

Ask the City Ethicist

“I’ve got all this experience, now I want to make some money!”

by
Alex Kipp

Question: *I am a nutritionist currently working as an outreach educator for a big City agency. It’s my job to deliver health & nutrition information to children in both public and private schools. There are many other audiences and not-for-profit providers who seek qualified nutritionists to do the same sort of outreach for other target groups: the elderly, college students, neighborhood organizations. I’d like to make some extra money working as a freelancer for a couple of these organizations. Is that possible?*



Answer: This is a great question because it illustrates several concerns we have to consider when addressing questions of ethics/conflicts of interest. You’ve got expertise. Even better, you’ve got expertise that’s in demand. Nothing unethical about that. But there are principles and laws that do prevent crisscrossing your private financial interests and the public duties entrusted to you as a part of your City job. Let’s look at couple of areas of potential crossover that you’d want to avoid.

1) *Who is your target audience?*

This is important for you because there cannot be ANY overlap between the audiences you are paid by the City to speak to and the ones you are paid by someone else to speak to. For you, it sounds like being paid by another organization to speak to kids in public and private schools in NYC would be just the overlap you need to avoid. However, speaking to college students or the elderly sounds like it’s not part of your City job’s target audience and would therefore be OK.

What’s up with that restriction??

Basically the Conflicts of Interest Law prevents anyone in the City workforce from accepting compensation from someone other than the City for doing their City jobs. Usually we think of this as the “no tip” rule, but it also means that you can’t compete with your City-self as a private contractor. People might start to scratch their heads if you said to a school

principal requesting a nutrition talk, “gee, I can’t fit you into my schedule, but call my **private** practice and I’m sure we can work something out!” This restriction needs to be kept in mind regardless of who is paying you for the outside work. It could be a not-for-profit, a private company, a school, or even another government agency. If you could reasonably imagine your City agency assigning you to talk to this group about nutrition, then you can’t accept money from anyone but the City for doing so.

2) *Who is paying you?*

So, let’s say there is no overlap. We’ve successfully leapt that hurdle. Now we need to know a little bit about your prospective outside employer. Here’s why: if this outside employer deals with ANY City agency in any way, you will need to seek agency head written permission and a WAIVER from the Conflicts of Interest Board to work for them. This is a requirement of the law. And the nexus doesn’t even have to be obvious. Let’s say, for example, a not-for-profit that wants to use your services currently receives a grant from an agency different from the one where you work. You would still need agency permission and a waiver to work there. Let’s lay out a couple of fact patterns where a waiver may or may not be required:

a) *The outside employer is a local not-for-profit.*

If it receives ANY grants from ANY City agency, you will need a waiver. There is a good chance that the not-for-profit does receive some sort of City funds, as thousands of others do. Call us or them to make sure.

b) *The outside employer is a private firm.*

If the firm deals with the City in any way (such as service contracts with a City agency), you will need a waiver to work there. Call us or the firm to find out if they deal with the City.

c) *The outside employer is a private individual.*

Again, a waiver is needed if this person has business dealings with the City. The likelihood that the person, as an individual, deals with the City the way a vendor would is low, but not unheard of. The one big thing to watch out for is the situation where the private individual is paying you for the talk from a grant s/he received from the City. That’ll probably trigger the need for a waiver. Ask the individual to be sure.

d) *The outside employer is another government entity.*

Here, no waiver is needed because the other employer is a government entity. (But remember: no overlap between the audiences you work with for the City and your second government employer!)

If your agency requires you to disclose outside employment you need to do so in any of the above cases. (This is not a matter of the Conflicts of Interest Law, but of agency policy. Check with your agency counsel.) And also remember this: even if you are on a leave of absence, the need to seek a waiver will still apply in all the above examples!

3) What's your lesson plan?

As in all outside activities, whether you need a waiver or not, they are to be pursued without the use of City time or resources. That's a no-brainer. What might be less obvious is the issue of your lesson plan. Material you generate on the clock for use in your City job is probably the property of the City. This doesn't mean you can't speak about nutrition to private clients per se, but it does mean you will have to generate your own specific material to do it.

Clear? Not so much? If it's not, please give one of our fine attorneys a confidential call 212-442-1400. Ask for the "Attorney of the Day". Someone will be able match the facts of your job opportunity up with the requirements of the law, thereby bringing you peace of mind and keeping you in compliance with the law. You can even call anonymously.

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