

the Ethical Times

Who's The Boss? ...The Public Trust, That's Who!

By Roy Koshy

It's a nice sunny afternoon, you're walking down a New York City street, perhaps listening to "Sunny Afternoon" by the Kinks on your ear pods, and you smell the savory scent of home-baked empanadas. You enter a small empanada café from whence the scent came, and see two friendly smiling employees who say, "Welcome to The Empanada House, the best empanadas in New York City. What can I get you?" You, a fan of harmony as well as delicious baked treats, order a savory chicharron empanada. Employee #2 walks back to the kitchen as Employee #1 happily puts in your order. You then decide that you'd also like something sweet, so you add the caramel empanada to your order. Employee #1 yells to Employee #2, "One caramel in addition to the chicharron." Employee #2 comes back to the counter and tells Employee #1, "We're out of caramel." Employee #1 admonishes his colleague, "Dang it! I told you to put in an order before Tuesday!" Employee #2 retorts, "Well excuse me but I was busy with investor meetings, putting out YOUR fires!" Employee #1 snaps, "Hey! You don't talk to me like that, I'm your BOSS!" To which Employee #2 snaps back, "Oh no, not around here you're not! This empanada business was MY idea and I LET you be a part of it!" You sneak back outdoors into your nice sunny afternoon as these two distressed pastry purveyors bicker. Later on, you see a COIB

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announcement in your email inbox describing an enforcement case involving two public servants who co-own an empanada café while one of them was supervising the other at their City agency. (You receive this email because you are an avid fan of all things COIB and subscribe to our email lists, which is also why you are reading this newsletter.)



The conflicts of interest law prohibits a superior and subordinate in City government from entering into any kind of business or financial relationship with each other. A superior is someone who can affect the terms and conditions of one's employment. So why does the law prohibit this particular type of relationship, as opposed to a financial relationship with a co-worker of the same rank? Quite simply, the inherent power dynamic between a boss and their subordinate coupled with an outside financial obligation to

one another will inevitably cause workplace problems, even if only from an optics standpoint.

Let's revisit the Empanada House (for educational purposes only, because the drama at that place doesn't make the empanadas seem appetizing). Sure, these two public servants are running a business off-the-clock and off-site, so what's the problem if they're not misusing City time, City resources, or their City positions? Let's say that the City superior is offering a promotion to one of his City subordinates, and he offers the promotion to the subordinate who happens to be his business partner at the café. Did this employee really earn this promotion, or is the City superior using his City power to make sure their shared business venture doesn't have financial stress during the slow empanada season? We won't know for sure. This financial relationship makes us question the City superior's ability to carry out their su-

perisory duties in every aspect, from awarding promotions to completing evaluations to assigning work.

In fact, any financial relationship between a City superior and subordinate would pose this same problem, including (but not limited to) renting or purchasing property from each other, serving as an attorney or paid representative for one another, or being roommates. What if any of the aforementioned financial relationships go bad? Perhaps Employee #2 is sick of how Employee #1 is managing the books the café and retaliates through his authority at their City agency. Or a subordinate sold their supervisor a lemon of a car, and now the supervisor is determined to sour that employee's life in City government. Even if the supervisor is not intentionally spiteful, the appearance of every decision will be called into question. Much like every other aspect of the conflicts of interest law, if a public serv-

Financial Relationships

IN THE WORKPLACE

City employees may not enter into a **business or financial relationship** with anyone who is their **City superior or subordinate**.

Business or Financial Relationships Include:

- Loans
- Sale of goods and services
- Business Ventures
- Purchases of property
- Rental agreements
- Lottery pools
- Serving as an attorney, broker or representative

A Superior is Anyone with the Power to:

- Evaluate job performance
- Assign work
- Approve leave requests
- Approve overtime



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ant's official actions appear to be motivated by a private financial interest, public trust deteriorates. In this case, agency morale can deteriorate as well.

Financial relationships vary in scope and type, and not all are as big as co-owning a business. In fact, the Board Rules have a \$25.00 limit on any loan or transaction between a superior and subordinate – this would cover your boss selling a lipstick from Avon or you loaning your subordinate some money to buy lunch. A shared activity related to the public servants' City job such as a carpool or a coffee club is not deemed a financial relationship under the conflicts of interest law, so long as the expenses and benefits are shared equally by all parties.

In previous issues, we've addressed the prohibitions on superiors accepting valuable gifts from subordinates or soliciting subordinates to partake in political activities (but you read those already, you ethics psycho). What sets this provision of the law apart is that the superior and subordinate are both responsible for this violation. Even though there is indeed a power differential between the boss and employee, a financial relationship requires two parties. Of course, if it is clear that the person in power forced the financial obligation onto their City subordinate, the superior would not only be responsible for violating the conflicts of interest law's prohibition on superior-subordinate financial relationship, but the superior would also be dinged for using their City position to obtain a personal financial gain. And, if that financial relationship is an ongoing one, like those two City employees at the Empanada House, the superior could not continue supervising his co-owning subordinate without violating the conflicts of interest law. They'd have to sell the business or put in for a transfer or reassignment.



Thank you for reading. Now go outside, get a snack, and keep good government delicious!

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THE PUBLIC SERVICE PUZZLER



This month's [Puzzler](#) contains ancient tablets holding knowledge relevant to public servants. Decode the message and [send your answers here!](#)

Recent Enforcement Cases

Misuse of City Time. The Executive Director of Forensic Investigations at the New York City Office of Chief Medical Examiner ("OCME") spoke on the phone for more than two hours and exchanged 75 text messages with two clients of her real estate business while she was being paid to perform work for OCME. The Executive Director obtained permission from OCME to do real estate work based in part on her promise that she would perform that work only on her personal time. The Executive Director paid a \$1,750 fine to the Board.

Misuse of City Time & City Resources. A Sanitation Worker at the New York City Department of Sanitation ("DSNY") used DSNY email accounts to send and receive four emails in which he sent himself invoices and advertisements for his mozzarella business. Two of these emails were sent at times the Sanitation Worker was required to be performing work for DSNY. In resolving this matter with a public warning letter instead of seeking a fine, the Board considered the minimal amount of City time and City resources used by the Sanitation Worker.

Recent Enforcement Cases

Misuse of City Position. A Family Leadership Coordinator for the New York City Department of Education (“DOE”) put her daughter on a list of vendors providing workshops to parents at a DOE event. As a result, a \$1,600 purchase order was created to pay the daughter for her services. After a DOE colleague informed the Family Leadership Coordinator of the conflict of interest in her conduct, the Family Leadership Coordinator advised DOE that her daughter was no longer available to provide the workshop. The daughter did not provide a workshop and did not receive any payment from DOE. In a three-way settlement with the Board and DOE, the Family Leadership Coordinator agreed to pay a \$1,500 fine to the Board.

Misuse of City Position. A Custodian III for the New York City Department of Citywide Administrative Services (“DCAS”) received approximately \$10,000 in loans from three of her subordinates. She requested an additional \$5,000 loan from one of those subordinates, but the subordinate declined to provide it. In a three-way settlement with the Board and DCAS, the Custodian III agreed to be demoted to Custodian I, which resulted in a \$13,039 reduction in her annual salary. The Board accepted this DCAS-imposed penalty as sufficient and imposed no additional fine.

Misuse of City Position. The Chair of Bronx Community Board 6 signed a nomination form for her grandchild, who was living with her, to receive a Youth Leadership Award, awarded annually by the New York Yankees to high school students in the Bronx. As a result, the grandchild received the award and accompanying \$750 stipend. The Chair agreed to pay a \$750 fine to the Board.

Prohibited Post-Employment Communications. A Plumbing Inspector for the New York City Department of Buildings (“DOB”) left DOB and began communicating with DOB employees on behalf of a private plumbing business he co-owns. Within one year of his departure from City service, the former Plumbing Inspector communicated with DOB by: submitting five requests for fi-

nal inspections of plumbing work performed by his company; being present when these inspections were conducted by DOB Plumbing Inspectors; and exchanging a series of emails with a DOB Plumbing Supervisor regarding DOB’s objections to plumbing work his company performed in an attempt to resolve those objections. The former Plumbing Inspector agreed to pay a \$3,500 fine to the Board.

Misuse of Confidential Information & Misuse of City Position. An Eligibility Specialist II for the New York City Human Resources Administration (“HRA”) accessed the Welfare Management System to view her own records and the records of two close relatives. One of these close relatives (the “Tenant”) was receiving rental assistance from HRA and renting living space from the Eligibility Specialist, resulting in the Eligibility Specialist receiving rental benefits from HRA. The Eligibility Specialist also used HRA’s Paperless Office System to view the confidential records of herself and the Tenant and to take actions on the Tenant’s case. In a three-way settlement with the Board and HRA, the Eligibility Specialist agreed to resign from HRA. The Board accepted this HRA-imposed penalty as sufficient and imposed no additional fine.

Misuse of City Position & Superior-Subordinate Financial Relationship. In 2021, a Captain at the New York City Department of Correction (“DOC”) had a subordinate Correction Officer co-sign a loan to enable the Captain to purchase a 2017 Lexus ES. The Correction Officer remained a co-signer on the loan until 2023 when the Captain paid the outstanding balance. The Captain agreed to pay a \$2,500 fine to the Board.

Misuse of City Position. From 2019 to 2022, a Captain for the New York City Department of Correction (“DOC”) occasionally supervised her cohabiting daughter, who worked as a Correction Officer at the same DOC facility she did; this supervision ended when the daughter transferred to a different DOC facility. The Captain agreed to pay a \$1,000 fine to the Board. In determining the appropriate penalty for her conduct, the

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Board considered that the Captain took steps that reduced—but did not eliminate—her supervision of her daughter while they were at the same facility.

Soliciting a Violation of Chapter 68 & Misuse of City Resources. A Financial Analyst at the New York City Office of Technology and Innovation (“OTI”) asked an employee of the New York City Department of Housing Preservation and Development (“HPD”), where the Financial Analyst previously worked, to violate Chapter 68 by providing him with confidential HPD procurement orders soliciting bids from vendors. The HPD employee did not provide the requested documents. The Financial Analyst also used his OTI and HPD email accounts to send and receive a total of 30 emails related to a restaurant he owned. The Financial Analyst agreed to pay a \$3,600 fine to the Board.

Prohibited Post-Employment Appearances. An Investment Manager in the Bureau of Asset Management (“BAM”) at the New York City Comptroller’s Office left the Comptroller’s Office to work at a private asset management firm. Within one year of his departure from City service, the former Investment Manager contacted two Senior Investment Officers at BAM with whom he had worked to ask for an institutional investor reference for a fund manager on behalf of his new employer. The Senior Investment Officers provided the institutional investment reference to the former Investment Manager at a teleconference. The former Investment Manager agreed to pay a \$1,750 fine to the Board.

Prohibited Appearances. From 2011 to 2023, a Senior Stationary Engineer at the New York City Department of Environmental Protection (“DEP”) filed 183 electrical applications with the New York City Department of Buildings as part of his private electrical business. The Senior Stationary Engineer obtained a waiver from the Board in 2023 that permits him to make these otherwise-prohibited communications going forward. The Senior Stationary Engineer agreed to pay a \$1,000 fine to the Board.

Misuse of City Time. On seven days in August and September 2021, a paramedic at the New York City Fire Department (“FDNY”) worked for a private senior care company for a total of 49 hours when he was required to be working for FDNY. The now-former paramedic paid a \$3,500 fine to the Board.

Misuse of City Time. On 19 days between December 2020 and June 2021, a Parent Liaison for the New York City Department of Education (“DOE”) worked for Amazon for a total of approximately 61 hours when he was required to be working for DOE. DOE terminated the Parent Liaison for this conduct. To resolve the Board’s enforcement action, the former Parent Liaison agreed to a public disposition admitting his violations and the penalty imposed by DOE. The Board determined that the former Parent Liaison’s termination was sufficient to address his conduct and imposed no additional penalty.

Misuse of City Time. A DOE teacher provided two music lessons for her private music instruction business at times when she was required to be working for DOE. In a joint settlement with the Board and DOE, the teacher agreed to pay a \$2,000 fine to DOE.

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



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