

*Ethics lights the
way to good gov-
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The Ethical Times

A Publication of the New York City Conflicts of Interest Board

Quinn Haisley, Editor



Chapter 68 and Private Employment

By Jeff Tremblay

Question: *I'm an employee at a New York City agency, and I'm thinking of supplementing my income with private work for a for-profit company. What restrictions do the City's ethics laws place on outside employment?*

Answer: A City employee must navigate a number of provisions of the City's ethics law when he or she works a second job in the private sector. Some of the restrictions on outside employment are intuitive. Others are less so.

The restrictions begin during the job-hunting process. A City employee is prohibited from soliciting, negotiating for, or accepting a position with any person or firm that is involved in a particular matter with the City while the public servant is actively considering, directly concerned, or personally participating in that particular matter on behalf of the City. This restriction helps to ensure that companies with business before the City do not receive special treatment in exchange for providing a City employee with a job. Because of the danger of inappropriate influence, this rule is broadly construed; even sending a resume out to a company that has a matter on which you are working could be considered a violation of the law.

In conducting a job search, a City employee should also keep in mind that he or she is prohibited from working for certain companies that have "business dealings" with the City. A full-time City employee is prohibited from having a position with a company doing business with *any* City agency. See City Charter § 2604(a)(1)(b). If the City employee only works part-time, he or she is prohibited only from working for a company that has business dealings with *his or her own* City agency. See City Charter § 2604(a)(1)(a). Chapter 68 provides that City employees who knew or should have known of the City business dealings are responsible under the law. See City Charter § 2604(a)(6).

Once the job hunt is over and a City employee begins working a second job, a number of additional restrictions come into play. Perhaps the most obvious restrictions are that the City employee may not use any City time or resources to perform work for the outside company. The City's Acceptable Use Policy, which allows for a City employee to make incidental

personal use of City time and resources for personal reasons, does not apply to activities that financially benefit the employee. There is no acceptable level of use for personal financial gain, and even minimal uses of City time and resources are prosecuted.

A City employee is also prohibited from using his or her City position to further his or her private interests. As such, a City employee may not use his or her City title in advertisements for the outside company. It also means that a City employee cannot ask his or her subordinates to perform services for, purchase products or services from, or otherwise support the private company.

Additionally, a City employee cannot "appear before" the City on behalf of his or her private employer. A City employee appears before the City any time he or she makes a communication, for compensation, other than those involving what the City Charter calls "ministerial matters." The level of "communication" necessary for such an appearance is minimal; even silently attending a meeting where City employees are present has been deemed an appearance before the City. Similarly, the ministerial matter exception, which allows for a City employee to make appearances related to an administrative act that does not involve substantial personal discretion, is narrow. The threshold used by the Board to determine whether there exists substantial personal discretion is low, so that the request and issuance of some permits has been deemed to be non-ministerial and therefore requesting them would be a prohibited appearance before the City.

Clearly, there are a lot of restrictions that could apply to a public servant who wishes to moonlight for a private company, and not all of them apply to all employees. Given the volume and complexity of these restrictions, the Board suggests that you call to get advice regarding your particular situation before taking a second job. You can call the Board's Attorney of the Day Monday through Friday from 9 a.m. to 5 p.m. at (212)442-1400.

*Jeff Tremblay is an Enforcement Attorney
at the New York City Conflicts of Interest Board*

Recent Enforcement Cases

▶ The Board issued an Order fining a former Community Associate for ACS \$5,000 for accepting \$100 to \$300 on three occasions from her former ACS supervisor in exchange for processing applications for the City's day care subsidy program.

▶ The Board released a settlement it reached with a former Assistant Principal for the DOE who admitted to multiple violations of the conflicts of interest law. First, he accepted a two-night hotel stay and of breakfasts for two from Glen Cove Mansion Hotel and Conference Center, a firm with business dealings with DOE. Second, the former Assistant Principal admitted that he directed four teachers who were his subordinates to complete, unbeknownst to them, examinations for the former Assistant Principal's high-school-aged son in order to enable his son to qualify for a merit-based scholarship to college. Third, the former Assistant Principal admitted that he asked a subordinate teacher to tutor his son on three occasions, for which he did not compensate the teacher. Fourth, the former Assistant Principal admitted that he approached a subordinate teacher about a "real estate opportunity" in Florida and then drove that teacher to his brother's real estate office to discuss that opportunity. The Board imposed a \$12,500 fine; however, after reviewing the former Assistant Principal's documented claim of financial hardship, the Board accepted a reduced fine of \$2,500.

▶ The Board reached a settlement with a DOE teacher who disclosed his school's confidential School Safety Plan online during the course of conducting an April 2013 webinar for the website SimpleK12.com. As a penalty, the teacher agreed to pay a \$1,000 fine.

▶ The Board reached a settlement with a former NYCHA employee who left City service and then consulted with two private firms regarding four contracts for which she was the Project

Administrator while she was employed at NYCHA. The former Project Administrator agreed to pay a \$3,000 fine as penalty for these violations of the City's conflicts of interest law.

▶ The Board and DEP jointly concluded a settlement with an Administrative Project Manager for DEP Reservoir Operations who used an agency E-ZPass to pay for \$775.13 of tolls on his regular commute. As a penalty, the Administrative Project Manager agreed to fully reimburse the agency for the cost of the tolls and to forfeit ten days of annual leave, worth approximately \$4,423.10.

▶ The Board and ACS concluded a settlement with an employee who, in July 2013, while serving as a Child Protective Manager in the Bronx Field Office, learned that his brother's wife was the subject of an ACS investigation and contacted the Child Protective Specialist who was handling that investigation, as well as that Child Protective Specialist's supervisor, to complain about how the investigation was being conducted. For this violation, the ACS employee agreed to pay a \$1,250 fine, split evenly between the Board and ACS.

▶ The Board reached a settlement with a now-former high-level official in the DOE Division of Financial Operations who disclosed confidential information regarding a DOE contract to the contractor, Future Technology Associates, LLC. The former DOE official forwarded, to one of FTA's owners, confidential internal emails regarding the DOE's concerns about FTA and the DOE-FTA contracts without an official reason to do so. As a penalty, the former DOE official agreed to pay a \$1,000 fine—an amount that would have been substantially higher had she not demonstrated financial hardship and suffered the loss of her job, income, and reputation in the aftermath of the investigation that surrounded this matter.

Congratulations! to the winner of the Conflicts of Interest Board's April Public Service Puzzler contest:

Brian Donaghy, an Assistant Director of Data Communications at NYCHA.

You can read Mr. Donaghy's bio and get the details for the May Public Service Puzzler by clicking [here](#).

*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 kipp@coib.nyc.gov*

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

**Phone: 212-442-1400
Fax: 212-442-1407
TDD: 212-442-1443
www.nyc.gov/ethics**

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