

Ask the City Ethicist
Outside Business Ventures

by
Alex Kipp

Question: *I've worked full time at a big City agency for about ten years. One of my work buddies is buying a restaurant. He wants me to join him as his business partner. As a City employee, can we own a restaurant, or is that a conflict of interest? Is this something we can get a waiver for?*



Answer: Owning a restaurant is not a violation of the conflicts of interest law *per se*, but there are plenty of things to watch out for. First, do you need a waiver? Probably not. Waivers are granted by the Board in cases where a particular interest you want to have or thing you want to do violates the letter of the Conflicts of Interest Law, but not its spirit. Normally we think of waivers happening when you want to own a business or hold a job with a private entity that does business with the City. Here, unless your proposed restaurant is going to contract with City agencies to cater City events, or is in the middle of some big litigation against the City, it's probably not "doing business" with the City. (Being inspected by the Health Department or paying City taxes normally do not rise to the level of "doing business" with the City.) So, in this case no, you probably don't need a waiver to own the restaurant. However, if your agency has an internal regulation that requires you to report any sort of outside job, you must report this restaurant ownership. Not all agencies have this internal regulation, so check with your boss or your agency counsel to find out. So, let's assume you either already have reported it to your agency, or you don't have to. What are the things to watch out for?

The conflicts of interest law is designed to prevent questions of public servants' integrity that can arise when a public servant's public duties and private interests get mixed together. So, in the most elementary sense, if you want to avoid any conflicts of interest problems, make sure you don't do any mixing of those two worlds. Below, I set forth some examples of how people in circumstances similar to your own have slipped-up.

Time and Resources:

Quite simply put, don't use City time or resources to pursue any part of this business venture. No calls on a City phone, no emails on a City computer, no document storage on a City hard drive, no City photocopying, you get the idea. This is a bright-line rule with no wiggle room, which is to say, making 5,000 copies on a City copier for your restaurant is probably a lot worse than making 5 copies, but they're both violations. And the larger point to remember is that it's pretty easy to see 5 copies creep up to 5,000 over a short period of time. Hence the zero-tolerance rule.

What about your workplace? That's also a City resource. You should not promote your business to your City colleagues or your City contacts (that is, the private individuals you interface with as a part of your City job.) And no menus in the reception area or the break room.

Subordinates

This is a pretty obvious notion, although we do see violations that turn on this issue from time to time. Your subordinates at your City job are not your personal servants. And while you can tell them what to do, in terms of the work they do for the City, you can't get them to do private work related to your restaurant for you. This means you don't have them run errands for your restaurant, and it also means you don't hire them to wait tables for you, even if they want to. In fact, you can't enter into any financial relationship with a superior or a subordinate. This means, for you and the buddy you want to invest with, that if either of you gets promoted to a supervisory position over the other, one of you is going to have to sell your share or transfer. It also means that you can't cater private events for people either above you or below in the chain of command at your City agency.

Representing your restaurant

Let's say your place receives a Sanitation summons or a Health Department violation and you want to contest it, or you want to apply for a sidewalk café license. All of these situations will likely require some contact with City agencies. You can't be the person to handle those contacts. If you wanted to represent your restaurant in its contacts with the City, you'd need permission from your agency head, and then a waiver from the Conflicts of Interest Board.

That's basically it. As I said, the most elementary rule is put up a wall between your "City job" world and your "private restaurant" world and keep it there. If some potential for crossover seems unavoidable and you're not sure what to do, give the Legal Advice Unit of the Conflicts of Interest Board a call, and they can confidentially advise you on how to proceed. Call 212-442-1400 between 9am and 5pm, Monday through Friday and ask to speak to the Attorney of the Day. You can even call anonymously.

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