

Ethics lights the way to good government

The Ethical Times

A Publication of the New York City Conflicts of Interest Board

Phil Weitzman, Editor



“Owning and Running A Business Outside of Your City Job”

By
Jesse 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 treats 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 you get from your job. 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 city 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 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 your City 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 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 to do 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. 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 private 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 for that business. 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:

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 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 you should to check with your own agency first before you start your own practice.

Question:

What if I have more questions about owning and running a private business outside?

Answer:

If you have any doubt at all about whether your private 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. □

Jessie Beller is Associate Counsel at the New York City Conflicts of Interest Board.

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Recent Enforcement Cases

► The Board and ACS entered into a three-way settlement with a Clerical Associate who served as Chair of the Board of Directors and Executive Director of Administration for a not-for-profit organization. On behalf of the not-for-profit, the Clerical Associate submitted a bid for a contract with DYCD, in violation of conflicts of interest law rules that pro-

hibit public servants from appearing for compensation before any City agency. The Clerical Associate also admitted that, at times she was required to be performing work for ACS, she used her ACS e-mail account to send or receive 46 messages relating to the not-for-profit. For this misconduct, the Clerical Associate agreed to serve a ten-day suspension, and to forfeit 5 days of annual leave, with a total financial value of \$2,118.90.

► In a joint settlement with the Board and DOHMH, an Associate Public Health Sanitarian in the DOHMH Division of Environmental Health, Bureau of Veterinary and Pest Control Services agreed to pay a \$2,000 fine to the Board and to be demoted, with an 8% salary decrease, for using City time and his City e-mail account to perform work related to his completion of his graduate degree and dissertation, his outside employment as an instructor at numerous collegiate institutions, his private tax preparation business, his private consulting business, and his work for multiple not-for-profit organizations of which he was the founder and president.

► The Board and DOHMH concluded a three-way settlement with a Supervising Public Health Advisor, who, in resolution of her misconduct, agreed to resign from, and not seek future employment with, DOHMH. Since February 2008, the Supervising Public Health Advisor has owned a group day care center (the "Center"). The Supervising Public Health Advisor admitted that the Center receives money and food from the New York City Administration for Children's Services ("ACS"), which funding constitutes "business dealings with the City" within the meaning of the City's conflicts of interest law. The Supervising Public Health Advisor acknowledged that her conduct violated the City's conflicts of interest law, which prohibits a public servant from having an interest in a firm that the public servant knows, or should know, is engaged in business dealings with any City agency. The Supervising Public Health Advisor further admitted that she communicated with City agencies on behalf of the Center, specifically that she (1) attended inspections of the Center conducted by DOHMH employees; (2) submitted documentation to ACS to qualify the Center to accept ACS payment vouchers from parents for their children to attend the Center; (3) submitted documentation to ACS on behalf of each parent of a child at the Center who was using an ACS payment voucher; and (4) appeared in person at ACS to submit license renewal materials to facilitate the Center's continued acceptance of ACS payment vouchers. The

Supervising Public Health Advisory acknowledged that this conduct violated the City's conflicts of interest law, which prohibits a public servant from "appearing" before any City agency on behalf of a private interest.

► The Board imposed a \$2,000 fine on a former DOE Community Associate who prepared a letter on his school's letterhead falsely claiming that he did not get reimbursed for work-related expenses and then faxed that letter to his personal tax preparer in an attempt to obtain an unjustified tax deduction on his personal tax return. The amount of the fine would have been higher but for the Community Associate's voluntary resignation from DOE during the pendency of the Board proceeding.

► In a joint settlement with the Board and DEP, DEP's Chief of Water Quality Construction agreed to pay full restitution to DEP and to pay a \$1,269 fine to the Board for using a City E-Z Pass to pay for \$1,268.97 of tolls he incurred during personal travel. □

*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*

**The New York City
Conflicts of Interest Board
2 Lafayette Street, Suite 1010
NYC 10007**

**Phone: 212-442-1400
Fax: 212-442-1407
TDD: 212-442-1443
www.nyc.gov/ethics**

A searchable index of all the COIB Enforcement Dispositions and Advisory Opinions is available courtesy of New York Law School here:

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

