

*Ethics lights the way
to good government*

The Ethical Times

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Volunteering with a Drop of Circumspection

by
Alex Kipp

Question: *I have worked for a City agency for a number of years in a variety of positions, most recently as a contract officer at HRA. There is a not-for-profit that provides social service programs in my neighborhood. It has invited me to serve on their board in a volunteer capacity. Is there anything I should be careful about?*

Answer: Generally, volunteer service for not-for-profits entails fewer restrictions under Chapter 68 of the City Charter, the City's Conflicts of Interest Law, than outside compensated employment. Because there is no compensation involved and because the volunteer work is for a not-for-profit, there is usually thought to be less potential for damaging conflicts of interest to occur. Also the City encourages volunteerism, so it has to be careful to balance the need for integrity, disclosure, and sunshine, while not making restrictions so overly burdensome that people are discouraged from donating their time to worthy causes that benefit us all.

However (and you knew there was a however, otherwise why bring it up?), there are a few potential conflicts of interest issues to keep in mind. I'll break them down into a several broad categories and then explain below. The categories are: 1) Crossover between your City job and the Not-for-Profit; 2) Confidential Information; and 3) (Mis)use of City Time/Resources.

1 – Be careful of any potential nexus between your volunteer work and your City job.

The City grants millions of dollars to various not-for-profits through agency programs and Council discretionary grants. Public servants working with and around those programs in their jobs who choose to volunteer need to be extra careful. A nexus between your City job and your volunteer work should set off a trigger that prompts you to call the Conflicts of Interest Board for legal advice. There are a couple of reasons.

First, as public servants, we have a duty of *undivided loyalty* to our primary employer, the City. In order to preserve that loyalty and the public's confidence in your official integrity, you may not take ANY official action concerning a not-for-profit where you volunteer. You must *recuse* yourself from the not-for-profit's City matters. This would be true if you volunteer in any capacity, whether as a board member, a carpenter, teacher, accountant, or anything else. Why? You know how bad the funding environment is right now: you certainly don't want a grant program tainted by allegations that one of the grantees got special treatment through the actions of a "person on the inside." This need for recusal would also come into play if, for example, your spouse was employed as the Executive Director of the not-for-profit.

Now if you are serving on the board of the not-for-profit and the not-for-profit is either considering or already has matters before your own agency, you **MUST** obtain written permission from your agency head to serve on that board. This allows the agency to monitor legitimate conflicts of interest that may occur, in order to make sure that a sense of integrity and fairness is preserved in its dealings with various not-for-profits. The permission from your agency is **NOT** required if the not-for-profit has matters before **OTHER** agencies, but not yours.

Note that recusal from City matters involving the not-for-profit

is *two-sided*, meaning you also may not take any action at the not-for-profit that has anything to do with ANY City agency. If, for example, the not-for-profit wanted to submit a grant application to a City agency, not only could you not help prepare the application, you couldn't make calls to City agencies about the application and you couldn't even discuss the project. If you wanted to partake in the not-for-profit's City-related matters, you'd need a waiver from the Conflicts of Interest Board in order to do it, which may or may not be given, depending on the facts.

2 – Confidential Information

This is pretty basic. Any confidential information we have as City employees cannot be disclosed to anyone who not entitled to know it. That would include the not-for-profit where you volunteer.

3 – City Time & Resources

Quite simply put, City time and resources are for official City work. They aren't to be used for private activities.

There is a possibility, however, for a tiny bit of wiggle room here. If your agency determines *officially* that devoting some time and resources to certain volunteer activities serves a legitimate City purpose, and the Conflicts of Interest Board agrees, then you may use some City time and resources (but not letterhead) for those volunteer activities. If you're interested in knowing more about this, call your agency counsel or the Conflicts of Interest Board.

4 – What if the Volunteer Gig Turns into a Paid One?

Once you accept compensation for this activity, that's called a "job," not a volunteer activity. And if your employer (in this case the not-for-profit where you used to volunteer) has any matters before City agencies (*e.g.* grants, contracts, etc.), you will need agency permission and a waiver from the Conflicts of Interest Board to have that job.

I hope none of this discourages your volunteer spirit! If it does raise any questions whatsoever, please reach out to the Conflicts of Interest Board for legal advice. Just call 212-442-1400 and ask for the Attorney of the Day. □

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Recent Enforcement Cases

► The Board fined a former Associate Fraud Investigator for the HRA \$3,000 for using his City position to obtain confidential information about his private tenant to use to collect rent from her and for having a prohibited ownership interest in a firm engaged in City business dealings.

► The Board fined a former Paralegal for the Section 8 Subpoena Unit at HPD \$1,500 for appearing before HPD within one year of his resignation from HPD.

► The Board and the DOE concluded a three-way settlement with a DOE Principal who paid a total fine of \$7,500 for, among other things, intertwining the operations of his not-for-profit organization

with those of his school, despite having received written instructions from the Board that the City's conflicts of interest law prohibits such conduct.

► The Board fined an ACS Youth Advocate Liaison \$1,250 for working for 5 years at a firm with business dealings with ACS, without a waiver from the Board.

► The Board and HRA concluded a three-way settlement with an HRA Job Opportunity Specialist who was fined ten days' pay, valued at \$1,586, by HRA for accessing the Welfare Management System to view her daughter's and granddaughter's confidential public assistance records for the Job Opportunity Specialist's personal use.

► The Board and DHS concluded a three-way settlement with a DHS Senior Special Officer who was fined five days' pay, valued at \$870, by DHS for soliciting and selling Avon products to several of her subordinates.

► The Board issued its Findings of Facts, Conclusions of Law, and Order fining a former Medical Insurance and Community Services Administration Eligibility Specialist for the New York City Human Resources Administration \$10,000 for using her City position to access confidential information about an HRA client whose name was similar to hers in order to steal that client's identity for the Eligibility Specialist's personal use to obtain a cell phone contract and a credit card.

► The Board and DOE concluded a three-way settlement with a teacher who agreed to pay a \$750 fine to DOE for having a second job with Touro College, a firm with City business dealings, without first seeking a waiver from the Board.

► The Board and DOF concluded a three-way settlement with a Deputy Sheriff who was fined \$3,000 by DOF for using his City position to borrow and not fully repay \$5,000 from the manager of a firm that contracted with the City Sheriff's Office, which is a division of DOF.

► The Board and DSNY concluded three-way settlements with two DSNY Sanitation Workers who were each fined 9 work-days' pay, valued at \$2,412, by DSNY for, while in the course of conducting their regular collection route, giving a business card for their private carting company to a homeowner in an effort to solicit future private business from the homeowner.

► The Board and FDNY concluded a three-way settlement with a Lieutenant in the Emergency Medical Service who, in 2004, borrowed \$1,500 from her subordinate, an FDNY Emergency Medical Technician.

► The Board fined a former Child Protective Manager for ACS \$1,000 for obtaining a \$13,000 loan from one of her subordinates, which she fully repaid within two months of the loan.

► The Board imposed, and then forgave based on demonstrated financial hardship, a \$2,000 fine on a former DOE Substitute Teacher who

allowed students from her fifth-grade class to work, without pay, at a restaurant that she owned.

► The Board imposed, and then partially forgave based on demonstrated financial hardship, a \$1,500 fine on a former Child Welfare Specialist at ACS who accessed the New York State Central Registrar's confidential database, CONNECTIONS, to view information concerning her aunt's children, to whom she became a foster parent. CONNECTIONS is a confidential database of child abuse and maltreatment investigations and is used by ACS and other child protective services throughout New York State.

► The Board fined a former Deputy Commissioner for DoITT, who was the General Manager and President of DoITT's media and television divisions, including NYC-TV, \$5,000 for his multiple violations of, the City's conflicts of interest law.

► The Board issued a public warning letter to the former Director of Production at NYC-TV, a division of DoITT, for using her City computer to open, draft, and/or store a draft Limited Liability Corporation agreement related to a private LLC that she planned on forming and eventually did form.

► The Board and Parks Department concluded a joint settlement with a Parks Recreation Center Manager who paid a \$2,500 fine to the Board for using a Parks vehicle and personnel to facilitate his vacation plans and for using his Parks computer to sell merchandise on eBay.

► The Board issued a public warning letter to a DOE School Aide for having an imputed ownership interest in her husband's firm, which firm engaged in business dealings with her school.

► The Board fined a former Supervisor of Child Care at ACS \$500 for his multiple violations of the City's conflicts of interest law, a fine that was reduced from \$3,000 because of the Supervisor's demonstrated financial hardship.

► The Board fined a former Custodian for DOE \$5,000 for directing a subordinate to paint his private residence, paint his boat, and make repairs to two of his vehicles. In setting the fine, the Board took into account that the custodian had been suspended by DOE for 30 days, valued at \$6,747 for the same conduct.

► The Board fined a former Deputy Chief of Staff to the City Council Speaker \$2,500 for soliciting contributions to the Speaker's reelection campaign. The Deputy Chief of Staff to the Council Speaker is an individual with "substantial policy discretion" within the meaning of the City's conflicts of interest law. Deputy mayors, agency heads, and other public servants with "substantial policy discretion" are prohibited by the City's conflicts of interest law from asking anyone to make a political contribution for any candi-

date for City elective office (such as City Council) or for any elected official of the City (such as a City Council Member) who is a candidate for *any* elective office. (This prohibition does not apply to solicitations made by elected officials themselves.)

► The Board and DOE concluded a three-way settlement with a DOE teacher who was fined \$3,500 by DOE for using her school's BJ's Wholesale Club membership, which was obtained using the school's tax identification number and was to be used only for City purposes, to make personal, tax-free purchases.

► The Board fined a former Director of Construction at DSNY \$6,000 for: (a) asking a DSNY subordinate to perform personal tasks for him, including driving him to the hospital to visit a patient; (b) asking a lower-ranking DSNY employee who was also certified as an Asbestos Investigator to certify that his home was asbestos-free on a notification form mandated by the Department of Buildings in order for the Director of Construction to remodel his home; and (c) obtaining two summer jobs for his son with firms having DSNY business dealings for which he was Director of Construction.

► The Board issued a public warning letter to ACS Clerical Associate II who also worked for four and one-half years at a firm engaged in business dealings with ACS. □

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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