

ASK THE CITY ETHICIST

Back to School

By
Alex Kipp

Fall is upon us, which means the start of the school season once again. It also means back to school for the many public servants who supplement their City income with private work as teachers and adjunct professors. This article focuses on the conflicts of interest issues you should keep in mind should you decide you want to teach on the side.



First, let's assume we're talking about teaching for pay. If you're teaching as a purely volunteer activity, some conflicts issues would apply, including some of the ones we'll talk about here, but the focus would be slightly different and is probably best handled in an article to devoted to volunteer activities.

Now, assuming the teaching job is paid, the first question to ask is, "does my agency require me to disclose any sort of outside employment?" If the answer is "yes" (and it would be "yes" at a lot of agencies), then you'll need to disclose your outside teaching position to your agency, whatever and wherever the position is. It could be teaching basket weaving on the moon and you'd still have to disclose it. (Hard to imagine how basket weaving on the moon presents a conflict with your agency job, except, possibly, the commute.) If you're not sure how or to whom or even whether you are required to disclose outside employment, check with your agency counsel, your personnel officer, or your supervisor.

The next question to ask is, "Does my outside employer have any City business dealings?" If the answer is "yes," then you will need to apply for written permission from your agency head and a waiver from the Conflicts of Interest Board to have this teaching position. Why? The Conflicts of Interest Law's outside employment restrictions were written broadly, making it a violation for ANY full-time City employee to have ANY position with ANY private company that has business dealings with ANY City agency. (Teaching at a government university, like CUNY, would not be considered "private" and therefore no waiver would be needed, but you'd still want to keep mindful of the points listed below.) So for example, if you worked for the Department of Buildings and you wanted to do some part-time tutoring for Kaplan Test Prep, you'd need a waiver, as Kaplan has business dealings with the Department of Education. Are you likely to get that waiver? Teaching waivers are often sought and often granted, but in seeking the waiver, there are a few questions to be asked. How you answer will figure in to assessing whether you will receive the waiver.

1) How did you get the job opportunity?

Sounds weird, but this matters a great deal. Obviously, if you responded to a job search engine on your own time, it's difficult to imagine a perceived (mis)use of City position on your part in applying for the job. But what if the opportunity came directly from someone that you deal with in your City capacity? If, for example, a vendor with a big deal on your City desk offers you a teaching gig, that may at least *appear* that the vendor is attempting to get favorable treatment from you, or that you are misusing your influence over that deal to get a teaching gig, or both.

2) What subject are you teaching?

Again, this seems obtuse at first glance, but is also important. The Conflicts Law contains a provision that prevents us, as City employees, from accepting anything from anyone for doing the job that the City already pays us to do. Frequently you'll hear of this as the "no tips" rule, but it's a broader concept than that. If your agency could reasonably expect you to do it, then a private party can't pay you to do it. So, for example, I, as a COIB trainer, can't accept anything from anyone in the WORLD to talk about the Conflicts of Interest Law, since that's what my City job is (not really an issue for me as there are very few people who'd privately pay to hear me talk about this law). In an enforcement example, a DOHMH employee was fired and fined around \$11,000 for privately teaching a topic she was employed by DOHMH to teach, to an audience she could have been assigned by DOHMH to teach.

3) Where are you teaching?

This is an especially important one. The issue is whether the college or university where you propose to teach has matters that you consider in your City job. You shouldn't be overseeing the contracts of the place that pays you for evening work.

If those questions can be adequately addressed, as they often are, you'll probably receive a waiver. When you do, there may be some caveats included towards the end of the waiver letter, including:

City Time & Resources—

You may not use ANY City time or resources for any sort of outside job. This includes email, phones, computers, printers, office space, lesson plans you've generated for City purposes, etc. It's zero tolerance on City time or resources.

Appearances before the City—

You can't represent your private employer before ANY City agency (unless you've gotten an explicit waiver to do so). So, for example, if your private employer wanted to sell classes to ANY City agency, you couldn't be the salesperson.

Promoting Your Outside Employment at your City Job—

You can't advertise your teaching services in the building where you work, send emails to colleagues, etc. Now what if someone from your agency lands in your class, totally by his/her own actions? If that person is a colleague and not a superior or sub-ordinate, then there is no conflicts issue. However, teaching a superior or subordinate in your outside class might well present some questions.

Call the COIB for free confidential legal advice on this, or any topic you think may be conflicts-related. The number is 212-442-1400. An attorney is available to take your call Monday through Friday, from 9am-5pm.

*Alex Kipp is Director of Training and
Education at the New York City Conflicts of Interest Board*

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