

*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 Position

By Dinorah S. Núñez

Question: *I am a supervisor at the New York City Housing Authority. I am currently doing some home improvement work on my home. Several subordinates in my unit who I am also friends with have volunteered to help me. Is it okay for us to meet on the weekend at my house to do some painting?*

Answer: No. You may not use your subordinates to help you do home improvement work on your home or to do any other type of personal work for you, even if you are friends with your subordinates outside of work. Your subordinates cannot help you with your home improvements even during their non-City time, such as after work hours or on the weekend.

The City's Conflicts of Interest Law prohibits a public servant from using or attempting to use his or her City position to obtain a private benefit for himself or herself. By allowing your subordinates to do home improvement work on your home, you would be using your position to obtain a benefit for yourself by having your subordinates do free work for you that you would have to pay someone else to do. This would still be true even if you and your subordinates were friends. While our friends may do favors for us all the time, that aspect of the friendship changes after you and your friend are in a superior/subordinate relationship. By allowing your subordinate who is also your friend to do personal work for you, you create the appearance that your subordinate's personal work for you will influence your evaluations of your subordinate. Also, even if you are friends, the law seeks to protect a subordinate from being unduly pressured into doing personal work for his or her superior. A subordinate may feel that if he or she does not do the personal work for his or her superior, then the superior may retaliate by changing the subordinate's work assignments or giving a poor performance evaluation.

Question: *Would it be better if I paid my subordinates to do the home improvement work on my home?*

Answer: No. The City's Conflicts of Interest Law prohibits a public servant from entering into a financial relationship with another public servant who is a superior or

subordinate. By paying your subordinate to do the home improvement work on your home, you would be entering into a financial relationship with your subordinate. Having a financial relationship with your subordinate creates the appearance that the financial relationship between you and your subordinate will influence the work assignments or evaluations you give to your subordinate.

Here are the rules regarding misuse of one's City position. These rules were created to ensure that a public servant's first duty of loyalty is to the City and not to any private or personal interest of the public servant.

Rule 1. You may not use your City position to obtain a private benefit for yourself or someone with whom you are associated.

The City's Conflicts of Interest Law prohibits a public servant from using his or her position to obtain a benefit for the public servant or someone with whom the public servant is "associated." People associated with a public servant include a parent, spouse, sibling, child, and anyone with whom the public servant has a business or financial relationship. This means that you cannot take part in any matters involving people with whom you are associated, including hiring, recommending, or supervising someone with whom you are associated. This rule applies even if you are recommending the "associate" for a job that isn't with the City of New York. For example, the Board fined a Construction Project Manager for the New York City Department of Design and Construction ("DDC") \$1250 for recommending his sister for a job with a DDC vendor.

Rule 2. You may not use your City position for private gain, including using City resources for a private purpose.

This means, among other things, that you may not use any City resources, including computers, telephones, and City time, to further a private interest, such as your private business. The Board fined the former Chair of the New York City Civil Service Commission ("CCSC") \$15,000 for misusing City re-

sources and personnel to perform tasks related to his private law practice.

Rule 3. You may never disclose confidential City information.

Never disclose confidential information or use it for your own benefit or for the benefit of someone with whom you are associate. What is confidential information? Any information that a member of the general public cannot obtain (such as through the Freedom of Information Law). The Board and the New York City Human Resources Administration (“HRA”) concluded a three-way settlement in which a Job Opportunity Specialist was fined \$500 by the Board, and suspended for 15 work days by HRA, for accessing and disclosing confidential information about his ex-wife to use at child support proceedings in an attempt to reduce the amount of child support he had been ordered to pay. □

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Recent Enforcement Cases

▶The Board and the Department of Education (“DOE”) concluded a 3-way settlement with a DOE Principal who misused his City position to (1) obtain a job for his sister with a DOE vendor and (2) DOE contracts for one of the private tenants of his commercial property. The Principal paid \$3,000 to the Board and \$1,500 in restitution to DOE.

▶The Board fined a Project Manager with the Department of Citywide Administrative Services \$4,500 for having an interest in an investment & management company doing business with the City, appearing before City agencies on behalf of the company, and performing work for the firm on City time and using City resources.

▶The Board issued a public warning letter to an employee of DOE’s Office of

Special Education School Improvement who solicited a DOE vendor to provide free literacy services to his church’s adult literacy program. The Board took no further action, taking into account that, after consulting the DOE Ethics Officer, the employee withdrew the request and did not pursue it further.

▶The Board and DOE concluded 3-way settlements with five former DOE Technology Staff Developers for appearing before DOE on behalf of their new employer within one year of resigning from DOE. The Board and DOE also concluded a separate settlement with one of the Technology Staff Developers who operated a separate firm that did business with DOE while he was still employed by DOE. The five former employees were fined a total of \$12,000.

▶The Board fined two Department of Correction Steamfitters \$3,000 each for moonlighting at a firm doing business with the City, specifically in City parks.

▶The Board fined a Police Department Patrol Supervisor \$1,250 for running his private business on City time, using a City telephone, computer, and paper, and for entering into a financial relationship with his subordinate.

▶The Board and DOE concluded a 3-way settlement with the then-Deputy Director of Budget for DOE Region 2, who used his DOE position to help obtain a principal’s position for his brother. The Board and DOE fined him \$1,250, to be paid to the Board.

▶The Board and HRA concluded a 3-way settlement with an HRA Eligibility Specialist II for accessing and disclosing confidential information about her cousin’s public assistance record. The Board fined her \$1,500, and she was suspended by HRA for 15 days, valued at \$1,952.

▶The Board and HRA concluded a 3-way settlement with an HRA Job Opportunity Specialist for accessing and disclosing confidential information about his ex-wife, an HRA client. The Board fined him \$500, and HRA

suspended him for 15 days, valued at \$2,205.97.

▶The Board fined a Probation Officer with the Department of Probation \$500 for owning & operating a business that subcontracted with firms doing business with the City to provide security services on NYC School Construction Authority sites.

▶The Board issued a public warning letter to an HRA Special Officer who, while on leave from HRA, used his City-issued Blackberry to make several calls from Florida, Nevada, and New Jersey, all without authorization from HRA, and signed telephone reimbursement forms that some of these calls were agency-related when in fact they were not. The Board concluded that no further action was required, in view of the limited number of calls involved. □

*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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