

ASK THE CITY ETHICIST

Thinking of Starting an Outside Business?

By
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Question: *I work full-time for a City agency, and I want to start a company that I plan to own and operate with my wife. I understand that my company cannot contract with the City directly, but would it be OK for my company to be a subcontractor on a City contract?*

Answer: Perhaps. As you probably know, the City's conflicts of interest law—contained in Chapter 68 of the City Charter—prohibits full-time public servants from owning a firm that has business dealings with any City agency, not just the public servant's own agency. What you might not know is that "business dealings" are not limited to prime contracts with the City, and a firm may have business dealings with the City as a subcontractor.



The Conflicts of Interest Board looks at several factors to determine whether a subcontractor on a City contract itself is deemed to have business dealings with the City. Those factors include: whether the subcontractor receives any payment from the City directly; whether the subcontractor reports to the City on any matters; and whether the subcontractor's work on the City contract is done at a City site. Recently, for example, a Probation Officer at the Department of Probation also owned and operated a private firm that provided security services at City agency sites. The security services were provided through subcontracts on City contracts, and under the terms of those subcontracts, the Probation Officer's firm was required to regularly submit reports to the City. In this situation, the Board determined that the Probation Officer's firm had business dealings with the City, and the Board accordingly fined the Probation Officer for this violation of Chapter 68.

You should be aware that an ownership interest may exist under lesser circumstances than the sole or joint proprietorship you described. If your spouse or unemancipated child owns a firm, you are still deemed to have an ownership interest in the firm. This means you cannot do an end run around Chapter 68 if your wife were to be the sole owner of the firm—you would still be in violation of Chapter 68 if the firm were to have business dealings with the City.

City business dealings or not, you should also be aware that the City's conflicts of interest law imposes the following restrictions on public servants, which are particularly relevant to those who own an outside business:

- 1) **Do not communicate (write, call, e-mail, etc.) with *any* City agency on behalf of the firm, except about ministerial matters.** A "ministerial matter" is an administrative act that is carried out in a preset way and does not involve substantial personal discretion by a public servant.
- 2) **Do not perform your work for the firm on City time.**
- 3) **Do not use City equipment, letterhead, personnel, e-mail, or other City resources in connection with your work for the firm.**
- 4) **Never use your City position to obtain any advantage for the firm.** For example, you may not advertise the firm at your City workplace or promote it to the people you deal with in your City job.
- 5) **Always preserve the confidentiality of the City's confidential information.**

The Chapter 68 restrictions exist to ensure that your ownership interest does not conflict—or even *appear* to conflict—with your City duties. That said, the Conflicts of Interest Board understands that a conflict of interest does not always appear whenever a public servant has an ownership interest in a firm that has business dealings with the City. In appropriate circumstances, the Board will grant an order to permit a public servant to maintain an otherwise prohibited ownership interest. An order **must** be sought (or the interest must be divested) if the firm in question has business dealings with the City.

To get an order from the Board, you must first receive written approval from your agency head, detailing why your ownership interest would not conflict with your City duties. You must submit that written approval to the Board along with your request for an order. If the Board sees no conflict, you will be granted an order permitting you to maintain your ownership interest, subject to the above restrictions. If the Board's order does not permit you to keep your ownership interest *or* if you do not seek an order, you will be in violation of Chapter 68 if you maintain your ownership interest in a firm that does business with the City.

If you are unsure whether you have an ownership interest in a firm or if that ownership interest creates a conflict of interest, call the Conflicts of Interest Board at 212-442-1400 and ask for the "attorney of the day." You can also e-mail us through our website (<http://www.nyc.gov/ethics>) by clicking on "Contact COIB." All calls and e-mails 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. <http://nyc.gov/ethics>.