

Ethics lights the way to good government

The Ethical Times

A Publication of the New York City Conflicts of Interest Board

Phil Weitzman, Editor



“Prohibited Appearances Before the City”

By
Sung Mo Kim

Question:

I am a full-time City employee. I live in a house that is located across the street from a local high school. Recently, my neighbors and I have received several notices of violation from the Department of Sanitation (“DSNY”) for improper recycling. We want to contest these violations because much of the improper recycling is garbage thrown out by the students at the high school who pass our block to and from school. In order to contest these violations, we have to challenge them in a hearing at the Environmental Control Board (“ECB”), which is part of a City agency.

I plan to represent myself at the ECB hearing. In addition, some of my neighbors have offered to pay me to also represent them at the hearing. May I represent myself at the ECB? May I represent my neighbors for a small fee?

Answer:

Under these circumstances, you may certainly represent yourself at the ECB.

You may not, however, get paid to represent your neighbors at the ECB. The law prohibits a City employee from representing, for compensation, private interests before a City agency or in matters involving the City. The one exception is if the representation involved a ministerial matter, which is defined as an administrative act that is carried out in a prescribed manner and does not involve substantial personal discretion. Here, your proposed representation of your neighbors at ECB would not be ministerial in nature because a hearing judge’s determination on challenges to notices of violation would involve discretion. And since representing your neighbors before ECB is not ministerial, you may not get paid for that work.

Having learned that you may not represent your neighbors before ECB for pay, you may now be wondering whether you may represent your neighbors without pay. Unfortunately, I will not be able to answer that question with the limited information you provided above. However, I can say that the answer to that question will depend on several factors, including, among other things, your City job title and whether in your City job you have dealings with ECB.

The Conflicts of Interest Board has historically held that, even if unpaid, it would be inconsistent with the discharge of a City employee’s official City duties and hence would violate the City’s conflicts of interest laws for a City employee to represent private interests before his or her own City agency or before a City agency that the City employee deals with in his or her City job. Thus, for example, an ECB employee would not be permitted, even if unpaid, to represent a neighbor for improper recycling violations since such violations are handled at his or her own City agency.

Additionally, for City lawyers engaged in the outside practice of law,

there is a flat prohibition on working, regardless of whether they receive compensation, on City-related matters on behalf of outside clients or representing private interests in litigation against the City. Therefore, no City lawyer would be permitted to represent a neighbor before the ECB for improper recycling violations since such matters are City-related matters.

In contrast, it would be likely permissible for a City employee who is not a lawyer, and who does not in his or her City capacity have any dealings with ECB or DSNY, to represent, without compensation, a neighbor before the ECB to contest a violation.

Public servants who have questions about these, or any other of the city’s ethics laws, should contact the Conflicts of Interest Board for free, confidential advice at 212-442-1400. 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. □

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Recent Enforcement Cases

▶ The Board adopted the Report and Recommendation of an Administrative Law Judge of the New York City Office of Administrative Trials and Hearings, issued after a full trial, fining a former HRA Eligibility Specialist \$7,500 for impermissibly using and disclosing confidential information to harass and threaten a woman who she thought was having an affair with her husband.

▶ The Board adopted the Report and Recommendation of an Administrative Law Judge of the New York City Office of Administrative Trials and Hearings fining, after a full trial, the Brooklyn Borough President \$20,000 for accepting free foreign travel and related accommodations for his wife on three occasions. For each trip, it was undisputed that the Brooklyn Borough President was conducting official business and thus could accept free airfare and related accommodations for himself. However, at no time was the Brooklyn Borough President’s wife an employee of the City. Therefore, her travel was not an expense that could have been properly paid for with City funds; thus, if the Borough President wished to have his wife accompany him, he was required to pay for her travel expenses himself.

▶ The Board and DEP concluded a joint settlement with an Environmental Police Sergeant who admitted to using his City position to threaten and intimidate a car wash business into providing free services for the Sergeant’s personal vehicle. As a penalty, the Sergeant agreed to be demoted to the position of Environmental Police Officer, to serve a 30-day suspension without pay (valued at approximately \$3,772), and to serve a one-year probationary period at DEP.

▶ The Board fined a former DOE Elevator Operator \$300 for accepting free cases of bottled water from Poland Spring, a vendor to his school.

▶ The Board fined a Parks Department Manager \$1,250 for entering into a financial relationship with several of her Parks subordinates by participating in a “sou-sou” savings club with them. The Board also issued seven of those subordinate Parks employees Public Warning Letters for their respective involvement in a financial relationship with a superior.

▶ The Board concluded a joint settlement with ACS and an ACS/DJJ Juvenile Counselor who admitted to refusing to allow a female resident of Horizon Juvenile Center, who was then 32-weeks pregnant, to use the restroom facility unless the resident wrote a statement in favor of the Juvenile Counselor. As a penalty, the Juvenile Counselor agreed to serve a 30-day suspension (valued at approximately \$3,352).

▶ The Board concluded a settlement with a former Deputy Inspector General at DOI for using City resources on behalf of his outside work as a sales representative for a multi-level marketing company, and for attempting to sell the company’s products to his subordinates. The former Deputy Inspector General was demoted from a supervisory investigative position to an administrative position, paying \$15,000 less annually.

▶ The Board issued a Public Warning Letter to a DOE teacher for attempting to place promotional materials, relating to his outside job as a sales representative, inside the envelopes of his school’s annual holiday greeting cards for students’ families.

▶ In a joint settlement with the Board and DEP, a DEP Administrative Accountant forfeited three days of annual leave for using his DEP email account to send and receive, over an 18-month period, 1,202 messages relating to a Jaguar car club to which he belongs, and allowing his DEP email address to be posted on the club’s website as a way to contact him.

▶ The Board imposed a \$5,000 fine and \$345.02 in restitution on a former HRA Supervisor who used the Electronic Benefit Transfer Card of an HRA client to make personal purchases.

▶ The Board and DOE concluded a three-way settlement with a DOE Principal who agreed to pay a \$5,000 fine and restitution in

the amount of \$764.03 for authorizing DOE funds to pay his DOE secretary to proofread and edit his essays for his personal doctoral degree.

▶ The Board imposed a \$5,000 fine on a former Eligibility Specialist at HRA for accessing the Welfare Management System to obtain confidential information concerning her daughter’s father and his relatives and for disclosing that information to her daughter’s father.

▶ The Board and NYCHA concluded a three-way settlement with a Procurement Analyst who agreed to be suspended for 40 days without pay, valued at \$7,616, for using his City computer, telephone, and e-mail account during his City work hours to do work for his private business as a running coach.

▶ The Board and the Business Integrity Commission (“BIC”) concluded a three-way settlement suspending a BIC Market Agent for 30 days without pay, valued at \$3,403, for using BIC letterhead to write a personal letter, which he then sent, from a fictitious person at BIC to the New York State Department of Taxation and Finance in an attempt to obtain a personal tax deduction by misrepresenting BIC’s employee reimbursement policy.

▶ The Board and HRA concluded a three-way settlement with a Principal Administrative Associate who paid a fine of ten days’ pay, valued at \$2,033.60, for accessing the Welfare Management System to view the public assistance records of her tenant for her personal use.

▶ The Board fined the former Vice-Chairman of NYCHA \$2,000 for using NYCHA letterhead and his NYCHA subordinate to write two letters: (1) to the director of a real estate agency to praise the broker who handled the sale of his apartment, who was also an old personal friend; and (2) to write a letter to a federal judge seeking leniency for a family friend about to be sentenced on one count of distribution of child pornography.

▶ The Board and DOE concluded a three-way settlement with a former DOE Teacher who was fined \$4,000 by the Board for owning a software firm doing business with DOE and appearing before DOE on behalf of his firm while employed at DOE and during his first year of post-City employment.

▶ The Board fined a former Office Machine Aide at DOT \$2,000 for, during times he

was required to be performing work for DOT, using his City e-mail account and City telephone to perform work related to his private home-based internet travel agency.

▶ The Board fined a former City Research Scientist IV for the DOHMH Office of Emergency Preparedness and Response \$1,000 for sending an e-mail on behalf of his new employer to DOHMH within one year of the termination of his DOHMH employment. □

*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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