

Ask the City Ethicist

Owning and Running a Business Outside of Your City Job, Part II

by

Jessie M. Beller

Question: *I plan to start my own business selling homemade cakes and pastries made in my kitchen. Is this okay, since I am a full-time City employee? What about telling everyone at my office about my bakery business so they can order from me?*



Answer: As a public servant, you are permitted to own and operate your own business as long as you follow the conflicts of interest rules:

- 1) *You must perform work for your business on your own time, not on City time.***
- 2) *You may not use City equipment, City supplies, City resources, City letterhead, or City employees for your personal business.***
- 3) *You may not use City confidential information in your personal business.*** Never disclose confidential information. Never use confidential information for your own advantage, or to benefit your personal company. Confidential information is any information that a member of the general public cannot obtain.
- 4) *You may never use your City position to help your company.*** This means that you may not use your City position to provide an advantage or benefit to your company. For example, you cannot use your City position to help your company obtain permits or contracts from City agencies.

The second part of your question, about promoting your business to your City colleagues, requires more explanation. Since you are prohibited from using your City position to benefit yourself or your company, you cannot promote your bakery to the members of the public with whom you deal in your City job. You cannot use your City email to send out flyers about your bakery to your unit or office, nor can you solicit business from

any City vendors you work with or supervise. If you have subordinates, you cannot ask them to buy products from your bakery, nor should you sell products to your boss. If you want to share the news about your new bakery with office colleagues, use your home computer and use their personal email addresses or other forms of personal contact information to pass along the information.

Finally, the conflicts of interest rules prohibit business or financial relationships between superiors and subordinates. You cannot sell your bakery items to subordinates or superiors, though you may do business with colleagues, meaning employees on the same level as you.

***Question:** I own and operate a successful technology repair business and have been providing services to private clients for several years. I just learned about a Request for Proposals from the City for a contract to repair and refurbish computers at my agency from a posting on a public website listing upcoming City contracts. Can I bid on this contract?*

Answer: The first part of the answer to your question is that public servants cannot work for, or have an ownership interest in, a company doing business with (or seeking business with) the City. Business dealings with the City include receiving City funds or having contracts with the City, so bidding on this contract would be prohibited. If you are not a full-time public servant (meaning that you work fewer than twenty hours per week for the City), the prohibition for ownership interests is on business dealings with your own agency, not the entire City. So, since you are a full-time employee, it would violate the New York City conflicts of interest law for your personal business to bid on any City contracts, or otherwise have business dealings with any agency of the City, unless you receive **written permission** from the Conflicts of Interest Board. Getting this written permission (called an “Order”) from the Board is a two-step process. First, you must receive written approval from your agency head, detailing why your personal business’s contract with the City would not conflict with your City duties. Second, the Board must determine that your ownership interest in a business with City contracts would not be a conflict of interest. When determining whether to grant an order, the Board considers, among other factors, the hours involved and whether there is any possible relationship between your City duties and your personal business. If the Board sees no conflict, you will be granted an Order, likely subject to certain common sense limitations.

The second part of the answer to your question is that you are not permitted to represent private interests for compensation before any City agency or to appear directly or indirectly on behalf of private interests in City matters. This means that you cannot sign or submit a bid for a contract to the City, nor can you meet with City officials to present a pitch for your company's repair services, or otherwise communicate with any City agency about your personal company. In order to have such communications with the City, you would need a waiver from the Board, which follows the same process as for an Order.

Just a reminder that as you continue to operate your technology repair business, even if you choose not to pursue any City contracts, make sure that you do not use City time, City resources, City confidential information, or your City position or title. Use your personal email, cell phone, computer, etc., and do not promote your business in the workplace. Also, you are not allowed to provide any services to (or otherwise do business with) a superior or a subordinate, so while a colleague can hire you, your boss or your subordinates cannot.

Question: *Big news—I just became an Avon representative and plan to start selling Avon products to friends and family. Can I sell Avon products in my office? I know my friends at work are big fans!*

Answer: The Conflicts of Interest Board has actually considered your exact question, so here is your answer: it would violate Chapter 68 for a superior to sell beauty products (such as Avon or Mary Kay) to a subordinate, though it would not violate Chapter 68 for a subordinate to sell beauty products valued at \$25 or less to a superior. However, this rule only applies to superior and subordinate sales, so you may sell to colleagues, provided that your agency does not prohibit this practice and further provided that you do so on your own time, not on City time, and do not use City resources.

Question: *I am an attorney, and want to start a small law practice outside of my City job. Can I do this?*

Answer: Besides the strict limitations on City time and resources we discussed above, which prohibit you from using City time and resources for a personal business, Chapter 68 imposes three specific restrictions on the outside practice of law:

- 1) You cannot represent clients who have any business dealings with the City, even on non-City matters.
- 2) You cannot work on any City-related matters.
- 3) You cannot represent your superior or your subordinate, even if you work for free.

Additionally, a lot of City agencies impose stricter rules on the outside practice of law, and may prohibit it entirely, so we encourage you to check with your own agency first before you start your own practice.

Question: *What if I have any more questions about owning and running a business outside my City job?*

Answer: If you have any doubt at all about whether your personal business 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 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.

In addition to all the outside employment rules we have discussed here, you must follow your agency’s disciplinary rules and guidelines, which may in some cases place further restrictions on your second job.

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