

Ethics lights the way to good government

The Ethical Times

A Publication of the New York City Conflicts of Interest Board

Quinn Haisley, Editor



Volunteering Part 3

By
Phil Weitzman

Question: *I am a City employee hoping to become more involved in my community by volunteering for a local not-for-profit. If things go well, I may even try to join the not-for-profit's board. What are the conflicts of interest restrictions to watch out for?*

Answer: Kudos to you for seeking to help your community through volunteering! Because the City encourages volunteering, the Conflicts of Interest Law for City employees provides relatively few (but important) restrictions on volunteering activities.

Before getting into what the rules say, we should note that, for the purposes of the Conflicts Law, an outside activity is only 'volunteering' if you receive no compensation. As soon as you receive compensation a different set of Conflicts Law restrictions, which address outside compensated work, would apply.

The **first** set of restrictions on volunteer work should be obvious. As one would expect, you can never disclose the City's confidential information, so be careful not to share any confidential info in the course of your volunteering duties. In addition, you can't use the City's resources on behalf of the organization you volunteer for. This means, for instance, no fliers printed on City copiers, no fundraising e-mails on City computers, no volunteering while you're supposed to be doing City work, and no ordering your subordinates to get involved.

A **second** set of restrictions provides a few less obvious rules. *These rules apply only if you want to be an officer or board member for your not-for-profit:*

1) If the organization receives funding from the City agency you work for, you will need permission from the head of your agency before you can serve on the board. So, for example, if you work for the Department of Youth and Community Development (DYCD), you could not be a board member or officer for a not-for-profit that receives money from DYCD unless you received written permission from your agency head. However, you *would not need permission* to be a board member for a not-for-profit that receives funding from City agencies *other than your own*, for instance, ACS or the Parks Department.

2) In addition, as a board member or officer you must recuse yourself from your not-for-profit's business dealings with 'the

City,' meaning *all* New York City agencies. So, for instance, if your not-for-profit is seeking a City grant, you can't help write the grant or call any City agency to gather information on the application, and you can't take any actions in your own City job relating to that grant application either, should the opportunity arise.

Consequences for violating these rules are unpleasant: a City employee was recently fined \$7,500 for serving on the board of a not-for-profit that did business with her agency, for taking part in the not-for-profit's City business dealings, and for using City resources for the not-for-profit. However, as noted above, you can seek written permission from your agency head to hold an otherwise impermissible position on the board of a not-for-profit. Going beyond that, the Conflicts of Interest Board, in consultation with your agency head, may determine to grant a waiver allowing you to participate in your not-for-profit's business dealings with the City, provided that business is sufficiently removed from your City duties. So there may be more leeway for your volunteering activities than you think – the important point is to ask *before* you engage in activities that might not otherwise be OK.

Finally, you might even get permission to use City resources, if your volunteer work is encouraged by your agency. With written approval from your agency head and from the Conflicts of Interest Board, you *could* use limited amounts of City resources (but never letterhead) for your volunteer activity. For instance, some City agencies have *pro bono* programs that encourage City attorneys to do free volunteer legal work on City time. But, again, permission only works if you ask *before* you take action, so be sure to check first before you engage in such activities.

Looking for more information on whether your volunteer work creates a conflict of interest? Contact your Agency Counsel, or 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.

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Recent Enforcement Cases

▶ In a settlement with the Board, a former Agency Attorney IV with ACS paid a \$1,000 fine for attending a meeting with senior ACS officials, including the Commissioner, as General Counsel to a private adoption agency less than two months after leaving ACS.

▶ The Board and the New York City Comptroller's Office concluded a settlement with an Accountant in the Comptroller's Bureau of Accountancy who had an ownership interest in two taxi cab medallions – his wife's since December 1989 and his own since October 2006 – which interests involve business dealings with TLC. The Accountant acknowledged that he communicated with TLC on behalf of his ownership interests in the two taxi cab medallions. During the pendency of this proceeding, with the approval of the Comptroller, the Board issued an order permitting the Accountant to retain his ownership interest in the two taxi cab medallions and a waiver to permit the Accountant to appear before TLC in connection with those medallions. For the violations that occurred before the issuance of the Board order and waiver, the Accountant agreed to pay a fine equal to five days' pay, valued at \$942.

▶ The Board reached a settlement with the District Manager for Bronx Community Board 9, who paid a \$7,500 fine to the Board in resolution of his violations of the City's conflicts of interest law. The District Manager has been the President of the Bronx Puerto Rican Day Parade (the "Parade") since 2000. By letter dated March 22, 2000, the Board issued the District Manager a waiver to serve as President of the Parade, explicitly advising the District Manager that his work for the Parade must be performed at times when he is not required to perform services for the City and that he may not use City equipment, letterhead, personnel, or other City resources in connection with his work for the Parade. Beginning in

at least 2005, the District Manager, during times when he was required to be performing work for CB 9, coordinated and operated the Parade's activities out of the CB 9 office, using CB 9 resources, including its personnel, office, conference room, copier, fax machine, phones, and computers, to operate the Parade.

▶ The Board issued a public warning letter to a teacher with DOE for, on approximately ten occasions in 2012, paying one of the students at her school to provide childcare services for her granddaughter.

▶ The Board and DSNY concluded a settlement with a Sanitation Worker who, between 2009 and 2012, took DSNY property from various DSNY facilities without authorization for his personal purposes, including 44 truck batteries, 10 car batteries, 2 truck steps, and 5 bags full of computer cables, telephone cables, data cables, and extension cords. All of this property was ultimately reclaimed by DSNY. As a penalty, the Sanitation Worker agreed to be suspended for 39 work days, valued at \$10,718.84.

▶ In a settlement with the Board, a former Agency Attorney for HPD paid a \$1,000 fine for representing a landlord in a matter in Housing Court in which HPD was the petitioner and was represented by an HPD attorney; the former Agency Attorney and the HPD attorney negotiated and signed a Consent Order and Judgment to resolve the matter. Because the matter had been pending at HPD while the Agency Attorney was still employed at HPD, his post-employment appearance violated the "revolving door" prohibition of the City's conflicts of interest law.

▶ The Board issued a public warning letter to a DOE teacher for being the executive in charge of a not-for-profit that had business dealings with DOE, and for using his school's gym to make promotional videos for the not-for-profit.

▶ The Board issued a public warning letter to an Associate Public Health Sanitarian at DOHMH for participating in a "sou-sou" savings club which included one of his supervisors.

*Interested in more information?
Get in touch with COIB's Training & Education Unit to arrange a class in Chapter 68 for you and your staff.
Contact Alex Kipp, Director of Training, at kipp@coib.nyc.gov*

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http://www.nyls.edu/centers/harlan_scholar_centers/center_for_new_york_city_law/cityadmin_library

