

“Administering an Effective Ethics Law: The Nuts and Bolts”

by
Prof. Mark Davies*

Cooperation in Ethics Management and the Fight Against Corruption:
International Scenario
6th Seminar of the Brazilian Commission of Public Ethics:
Ethics in Public Management
Nov. 17, 2005

Outline

Introduction

For article and remarks at IV Global Forum on Fighting Corruption, see
<http://www.nyc.gov/ethics>, then “International”

Conflicts of Interest Board (“COIB”) and Staff

- Board
 - Independent 5-member volunteer board appointed by Mayor with advice and consent of City Council
- Staff:

| | |
|---|-------------|
| Executive/administration/information technology Executive Director, Director of Administration, Administrator, Director of IT | 4 |
| Legal Advice Attorneys | 3 |
| Ethics Training & Education Director of Training & Education, Senior Trainer | 2 |
| Financial Disclosure Director of FD, Deputy Director, Senior FD Analyst, Administrative Assistant, FD Assistant | 5 |
| Enforcement Attorneys (4), Litigation Coordinator | 5 |
| | Total 19 |
| | Attorneys 9 |

Legal Advice

- Provides “cover” for officials unjustly accused of unethical conduct
- COIB is *only* City agency authorized to interpret ethics law
- Telephone advice – Caller Information Sheets (see page 5)
- Written advice – staff attorney letters, waivers, Board letters, formal advisory opinions
 - 2004: 470 opinions, including 252 staff letters, 157 waivers, 58 Board letters, 3 formal advisory opinions
 - Sample waiver letter (see pages 6-7)
 - Sample formal advisory opinion (see pages 8-12)
- Confidentiality provisions
- Formal advisory opinions are available at:
<http://www.citylaw.org/cityadmin.php>

Training and Education

- Training staff and guidelines for training
- Who receives ethics training
 - New public servants; public servants who give conflicts advice within government agencies, such as attorneys or personnel officers; public servants most susceptible to conflicts of interest (high level officials and those involved in purchasing, government contracting, issuance of permits, and inspections)
 - Two-page plain language version of NYC conflicts of interest law (see pages 13-14)
- Live training by COIB
 - 2004: 288 classes to 14,470 public servants at 38 agencies
 - Games, exercises, Q&A
 - Participation by Mayor
- Train the Trainer program
- Ethics officers or liaisons at agencies
- Other training methods
 - Videotapes and DVD’s – targeted at vendors, specific agencies (e.g., Department of Education), and general
 - Public service announcements
 - Website: <http://www.nyc.gov/ethics>
 - Interactive web-based conflicts of interest training program

- Print publications – posters, leaflets, FAQ leaflets, bookmarks
- Columns for civil service newspaper; newsletter
- Goal of training
 - Alert public servants to possible conflicts of interest and need to call COIB - one-page guide to conflicts of interest (see page 15)
- Resources
 - Council on Governmental Ethics Laws: <http://www.cogel.org>

Annual Financial Disclosure

- Who files: elected officials and candidates for elective City office; agency heads and their deputies and assistants; senior managers; policymakers, including compensated members of all boards and commissions; and those persons involved in the negotiation, authorization, or approval of contracts, licenses, or permits
- Number of filers: 8,000
- Late filing fine (at least 8 days late): minimum of \$250
- Fine for failure to file, failure to disclose assets or liabilities, or misstatement of assets or liabilities: up to \$10,000 per violation
- Total fines imposed (1990-October 2005): \$466,000
- Compliance rate: >98%
- Number of reports viewed by the public and media: 550 per year

Enforcement

| | 2001 | 2004 | Jan.-Oct. 2005 | 1990-Oct. 2005 |
|-------------------------------------|----------|---------|----------------|----------------|
| Complaints Received | 124 | 307 | 329 | 1,872 |
| Dispositions | 154 | 266 | 188 | 1,498 |
| Dispositions Imposing Fines | 9 | 6 | 10 | 65 |
| Public Warning Letters | 2 | 0 | 1 | 6 |
| Fines Imposed | \$20,450 | \$8,450 | \$31,250 | \$271,875 |
| Referrals to Dept. of Investigation | 49 | 156 | 89 | N/A |
| Reports from Dept. of Investigation | 43 | 93 | 87 | N/A |

- Highest fine: \$84,000
- Historical data (1990-2004), see 2004 Annual Report at: http://www.nyc.gov/html/conflicts/downloads/pdf2/annual%20report_04.pdf
- Text of public dispositions, see <http://www.citylaw.org/cityadmin.php>
- Summaries of the public dispositions, see http://www.nyc.gov/html/conflicts/downloads/pdf2/enf_summary.pdf
- Enforcement process (see page 16)
- Confidentiality provisions

* Executive Director, New York City Conflicts of Interest Board; Adjunct Professor of Law, Fordham University School of Law; Chair, Government Ethics and Professional Responsibility Committee, Municipal Law Section, New York State Bar Association. The views expressed in these remarks do not necessarily represent the views of those organizations.

CALLER INFORMATION SHEET

COIB Attorney:

Date:

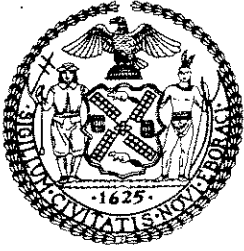
Time:

| | |
|--|------|
| Caller Name: | |
| <input type="checkbox"/> <i>Check if Anonymous</i> | |
| Affiliation: | |
| Phone: | Fax: |
| Address: | |
| Email: | |

| |
|--|
| CALLER <input type="checkbox"/> City Servant <input type="checkbox"/> Media <input type="checkbox"/> Civilian Public <input type="checkbox"/> Fed/State/Local |
| CATEGORY: <input type="checkbox"/> Private Law Firm <input type="checkbox"/> Civic <input type="checkbox"/> Former City Servant |

| |
|--|
| TOPIC: |
| <input type="checkbox"/> Moonlighting <input type="checkbox"/> Volunteer Activities <input type="checkbox"/> Political Activities <input type="checkbox"/> Enforcement |
| <input type="checkbox"/> Gifts/Honoraria <input type="checkbox"/> Ownership Interests <input type="checkbox"/> Post-Employment <input type="checkbox"/> Community Bd |
| <input type="checkbox"/> Certification <input type="checkbox"/> Use Position (b)(3) <input type="checkbox"/> FD <input type="checkbox"/> Fundraising |
| <input type="checkbox"/> Other _____ |

| |
|--|
| ACTION TAKEN: |
| <input type="checkbox"/> Oral Answer |
| <input type="checkbox"/> GAVE WARNING THAT ADVICE IS BASED ON INFORMATION SUPPLIED AND NOTICE OF AVAILABILITY OF WRITTEN ADVICE. |
| <input type="checkbox"/> Referred Caller to: <input style="width: 400px; height: 20px;" type="text"/> |
| <input type="checkbox"/> Other: <input style="width: 400px; height: 20px;" type="text"/> |
| <input type="checkbox"/> Suggested Written Request for advice |
| <input type="checkbox"/> Advised conduct prohibited unless & until caller submits written request for advice |
| <input type="checkbox"/> Possible Enforcement |
| <input type="checkbox"/> Suggested Sending in Written Complaint |
| <input type="checkbox"/> Materials to Be Sent (to addressee above) |
| Indicate Materials Needed: <input style="width: 400px; height: 20px;" type="text"/> |
| <input style="width: 400px; height: 20px;" type="text"/> |
| Secretary to Initial & Date When Materials Sent: _____ |



CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD

2 Lafayette Street, Suite 1010
New York, New York 10007
(212) 442-1400

Fax: (212) 442-1407 TDD: (212) 442-1443

October 24, 2005

Anthony W. Crowell, Esq.
Special Counsel to the Mayor
Office of the Mayor
City Hall
New York, NY 10007

Re: Conflicts of Interest Board Case No. 2005-592 (Marie Delus)

Dear Mr. Crowell:

This is in response to your letter to the Conflicts of Interest Board (the "Board"), dated September 30, 2005 and subsequent communication between your office and Board staff, requesting an opinion as to whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, Marie Delus may work part-time for Macy's Department Store ("Macy's"), in light of her position with the Mayor's Office.

You have informed the Board that Ms. Delus is employed by the Mayor's Office as Deputy Agency Chief Contracting Officer; that she wishes to continue her position as a Part-time Sales Associate at Macy's; and that Macy's has business dealings with the City, although not with the Mayor's Office.

By letter to the Board, Peter Madonia, Chief of Staff to the Mayor, has approved of Ms. Delus's outside employment with Macy's.

Pursuant to Charter Section 2604(a)(1)(b), except as otherwise provided by Charter Section 2604(e), a public servant whose primary employment is with the City may not hold a position with a firm which is engaged in business dealings with the City.

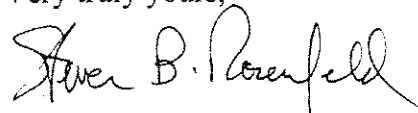
Charter Section 2604(e) provides that a public servant may hold a position, or engage in conduct, otherwise prohibited by Chapter 68, if the Board determines, after receiving written approval of the public servant's agency head, that such a position or conduct does not involve a conflict with the purposes and interests of the City.

Visit our home page at <http://nyc.gov/ethics>

You are advised that, based on your representations and Mr. Madonia's written approval, the Board has determined that it would not conflict with the purposes and interests of the City for Ms. Delus to work for Macy's as a Part-time Sales Associate, *provided that* she performs such work during times when she is not required to perform services for the City; that she does not use City equipment, letterhead, personnel, or other City resources in connection with this non-City work; that she does not use her official City position or title to obtain any private or personal advantage for herself or Macy's; and that she does not disclose or use for private advantage any confidential information obtained as a result of her City employment. See Charter Sections 2604(b)(2), (b)(3), and (b)(4), respectively. Moreover, Ms. Delus may not be involved, either at the Mayor's Office or at Macy's, in Macy's business dealings with the City.

The advice conveyed in this letter is conditioned on the correctness and completeness of the facts supplied to us. If such facts are in any respect incorrect or incomplete, the advice we have given to you may not apply. If at any time you would like further advice based on a change of circumstances or additional information, please contact us.

Very truly yours,



Steven B. Rosenfeld
Chair

cc: Monica Blum
Angela Mariana Freyre
Andrew Irving
Jane W. Parver

Marie Delus

2005-592e.ch/wh/je

CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD

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Charitable Contributions
Superior- Subordinate Relationship
Sale of Products

Charter Sections: 2604(b)(2), (b)(3), (b)(4) and (b)(14)

Advisory Opinion No. 98-12

The Conflicts of Interest Board (the "Board") has received a request for an opinion from a public servant employed by a City agency (the "Agency"), asking whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, she may sell beauty products to her subordinates within the Agency. The Board has also been asked whether a superior may ask a subordinate to contribute to a charitable organization.

For the reasons discussed below, it is the opinion of the Board that it would be a violation of Chapter 68 for the public servant to sell beauty products to her subordinates within the Agency. It would also be a violation of Chapter 68 for a superior to solicit charitable contributions from a subordinate. The Board has determined, however, that a subordinate may sell products to a superior, or solicit donations for charitable purposes from a superior, if the amount involved is de minimis. The Board considers de minimis to be \$25.00 or less. Further, the Board has also determined that agencies may determine whether and to what extent employees who are peers may sell products to each other or solicit donations from each other for charitable purposes.

Background

From time to time, the Board receives requests from public servants regarding the propriety of selling items within their agency or soliciting donations to charitable causes. As examples, public servants sell sweets for their children's schools, seek sponsors within their agency for walkathons, or sell cosmetic products to earn outside, non-City income. The sale of items can include anything from Girl Scout cookies to raffle tickets for charity. In some cases it is a superior selling to a subordinate and in others it is a subordinate selling to a superior or a peer selling to a peer.

Discussion

The sale of items, whether for charitable purposes or as part of a side business, is governed by several Charter provisions. These provisions are contained in Charter Sections 2604(b)(2), (b)(3) and (b)(14). The purpose of all of these provisions is to preserve the integrity of public service, to prevent City employees from being exposed to official coercion in their City positions, and to prevent employees from using their City positions for personal gain.

Charter Section 2604(b)(2) provides that no public servant shall engage in any business, transaction, or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of

his or her official duties. Charter Section 2604(b)(3) provides that no public servant shall use or attempt to use his or her official position to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.

Charter Section 2604(b)(14) states, "No public servant shall enter into any business or financial relationship with another public servant who is a superior or subordinate of such public servant."

The Charter Revision Commission defined the superior-subordinate relationship as follows:

Subordinates are not limited to individuals directly under and reporting to the public servant, but include all individuals in lower positions in the organizational hierarchy of the agency, whose work the public servant has the power to direct or whose terms and conditions of employment the public servant has the power to affect.

See Volume II, Report of the New York City Charter Revision Commission,
December 1986 - November 1988, p. 178.

Conclusion

It is the opinion of the Board that superiors may not ask subordinates to purchase items or contribute to charitable causes. Accordingly, the sale of raffle tickets, Girl Scout cookies, cosmetic products or similar items by a superior to a subordinate is entirely proscribed by Charter Section 2604(14) and therefore

would violate Chapter 68. In addition, it is the opinion of the Board that for a superior to request a subordinate to sign up for a bike-a-thon, walk-a-thon, or similar charitable activity or to request a charitable donation would also be in contravention of Charter Section 2604(14) and therefore would violate Chapter 68, unless the charitable activity or fundraiser is sponsored by the City.

The question then remains as to whether a subordinate may sell products to or solicit donations from superiors. In this regard, it is the opinion of the Board that if the amount involved is de minimis, then such an exchange would not violate Chapter 68. The Board considers de minimis to be \$25.00 or less. However, City agencies may determine that a lesser amount is appropriate. Further, it is the opinion of the Board that agencies may determine whether and to what extent employees who are peers may sell products to each other or solicit donations from each other for charitable purposes.

In addition, to the extent the above-mentioned activities are permitted, they must be conducted in accordance with Charter Sections 2604(b)(2) and (b)(3). This means that these activities must be performed at times when the public servants are not required to perform services for the City and that the public servants may not use their official City position or title to obtain any private or personal advantage; and that public servants do not use City equipment, letterhead, personnel or other City resources in connection with this non-City work. See Charter Sections 2604(b)(2) and (b)(3), respectively.

The Board notes that the City endorses and promotes certain charitable initiatives on an on-going or annual basis. The Board's decision excludes these types of charitable events sponsored by the City. Such events would include the annual Combined Municipal Campaign, blood drives, toy drives, or other City sponsored charitable activities.

The Board's decision on this matter is conditioned on the correctness and completeness of the facts supplied to us. If such facts are in any respect incorrect or incomplete, the advice we have given in this opinion may not apply.

Benito Romano
Acting Chair

Bruce A. Green
Jane W. Parver

Dated: December 31, 1998



New York City Conflicts of Interest Law, Covering New York City Public Servants (Plain Language Version*)

1. ***Misuse of Office.*** Public servants may not use or misuse the position to financially benefit themselves, their family members, or anyone with whom they have a business or financial relationship.
2. ***Misuse of City Resources.*** Public servants may not use City letterhead, personnel, equipment, supplies, or resources for a non-City purpose, nor may they pursue personal or private activities during times when they are required to work for the City.
3. ***Gifts.*** Public servants may not accept anything valued at \$50 or more from anyone that they know or should know is doing business or seeking to do business with the City.
4. ***Gratuities.*** Public servants may not accept anything from anyone other than the City for performing their official duties.
5. ***Seeking Other Jobs.*** Public servants may not seek or obtain a non-City job with anyone whom they are dealing with in their City job.
6. ***Moonlighting.*** Public servants may not have a job with anyone that they know or should know does business with the City or that receives a license, permit, grant, or benefit from the City.
7. ***Owning Businesses.*** Public Servants may not own any part of a business or firm that they know or should know does business with the City or that receives a license, permit, grant, or benefit from the City, nor may their spouses, or their domestic partners, nor any of their children.
8. ***Confidential Information.*** Public servants may not disclose confidential City information or use it for any non-City purpose, even after they leave City service.
9. ***Appearances Before the City.*** Public servants may not accept anything from anyone other than the City for communicating with any City agency or for appearing anywhere on a City matter.
10. ***Lawyers and Experts.*** Public servants may not receive anything from anyone to act as a lawyer or expert against the City's interests in any lawsuit brought by or against the City.
11. ***Buying Office or Promotion.*** Public servants may not give or promise to give anything to anyone for being elected or appointed to City service or for receiving a promotion or raise.
12. ***Business with Subordinates.*** Public servants may not enter into any business or financial dealings with a subordinate or supervisor.
13. ***Political Solicitation of Subordinates.*** Public servants may not directly or indirectly ask a subordinate to make a political contribution or to do any political activity.
14. ***Coercive Political Activity.*** Public servants may not force or try to force anyone to do any political activity.

15. ***Coercive Political Solicitation.*** Public servants may not directly or indirectly threaten anyone or promise anything to anyone in order to obtain a political contribution.
16. ***Political Activities by High-Level Officials.*** Elected officials, deputy mayors, agency heads, deputy or assistant agency heads, chiefs of staff, directors, or members of boards or commissions may not hold political party office or ask anyone to contribute to the political campaign of anyone running for City office or to the political campaign of a City elected official running for any office.
17. ***Post-Employment One-Year Ban.*** For one year after leaving City service, former public servants may not accept anything from anyone, including the City, for communicating with their former City agency.
18. ***Post-Employment One-Year Ban for High-Level Officials.*** Elected officials, deputy mayors, the chair of the City Planning Commission, and the heads of the Office of Management and Budget, Law Department, or Departments of Citywide Administrative Services, Finance, or Investigation, for one year after they leave City service, may not accept anything from anyone, including the City, for communicating with their former branch of City government.
19. ***Post-Employment Particular Matter Bar.*** After leaving City service, former public servants may never work on a particular matter they personally and substantially worked on for the City.
20. ***Improper Conduct.*** Public servants may not take any action or have any position or interest, as defined by the Conflicts of Interest Board, that conflicts with their City duties.
21. ***Inducement of Others.*** Public servants may not cause, try to cause, or help another public servant to do anything that would violate this Code of Ethics.
22. ***Disclosure and Recusal.*** As soon as a public servant faces a possible conflict of interest under this Code of Ethics, he or she must disclose the conflict to the Conflicts of Interest Board and comply with the Board's instructions, which may include recusal, divestiture, or other actions.
23. ***Volunteer Activities.*** A public servant may be an officer or director of a not-for-profit with business dealings with the City if they do this work on their own time, they are not compensated for such work, the not-for-profit has no dealings with their City agency (unless the head of the agency has given approval), and said public servant is in no way involved in the not-for-profit's business with the City.

FOR ADDITIONAL INFORMATION, CONTACT
NEW YORK CITY CONFLICTS OF INTEREST BOARD
2 LAFAYETTE STREET, SUITE 1010
NEW YORK, NY 10007
212-442-1400 (TDD 212-442-1443)
<http://nyc.gov/ethics>

* This material is intended as a general guide. It is not intended to replace the text of the law (NYC Charter § 2604). For more particular information or to obtain answers to specific questions, you may write or call the Board. Also, bear in mind that individual agencies may have additional restrictions on the acceptance of gifts, moonlighting, and other issues. Contact your agency counsel for more information.



The City's Conflicts of Interest Law prohibits public servants from using or appearing to use their City positions for their own personal benefit. To comply with the law, you cannot:

- **Use your City position to gain any private advantage for yourself, a close family member, or anyone with whom you have a financial relationship.**
- **Use City resources for any non-City purpose, or disclose confidential City information to any private person or firm.**
- **Accept any valuable gift from someone doing business with any City agency, or *anything* from anyone for performing your City job.**
- **Take a second job with a firm, or own all or part of a firm, that has business with any City agency, unless you receive approval from the Board and your agency.**
- **Enter into any kind of private financial relationship with a superior or subordinate.**
- **Ask a subordinate to work on a political campaign or make a political contribution.**
- **Take part in a not-for-profit organization's business dealings with any City agency.**
- **Discuss possible future employment with a firm you are currently dealing with in your City job.**
- **Communicate with your former agency on behalf of a private firm for one year after you leave City service, or ever work on a matter you personally and substantially worked on while with the City.**

For information or to get advice on the City's Ethics Law, call the Conflicts of Interest Board at 212-442-1400 (calls are confidential) or visit our website at <http://nyc.gov/ethics>

This material is intended as a general guide. It is not intended to replace the text of the law (Charter § 2604). For more particular information or answers to specific questions, please write or call the Board. Also, bear in mind that individual agencies may have additional restrictions on the acceptance of gifts, moonlighting, and other issues. Contact your agency counsel for more information.

ETHICS ENFORCEMENT PROCESS IN NEW YORK CITY

