

*Ethics lights the
way to good gov-
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The Ethical Times

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Quinn Haisley, Editor



Personal Benefits?

By
Alex Kipp

A big difference between public service and work in the private sector sometimes has to do with the kinds of benefits we can take advantage of in those positions. I'm not speaking about pensions or flexible spending accounts or health plans, but the ways in which people may try to use their work positions to get personal benefits for themselves or their families. In the private sector, depending on the company, that may be the norm, but in the public sector, it might very well be a violation of the Conflicts of Interest Law.

Public service is a public trust. That trust relationship isn't just with our employer and our clients, like you might imagine it being in the private sector. In public service, our trust relationship is to all people who hold stakes in government. That's everyone: your agency, the people your agency serves, the people your agency regulates, the vendors competing on City bids, taxpayers, voters, recipients of government services, good government groups, and the press. They deserve the appearance and reality that the choices made by public officials serve the public's interest and are not compromised by the officials' private interests. I'll hit on a few kinds of behavior that, while possibly OK in the private sector, would not be OK for a New York City public servant.

Gifts—We'll deal next month with an in-depth look at gifts, so I'll just lightly touch on it here. In the private sector, accepting or giving gifts to people one does business with might be common practice. However, taking gifts from private sector people you deal with as a part of your City job is usually a bad idea, quite possibly a violation of your agency code of conduct, and also a violation of the Conflicts Law. No one should be made to feel that giving a gift to a public servant is either required or a way to get special treatment. Also, when public servants accept gifts, questions about the integrity of their actions could arise. Many agencies have a zero tolerance rule about accepting gifts from members of the public with whom its employees deal. Even if your agency doesn't have such a rule, the Conflicts Law prevents you from accepting a "valuable" gift from ANYONE doing business or seeking to do business with the City. Valuable is defined as \$50 or more and the rule is aggregate and cumulative (meaning that \$50 can be one gift of the total of gifts given from one source in any consecutive 12-month period.)

Tips—Related to Gifts, but covered by a different section of law, is the concept of gratuities, or tips. Generally a tip is defined as something given to a person for performing his or her job. As City employees we aren't allowed to accept ANY tip from anyone for doing the job the city pays us to do. (That's different than the \$50 gift rule—here no amount is allowed.) No one should feel like they need to or could pay extra to get government services entitled to them.

Access—In your City position, you probably have access to certain people and certain kinds of privileged information. That access is for getting the public's business done, not your own. This is kind of an obvious point, but it's worth mentioning, as there have been a number of enforcement cases involving public servants trying to use access to people, information, or both, to secure a benefit for themselves or an associate. Examples include social services caseworkers using access to confidential City databases to address disputes with private tenants or ex-spouses, or a City employee at the Department of Correction giving confidential information about an assault to someone whose relative was involved in the assault, or a City plan examiner using his connections at Consumer Affairs to try to expedite a complaint against a contractor working on his private residence. None of these turned out well for the City employee involved.

Networking & Job Searches—When thinking about changing jobs, you might naturally consider applying for work with a company that you've dealt with in your City job. Be careful. The Conflicts Law prohibits you from seeking employment with any private entity that you currently deal with. Notice that last sentence says, "currently." So, if you dealt with company six months ago and have finished those dealings completely, you'd be fine. If, however, you've finished one matter with the company this week and expect to start another next week, that's the time to go to your supervisor and see if you can be recused from any dealings with that company for the duration of your seeking employment with the company. If your supervisor agrees, then you may pursue a job with the company. Even discussing the possibility of a job interview with a company that you deal with for the City will create a question of loyalties on the project, so you'd want to discuss recusal options with your boss early, before any discussions with the company regarding the job occur.

The other kind of job search is the one where a relative or associate seeks a job from your agency while you still work there. While that relative is free to apply and be considered like anyone else, you can't be involved in any part of a hiring process that involves the relative. No interviews, no recommendations, no selection committees, nothing. And if the relative does get hired, neither of you could be in a supervisory role over the other.

Resources—The last thing to consider is City resources: copiers, computers, vehicles, paper, printers, phones, and the like. No City time or resources can be used to benefit your private financial interests or the interests of a political campaign. That's different from some private sector employers who might give you a whole day of the week to work on outside projects - some tech firms reportedly do this. The City doesn't. The taxpayer pays us to do our City jobs and not our own pet projects. Alas, you'll have to use your own time to develop the next Google or Facebook.

Questions? Reach out to the Conflicts of Interest Board for free confidential legal advice. Someone is available to speak with you 9-5, Monday through Friday and you even call anonymously. The number is 212-442-1400

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Recent Enforcement Cases

▶ The Board and the Office of the Bronx Borough President concluded a settlement with an Education and Community Liaison who agreed to serve a 30 workday suspension, valued at \$5,066.13. The Liaison admitted to: (1) asking a DOE employee to provide her with non-public information concerning her son, a student at a DOE school in the Bronx, which the employee declined to do; (2) attempting to obtain an exemption for her son from the decision of DOE administrators to exclude her son from his school's "Senior Activities" because he had not met the eighth-grade promotional criteria; and (3) soliciting employment and personal assistance from the Chief of Staff of a New York City Council Member and the chairs of the Bronx Borough President's Education Consortia, officials with whom she dealt in the course of performing her official duties.

▶ The Board and NYCHA concluded a joint settlement with the Director of the Family Services Department. The Director admitted that she helped her daughter obtain a position with a non-profit organization that receives funding from the City and works extensively with the Director's department. Specifically, the Director spoke to an associate vice president at the non-profit organization after a business meeting about employing her daughter and emailed her daughter's résumé to two employees of the non-profit organization. As a penalty, the Director agreed to pay a \$2,300 fine to the Board.

▶ The Board concluded a settlement with an Administrative Manager at the New York City Office of the Comptroller who, from at least February 1, 2012, through September 30, 2012, during hours she was required to be performing work for the Comptroller's Office, used her City computer and e-mail account to perform work for the political campaign of a candidate for New York State Assembly, such as reviewing and editing campaign and fundraising materials and coordinating attendance at campaign events. As a penalty, the Administrative Manager agreed to pay a \$2,500 fine.

▶ The Board and DDC reached settlements with an Assistant Commissioner and a Program Director who used their City positions to solicit funds from a DDC vendor for a non-profit organization in which they held positions. The Assistant Commissioner and the Program Director were responsible for overseeing the construction of an Emergency Medical Service Station in Brooklyn, including overseeing a DDC vendor's work on a construction management contract. The two each also held various positions as officers at the non-profit, including as the non-profit's 2012 Gala Co-Chair and as the non-profit's Secretary. In public dispositions of the charges, the Assistant Commissioner and the Program Director each acknowledged sending emails to the vendor soliciting funds for the non-profit. The Assistant Commissioner also acknowledged that, on two occasions, he met with the vendor regarding its poor performance on a DDC City Contract. After those meetings concluded, he asked the vendor what value of sponsorship plan the vendor intended to purchase for the non-profit's annual gala. The Assistant Commissioner agreed to resign from DDC and pay an \$8,000 fine to the Board, and the Program Director agreed to pay a \$2,500 fine to the Board and be placed on an indefinite employment probation for his violations.

▶ The Board concluded a settlement with a former Parent Coordinator at Mosaic Preparatory Academy who, while employed by DOE, used a DOE tax exempt form to make tax-free personal purchases for her daughters-in-law. As Parent Coordinator at Mosaic Prep, she was authorized to have the tax exempt form, but was only permitted to use it to make purchases for Mosaic Prep. For this conduct, DOE terminated the employment of the Parent Coordinator. The Board imposed no additional penalty.

▶ The Board issued a public warning letter to an HRA Eligibility Specialist for accessing confidential public assistance case records on HRA's Welfare Management System database in order to look up the Medicaid and Food Stamp recertification dates for two of her relatives so they would not miss them.

*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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