

*Ethics lights the way
to good government*

The Ethical Times

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Alex Kipp, Editor



“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 designed to 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.

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, college students or the elderly sounds like they’re 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 a particular group about nutrition, then you can’t accept money from anyone but the City for doing so.

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 written permission from your agency and a WAIVER from the Conflicts of Interest Board to work for them. This is a requirement of the law. And the connection 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 a City 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:

▶ *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 do. Call us or them to make sure.

▶ *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.

▶ *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.

▶ *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.

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 at 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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Recent Enforcement Cases

▶ The Board and HRA concluded a three-way settlement with a Clerical Associate who agreed to pay HRA a fine equivalent to 20 days’ pay, valued at \$2,490, for accessing the Welfare Management

System to view the public assistance records of her daughter and granddaughter for her personal use.

▶ The Board and HPD concluded a three-way settlement with an HPD Real Property Manager who, at times when he was supposed to be doing work for HPD, used a City computer and telephone to perform work related to his private insurance business. For this misconduct, he was suspended by HPD for 60 calendar days, valued at \$8,464.44, and placed on probation for one year starting from the date of the completion of the suspension.

▶ The Board issued a public warning letter to a DOE Associate School Food Manager who asked her subordinate to distribute her daughter's resume to several DOE schools at which her subordinate worked.

▶ The Board fined the former Senior Deputy Director for Infrastructure Technology in the Information Technology Division at NYCHA \$20,000 for multiple violations of the conflicts of interest law related to his work at his restaurant, 17 Murray.

▶ The Board fined a former NYCHA Supervisor of Caretakers \$6,000 for lending money to at least two Caretakers he supervised at an approximately 30% interest rate.

▶ The Board and HRA concluded a three-way settlement with an Eligibility Specialist who agreed to irrevocably resign from HRA and to not seek future employment with the City for accessing the Welfare Management System to view, for her personal use, the public assistance records of the mother of her husband's child and the mother's other children.

▶ The Board concluded a settlement with a former DOE Occupational Therapist who admitted that she owned a firm that provided therapy to DOE students and that she appeared before DOE on behalf of her firm each time she requested payment from DOE for those services. DOE had previously terminated the Occupational Therapist for this conduct. The Board took the DOE penalty into consideration in deciding not to impose a fine.

▶ The Board issued a public warning letter to a DOE Principal for approving her daughter's request to serve as an uncompensated Teacher Intern at her school (*i.e.*, to student teach).

▶ The Board concluded a settlement with an HPD Project Manager who was fined \$2,000 for using his HPD position to communicate with several HPD employees on behalf of a cooperative building, of which he is a shareholder, while he was the President of the cop's Board of Directors.

▶ The Board and FDNY concluded a three-way settlement with a Supervisor of Mechanics who was fined six days' pay by FDNY, valued at \$2,060, for using his City vehicle

during his City work hours to conduct an electrical inspection on behalf of his private company.

▶ The Board fined a DSNY Supervisor \$2,250 for using his DSNY position to enlist two of his DSNY subordinates, both Sanitation Workers, to chauffeur his girlfriend and his aunt.

▶ The Board and DSNY concluded a three-way settlement with a Sanitation Worker who, while in the course of conducting his regular collection route, used his Sanitation truck to collect construction debris, also known as "trade waste." The Sanitation Worker agreed to retire from DSNY effective July 17, 2010, and not seek future employment with DSNY ever or with the City for five years.

▶ The Board issued public warning letters to 14 DOE teachers who were employed as tutors by a private firm that contracted with DOE to provide tutoring services to DOE students.

▶ The Board issued a public warning letter to an HPD Community Assistant for, from 2004 through January 2010, renting an apartment from her superior's live-in fiancé.

▶ The Board and DOHMH concluded a three-way settlement with an Associate Staff Analyst in which she agreed to be suspended for 22 work days, valued at \$6,005.34; forfeit 136 hours of annual leave, valued at \$5,303.48; resign from DOHMH; and never seek City employment in the future for her multiple violations of the City's conflicts of interest law. Among her violations, she communicated with DOHMH on behalf of a not-for-profit organization prior to and during her tenure as its Executive Director and represented the not-for-profit before City agencies, including DOHMH.

▶ The Board and DOE concluded a three-way settlement with an Assistant Principal who was fined \$2,400 for, when he was employed as a Principal, directly supervising his brother, the school's Dean of Discipline, for over four years.

▶ The Board and DEP concluded a three-way settlement with a Lab Microbiologist who was suspended by DEP for eight days without pay, valued at \$1,495, for using his City vehicle, in violation of DEP Rules, to pick up his daughter from school.

▶ The Board fined a former NYCHA Telecommunications and Vehicle Coordinator \$900 for soliciting and obtaining loans totaling \$300 from two superiors. The former Telecommunications and Vehicle Coordinator also acknowledged that he misappropriated \$503 from NYCHA's petty cash fund by altering the dollar amount on two vouchers and receipts that were submitted for reimbursement and keeping not only the difference between the correct amount and the

altered amount (\$110) but also the \$393 he should have reimbursed to the NYCHA employee. In setting the amount of the fine, the Board took into consideration the former Telecommunications and Vehicle Coordinator's financial hardship and that he had been suspended for 30 days without pay by NYCHA, valued at \$3,890.

▶ The Board fined a former DOT Deputy Chief Engineer \$1,000 for communicating with DOT on behalf of his new employer within one year of his resignation from DOT.

▶ The Board and DOHMH concluded a three-way settlement with a Principal Administrative Associate who paid a \$2,500 fine to DOHMH for, at times when she was supposed to be doing work for DOHMH, using a City computer and her DOHMH e-mail account to sell Avon products, including to several of her DOHMH subordinates.

▶ The Board and NYCHA concluded a three-way settlement with a Supervisor of Plasterers who was fined \$1,750 by the Board for misusing his City position to obtain a personal benefit for himself. The Supervisor acknowledged that he obtained the unpaid assistance of a subordinate who drove to the Supervisor's home, measured the kitchen floor, and accompanied the Supervisor's son to purchase tile, which tile the subordinate helped to install in the Supervisor's kitchen. □

*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
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