

# ASK THE CITY ETHICIST

## *Volunteering with a Drop of Circumspection*

By  
Alex Kipp

**Question:** *I have worked for a City agency for a number of years in a variety of positions, most recently as a contract officer at HRA. There is a not-for-profit that provides social service programs in my neighborhood. It has invited me to serve on their board in a volunteer capacity. Is there anything I should be careful about?*



**Answer:** Generally, volunteer service for not-for-profits entails fewer restrictions under Chapter 68 of the City Charter, the City's Conflicts of Interest Law, than outside compensated employment. Because there is no compensation involved and because the volunteer work is for a not-for-profit, there is usually thought to be less potential for damaging conflicts of interest to occur. Also, you might say the City likes to encourage volunteerism, so it has to be careful to balance the need for integrity, disclosure, and sunshine, while not making restrictions so overly burdensome, people are discouraged from donating their time to worthy causes that benefit us all.

However, (and you knew there was a however, otherwise why bring it up?) there are a few potential conflicts of interest issues to keep in mind. I'll break them down into a several broad categories and then explain below. The categories are: 1) Crossover between your City job and the Not-for-Profit, 2) Confidential Information, 3) (Mis)use of City Time/Resources

1 – Be careful of any potential nexus between your volunteer work and your City job.

The City grants millions of dollars to various not-for-profits through agency programs and Council discretionary grants. Public servants working with and around those programs in their jobs who choose to volunteer need to be extra careful. A nexus between your City job and your volunteer work should set off a trigger that prompts you to call the Conflicts of Interest Board for legal advice. There are a couple of reasons.

First, as public servants, we have a duty of *undivided loyalty* to our primary employer, the City. In order to preserve that loyalty and the public's confidence in your official integrity, you may not take ANY official action concerning a not-for-profit where you volunteer. You must

*recuse* yourself from the not-for-profit's city matters. This would be true if you volunteer in any capacity, whether as a board member, a carpenter, teacher, accountant, or anything else. Why? You know how bad the funding environment is right now: you certainly don't want a grant program tainted by allegations that one of the grantees got special treatment through the actions of a "person on the inside". This need for recusal would also come into play if, for example, your spouse was employed as the Executive Director of the not-for-profit.

Now if you are serving on the board of the not-for-profit and the not-for-profit is either considering or already has matters before your agency, you **MUST** obtain written permission from your agency head to serve on that board. This allows the agency to check for legitimate conflicts of interest that may occur, in order to make sure that a sense of integrity and fairness is preserved its dealings with various not-for-profits. The permission from your agency is **NOT** required if the not-for-profit has matters before **OTHER** agencies, but not yours.

Note that recusal from City matters for the not-for-profit is *two-sided*, meaning you also may not take any action at the not-for-profit that has anything to do with ANY City agency. If for example, the not-for-profit wanted to submit a grant application to a City agency, not only could you not help prepare the application, you couldn't make calls to City agencies, you couldn't even discuss the project. If you wanted to partake in the not-for-profit's City-related matters, you'd need a waiver from the Conflicts of Interest Board in order to do it, which may or may not be given, according to the facts.

## 2 – Confidential Information

This is pretty basic. Any confidential information we have as City employees cannot be disclosed to anyone who not entitled to know it. That would include the not-for-profit where you volunteer.

## 3 – City Time & Resources

Quite simply put, City time and resources are for official City work. They aren't to be used for private activities.

There is a possibility, however, for a tiny bit of wiggle room here. If your agency determines officially that devoting some time and resources to certain volunteer activities serves a legitimate City purpose, and then Conflicts of Interest Board agrees, then you may use some City time and resources (but not letterhead) for those volunteer activities. If you're interested in knowing more about this, call your agency counsel or the Conflicts of Interest Board.

## 4 – What if the Volunteer Gig Turns into a Paid One?

Once you accept compensation for this activity, that's called a "job," not a volunteer activity. And if your employer (in this case the not-for-profit where you used to volunteer) has

any matters before City agencies (e.g. grants, contracts, etc.), you will need agency permission and a waiver from the Conflicts of Interest Board to have that job.

I hope none of this discourages your volunteer spirit! If it does raise any questions whatsoever, please reach out to the Conflicts of Interest Board for legal advice. Just call 212-442-1400 and ask for the Attorney of the Day.

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