

ASK THE CITY ETHICIST

#19: *That Outside Job Restriction is Broader Than You Might Think*

by
Alex Kipp

Question: *I am a compliance manager at the Department of Youth and Community Development. I also have a Master's Degree in Education and would like to get an outside job working for a tutoring center in the City. Of course, one of this company's biggest clients is the Department of Education. As a DYCD employee, I don't have anything to do with the DOE in my City job, and I only work for this tutoring center on the weekends. Can I take this job? --John in Manhattan*



Answer: The complicated answer, John, to this question, is “no, but maybe yes...,” which is to say a couple of things. First, you’re right to ask the question. Public servants are bound by Chapter 68 of the City Charter (the “Ethics Law”), which aims to protect the integrity of their City positions by avoiding conflicts of interest violations. And conflicts can definitely occur between a public servant’s duties to the City and his/her duties to a secondary employer. On the most basic level public servants shouldn’t get into situations where it looks like they’re playing on both sides of a public/private transaction, like awarding City contracts to their own companies, performing City inspections of their outside employer’s properties, etc.

The “no” comes from this: full-time public servants are prohibited under Chapter 68 from having *any* second job with *any* private firm (or not-for-profit) that does business with *any* City agency. That’s pretty broad, but it makes some sense if you keep in mind that some public servants have decision-making responsibilities that affect more than one agency. To be effective, the law has to cover *all* City employees. In fact, Chapter 68 generally doesn’t make a distinction between types or classes of full-time City employees (imagine trying to navigate a law that tried to define conflicts for every title of every unit of every agency individually—nobody’d be able to read it!) So, John, for you, or anyone else working full-time for the City, working for this particular tutoring business on the side would put you in violation of the law, since, as you said, one of their major clients is the DOE. (For part-timers the restriction is only on working for a firm that does business with one’s *own* City agency.)

Now, here comes the “but maybe yes” part of the answer. The Conflicts of Interest Board, the agency that interprets and enforces Chapter 68, fully recognizes that the law may in certain instances be overly restrictive. It certainly sounds like it might be in your case (although it’s the Board that has to make this determination, not you or me). In these situations, the Board can choose to grant you a *waiver* to go ahead and have that job, as long as you abide by the conditions set forth in the waiver (agreeing not to serve as the tutoring company’s rep to the DOE might be one such condition). But there is a catch: the Board cannot grant you the waiver until you’ve received agency-head permission to have the job. In other words, getting a waiver is a two step process: you

first get your commissioner's written approval, and then you forward that to the Board. It sounds like, in your situation, John, you are likely to get both agency permission and a waiver for this outside job, because your proposed outside job has nothing to do with your City job, but remember: if you do not get a waiver *you are in violation of Chapter 68 and may be subject to penalties, including big fines and disciplinary action.*

There are two more points, John. First of all, many agencies make it a requirement for you to ask for agency permission for *any* outside job, regardless of whether that outside employer has any dealings with the City. This doesn't mean that these agencies are in the business of denying outside work to their employees, they just want to know what that outside work is. Check with your agency counsel to see if this permission requirement exists at your agency.

Lastly there are some general cautions about any outside job you may have, no matter what the job is:

- You can't use any City equipment, time, supplies, personnel, office space, or letterhead for your outside job (this also means you can't give out your City telephone number in connection with the outside job).

- You can't use your City position to gain any special benefit for your outside employer.

- You can't serve as your outside job's rep for any of its City-related business. If the tutoring company got audited by the Department of Finance, for example, you can't represent the company in its dealings with the DOF. In fact, you can't have *anything* to do with *any* business between your outside employer and *any* agency of the City.

- You can't disclose confidential City information to anyone. (Confidential information is information that is not available to the public.)

That about covers it, John. The bottom line is that you should call the Board and speak with one of our attorneys about your case. Just call our office at 212.442.1400, during business hours, Monday through Friday. Ask to speak to the attorney of the day. By getting a waiver from the Board, you'll be in compliance with the law, you'll have covered yourself, and you'll have done your part to preserve the public trust.

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