

Ethics lights the way to good government

The Ethical Times

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Referring a Friend

By Alex Kipp

Question: I work as a Principal Administrative Associate in the HR Unit of a City agency. I recently posted a job vacancy notice on our website for a Substance Abuse Counselor. I have a friend who I used to work with who'd be perfect for the job. I was thinking of referring her. My co-worker, however, told me I could not make the referral. When I asked why, he said I would be committing an act of nepotism, and nepotism is illegal. Is this true?

Answer: It is true that certain kinds of favoritism are illegal under Chapter 68 of the City Charter, the City's Conflicts of Interest Law. However, I'm not sure that the referral you mention would be. Let's first take a look at what nepotism is, and how it is addressed by the law.

According to the American Heritage Dictionary of New Cultural Literacy, 3rd Edition, nepotism is "favoritism granted to relatives or close friends, without regard to their merit. Nepotism usually takes the form of employing relatives or appointing them to high office." Nepotism often invokes the idea of someone using their government office to obtain a position for a relative or friend in a way that by-passes a transparent, fair, merit-based hiring system. Nepotism runs counter to fairness, and threatens to turn the workings of government into a family-run business, where raises, promotions, and assignments are determined more by birthright than by quality of labor.

Interestingly enough, the word "nepotism" does not appear anywhere in Chapter 68. This is because Chapter 68 deals with the concept in a slightly different manner that both widens and limits the scope of the above definition. Under Chapter 68, no public servant is allowed to use their City position for their own personal benefit, nor are they allowed to do so for anyone with whom they are *associated*. Once we know who is an associate, then we'll be able to determine whether or not you can make the referral.

"Associate" is defined in Chapter 68 as a spouse, domestic partner, child, parent or sibling of a public servant; a person with whom a public servant has a business or other financial relationship; and each firm in which a public servant has a present or potential interest. That's a pretty specific list. Notice there is no mention of "friends" in it. Notice also how it includes firms and people with whom you have a financial relationship. Why? Normally, when we think of nepotism, we probably think of hooking up our kids or siblings, or our high-school locker part-

ners. We might not think of our landlords or tenants, employees of our outside businesses, or investing partners. But, just imagine the scandal if you helped recommend and hire a guy you owed a \$10,000 debt, or a roommate who's behind on the rent.

And I think there's probably a good reason why "friend" isn't listed as an associate. First of all, how do you define friend? Is there a minimum amount of time you have to spend together? Are there certain activities that prove friendship and others that do not? It's easier to define relatives and people with whom you have a financial relationship.

So, now to your friend. If this friend of yours is in no way *associated* with you—you don't owe the friend money, s/he's not your business partner, or your current roommate, or does not in any other way have a financial relationship with you—then referring your friend is fine. Some might even say you're doing the agency a favor by helping to find qualified people to work there.

Now, does that give you the go-ahead to misuse your City position to get your friend some sort of unfair advantage? Of course not. Your friend has to go through the hiring and interviewing process like anyone else. And in order to ensure a sense of fairness and transparency, you'd probably want to let your boss know that your friend was applying for the job, so your boss could decide whether to take you out of the hiring process. But if that friend was an *associate*, as defined above, you couldn't refer that friend or take ANY action involving the entire hiring process.

If you have any questions about whether your activities would create 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. □

Alex Kipp is Director of Training & Education at the New York City Conflicts of Interest Board.

Recent Enforcement Cases

► The Board issued a public warning letter to a seasonal Chief Lifeguard for the Parks Department for using Parks resources in connection with his private work as a tax preparer.

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► The Board fined a DOHMH Health Services Manager for \$3,500 for using her position to help her brother get a job in the DOHMH bureau that she supervised and for using her position to steer a DOHMH contract to a vendor with which she had a financial relationship.

► The Board fined a former DOE teacher \$15,000 for making compensated appearances before the DOE within one year of leaving City service.

► The Board fined a NYCHA Supervising Housing Caretaker \$1,000 for receiving fees from two tax preparation companies for referring five of his subordinates to the companies and receiving faxes at his job in connection with this private business.

► The Board fined a former NYCHA Plumbing Supervisor \$1,000 for using four hours of City time to work for his private plumbing company.

► The Board and the Human Resources Administration concluded a three-way settlement in which an HRA Clerical Associate was fined 10-days' pay by HRA, valued at \$1,325, for accessing confidential information about her private tenant.

► The Board and NYCHA concluded a three-way settlement with a NYCHA Superintendent who was fined \$2,000 by the Board and \$1,500 by NYCHA for misusing his NYCHA position to obtain free services from his subordinates.

► The Board and NYCHA concluded a three-way settlement with a NYCHA Assistant Resident Buildings Superintendent who was suspended for 44 work days, valued at approximately \$10,164, for misusing his NYCHA position and NYCHA letterhead in an attempt to avoid paying a parking ticket he had received.

► The Board fined a Deputy Chief Administrative Law Judge at the Parking Violations Bureau for the New York City Department of Finance \$1,450 for accepting free legal representation from his subordinate.

► The Board issued public warning letters to four current and former NYCHA Community Center staff members for accepting compensation from an entity other than NYCHA for performing their official City duties.

► The Board and the New York City Environmental Control Board concluded a three-way settlement with an Operations Manager who was fined \$2,500 by the Board, demoted by ECB in title (but not in salary), and reassigned from the Brooklyn Office to the Manhattan Office of ECB for using her ECB position and ECB resources to facilitate and promote her sister's use of an ECB job that she never held on her resume.

► The Board and DOHMH concluded a three-way settlement in which a DOHMH Special Consultant was suspended for six days, valued at \$1,597, for using City time and City re-

sources to work on a variety of private business ventures.

► The Board and DOHMH concluded a three-way settlement in which a Public Health Educator in the Bureau of School Health was suspended for five days by DOHMH, valued at approximately \$1,274, for giving two paid lectures which he could have been reasonably assigned to do as part of his DOHMH duties and then communicating about those paid lectures using City technology resources while on City time.

► The Board fined a former ACS Community Coordinator \$2,000 for using City resources and City time to perform work related to his private counseling practice and for appearing before another City agency on behalf of that practice.

► The Board and the Parks Department concluded a three-way settlement with a Parks Recreation Supervisor, who agreed to serve a 30-day suspension, valued at approximately \$2,300, for misusing his Parks position to obtain paid work from an organization that was using the Parks facility he supervised.

► The Board and DEP concluded a three-way settlement with the DEP Agency Chief Contracting Officer, who forfeited \$6,290 in annual leave for misusing her position at DEP to obtain DEP water-pumping services on an expedited basis not regularly afforded to the general public.

► The Board issued public warning letters to a DOE Principal and teacher for entering into a loan arrangement with each other.

► The Board fined a former DOE Principal \$1,500 for allowing one of his subordinates to hire and supervise her children and for allowing another subordinate to hire and supervise her brother.

► The Board fined an HHC Executive Director of a hospital \$1,000 for not paying the required fee for multiple prescriptions he filled at his hospital's pharmacy until seven months after the last of the prescriptions was dispensed to him.

► The Board issued a public warning letter to a DEP Watershed Maintainer of the Bureau of Water Supply for having a part-time position with and an imputed ownership interest in a firm that engaged in business dealings with DEP through a contract to perform road striping and paving at DEP facilities.

► The Board and DOHMH concluded a three-way settlement in which a Principal Administrative Associate in the DOHMH Bureau of Correctional Health Service was suspended for seven days by DOHMH, with the approximate value of \$1,492, for using City resources on City time to complete an online degree at the University of Phoenix.

► The Board fined a DOE School Food Manager \$600 for selling Avon products to her subordinates.

► The Board issued a public warning letter to a DOE Nursing Supervisor for using or attempting to use her City position in order to obtain a benefit for her son by intervening in the disciplinary proceedings on his behalf. □

Recent Advisory Opinions

2009-3: The City's five pension systems are City agencies within the meaning of the Conflicts of Interest Law.

2009-4: Law firm associates who defer their work at their firm to work for a year, at their firm's expense, for City agencies will be public servants within the meaning of the Conflicts of Interest Law.

2009-5: A former public servant will not violate the ban on communicating with his or her former City agency for one year after leaving City service by communicating during that year with employees or officials of that agency to seek those persons' endorsements of candidates for elective office because such communications seek not official action by the agency but rather the personal action of those being solicited. □

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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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

