



NEW YORK UNIVERSITY
A private university in the public service

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February 15, 2012

OFFICE OF GENERAL COUNSEL MEMORANDUM

USE OF NYU OFFICE FOR OUTSIDE BUSINESS ACTIVITIES

NYU faculty members and other NYU personnel generally are permitted to engage in limited, non-competitive business activities outside their work for the University. This may include, for example, providing consulting services, clinical care or counseling services, music or other lessons, or legal or other services to members of businesses, organizations or the public. Faculty members and other NYU personnel sometimes seek to use their NYU office for these activities. Such use has a number of implications, the most significant of which are highlighted below, and generally is prohibited. Truly *de minimis* office use for outside business activities, such as an occasional call to patients, clients or private students, is not within this prohibition. In any event, NYU faculty members and other NYU personnel should not use their NYU office address for outside activities.

Issues Implicated by Use of Office for Outside Business Activities

Legal Issues

1. **NYU's Tax-Exempt Status**
For NYU to maintain its status as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code, NYU must be organized and operated exclusively for charitable and educational purposes. Among other things, this requires both that any benefit to private persons be incidental to NYU's carrying out its educational and charitable purposes and that NYU's income and other assets not inure to the benefit of persons who are in a position to exercise control over NYU (i.e., insiders or disqualified persons). Violations of these prohibitions can occur, for example, where NYU personnel are permitted to use NYU facilities and assets for their outside business activities without paying arm's length use fees.

2. **NYU's Real Estate Tax Exemption**

In order to preserve NYU's real estate tax exemption for a building, the University can only use up to 5% of the building for unrelated purposes in any year. Not only can outside business use by NYU faculty members and other NYU personnel of a building cause NYU to lose its real estate tax exemption for that building, but because the 5% limit is cumulative of all other unrelated uses in the year, NYU would need to engage in the labor intensive process of tracking any such outside business use.

3. **NYU's Tax Exempt Bond Financing**

For a building financed with tax-exempt bonds, only a very small percentage (typically 3%) of the building's use can be "private use." Again, not only can outside business use by NYU faculty members and other NYU personnel of a tax-exempt financed building jeopardize the tax-exempt character of the bonds, but because the 3% limit is cumulative of all other private uses, NYU would need to engage in the labor intensive process of tracking any such outside business use.

4. **Liability**

The private use of NYU space by NYU faculty members and other NYU personnel raises liability issues as well. For example, if a patient, client or private student of an NYU faculty member or other NYU personnel is injured in NYU space, NYU may face a claim that the University is liable.

5. **Other Legal Issues**

Depending on the nature of the outside business activity of the NYU faculty member or other NYU personnel, other legal issues can arise, such as licensing and zoning issues.

Conflict of Interest and Conflict of Commitment Issues

Under [NYU's Policy on Academic Conflict of Interest and Conflict of Commitment](#), the "Outside Activities" (a defined term in the Policy) of faculty (and in most cases investigators who are not faculty) are restricted in a variety of ways. Among these restrictions are the following:

- Full-time faculty normally are not permitted to spend more than an average of one day per seven-day week (or the equivalent of an eight-hour work day) on Outside Activities during any semester or summer months in which they receive compensation from NYU.
- Faculty normally may not have executive or managerial responsibilities in a private or public entity outside of NYU.
- Faculty and investigators may not allow Outside Activities or other personal

activities to detract from their primary allegiance to NYU.

- Outside Activities must comply with all University and applicable school/unit policies.
- Faculty and investigators may not compete with NYU, divert opportunities from NYU or disturb NYU relationships.
- Teaching and research engaged in by NYU faculty and investigators independent of NYU are subject to special limitations.
- Faculty and investigators are required to disclose all Outside Activities in accordance with University and applicable school/unit policies.
- Faculty and investigators generally are prohibited from using NYU resources, including facilities, personnel or equipment, except in a purely incidental way, as part of or in connection with their Outside Activities. Any involvement with NYU students must be approved in advance by the applicable dean/unit head, with the goal of protecting students.
- Faculty and investigators are prohibited from using the NYU name, marks, symbols and logos in connection with their Outside Activities, other than reference to their NYU affiliation for identification purposes.
- Faculty and investigators must make it clear in their Outside Activities that NYU has no involvement in or liability for the activities and NYU is not endorsing such activities.
- Faculty and investigators must act legally and ethically in connection with their Outside Activities.

Similar conflict of interest rules apply to NYU personnel other than faculty and investigators.

How To Address a Particular Situation

If a faculty member or other NYU personnel seeks to conduct an outside business activity in his or her NYU office beyond the *de minimis* level described in the opening paragraph, the relevant school dean should be consulted.

Further Resources

If you have legal questions regarding use of NYU office space for outside business activities, you can find a member of the Office of General Counsel who practices in this area by visiting our [practice areas page](#) and scrolling to “Conflicts of Interest.” See also our memorandum “[Considerations in Licensing Standard End, Leasing University Facilities for Non-University \(Third-Party\) Use.](#)”