assistant Principal’s real estate license. The Assistant Principal agreed. In February 2020, the Assistant Principal was promoted to Principal, in which role he supervised the Payroll Secretary. In November 2020, the Principal paid the Payroll Secretary a \$10,000 commission for selling a house. City Charter § 2604(b)(14) prohibits public servants from entering into financial relationships with their superiors or subordinates. In a joint settlement with the Board and DOE, the Principal agreed to pay a \$1,500 fine to the Board, and the Payroll Secretary agreed to pay a \$1,000 fine to the Board.

Misuse of City Position. An Assistant Principal asked a subordinate teacher to co-sign a college loan for the Assistant Principal’s daughter. When the teacher did not agree to do so, the Assistant Principal sent a text message to the teacher “begging” her to cosign the loan. The teacher again declined. By ask-

ing a subordinate to co-sign a loan, the Assistant Principal attempted to use his City position for personal gain in violation of City Charter § 2604(b)(3). In a joint settlement with the Board and DOE, the Assistant Principal agreed to pay a \$1,250 fine to the Board.

Prohibited Ownership Interest; Prohibited Appearances. A School Psychologist owned and operated three child daycare centers that received hundreds of thousands of dollars in voucher payments from the New York City Administration for Children’s Services (“ACS”). The School Psychologist communicated with ACS on hundreds of occasions to obtain these payments. The School Psychologist also communicated with DOE in an attempt to become a 3-K provider. By having an ownership interest in firms doing business with the City, the School Psychologist violated City Charter § 2604(a). By communicating with the City on behalf of these businesses, she violated City Charter § 2604(b)(6). In a joint settlement with the Board and DOE, the School Psychologist agreed to pay a \$9,000 fine to the Board.

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

THE PUBLIC SERVICE PUZZLER

AI has taken over this month’s [Puzzler](#), but we need you, human public servant (or any human really), to correct the mistakes generated by this artificial yet not so intelligent bot. [Submit your corrections here!](#)

Meet last month’s winner **Vincent Rivellese**, Senior Appellate Attorney at the Bronx DA Office who also participates in “grip sports” competitions all over the country.

