

SUMMARY OF THE CONFLICT OF INTEREST LAW - NO. 1

SELECTMEN

As a Selectman, you are a “municipal employee” and are covered by the conflict of interest law, G.L. c. 268A. ⁽¹⁾ All municipal officials and employees -- whether elected or appointed, full or part time, paid or unpaid -- must comply with the restrictions of the conflict law. The law also regulates the activities of former employees and business partners of current and former employees. ⁽²⁾ The purpose of the law is to ensure that your private interests and relationships do not conflict with your responsibilities as a public official.

I. RESTRICTIONS ON YOUR ACTIONS

A. Self-Dealing (§19)

The law generally prohibits you from taking any official action on matters affecting your own financial interests, or the financial interests of: your immediate family members (i.e., your spouse and the parents, siblings and children of either you or your spouse); partners; your employer(s) other than your town; anyone with whom you are negotiating or have an arrangement concerning prospective employment; or organizations for which you serve as an officer, director, partner, employee or trustee. ⁽³⁾ As a Selectman, you may not act in any way that affects these interests, positively or negatively, nor may you act on any matter that affects these interests within the foreseeable future. If a matter affecting one of these interests comes up for consideration at a Selectmen’s meeting, the wisest course of action is to leave the room during discussion, deliberation and the vote on the matter, and make sure that the minutes of the meeting reflect your recusal.

The prohibition on acting in these matters is very broad. You may not participate as a selectman in any way: you may not vote on these matters; you may not participate in, moderate or chair discussions; you may not delegate these matters to a subordinate; you may not prepare official documents concerning these matters; and you may not take any other type of official action regarding these matters.

For example, if a budget line item includes the salary of an immediate family member, you may not discuss that line item with your colleagues -- even during informal conversations. If a warrant includes payments to a family member or a business organization as described above, you may not sign the warrant. If you are an abutter to a public works project, you may not participate as a Selectman in any hearings or deliberations about that project. If you are on the board of a charitable organization, you may not as a selectman direct the Town Administrator to act on that organization’s application for a municipal grant.

Note that there are some special cases, including:

1. Acting on Budgets: You must abstain from any action on budget items which include the salary of an immediate family member (or would otherwise affect the financial interests of one of the entities listed above). Although you are prohibited from acting on those particular line items, you may act and vote on the budget as a whole provided that those line items you abstained from have previously been voted on and approved separately. For more information, see [Advisory 05-03: Elected Officials Voting on Budgets and Signing Payroll Warrants that Include Salaries for Family Members](#).

2. **Acting on Matters of General Policy:** You may act on municipal ordinances, bylaws and other matters of “general policy” as long as the financial interest of you or your immediate family members is shared by a “substantial segment” of your town’s population. The State Ethics Commission has advised that at least 10% of a town’s total population is a “substantial segment” for the purposes of the conflict law; therefore, you may act on matters affecting your own financial interests, or others’ private interests as listed above, if the financial interest is shared by at least 10% of your town’s residents, as determined by the most recent federal census. For example, as a selectman, you may participate in setting the tax rate because that decision is a matter of general policy and affects more than 10% of the town’s population.

You also may act on matters of general legislation and certain home rule petitions including drafting, promoting or opposing general legislation (bills that would amend the state’s General Laws), or legislation relating to your town government’s organization, powers, duties, finances or property. Note that matters involving “special legislation,” do not fall within this exception.

3. **Acting on Matters Affecting Abutting or Nearby Property:** Property owners are presumed by the Commission to have a financial interest in matters affecting abutting and nearby property. Therefore, you generally may not act in your official capacity on matters involving a business or property which abuts your own property, or which is close enough that the outcome of the matter will affect your own property values. Also, you generally may not act in your official capacity on matters involving a business or property which abuts businesses or property owned by your immediate family members, business partners, private employers, prospective employers, or organizations for which you serve as an officer, director, partner or trustee. For more information, see [Advisory 05-02: Voting on Matters Affecting Abutting or Nearby Property](#).

4. **Acting on Matters Affecting Competitors’ Financial Interests:** Businesses and individuals may have a financial interest in matters affecting their direct competitors when the effect on the competition also affects themselves or their own business. For example, a liquor license holder is presumed to have a financial interest in the liquor license application of a nearby establishment; a job applicant is presumed to have a financial interest in the process of evaluating other candidates for the position. Therefore, you generally may not act on matters affecting your own direct competitors, or direct competitors to an immediate family member, business partner, private employer, prospective employer, or organization for which you serve as an officer, director, partner or trustee. For more information, see [Advisory 05-04: Voting on Matters Involving Competitors](#).

B. Appearances (§23)

The law prohibits you from taking any type of official action that could create an appearance of impropriety, or otherwise acting in a manner which could cause an impartial observer to believe that your actions are tainted with bias or favoritism. Before taking any type of action which could appear to be biased, you must first file a full, written disclosure of all the relevant facts with your Town Clerk. We also recommend that you make the disclosure public at the Selectmen’s meeting where the issue arises, and see that the minutes reflect your disclosure. Instances in which you should file such a disclosure include: actions affecting the financial interests of a relative who is not an immediate family member, such as a son-in-law, a niece or a grandparent; actions involving a friend, neighbor, business associate, or anyone with whom you have a significant personal or professional relationship. If you are in doubt as to whether there is an “appearance problem,” the safest approach is to contact your Town Counsel or the Legal Division of the State Ethics Commission prior to acting.

C. Acting on Behalf of Others and Private Employment (§§ 17 and 18) The law generally prohibits you from acting as agent or attorney for anyone other than your town in connection with any matter of direct and substantial interest to your town. For instance, you may not contact a town agency on behalf of a private individual, company, not-for-profit organization, group, association, or other special interest. You may not appear before a town department or town employee on someone else’s behalf. You may not allow your name to be used on documents which are submitted to a town board or town employee by someone else. You may not serve as spokesperson or otherwise represent anyone in connection with town business.

Also, you generally may not receive pay or other compensation from anyone other than your town in connection with

any matter that involves your town. Even if you recuse yourself to comply with §§ 19 and 23, as discussed above, you may not represent a private party in the matter from which you are recused.

There are some exemptions to these general prohibitions, including:

1. **Legitimate constituency work.** You generally may act on behalf of a constituent who lives or does business in your town, so long as your actions are “within the proper discharge of official duties.” However, you may not be paid for such representation by the constituent or other private party, and you may not act as the constituent’s attorney or agent. For example, you may contact the public works department to inquire about the status of a street repaving project for a constituent; you may not represent a constituent who is suing the town for damage to her property as a result of that paving project nor may you be paid in connection with that lawsuit by the constituent. Note that you may not act on behalf of constituents who are members of your immediate family, business partners, private employers, prospective employers or organizations for which you serve as officer, director, partner or trustee in matters in which they have a financial interest (see “Self-Dealing” above). Even if no financial interest exists, if you act on behalf of constituents who are members of your immediate family, business partners, private employers, prospective employers or organizations for which you serve as officer, director, partner or trustee, you must file a disclosure as discussed in Section B above. Finally, you cannot ask anyone to do something unlawful or put undue pressure on them, as discussed in Section F below. If you have concerns about whether your actions are constituent services, get advice from the Ethics Commission before acting. For more information, see [Advisory 05-06: Elected Officials Providing Constituent Services](#).

2. **Acting in your Personal Capacity.** You may always act on your own behalf, and you may always state your own personal points of view. However, you should always make it clear that you are acting on your own behalf, not representing someone else and not acting in any official capacity. You may even represent yourself before a town board (but remember that you may not take any type of official action on a matter that affects you). For example, if you are abstaining as a selectman from participating in a matter which affects your property, you should leave the table and sit in the audience while the matter is before the board. You may participate in this matter only when other members of the public are invited by the board to participate. When you participate, you should state that you are not acting as a selectman but on your own behalf.

3. **Special Municipal Employees.** If you serve as a Selectman in a town which has a population of 10,000 or fewer, you are considered a “special municipal employee” for the purposes of the conflict law. Selectmen who are “special municipal employees” may represent others only in the following circumstances: they have never acted on the matter as a municipal official; the matter is not and has not been the subject of their official responsibility; and the matter is not currently pending before the Board of Selectmen.

D. Multiple Contracts and Holding Additional Offices (§20)

You are generally prohibited from having a direct or indirect financial interest in a contract with your town or from holding more than one appointed and paid position in town. This section of the law restricts municipal employees from actually having or appearing to have an ‘inside track’ to appointments to paid municipal jobs. The law permits you to hold as many uncompensated appointed positions as you wish, so long as all of the positions you hold are unpaid. It also permits you to hold as many elected positions as you wish even if you are compensated for one or more of these elected positions, so long as all of the positions you hold are elected. For information about other exemptions, see [Ethics Primer: Financial Interests in Contracts for Municipal Employees](#).

There are many exemptions in this section of the law. For instance, you may own less than 1% of the stock of a company that does business with your town.

One exemption, known as the “selectman’s exemption,” permits a person already holding an appointed and paid municipal position (e.g., a teacher) to run for and hold the additional municipal position of Selectman. However, for those selectman who use this exemption, several additional restrictions are imposed. First, you may receive only one municipal salary but have the ability to choose which salary you will receive. In addition, as a Selectman, you may not vote or act on any matter within the purview of the municipal agency by which you are employed or over which you have official responsibility. Finally, you may not be appointed to any municipal position other than the one you

currently hold - including a job promotion - while serving as a Selectman and for six months thereafter.

Also, as discussed above, if you serve as a Selectman in a town which has a population of 10,000 or fewer, you are considered a “special municipal employee” for the purposes of the conflict law. As a special municipal employee, you may have a financial interest in a town contract or a second paid position if you file a disclosure of your financial interest in the contract with the Town Clerk and either (a) the Board of Selectmen has no jurisdiction over the agency with which you have the contract or position or (b) if the Board has jurisdiction over the municipal agency with which you have the contract or position, the other members of the Board of Selectmen vote to exempt you from the provisions of §20.⁽⁴⁾

For information about the application of these exemptions and other exemptions that may apply, contact your Town Counsel or the Legal Division of the State Ethics Commission.

E. Appointments by the Board of Selectmen (§21A)

As a Selectman, you generally cannot be appointed to any position -- paid or unpaid -- that is both appointed by the Board of Selectmen and is under the supervision of the Board of Selectmen. You must wait 30 days after you finish serving as a Selectman before you are eligible to be appointed to such a position⁽⁵⁾ or you must receive approval for the appointment at an annual town meeting of the town. You may submit a resume or otherwise indicate an interest in such a position while still being on the Board, but the Board may not take any actions regarding your expression of interest until after the 30-day cooling off period. For more information about this restriction, see [Advisory No. 96-01: Municipal Officials Being Appointed to Positions under their own Boards](#).

Positions on Board subcommittees and positions held ex officio by virtue of your Selectman’s position are considered to be part of your Selectman’s position, and therefore do not trigger the restrictions of §21A. Generally, you may serve on a Board subcommittee, so long as your position on the subcommittee would terminate if you were to resign as Selectman. Similarly, you may serve ex officio on another municipal committee that reports to the Board, as long as the committee membership would automatically terminate should you resign as Selectman. For example, you may serve on the Recreation Commission as the selectmen’s representative on that board, as required by the town’s charter.

F. Unwarranted Privileges (§23)

The law prohibits you from using your official position to obtain any type of “unwarranted privilege” of substantial value (\$50 or more) for yourself or anyone else. For instance, you may not use official resources (e.g., office equipment, stationery, municipal cars, the town seal, staff time) for personal or political purposes. You also may not use your official position to get any type of preferential treatment for yourself or anyone else. You may not generally solicit your subordinates, license holders, or anyone under your authority for any personal or political purpose. You may not use your official title to endorse products or activities.

For more information about this restriction, see Advisory No. 84-01: Political Activity [Advisory 84-01: Political Activity](#) and Advisory 05-01: The Standards of Conduct. [Advisory 05-01: Standards of Conduct](#)

G. Confidential Information (§23)

The law prohibits you from publicly revealing confidential information, or from using it for private or political purposes. Anything that is not a “public record” under the Massachusetts Public Records Law is considered confidential. Remember that matters discussed while the Board is in Executive Session are confidential until after the Executive Session minutes are released as public records. For additional information on the Public Records law, see www.sec.state.ma.us/pre/preidx.htm.

H. Bribes (§2)

You may not ever accept anything that is given to you with an intent to corruptly influence your official actions or to corruptly induce you to take or not take any official action. Anything -- of any value -- may be considered a bribe if it

is given to you in exchange for your agreeing to take some type of official action or if you agree to not take an official action you would otherwise take.

I. Gifts and Gratuities (§3)

You may not accept anything worth \$50 or more if it is given to you because of something you did, or might do, as a municipal official. Whenever you are offered anything from a private party, you must ask whether there is a link between the gift and an official act or act within your official responsibility. The Commission determines whether a link is established by reviewing all the circumstances. Such circumstances may include, for example, the identities or relationship of you and the giver, the giver's and your expressed intents, the timing of the gift, whether you have acted or will act on matters affecting the giver, and the effect of the gift on your acts. In addition, the Commission will consider whether the gift is repeated, planned or targeted, whether it is a business expense, whether there is personal friendship or reciprocity between the giver and you, the nature, amount and quality of the gift, and the location of the entertainment and the sophistication of the parties. Because the prohibition applies to acts "performed or to be performed," a reward of substantial value for a past act may violate the law just as a gift of substantial value in anticipation of a future act might.

Note that multiple gifts from the same person or company with a total value of \$50 or more may be considered illegal gratuities. For more information, see [Advisory 04-02: Gifts and Gratuities](#). Note also that special rules apply to scarce tickets. See [Advisory 04-01: Free Tickets and Special Access to Event Tickets](#).

J. Restrictions After You Leave Government Service (§18)

You may never be paid by anyone except your town in connection with a particular matter in which you participated as a public official. For example, if you participate in the Selectmen's decision to award a town building contract, you may not then be paid by a private company to help it get the contract or, generally, to assist it in performing work under that contract.

In addition, there is a one-year "cooling off" period before you may personally appear before -- or telephone or write to -- a town agency in connection with a matter that was under your official responsibility within two years prior to your leaving government service, even if you did not participate in it. This includes affixing your professional stamp on documents submitted to your former agency.

For more information on these restrictions, see State Ethics Commission [Advisory No. 90-01: Negotiating for Prospective Employment](#) and [Summary of the Conflict of Interest Law 13: Former Municipal Employees](#).

II. SPECIAL RESPONSIBILITIES OF SELECTMEN

In addition to the above restrictions, the conflict law also gives Selectmen certain additional responsibilities.

A. Designating Special Municipal Employees (§1)

The Board of Selectmen may vote to designate other municipal positions as "special municipal employee" positions for purposes of the conflict law. Sections 17 and 20 of the conflict law apply less restrictively to "special municipal employees" than they do to other municipal employees.

Only certain part-time or unpaid positions may be designated as "special municipal employee" positions. The designation must apply to an entire category of positions, as opposed to a particular individual's position. For instance, the Board may vote to designate all part-time police officers as "special municipal employees," or all members of a particular board, but the Board may not, for example, designate only one part-time police officer to be a "special municipal employee."

Unless the vote to designate includes a "sunset" provision, "special municipal employee" designations remain valid until revoked by a subsequent vote of the Selectmen. Up-to-date "Special municipal employee" designation lists should be kept on file at the Town Clerk's office and filed with the State Ethics Commission.

B. Making Determinations and Granting Exemptions as an Appointing Authority under §§ 17, 19, 23

Some Boards of Selectmen are the legal appointing authority for certain town employees. Appointing authorities have several primary responsibilities under the conflict law:

1. Section 17. Section 17 generally prohibits town employees from acting as agent for anyone other than the town in connection with matters in which the town has a direct and substantial interest. However, §17 allows appointed town employees to act as agents for their immediate family members,⁽⁶⁾ and for anyone with whom they have a “fiduciary” relationship,⁽⁷⁾ if they first get permission from their appointing authority. As an appointing authority, you may be asked to vote to give such permission to a town employee.

2. Section 19. Section 19 generally prohibits town employees from participating in their official capacity in any particular matter which affects their own financial interests, or the financial interests of their immediate family members, business partners, private employers, prospective employers or organizations for which they serve as an officer, director, partner or trustee. However, §19 allows appointed town employees to participate in such matters if: (a) they first make a written disclosure of all the relevant facts to their appointing authority; and then (b) they receive back from the appointing authority a “written determination” that the financial interest is “not so substantial as to be deemed likely to affect the integrity of the services which the town may expect from the employee.” As an appointing authority, you may be asked to vote to give such a determination to a town employee.

3. Section 20. Section 20 generally prohibits a municipal employee from having a financial interest in a contract with the town. Several exemptions are available which require a vote by the board of selectmen to approve an exemption allowing a municipal employee to hold a contract. For example, in towns with a population of less than 3,500 persons, selectman may approve an exemption allowing a municipal employee to hold more than one appointed position with the town. Another exemption requires selectmen to approve an exemption that would allow a municipal employee in a town with a population of less than 35,000 to serve in part-time, call or volunteer police, fire, rescue or ambulance departments, provided the head of the department certifies in writing to the town clerk that no other employee is available to perform such services. A number of additional exemptions exist which require approval by the board of selectmen. Individuals seeking exemptions should contact the Ethics Commission or Town Counsel for advice.

4. Section 23. Among other restrictions, §23 generally prohibits town employees from acting in a manner which would cause a reasonable person to conclude that anyone could unduly enjoy their favor in the performance of their official duties. However, §23 allows town employees to act in such instances if they first make a full, written disclosure of all the relevant facts to their appointing authority. As an appointing authority, you may receive such disclosures, which must be maintained as public records. While you do not have to take any action regarding them, it is recommended that you review them. As the appointing authority, you have the discretion to act in the town’s interests and may prohibit an employee from acting in a matter even if the employee discloses the relevant facts.

The determinations and exemptions made by selectmen as discussed above are discretionary. It is the responsibility of the board to weigh the circumstances and determine what is in the town’s best interests.

FOOTNOTES

^{1/}If your town population is 10,000 or fewer, you are a “special municipal employee;” if the town population is greater than 10,000, you cannot under any circumstances be a “special municipal employee.” As discussed below, the law places fewer restrictions on “special municipal employees” in some instances.

^{2/}For additional information, see [State Ethics Commission Summary 13: FormerMunicipal Employees](#) and [Advisory 88-01: Municipal Employees Acting as Agent](#).

³Note that this prohibition applies both to for-profit and to charitable organizations.

⁴Note that G.L. c. 268A, §19 would prohibit you from participating in this vote to grant yourself an exemption.

⁵Note that if you rely on the Selectmen's exemption to §20 in order to hold a second municipal exemption, you must wait six months after you finish serving as a Selectman before you are eligible for appointment to any additional municipal position.

⁶"Immediate family" includes the employee's spouse, and the parents, siblings and children of both the employee and his spouse.

⁷Examples of fiduciary relationships include acting as guardian, executor or administrator.

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Summaries are prepared and issued by the Public Education Division of the State Ethics Commission. They are intended to provide guidance to public officials and employees concerning practical applications of the conflict law. For more information about the law, please contact your Town Counsel or the Legal Division of the State Ethics Commission at (617) 371-9500.

ISSUED: September 1987

REVISED: March 1990

REVISED: September 2005

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