

ASK THE CITY ETHICIST

Misuse of Position

By
Vanessa Legagneur

Chapter 68 of the New York City Charter prohibits public servants from using, or attempting to use, their positions to obtain a benefit for themselves or anyone with whom they are associated including parents, spouses, siblings, children, and anyone with whom they have business or financial relationships. There are many situations in which this prohibition applies.



Hiring/Supervising: One area is hiring, recommending, or supervising someone with whom a public servant is associated- all prohibited under the rule. Becoming involved in such matters taints the process. For example, job seekers and contract bidders may feel that their applications and proposals are judged unfairly if the City official involved in hiring is associated with a competitor. Public servants may also question how their job performance is being evaluated if they learn that a co-worker is associated with their supervisor. The Board has fined several public servants for supervising their relatives or helping them to obtain employment, including one public servant who directed her subordinate to interview the public servant's brother.

If the action a public servant is about to take is going to benefit him/herself or an associate, then the public servant must not take that action and in general must recuse from the situation. Recusal requires disclosure to both superiors and subordinates that the public servant is not going to participate in discussions, attend meetings, or receive copies of e-mails or documents related to the matter.

Special Access & Privileges: Another situation in which the rule applies is special access. Many public servants have access to confidential records or public records that are not easily available to the public. This rule prohibits public servants for using their position to gain access to such information for non-City purposes. For example, the Board has fined several public servants for accessing City records, including a public servant who did so in order to conduct genealogy research for his private clients.

The Board has issued fines to public servants for using their authority to obtain privileges for themselves and their associates including: lowering a sibling's child support payments; approving a parent's food stamp application; expediting a parent's reimbursement check; and using City funds or a City tax identification number to make personal purchases. City resources should be used for official purposes only. Doing so encourages and preserves the public trust.

Soliciting Loans/Business: The Board has also fined public servants for obtaining benefits from people whom they meet as part of their official duties or those with whom they work. For example, public servants are prohibited from borrowing money from a City client or soliciting

the City client to hire their private business. Public servants must also refrain from using their positions to coerce their subordinates, including asking subordinates to run personal errands; referring subordinates to a private businesses for a referral fees; or soliciting subordinates to join, or donate money to, not-for-profits of which they are members.

Public servants who have questions about these, or any other of the City's ethics laws, should contact the Conflicts of Interest Board for free, confidential advice at 212-442-1400. All calls are confidential and you may call anonymously.

Vanessa Legagneur is an Associate Counsel at the New York Conflicts of Interest Board