

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

A Publication of the New York City Conflicts of Interest Board

Quinn Haisley, Editor



Chapter 68 and Private Employment

By Jeff Tremblay

Question: *I'm an employee at a New York City agency, and I'm thinking of supplementing my income with private work for a company. What restrictions do the City's ethics laws place on outside employment?*

Answer: A City employee must navigate a number of provisions of the City's ethics law when he or she works a second job in the private sector. Some of the restrictions on outside employment are intuitive. Others are less so.

The restrictions begin during the job-hunting process. A City employee is prohibited from soliciting, negotiating for, or accepting a position with any person or firm that is involved in a particular matter with the City while the public servant is actively considering, directly concerned, or personally participating in that particular matter on behalf of the City. This restriction helps to ensure that companies with business before the City do not receive special treatment in exchange for providing a City employee with a job. Because of the danger of inappropriate influence, this rule is broadly construed; even sending a resume out to a company that has a matter on which you are working could be considered a violation of the law.

In conducting a job search, a City employee should also keep in mind that he or she is prohibited from working for certain companies that have "business dealings" with the City. A full-time City employee is prohibited from having a position with a company doing business with *any* City agency. See City Charter § 2604(a)(1)(b). If the City employee only works part-time (less than 20 hours per week), he or she is prohibited only from working for a company that has business dealings with *his or her own* City agency. See City Charter § 2604(a)(1)(a); Board Rules § 1-06. Chapter 68 provides that City employees who knew or should have known of the City business dealings are responsible under the law. See City Charter § 2604(a)(6).

Once the job hunt is over and a City employee begins working a second job, a number of additional restrictions come into play. Perhaps the most obvious restrictions are that the City employee may not use any City time or resources to perform work for the outside company. The City's Acceptable Use

Policy, which allows for a City employee to make incidental personal use of City time and resources for personal reasons, does not apply to activities that financially benefit the employee. There is no acceptable level of use for personal financial gain, and even minimal uses of City time and resources are prosecuted.

A City employee is also prohibited from using his or her City position to further his or her private interests. As such, a City employee may not use his or her City title in advertisements for the outside company. It also means that a City employee cannot ask his or her subordinates to perform services for, purchase products or services from, or otherwise support the private company.

Additionally, a City employee cannot "appear before" the City on behalf of his or her private employer. A City employee appears before the City any time he or she makes a communication, for compensation, other than those involving what the City Charter calls "ministerial matters." The level of "communication" necessary for such an appearance is minimal; even silently attending a meeting where City employees are present has been deemed an appearance before the City. Similarly, the ministerial matter exception, which allows for a City employee to make appearances related to an administrative act that does not involve substantial personal discretion, is narrow. The threshold used by the Board to determine whether there exists substantial personal discretion is low, so that the request and issuance of some permits has been deemed to be non-ministerial and therefore requesting them would be a prohibited appearance before the City.

Clearly, there are a lot of restrictions that could apply to a public servant who wishes to moonlight for a private company, and not all of them apply to all employees. Given the volume and complexity of these restrictions, the Board suggests that you call to get advice regarding your particular situation before taking a second job. You can call the Board's Attorney of the Day Monday through Friday from 9 a.m. to 5 p.m. at (212)442-1400.

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Recent Enforcement Cases

► While working for the City's Board of Elections, a supervisor in the BOE Queens Borough Office hired a subordinate BOE employee to work for his private consulting company. The supervisor also used his BOE email account for purposes related to that company and to another company he owns that markets data services to political campaigns. The Commissioners of Election voted to suspend the supervisor without pay pending a disciplinary hearing concerning this conduct, and the supervisor resigned to resolve the pending disciplinary action. The Board accepted the related disciplinary action taken by BOE as sufficient penalty for the Chapter 68 violations.

► In a joint settlement with DOT, a Supervising Highway Repairer for DOT agreed to pay a \$2,000 fine to the Board for referencing his DOT position to a fellow DOT employee in an unsuccessful attempt to convince that employee not to issue two New York City Environmental Control Board Notice of Violation summonses to a private construction company for which the Supervising Highway Repairer worked on a part-time basis.

► A Captain in the New York City Department of Homeless Services ("DHS") Security Division forfeited 50 days of annual leave for being involved in two separate personnel matters at DHS concerning his daughter, who is a Special Officer at DHS. This matter was a joint settlement with DHS.

► In a joint settlement with the DOE, a teacher agreed to pay a \$1,500 fine to the Board for asking the mother of a student assigned to the teacher's pre-kindergarten class to loan her the mother's SNAP food stamp card so that the teacher could personally use approximately \$100 in benefits connected with the SNAP card. The mother did not provide the SNAP card to the teacher.

► A Computer Systems Manager for the New York City Department of Records and Information Services paid the Board

a \$4,650 fine for doing business with the Office of the Public Administrator of New York County (a City agency) as an independent consultant. The amount of the fine represents the total amount the Computer Systems Manager received as a result of the prohibited business dealings. This matter was a joint settlement with DORIS.

► A Plasterer for the New York City Housing Authority ("NYCHA") agreed to be suspended for 25 work days without pay, valued at approximately \$8,128, for agreeing to accept money from a NYCHA tenant to repair the bathroom ceiling in her apartment. The Plasterer cancelled the appointment shortly before its scheduled time because he did not want to give up his NYCHA overtime. This matter was a joint settlement with NYCHA.

► A former First Deputy Press Secretary for the New York City Mayor's Office paid a \$2,000 fine to the Board for communicating with her former City agency on two occasions on behalf of her new private sector employer -- including attending a meeting hosted by a Deputy Mayor at City Hall -- within her first year of leaving City service.

► In September 2014, a DOE teacher solicited a loan from his supervisor, a DOE assistant principal, which the assistant principal did not provide. The teacher had previously been advised in a public warning letter issued by the Board in December 2012 that for a public servant to accept a loan from one's City superior or subordinate would violate the City's conflicts of interest law. Thus, by soliciting this prohibited loan in September 2014, the teacher requested that his supervisor, the assistant principal, violate the conflicts of interest law, itself a violation of the conflicts of interest law, which prohibits a public servant from intentionally or knowingly soliciting, requesting, aiding, or causing another public servant to violate the law. The teacher paid a \$1,250 fine to the Board.

Congratulations! to the winner of the Conflict of Interest Board's March Public Service Puzzler contest:

Joshua Florsheim, the Executive Director of Business Policy & Analysis at the Department of Buildings.

You can read Mr. Florsheim's bio and get the details for the April Public Service Puzzler by clicking [here](#).



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*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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