

ASK THE CITY ETHICIST

Investments

By
Rob Casimir

Question: *I was recently offered a position at a City agency. While I am interested in accepting this position, I've heard that there are limits for City employees who want to hold an ownership interest in companies that do business with the City. I inherited from my grandmother \$50,000 of stock in a large corporation that has a few City contracts. Can I keep my stock and still work for the City?*



Answer: While the answer will depend on the amount and type of stocks you own, in general there is plenty of room for most City employees to invest in the stock market. But before answering your question, let's provide some background:

One of the primary purposes of an ethics law is to reinforce the idea that a *public servant* is exactly that: when he or she acts in an official capacity, it is with the intent to further the *public* interest – not boost the value of a private investment. The City's conflicts of interest law lays out clear restrictions on the interests and conduct of a City employee at this crucial intersection between private ownership and public trust.

To start, the conflicts of interest law contains language that prohibits City employees from possessing an "ownership interest" in *any* firm that does *any* business with *any* City agency. For the purposes of this law, "ownership" is defined as:

- A)** Owning more than 5% of a firm (in assets or debt)
- B)** Owning investments in a firm (*e.g.* stock) valued at \$44,000 or more; or
- C)** Possessing an ownership interest of *any value* while operating the firm.

Furthermore, in cases where the ownership interest is maintained by the public servant's domestic partner, spouse, or unemancipated child, these interests are imputed to the public servant and treated as their own.

If your stock ownership rises to the level of a prohibited ownership interest as described above, you should consult the Board for more guidance. Sometimes, you will have to sell or give away the prohibited interest, or place the interest into a blind trust, within ten days of beginning your City employment. However, there's another option: with the approval of your agency head, you may be able to seek an Order from the Board allowing you to

keep your stock holdings. The Board reviews each request for an Order individually and, in some cases, the Board allows public servants to keep otherwise prohibited interests, provided no real conflict is found and the public servant recuses himself or herself from all future matters involving the firm.

However, even in cases where your ownership interest is not “prohibited,” the law may still require additional action:

- 1) If your investment in a firm doing business with the City is valued between \$10,000 and \$44,000, you must completely recuse yourself from any City matters related to your holding.
- 2) If your investment in a firm doing business with the City is valued at less than \$10,000, you do not need to recuse yourself from City matters relating to the investment, but you must disclose your holding to the Board before you take any action involving the firm.

Now, to answer your specific question: it would seem that your possession of an investment valued at \$44,000 or greater in a firm with business dealings with the City of New York would create a conflict of interest. However, all is not lost: the final provision regarding ownership interests states that, in cases where the ownership interest is publicly traded, which sounds likely if the firm is as large as you suggest, the barometer for a conflict of interest shifts from firms with “business dealings with the City” to only those firms with “business dealings with the public servant’s own agency.” As long as the firm does not do business with the agency that extended to you an offer of employment, these holdings (though over the traditional threshold) would not constitute a “prohibited interest.” If that’s the case, you may retain the stock.

To find more information about investments and their role in the City’s ethics law, or to ask a question about any other potential conflicts of interest topic, call the Conflicts of Interest Board at (212) 442-1400 and speak to the Attorney of the Day. The agency can also be reached through the website (www.nyc.gov/ethics) under the “Contact Us” tab. Remember, all calls and e-mails are strictly confidential, so if you are ever in doubt: just ask.

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