

the Ethical Times

Playing Politics Supporting Your Candidate the Ethical Way

By Isaiah Tanenbaum

As summer turns to fall, it's a great time for us to have a chat about politics.

Wait! Don't go anywhere!

We won't be arguing about political parties, candidates, or even policy positions here. You probably have *more than ample* opportunities for that sort of discussion already. We'll be talking about what City employees can, and cannot, do with regards to political activities under the conflicts of interest law.

Now, we all cherish our First Amendment freedoms, which protect – among other things – our right to advocate on behalf of our political views and support the candidates we feel best represent those views by



IN THIS ISSUE

- 1 **Featured Article: Political Activities**
- 3 **Recent Enforcement Cases**
- 4 **Public Service Puzzler Winner**

giving them our money (campaign contributions) and our time (volunteering). Some of us might even land a paid position with a campaign.

Chapter 68 does not prohibit these activities, but it does place limits on the ways that we can use City resources for these ends. In fact, **the City's conflicts of interest law prohibits us from using any City time or City resources for political activities.**

Want to phone bank for a political party? Go for it, but do it on your own time, using your own phone. Want to flyer your neighborhood in support of a candidate? Have at it, but don't print those fliers on the City copier – not even one! Want to encourage your friends to attend the campaign rally on Saturday? Cool, but don't ask your City subordinates to join you.

You probably already know these rules. But let's look at some more complicated questions, and see how Chapter 68 guides us through them.

Can I volunteer for my boss's campaign?

Yes. Superiors can never order, ask, or even hint that their subordinates engage in any

political activity, including volunteering for a campaign. So if you have City subordinates, make sure that they never feel that you're telling them to volunteer. But any of us, independently, can choose to support any candidate we like, including those who happen to be our City superiors.

What about a paid position?

Still ok! And you don't even need a moonlighting waiver from COIB. However, some City agencies want to approve all outside jobs their employees might hold, and agencies that deal directly with elections, such as the Campaign Finance Board (CFB), may have additional restrictions. Ask your agency's Ethics Liaison if there are any special rules like these that might apply to you.

One final note: as public servants, we cannot make compensated appearances before the City, so the campaign shouldn't send you to represent it before the CFB, or indeed any City agency.

Could I donate to my boss's campaign? What about hosting a fundraiser?

Once again, yes! You aren't giving a gift to your boss; you're giving it to "The Committee to Elect Boss." You could also hold a fundraiser and collect checks for the campaign, so long as you're not (a) soliciting funds from anyone you have power over in your City capacity, such as your subordinates or members of the public or City vendors whose matters you oversee, *or* (b) designated as a "substantial policymaker" (few of us are), in which case you can't fundraise for a campaign for any City elective office, or for any City elected official running for any office.

My boss is running for office, and I'm working on her campaign on the side. A New Yorker I've been helping in my City capacity writes me at my City email address asking how he can get involved in the campaign. What should I do?

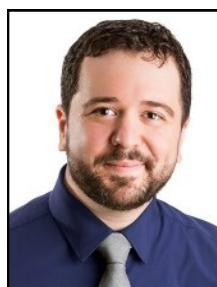
It might seem easiest to forward that email directly to the campaign manager, or call up the campaign's volunteer coordinator and tell him to reach out, but that would be politicking using City resources (namely, your City email account) and/or City time. So you should reply that all campaign inquiries must be directed to the campaign – you can give the would-be volunteer the campaign's web address and main number or email, but anything more would be a breach of the wall of separation that you must maintain between your City job and the campaign.

These laws seem overly restrictive.

First, that's not a question; second, remember that the goal is to keep our political and City lives as separate as possible, and sometimes that means we have to jump through a few hoops. But if you'd like to change the law, have you considered running for office yourself?

Fine, smart guy, I will run for office. What do I need to know?

Frankly, a lot – too much to cover here. Contact COIB's [Attorney of the Day](#) at (212) 442-1400 to get guidance on these — or any — provisions of Chapter 68. All conversations are confidential and can even be anonymous. See you at the polls!



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Recent Enforcement Cases

Misuse of City Resources & City Position.

A now-former NYC Department of Correction (DOC) Deputy Commissioner for Strategic Planning paid a \$20,000 fine for multiple violations of the City's conflicts of interest law. Most of the Deputy Commissioner's violations grew out of her 2017 dispute with her fourteen-year-old neighbor, who flew a recreational drone near the Deputy Commissioner's home in Nassau County:

- She had three DOC subordinates use approximately 28 hours of City time to perform tasks relating to the Deputy Commissioner's goal of having the Hempstead City Council pass an anti-drone ordinance.
- After the teenage neighbor sprayed a hose at her home security camera, the Deputy Commissioner told the DOC Chief of Health and Safety that she feared for her family's physical safety and accepted his offer to provide her with a DOC security detail. The detailed officers spent ~55 hours of City time on the assignment.
- The Deputy Commissioner insisted that Nassau County police arrest her fourteen-year-old neighbor, stating to police officers that she was a DOC Deputy Commissioner, while prominently displaying her DOC badge and telling them she had been "at the Mayor's Office" earlier in the day.
- The father of the fourteen-year-old neighbor was also arrested. The Deputy Commissioner attended the arraignment with a DOC security detail, and once again prominently displayed her DOC badge.

Also, in 2015 and 2016, the Deputy Commissioner had a subordinate Correction Officer, while on City time, create dinosaur stickers for her son's fourth and fifth birthday parties.

Superior-Subordinate Financial Relationship, Misuse of City Position, & Misuse of City Resources.

A Chief Inspector for the NYC Fire Department (FDNY) Bureau of Fire Prevention (1) rented a room in a house co-owned by one of his subordinates, an FDNY Community Coordinator Supervisor, and (2) rented out an apartment he owned to another subordinate, an FDNY Associate Fire Prevention Inspector.

The Chief Inspector paid a \$3,000 fine for these prohibited financial relationships with his subordinates and for supervising those with whom he had a financial relationship; in two joint dispositions with FDNY and the Board, the Community Coordinator Supervisor paid a \$1,750 fine to the Board (which also reflected the use of an FDNY vehicle for non-City purposes on three occasions) and the Associate Fire Prevention Inspector paid a \$500 fine to the Board.

Misuse of City Resources. After a full trial, an Administrative Law Judge (ALJ) at the NYC Office of Administrative Trials and Hearings found that a Senior Construction Project Manager for the NYC Department of Design and Construction (DDC) used City resources for his private business as a landlord and for his work as the managing agent of his mother's three rental properties. The Senior Construction Manager used a DDC copy machine to make or scan a private business document, received or sent three private business emails using his DDC email account, and stored 15 documents relating to his private business on his DDC computer. The ALJ recommended a fine of \$1,500. The Board adopted the ALJ's recommendation.

Recent Enforcement Cases

Misuse of City Resources. A Principal Administrative Associate at the NYC Department of Youth and Community Development (DYCD) used her DYCD computer and email account to pursue private businesses and fundraising activities. Specifically, she:

- stored eight versions of her personal memoir and a flier promoting a release event for the memoir, which she sold online;
- stored 15 invoices relating to her event-planning business; and
- used her DYCD email account to exchange six emails with a Good Morning America anchor to invite the anchor to attend a charity event.

In a joint disposition with the Board and DYCD that resolved both her conflicts of interest violations and unrelated agency misconduct, the Principal Administrative Associate agreed to serve a ten-workday suspension, valued at approximately \$2,712.

Misuse of City Resources. On four occasions between August 2016 and February 2017, a now-former Project Manager at the NYC Mayor's Office of Housing Recovery (HRO) used a NYC Fleet Zipcar account to rent Zipcars for her personal use. When HRO brought the unauthorized trips charged to the NYC Fleet Zipcar account to her attention, the Project Manager reimbursed the \$346.44 in charges to HRO. The Project Manager paid a \$1,250 fine to the Board.

Misuse of City Time & City Resources. A Project Manager at the NYC Economic Development Corporation (EDC) was authorized to take home an EDC Fleet vehicle at the end of her EDC workday in order to directly com-

mute to EDC project worksites at the start of the following workday. On 108 occasions between November 2016 and September 2017, the Project Manager used the Fleet vehicle to drive to and from her second job. On 85 of those 108 occasions, the Project Manager left for her second job before the end of her official EDC workday. The Project Manager paid a \$5,000 fine to the Board.

A [searchable index](#) of all the COIB Enforcement Dispositions and Advisory Opinions is available courtesy of New York Law School.

Congratulations!

To the winner of our Public Service Puzzler, **Linda Frese** of OCME.



This month, we have a **puzzle triathlon**: a maze that leads to a clue that leads to a riddle.

To win, send us the answer to that riddle by Sept 13th (extended deadline!).

Schedule a Chapter 68 Class

COIB's Education & Engagement Unit can arrange a class in Chapter 68 for you and your staff.

Contact Gavin Kendall at kendall@coib.nyc.gov



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