

## MISUSING ONE'S CITY JOB FOR PRIVATE ADVANTAGE

Chapter 68 forbids using one's City position for private or personal gain or advantage for oneself, one's close relatives, or one's business associates.

**Example:** Using your position as a Department of Health employee to obtain a favorable or speedy inspection for your brother's restaurant is a violation of the Conflicts of Interest Law.

**Example:** If you have a personal tax problem, you cannot write a letter about it to the Department of Finance on your City letterhead.

Writing a letter on City agency letterhead for any personal reason is strictly forbidden, especially if you are sending the letter to another City agency.

As a general rule the City Charter prohibits the use of City letterhead, personnel, equipment, resources, or supplies for any non-City purpose.

### THE ACCEPTABLE USE POLICY

Having said that, many agencies have adopted an "Acceptable Use Policy," that lays out some guidelines for acceptable "incidental personal use" of some City resources. Under this policy, local personal calls may be acceptable, as long as they are of an incidental nature and don't interfere with your job performance. The same goes with many other elements of office technology.

**Example:** An **occasional, short** call to one's mom in Brooklyn would be seen by the Board as an "incidental personal use" of City time and telephony, and therefore acceptable.

That same call to one's mom in Australia, using City long distance, would not, however, be acceptable, no matter how occasional or short. (Except, of course, if your agency has a program which allows reimbursement of personal calls using City long distance, and you participate in that program.)

**Not all agencies have adopted this “Acceptable Use Policy,” so it’s advisable to check with your agency counsel what your specific policy on incidental use of office technology and resources is.**

### **UNACCEPTABLE PERSONAL USE**

There are many types of personal use of even small items of City property, however, that will always be unacceptable and may result in agency disciplinary action or in prosecution by the Conflicts of Interest Board. This is particularly true if the improper use was for a private business purpose, but there are non-business uses of City resources that clearly fall outside of the “Acceptable Use Policy,” too: *sending hate speech or political literature on a City computer are examples.* The unauthorized use or borrowing of valuable items from your agency may even result in criminal prosecution.

Lastly, just to repeat: be aware that many agencies have stricter conflicts-related rules in many areas, including the use of City property for non-City purposes, than the general conditions this booklet has discussed. Public servants are bound to obey the stricter rules, so check with your agency counsel for your official policy.

### **RECEIVING INCOME FROM SECOND JOBS, YOUR OWN BUSINESS, AND INVESTMENTS**

Many City employees seek to supplement their City salaries through moonlighting, outside businesses, or investments. Generally, such activities are permissible, but you must be certain that outside sources of income do not cause a conflict of interest with your City job.



#### **MOONLIGHTING**

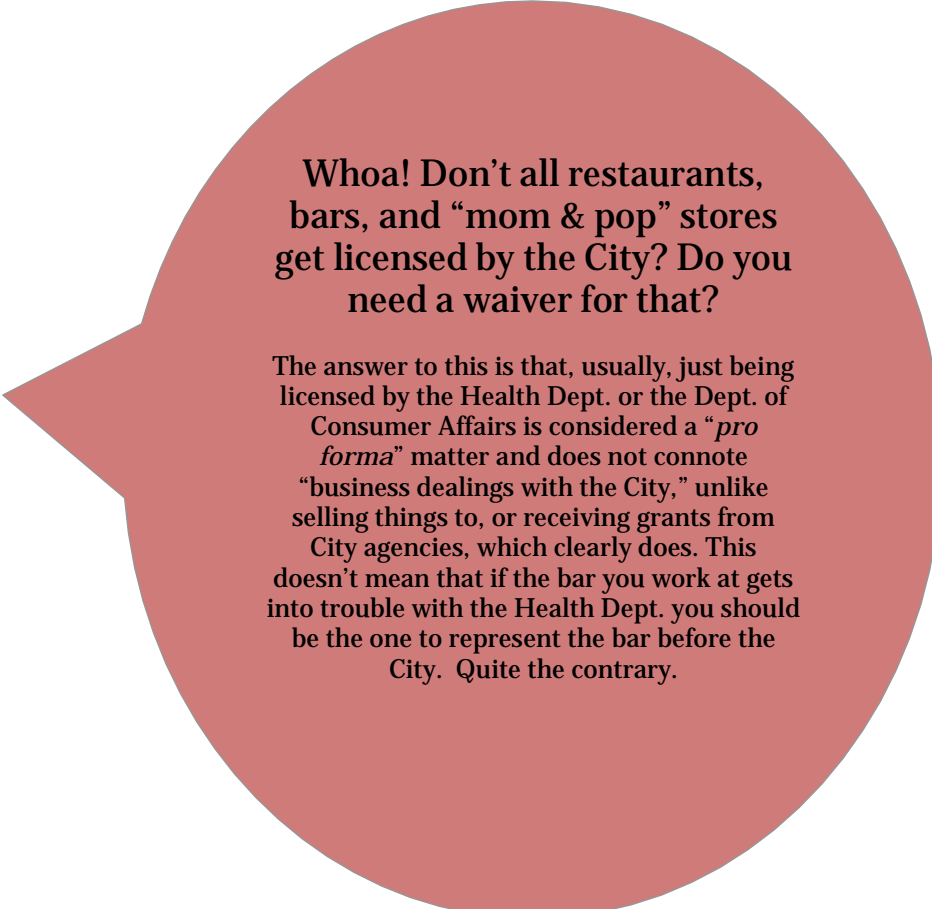


**Anyone working 20 hours or more per week for the City needs permission in order to work for a person or company that has business dealings with *any* City agency. This includes any firm (including a private university) that receives funding from the City, any firm that contracts to sell goods or services to the City, or any firm that is licensed by a City agency.**

To work for a company that has business dealings with a City agency, you need to obtain written approval for the job from your **agency head** and a **waiver** from the Conflicts of Interest Board. Further, it is **your** responsibility to find out if the firm has business dealings with the City.

If you work for the City **fewer** than 20 hours per week, then you may work for a company that has business dealings with the City, but not for a firm that does business with **your** City agency. If the firm does business with your own agency, you may not take a position at that firm unless you obtain the written approval of **your agency head** and a **waiver** from the Conflicts of Interest Board. This rule applies to all part-time public servants, whether or not they are paid, including Community Board members. It does not apply to unpaid members of advisory

committees, such as an *ad hoc* committee of citizens set up by the Borough President to give their views on a zoning proposal.



**Whoa! Don't all restaurants, bars, and "mom & pop" stores get licensed by the City? Do you need a waiver for that?**

The answer to this is that, usually, just being licensed by the Health Dept. or the Dept. of Consumer Affairs is considered a "*pro forma*" matter and does not connote "business dealings with the City," unlike selling things to, or receiving grants from City agencies, which clearly does. This doesn't mean that if the bar you work at gets into trouble with the Health Dept. you should be the one to represent the bar before the City. Quite the contrary.

Some things you can do to find out if your outside employer has business dealings with the City:

- a) ask the entity's accounting or financial people;
- b) ask one of the accounting or personnel people at your agency to run a VENDEX search (VENDEX is a database of City contracts); or
- c) call the staff at the Conflicts of Interest Board.

**CHECKLIST:** When working for a private employer, or for their OWN outside business ventures, public servants

- May not use City position to obtain any advantage for that employer or outside business;
- May not use City letterhead, personnel, equipment, resources, or supplies for a private employer, or their own private businesses;
- May not conduct any business for the employer, or their own private businesses on City time;
- May not use or disclose any confidential City information to help a private employer, or their own private businesses;
- May not work for a private employer, or their own private businesses, on any matter that is before **any** City agency, without getting a waiver from the Conflicts of Interest Board;
- May not appear as an attorney against the interests of the City in any case where the City is a party or a complainant without getting a waiver from the Conflicts of Interest Board; and
- May not be paid as an expert against the interests of the City, without getting a waiver from the Conflicts of Interest Board.

If you work for the City **less** than 20 hours per week, the last three restrictions apply only with respect to **your own** City agency.

**Example:** If you work for the Human Resources Administration 15 hours per week, you may work for a private employer on a matter before the Sanitation Department.

That is, provided that you comply with the other requirements discussed above and with any requirements that HRA has for outside employment.

In all cases you need to be careful to avoid any appearance that you are using

your City job to help your private employer. This would certainly include helping your private employer in any matters that involve your City agency.

### **Outside Professional Practices**

If you work as an attorney, agent, broker, or consultant to a firm, then you are regarded as having a position with that firm.

**Example:** If you are a full-time employee with the Fire Department and are also a licensed real estate broker, you may not act as a broker for any person or firm which does business with the City without a waiver from the Conflicts of Interest Board.

### **Temping Agencies**

There are also special rules for City employees who moonlight through private temporary employment agencies, especially if the temp agency you work for does business with City, **or if the company you are assigned to by the temp agency does.** You should call the Board for advice in these situations.



## **SUPERIORS AND SUBORDINATES**



All public servants are prohibited from having a business or financial relationship with a superior or a subordinate.

**Example:** If you own an apartment, you may not sublet it to someone you supervise.

**Example:** If you do outside carpentry work, you may not do a private job for your boss, not even for free.

“Does this mean I can’t loan my boss or my subordinate \$5 for lunch?”

No, although you could imagine even this becoming a problem. If, for example, your boss borrows \$5 from you every day and never pays you back, that might not be a prohibited financial relationship under the law, but it certainly is a case of the boss misusing City position to get a personal benefit.

**Example:** You also may not share an apartment with a superior or subordinate, since splitting the rent would involve a financial relationship.

**Example:** You cannot borrow \$1000 from any subordinate, nor can you loan any subordinate money, nor can any superior of yours lend money to or borrow money from you.

All of these situations are potentially coercive and, even if they are not, will throw a supervisor’s ability to give fair & impartial evaluations and job assignments into question.

## SOU-SOUS

Sou-sous, or savings clubs, absolutely connote a financial relationship between the parties involved. This means that it is impermissible for any superior to participate in a sou-sou with any subordinate. Under the Conflicts of Interest Law, public servants who are not in a superior/subordinate relationship may participate in a sou-sou together, but be sure to check with your agency counsel before you do so, as some agencies prohibit any financial activity between co-workers in the workplace.

## **GIRL SCOUT COOKIES, FUNDRAISERS, BOOSTER BARS, AVON**

This is one tiny potential exception to the restriction on financial relationships between superiors and subordinates, but it only works when the subordinate sells and the superior buys, not the other way around. Also, the amount the superior can buy is limited to \$25. The reasoning here is that the superior is less vulnerable to coercion than a subordinate and is therefore free to either buy or not buy, as s/he prefers.

**HOWEVER:** if you are interested in selling Avon, or Girl Scout cookies, or other similar things at work, please check with your supervisor or your Agency Counsel, as some agencies have prohibited ANY financial activities in the workplace regardless of their nature. And also remember the Acceptable Use Policy: if it is OK with your agency to sell these kinds of things, it should only be done at times when you are not required to do your City job.