

Ask the City Ethicist
Prohibited Appearances Before the City

by
Sung Mo Kim

Question: *I am a full-time City employee. I live in a house that is located across the street from a local high school. Recently, my neighbors and I have received several notices of violation from the Department of Sanitation (“DSNY”) for improper recycling. We want to contest these violations because much of the improper recycling is garbage thrown out by the students at the high school who pass our block to and from school. In order to contest these violations, we have to challenge them in a hearing at the Environmental Control Board (“ECB”), which is part of a City agency.*



I plan to represent myself at the ECB hearing. In addition, some of my neighbors have offered to pay me to also represent them at the hearing. May I represent myself at the ECB? May I represent my neighbors for a small fee?

Answer:

Under these circumstances, you may certainly represent yourself at the ECB.

You may not, however, get paid to represent your neighbors at the ECB. The law prohibits a City employee from representing, for compensation, private interests before a City agency or in matters involving the City. The one exception is if the representation involved a ministerial matter, which is defined as an administrative act that is carried out in a prescribed manner and does not involve substantial personal discretion. Here, your proposed representation of your neighbors at ECB would not be ministerial in nature because a hearing judge’s determination on challenges to notices of violation would involve discretion. And since representing your neighbors before ECB is not ministerial, you may not get paid for that work.

Having learned that you may not represent your neighbors before ECB for pay, you may now be wondering whether you may represent your neighbors without pay. Unfortunately, I will not be able to answer that question with the limited information you provided above. However, I can say that the answer to that question will depend on several factors, including, among other things, your City job title and whether in your City job you have dealings with ECB.

The Conflicts of Interest Board has historically held that, even if unpaid, it would be inconsistent with the discharge of a City employee's official City duties and hence would violate the City's conflicts of interest laws for a City employee to represent private interests before his or her own City agency or before a City agency that the City employee deals with in his or her City job. Thus, for example, an ECB employee would not be permitted, even if unpaid, to represent a neighbor for improper recycling violations since such violations are handled at his or her own City agency.

Additionally, for City lawyers engaged in the outside practice of law, there is a flat prohibition on working, regardless of whether they receive compensation, on City-related matters on behalf of outside clients or representing private interests in litigation against the City. Therefore, no City lawyer would be permitted to represent a neighbor before the ECB for improper recycling violations since such matters are City-related matters.

In contrast, it would be likely permissible for a City employee who is not a lawyer, and who does not in his or her City capacity have any dealings with ECB or DSNY, to represent, without compensation, a neighbor before the ECB to contest a violation.

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. You can also email us through our website (<http://www.nyc.gov/ethics>) by clicking on "Contact COIB." All calls and emails are confidential, and you may contact us anonymously.

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"Ask the City Ethicist" is written monthly by the staff of the New York City Conflicts of Interest Board and appears originally in The Chief Leader. "Ask the City Ethicist" is provided as general information, and should not replace the text of Charter Chapter 68. For legal advice on City ethics matters, please call the Board at 212-442-1400. All calls are confidential. You may call anonymously if you wish.
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