

*Ethics lights the way
to good government*

The Ethical Times

A Publication of the New York City Conflicts of Interest Board

Alex Kipp, Editor



Misuse of City Resources

By
Dinorah Nunez

Question: *My daughter goes to school near my office. I have a very busy schedule so it is often difficult for me to pick her up from school on time. If I have a late meeting, is it okay if my assistant picks my daughter up from school and brings her to my office?*

Answer: No. You may not use City resources, including City personnel, for any non-City purpose. Having your assistant pick your daughter up from school or perform other personal errands for you is a misuse of City personnel. You would also be using your position to obtain a personal benefit by having your subordinate do unpaid work for you that you would otherwise have to pay someone to do, like a chauffeur, a babysitter, or a tutor. In a joint settlement with the Board and the Department of Education, an Interim Acting Principal paid a \$900 fine for arranging with her subordinate to transport the Principal's children from school on City time. The subordinate used her own vehicle, and the fine was twice the amount the Acting Principal saved on the van service she would have hired for the five months she used the subordinate to transport her children.

Question: *I understand that I can't use City resources for any non-City purpose. But does that mean that I can't use my office telephone to make a doctor's appointment?*

Answer: No. While the Board Rules states that "it shall be a violation of City Charter § 2604(b)(2) for any public servant to use City letterhead, personnel, equipment, resources, or supplies for any non-City purpose," certain limited personal use is permitted. In fact, the Department of Investigation, the Conflicts of Interest Board, and the Law Department have adopted the Policy on Limited Personal Use of City Office and Technology Resources, also known as the Acceptable Use Policy ("AUP"). The AUP permits City employees to use City technology for personal use in certain limited circumstances if the use is not prohibited pursuant to this or another applicable agency policy. Thus, unless prohibited by your agency, the AUP permits you to use your City telephone to call your doctor's office to make an appointment or use your City computer to check your personal e-mail account. Your personal use of City resources should only take a minimal amount of your time and involve a minimal additional expense to the City. However, you may **never** use City resources for a private business or for political purposes. Also remember that you do not have a right of privacy when you are using the City's office and technology resources. Many City agencies have adopted the AUP as part of their agency rules and regulations. You may want to ask your agency's ethics officer or general counsel if your agency has adopted the AUP. You can find the AUP on COIB's website: <http://www.nyc.gov/ethics>.

Question: *I recently started my own investigation agency. I work on weekends and in the evenings during the week. My agency allows me to work in this type of moonlighting position. Is it okay for me to have my clients call me on my City telephone if they need to reach me during the day? Can I send out a quick fax to a client's local number from a City fax machine so that I don't have to leave my office in the middle of the day? Can my client pick up the documents instead from my office?*

Answer: No. You may not use City technology, resources, or time to further a private compensated interest, such as your private investigation agency. The AUP does not allow **any** use of City technology for any paid position. If a City telephone or fax machine are used for work concerning your private investigation agency, you will be violating the conflicts of interest law, whether you are sending or receiving the call or fax. The Board fined an Associate Staff Analyst at the Department of Citywide Administrative Services \$1,750 for, during times he was supposed to be performing work for the City, using a DCAS fax machine, his DCAS computer, and his DCAS e-mail account to perform work related to his two private businesses. While you may do work concerning your private business during your lunch hour, you still may not use City resources, including your City office. For example, you may never hold a meeting with a private client concerning your private business or outside job in your office or agency conference room during your lunch hour or even after work hours. However, you can meet your client during your lunch hour in front of your office building to pick up documents. You may also contact your private client during your lunch hour using your personal cellular telephone.

Question: *I am running for president of the local chapter of the Tea Party. May I use my City e-mail account to e-mail City employees concerning my candidacy?*

Answer: No. The AUP does not allow **any** use of City technology for any political purpose. If you use your City computer or City telephone for political activities, you will be violating the conflicts of interest law. For example, in a joint settlement with the Board and DOE, a DOE Parent Coordinator paid a \$1,500 fine for sending an e-mail from her DOE e-mail address to the parents of the students at her school, which e-mail was seeking volunteers to hand out flyers on behalf of the campaign of a State Senator.

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Recent Enforcement Cases

▶ The Board fined the former DOT Deputy Chief Engineer for the Roadway Bridges Bureau \$1,000 for communicating with DOT on behalf of his new employer within one year of his resignation from DOT.

▶ The Board and DOHMH concluded a three-way settlement with an Assistant Public Health Advisor in the DOHMH Bureau of STD Prevention and Control who, at the request of her close friend, accessed the confidential patient records of her friend's daughter, who had recently been seen at a DOHMH STD clinic, and then disclosed those records to her friend. For this misconduct, the Assistant Public Health Advisor agreed to (a) be suspended for 19 work days, valued at \$2,371; (b) resign from DOHMH effective July 15, 2010; and (c) not seek future employment with DOHMH ever or with the City for five years from the date of the disposition.

▶ The Board and DOHMH concluded a three-way settlement with a Principal Administrative Associate in the DOHMH Bureau of Vital Statistics who paid a \$2,500 fine to DOHMH for, at times when she was supposed to be doing work for DOHMH, using a City computer and her DOHMH e-mail account to sell Avon products, including to several of her DOHMH subordinates.

▶ The Board and NYCHA concluded a three-way settlement with a NYCHA Supervisor of Plasterers who was fined \$1,750 by the Board for misusing his City position to obtain a personal benefit for himself. The Supervisor acknowledged that he obtained the unpaid assistance of a subordinate who drove to the Supervisor's home, measured the kitchen floor, and accompanied the Supervisor's son to purchase tile, which the subordinate helped to install in the Supervisor's kitchen.

▶ The Board and DEP concluded a three-way settlement with a DEP Sewage Treatment Worker who, in January 2010, took a heating coil and PVC piping from the grounds of DEP's Red Hook Sewage Treatment Plant. For this misconduct, the Sewage Treatment Worker agreed to resign from DEP and to not seek employment with DEP ever or with the City for five years. The Sewage Treatment Worker also paid restitution to the City in the amount of \$2,932.88, which was the cost to the City of the heating coil he took.

▶ In a three-way disposition with the Board and DOHMH, a Caseworker in the DOHMH Bureau of Correctional Health Services agreed to pay fine equivalent to seven days' pay, valued at \$1,083, to DOHMH for using her City position to benefit her sister by facilitating the temporary release of her sister's incarcerated son.

▶ The Board and DHS concluded a three-way settlement with a DHS Special Officer who was suspended by DHS for thirty days without pay, which has the approximate value of \$4,884, for soliciting and obtaining personal loans from several of his subordinates.

▶ The Board fined a Clerical Associate at DCAS \$1,750 for, from 2004 to 2009, using her DCAS e-mail account, DCAS computer, DCAS telephone, and a DCAS fax machine to manage her brother's professional singing career.

▶ The Board fined a former Administrative Engineer at DOB \$2,000 for appearing before DOB within one year of his resignation from DOB.

▶ The Board concluded a settlement with a Parent Coordinator for DOE for conflicts of interest law violations related to her misuse of school funds to buy ice cream and uniform emblems to sell as unauthorized school fundraisers. The Parent Coordinator admitted that she failed to remit any money she collected to the school's treasury and could account for only some of the money she had collected. The Parent Coordinator previously accepted a 75-calendar-day suspension from DOE in settling a matter with DOE concerning the same conduct. The Board took into consideration this suspension without pay, which has an approximate value of \$7,515 to the Parent Coordinator, in deciding not to impose an additional fine.

▶ The Board concluded a settlement with a Secretary for HRA who repeatedly accessed confidential City information to advance her private interest in knowing where her grandchildren stayed on the weekends. HRA had previously brought related disciplinary charges against the Secretary. In settlement of those charges, the Secretary accepted a ten-day pay fine, valued at approximately \$1,357. The Board took the HRA penalty into consideration in deciding not to impose an additional fine.

▶ The Board fined a former Administrative Law Judge in the DOF Parking Violations Bureau of the New York City Department of Finance \$2,500 for accepting a prohibited gratuity and for misusing his City position for personal advantage, both after adjudicating parking tickets.

▶ The Board fined a former Assistant Director of Manhattan Construction for the Department of Parks and Recreation \$2,500 for working on the same particular matter in the private sector that he had previously worked on personally and substantially for the City.

▶ The Board issued a public warning letter to a DOE Clerical Associate who, between September 2007 and January 2009, wrote six otherwise accurate employment verification letters on DOE letterhead, in which

letters she forged the signature of a DOE Timekeeper, in order to continue receiving benefits from a not-for-profit organization.

▶ The Board fined a former Public Health Sanitarian for the Bureau of Food Safety and Community Sanitation at DOHMH \$950 for appearing before DOHMH within one year of her resignation from DOHMH.

▶ The Board and the Parks Department concluded a three-way settlement with the Parks Chief of Design of Capital Projects who paid an \$800 fine to the Board and full restitution to Parks of \$801.95 for using his City-issued E-ZPass for unauthorized personal travel.

▶ In joint settlements with DOHMH - OCME, the Board fined two Criminalists in the OCME Department of Forensic Biology \$1,500 each for using City resources to work on and promote a textbook they wrote.

▶ The Board issued a public warning letter to a DCAS Procurement Analyst for soliciting and accepting contributions from 16 different food vendors with which DCAS contracted on a regular basis. While not pursuing further enforcement action, the Board took the opportunity of this public warning letter to remind public servants that Chapter 68 prohibits public servants from soliciting or accepting contributions for personal workplace events, such as a retirement party, from vendors who contract with their City agencies. Vendors may be invited to these personal workplace events *only if* they pay no more for their attendance than their share of the cost of the event. □

*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, at

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