

## **CONFLICTS OF INTEREST LAW - POST EMPLOYMENT RULES AND THE DOE**

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December 20, 2007

The New York City Charter, Chapter 68, (the Charter) sets out rules of conduct for all New York City and Department of Education (DOE) employees. These rules are called the "Conflicts of Interest Law," and are administered by the Conflicts of Interest Board, an independent New York City agency.

Among the activities that are covered by the Conflicts of Interest Law are those associated with job hunting and working for pay for a new employer. The Charter calls these "post-employment activities." This memo discusses the provisions of the Charter concerning job hunting while an employee is still working for the DOE as well as those provisions concerning employment activities of after an employee has left the DOE.

### **JOB HUNTING**

With respect to job hunting, the Charter provides that "no public servant can negotiate for or accept any position with any person or firm who or which is involved in a particular matter while the public servant is actively considering, or is directly concerned or personally participating in such particular matter on behalf of the agency." In plain terms, this means that a DOE cannot seek a job with a firm with which the employee is dealing as part of his or her DOE job.

The Charter's definition of a "firm" is quite broad, and includes not only for-profit firms, but not-for-profit organizations, partnerships, sole proprietorships and joint ventures. It includes private universities. Government agencies, including CUNY and SUNY, are not covered by the Charter's definition of a "firm." Therefore the rule does not apply when a DOE employee is looking for a city, state or federal job, including jobs with public universities.

The practical effect of this job hunting rule is this: Jane Doe, in fulfilling her duties for the Department, is working with a private firm, XYZ Publishing, Inc., on two projects. Ms. Doe sees an advertisement for a job at XYZ Publishing which interests her, or a representative of the firm asks her if she might be interested in leaving the Department and working for XYZ Publishing. In either case, if Ms. Doe is interested in pursuing the question of employment further, she must speak to her supervisor about removing herself from participation in all projects involving XYZ Publishing until the job negotiations are over.

If Ms. Doe removes herself from the project, she should do so in writing, so that there is a record of her action. She should not send her resume to XYZ Publishing or talk with them about an interview until she removes herself from all projects involving XYZ Publishing. In the alternative, she may not send her resume or have any job discussions with XYZ Publishing until she is not dealing with the outside firm *on any matter* as part of her duties for the Department. As discussed in more detail below, if she accepts the job, Ms. Doe cannot have any contact with the Department of Education as part of her job with XYZ Publishing for one year after she leaves the Department.

**If Ms. Doe accepts a job with the vendor/potential vendor, she may tell fellow DOE employees where she will be working after she has left the DOE. But, during the remainder of her time at the DOE, she may have absolutely nothing to do with the future employer's current or future business with the DOE. Therefore, she may not try to get DOE business for her future employer or even suggest to anyone at the DOE that they should do business with her future employer. She should also keep in mind the restrictions on her future work at the firm, which are discussed in more detail below, most notably the “one year appearance ban” and the lifetime “particular matter ban.”**

## EMPLOYMENT AFTER AN EMPLOYEE LEAVES THE DEPARTMENT

### A. The One Year Appearance Ban

The Charter requires that a public servant wait a period of one year after termination of that public servant's employment with the City before the public servant may appear before his/her former agency. For purposes of this rule, the Department is viewed as a single agency, which includes all districts and divisions. "Appear" means to "make any communication, for compensation, other than those involving ministerial matters." "Appear" includes attending meetings, making telephone calls, writing or signing letters and engaging in similar types of activities. A "ministerial matter" means an "administrative act which does not involve substantial personal discretion." Be aware, however, that the Conflicts of Interest Board has taken a narrow view of the types of matters that are merely "ministerial."

The one-year appearance ban is personal to the employee. Therefore, upon leaving the Department, a former employee *can* work for a private entity that does business with the Department as long as the employee does not contact anyone in the Department, either in person or in writing, for a period of one year on behalf of the private entity. In fact, the former employee may work on the private entity's business with the Department, provided that this does not involve an "appearance" by the former employee before the Department.

The one-year appearance ban does not apply if the new job is with another government agency (city, state or federal), including public colleges and universities such as CUNY and SUNY.

The following examples may clarify the way the one-year appearance ban operates.

Jane Doe retires from the Department on March 1, 2007.

EXAMPLE A: Jane Doe immediately goes to work for the State Education Department. On March 2, 2007, Jane Doe *can* contact the Department on behalf of the State Education Department.

EXAMPLE B: On March 2, 2007, Jane Doe *cannot* make an application to provide services or actually provide services as a consultant to the Department of Education as Jane Doe, Associates or Jane Doe, Inc. because she is not appearing in a personal and private capacity. She is appearing through an entity. However, on March 2, 2008, Jane Doe can make an application to provide services or actually provide services as a consultant to the Department of Education as Jane Doe, Associates or Jane Doe, Inc., or as an employee of Jane Doe, Inc. because one year has passed and she is no longer bound by the appearance ban.

EXAMPLE C: XYZ Publishing House, Inc. has a contract with the Department of Education. It also has contracts with private schools and non-New York City school districts. Jane Doe *can* take a position with XYZ Publishing House, Inc. as a sales representative as long as her territory does not cover the Department because, presumably, she would have to appear before the Department to carry out her sales representative duties. Jane Doe cannot take a position with XYZ Publishing House, Inc. if this position would require her to appear before the Department before March 1, 2008.

EXAMPLE D: John Doe, a school psychiatrist, works for the Department of Education for a year. He terminates his employment with the Department on June 30, 2007. He wishes to work for an XYZ Evaluations Corp. Mr. Doe would do psychological evaluations of children for XYZ Evaluations Corp. He would sign the evaluations, and they would be sent to the Department of Education. In addition, Mr. Doe might have to contact Department of Education employees about the children he evaluates. Since contacting Department of Education employees and submitting evaluations of children would be “appearances” before the Department of Education, Mr. Doe could not do this work for XYZ Evaluations Corp. until June 30, 2008 (one year after he left the Department of Education).

## B. The “Particular Matter” Prohibition

In addition to imposing a one year appearance prohibition, the City Charter states that a public servant who leaves the City’s employ may never appear (whether for pay or as a volunteer) before the City (or receive compensation for services rendered) in connection with a particular matter with which that person had been "personally and substantially involved through decision, approval, recommendation, investigation or other similar activities." A “particular matter” includes a specific contract, including any renewals of the contract which are anticipated according to the terms of the contract.

As an example, when Jane Doe was employed by the Department of Education she developed a project which led to a two-year contract with an outside arts organization as part of her duties for the Department. The contract’s terms anticipated that it could be automatically renewed for one two-year periods. Jane Doe cannot take a position with the arts organization if the job requires her to be involved in that project during the term of the contract, including any automatic renewals of the contract. However, in four years, after the contract and its renewals have terminated, Ms. Doe can have involvement in a *new contract* with terms similar to the contract she worked on at the Department.

Also, the City Charter prohibits a public servant from using for private advantage any confidential information that the public servant learned as part of his or her public service. “Confidential information” consists of information that is not publicly obtainable. If information has not been made public and is not available under the Freedom of Information Act or other lawful methods, the information is confidential.

For example, if Joe Doe worked on a project concerning the possible sites of new schools, and this information is not available to the public, Mr. Doe cannot use his knowledge of the possible sites of the school to benefit *any* private interest – including himself, his private employer, his family or friends.

It is quite possible that some of you may have questions concerning the Conflicts of Interest Law. You may contact me at **212 374-3438** or at **[dschach@schools.nyc.gov](mailto:dschach@schools.nyc.gov)**. In addition, you may contact the Conflicts of Interest Board directly at **212-442-1400**.