

*Ethics lights the way
to good government*

The Ethical Times

A Publication of the New York City Conflicts of Interest Board
Clare Wiseman, Editor



A Tale of Three Vitos *or* Appearances Matter

By
Alex Kipp

How are we supposed to know that a public servant's choices and actions are trustworthy? It's nice to have good intentions, but sometimes appearance problems arise, even with good intentions. Let's look at an example. This is the story of Vito, the City Inspector. Actually it's three stories, dealing with the same set of facts but from three different points of view. This is the Tale of Three Vitos:

Part I – Vito's Very Good Day

Vito is a City veteran with a lot of construction experience. He comes from a family of builders. He prides himself on being able to relate to the companies he deals with. On a site he's inspecting, Vito meets the Jake, the CEO of the company in charge of the job. Jake's company has been in hot water with Vito's agency before. In fact, they just had a "stop-work" order vacated at another site. Knowing this, and because he wants to ease the tension, Vito makes an off-handed joke, saying, "you're in luck. Looks like I forgot my stop-work slips today." Instead of getting a gut laugh, this joke gets Vito a 15-second pause that feels like a lifetime.

During a moment when Jake gets pulled away, Vito overhears Jake talking about a position he needs filled ASAP at his construction company. Vito's brother has a lot of experience and is looking for work. When Jake returns, Vito is in the process of finalizing his inspection paperwork. Vito apologizes, saying "I couldn't help but overhear your conversation. You lookin' for a guy you can depend on to keep you outta trouble?" Jake confirms that he is looking for someone. Vito suggests that Jake consider his brother. Smiling, Vito wraps up the paperwork, finding no violations. Vito starts to leave, but then he worries that maybe Jake got the wrong idea. Out of an abundance of caution, Vito turns around and says, "of course, no pressure, man. I'm just trying to connect a good guy with another good guy..."

Part II – Jake's Very Bad Day

Now let's take Jake's perspective. It's been a rough morning. Jake's been sweating bullets, thinking about the inspection coming up. The last stop-work order cost him quite a bit and he can't afford another one. Vito, the construction inspector shows up, trying to be chummy. This makes Jake even more nervous. What's Vito so happy about? Then Vito **mentions** the stop-work order! Is Vito bullying him?

Jake gets a call that takes him away from Vito for a sec. The person Jake wanted to hire has declined the offer. It's back to square one. When Jake goes back to Vito, he sees him finishing up the inspection. Then Vito mentions that he was listening to Jake's conversation, which is pretty rude. Holding the inspection book in one hand, Vito suggests that Jake hire Vito's brother, as a way to "keep the company outta trouble." Vito mentions that he didn't find any violations. Is this supposed to imply that somehow the inspection and the job opening are related? Then, on the way out, Vito says, with this uncomfortable smile on his face, "no pressure, man! I'm just looking to connect two good guys!" Does Vito mean what he's saying or the opposite?

Jake isn't sure, but he can't afford another stop-work order. Maybe hiring Vito's brother will keep him on Vito's (and the City's) good side. Jake decides to follow up with Vito to bring his brother in for an interview.

Part III – High Anxiety

Now, just imagine you're walking around in the building after it's been finished by Jake's company. You find an old lamp in the building. It needs a shine. When you rub it, a genie pops out. The genie offers you one wish. (Apparently, the whole "3 wishes" idea was fake news...) Because you have an acute fear of walking in buildings with construction problems, you ask the genie to show the moment when the building passed inspection. The genie thinks this is a dumb wish, but keeps it to himself, because genies don't editorialize. So without argument, the genie whisks you back to that moment between Jake and Vito. You see a nervous Jake, the contractor. You see the socially awkward Vito, trying to

be chummy. You see Vito inspecting Jake's site while trying to set up an interview for his brother. And you see Jake willingly ascent. What's your perception of these two likely to be?

If you only had one more wish, you could find out what their true intentions were. But the genie doesn't budge, and, after you are transported back to the present, you just can't quite shake the feeling that the integrity of the inspection might have been compromised.

That question of integrity is the one that the City's conflicts of interest law is meant to prevent. It does so with two core principles:

First: we, as public servants, can't misuse our City position or City resources to benefit ourselves or those associated with us (like close family members or people/entities with whom we have a financial relationship). You'll see violations of this core principle in the "Recent Enforcement Cases" part of this newsletter; for example, the recent case of the ACS worker running her private business on City time, or the DOE employee who misused a DOE credit card to buy himself candy, clothes, and a Kindle.

Second: as public servants we also need to refrain from taking official actions that might create the appearance that we've misused our City position to advantage ourselves or associates. That means refraining from taking ANY official action that benefits ourselves or associates, even if our intentions are as pure as Saskatchewan snow. Why? Because, even with the best of intentions, if we act in a public capacity on something that affects our personal bottom line, how is the public going to know where our loyalties are? Similarly, if we engage in private dealings with entities we're supposed to regulate

for our City agencies, the public we serve is likely to have the same questions about our loyalties.

These two core principles put Vito's duty to render an unbiased City inspection first and above any interest he might have in his brother's employment. The principles keep Jake confident that avoiding stop-work orders is really about having a safe site and not who he hires. They keep you confident in the safety of the building, allowing you to spend your wish on something else (world peace, maybe?). And they keep Vito from looking like a clumsy bully.

And if this article raises conflicts of interest questions for you, call the Board and ask to speak with the Attorney of the Day. Confidential, free legal advice is available 9am-5pm, Monday through Friday, at 212-442-1400.

Alex Kipp is Director of Training & Education of the New York City Conflicts of Interest Board.

Recent Advice Opinions

► Social Media Accounts:

Advisory Opinion No. 2017-1 advises that public servants may not use official City social media accounts for political purposes, regardless of whether they do so on City time or whether they use City resources; that public servants may not, on City time or using City resources, operate social media accounts registered and operated on behalf of a campaign for elective office; that subordinate public servants may not manage, or create content for, their superior's personal social media accounts; and that public servants who reference their City positions on personal social

media accounts may not imply that they are speaking on behalf of the City or are invoking the authority of their City positions.

Recent Enforcement Cases

► A Department of Environmental Protection ("DEP") Sewage Treatment Worker admitted that, over the course of 22 months, he stole 11,328 pounds of metal worth approximately \$13,700 from DEP. For this misuse of City resources, he agreed to: (1) resign his DEP employment; (2) accept DEP's prior imposition of a 65-day unpaid suspension valued at approximately \$15,900; and (3) pay \$13,700 in restitution to DEP.

► A New York City Department of Education ("DOE") Associate Educational Analyst used another DOE employee's procurement card to purchase \$554 worth of items for personal use, including clothing, a Kindle, and candy. In the resulting three-way settlement with the Board and DOE, DOE sought termination but agreed instead to accept the Associate Educational Analyst's irrevocable resignation. The Board accepted the resignation as sufficient penalty for the Chapter 68 violations he committed.

► A Department of Health and Mental Hygiene ("DOHMH") Public Health Advisor agreed to serve a six-workday suspension, valued at approximately \$936, and pay a \$300 fine to the Board for twice using a DOHMH vehicle to take personal trips to the Green Acres Mall in Nassau County. Both trips occurred during hours when the Public Health Advisor was required to be working for DOHMH.

► An Administration for Children's Services ("ACS") Juvenile Counselor admitted that she misused her ACS position and ACS

resources when, following an automobile accident, she identified herself to the other driver as an ACS employee, pointed to her official ACS uniform, and displayed her ACS-issued badge/identification card, while asking the other driver not to call the police. For this misconduct, ACS imposed a suspension of 15 calendar days without pay, valued at approximately \$2,019. The Board accepted the suspension as sufficient penalty for the Chapter 68 violations committed.

► A n ACS Child Protective Specialist Supervisor admitted that she: (1) misused her ACS email and computer to conduct work for the private business she owns; (2) misused ACS time by conducting work for the private business at times when she was required to work for ACS; and (3) misused her ACS position by attempting to sell event tickets and products such as makeup and jewelry to her subordinates.

For this misconduct and other disciplinary charges unrelated to Chapter 68, ACS levied an eight-workday suspension, valued at approximately \$2,466. The Board accepted the suspension as sufficient penalty for the Chapter 68 violations committed.

► Two Department of Sanitation (“DSNY”) employees admitted they misused their City positions by receiving loans from a subordinate DSNY Clerical Associate. The respondents also admitted that, in creating the loan arrangement, they had both entered into prohibited financial relationships with the subordinate. (All loans were repaid.)

The Director of DSNY’s Work Experience Program forfeited five days of annual leave to DSNY, valued at approximately \$1,963, and paid a \$250 fine to the Board for receiving two loans totaling \$3,000.

The Assistant Director of DSNY’s Work Experience Program forfeited five days of annual leave to DSNY, valued at approximately \$1,371, and paid a \$250 fine to the Board, for receiving \$2,500 in loans.

► A DOE School Aide admitted that, on multiple occasions, over the course of several years, she misused her DOE position to solicit and receive loans of \$20 or less from the parent of a student she supervised. The Board, after balancing a number of factors, including penalties imposed in similar cases, the School Aide’s limited position of authority within the DOE, and that she eventually repaid the loans, determined the appropriate penalty to be a fine of \$50.

► In 2010, a now former New York City Police Department (“NYPD”) Traffic Enforcement Agent IV sought advice from the Board regarding whether he could retain ownership of his private business, Junior’s Police Equipment, Inc. (“Junior’s”), if he accepted a position with the NYPD. The Board informed him that he could but cautioned him on two crucial points: in order to avoid violations of the conflicts of interest law, he could not use City time, City equipment, or his City position for Junior’s, nor could he represent Junior’s before any City agency, including the NYPD.

The former NYPD Traffic Enforcement Agent has since admitted to multiple, egregious violations of the City’s conflicts of interest law, primarily relating to his work for Junior’s:

He made **prohibited appearances** before the NYPD on behalf of his private business to become an NYPD-authorized uniform dealer, and also to sell items with the NYPD logo and arranging with the commanding officer at the NYPD

Traffic Enforcement Recruit Academy to sell uniforms at the Academy. In yet another prohibited appearance violation, the Traffic Enforcement Agent then made a sales pitch at the Academy to a captive group of on-duty recruits. The pitch netted Junior’s \$32,781 in uniform and equipment orders and \$3,704.85 in deposits.

He **misused City time** by, over a three-month period, working for his private business at times when he was supposed to be working for the NYPD; **misused a NYPD vehicle** for over thirteen months to run his private business, and for other personal, non-City purposes, such as commuting daily, and giving rides to friends. He **misused NYPD gasoline** by, over the course of almost 60 weeks, filling up his NYPD vehicle (free of charge) at an NYPD garage, approximately twice per week, although all or most of his vehicle use related to Junior’s business, commuting, and other personal activities. He **misused an NYPD E-Z Pass** to pay \$8,827.93 in tolls related to Junior’s business and other personal and unauthorized purposes, such as commuting daily, over the course of 13 months; **misused an NYPD logo** on Junior’s business cards. And, he **misused police sirens and lights** in 26 non-emergency situations in order to bypass traffic while conducting business for Junior’s, commuting, and engaging in personal activities.

The Board levied a \$75,000 penalty, given the egregious nature of the violations despite the Board’s prior warnings. However, based on the former Traffic Enforcement Agent’s documented showing of financial hardship – including his resignation from the NYPD due to his infractions; revocation of the Junior’s uniform dealer authorization, sus-



pension of its gun dealer license, and the resulting closure of Junior's; the Traffic Enforcement Agent's lack of new employment or other income; his lack of liquid assets; and his outstanding debts – the Board agreed to reduce the fine to be paid from \$75,000 to \$5,000.

► A Financial Information Services Agency-New York City Office of Payroll Administration ("FISA") Deputy Executive Director paid a \$2,500 fine to the Board for helping her daughter obtain a position with a City vendor that she interacted with in her City position. Specifically, during one meeting with the City vendor, the vendor's CEO mentioned that he was looking to hire a recent college graduate for a specific project. The First Deputy Executive Director replied by suggesting her daughter as a candidate. When the First Deputy Director's daughter applied for the job, she used her mother's name. While she did not receive the job originally mentioned by the CEO, the daughter was hired in another position for which no other candidates were interviewed. The City's conflicts of interest law prohibits public servants from using their City position to help their children, other close relatives, or financial associates obtain employment.



[Click to Follow Us On Twitter!](#)

*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 Gavin Kendall, at
kendall@coib.nyc.gov*

**The New York City
Conflicts of Interest Board
2 Lafayette Street, Suite 1010
NYC 10007**

**Phone: 212-442-1400
Fax: 212-437-0705
www.nyc.gov/ethics**

***A searchable index of all the COIB
Enforcement Dispositions and Ad-
visory Opinions is available courte-
sy of New York Law School here:***

<http://www.nyls.edu/cityadmin/>

