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The Commonwealth of Massachusetts

State Ethics Commission

UMASS/AMHERST



312066016462668

John W. McCormack State Office Building, Room 619
One Ashburton Place, Boston 02108
Telephone (617) 727-0060
Fax (617) 723-5851

GOVERNMENT DOCUMENTS
COLLECTION

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SUMMARY OF THE CONFLICT OF INTEREST LAW

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BOARD OF HEALTH MEMBERS

As a member of a municipal board of health -- even if you are unpaid and serve solely in an advisory capacity -- you are considered a municipal employee and are covered by the conflict of interest law, G.L. c. 268A. The purpose of the law is ensure that your private interests and relationships do not conflict with your responsibilities as a public official.

Prohibited Actions (§19)

The law generally prohibits you from taking any official action on matters which would foreseeably affect your own financial interests, or the financial interests of: your immediate family members^{1/}; partners; employers other than your municipality; those with whom you are negotiating or have an arrangement concerning prospective employment; or organizations for which you serve as an officer, director, partner or trustee.^{2/} If one of these matters comes up for consideration at a board of health meeting, you must recuse yourself from any action on the matter, and make sure that the minutes of the meeting reflect your recusal. We recommend that you leave the room during both the deliberation and the vote on the matter.

The prohibition on acting in these matters is very broad. You may not participate as a board of health member *in any way*: you may not vote on such matters; you may not participate in, moderate or chair discussions about them; you may not delegate them to a subordinate; you may not prepare analyses or other documentation concerning them; and you may not take any other type of official action regarding them.

For example, if a member of your immediate family works as health agent, you may not participate in the board's consideration of an increase in salary for that position. You may not join in the board's discussions or actions regarding the inspection of a facility owned by your private employer. If you are an officer of a charitable organization, you may not recommend to other board of health members that the organization should be granted a permit or license.

Note that there are some special cases, including:

- **Actions Involving Competitor:** Actions which affect one business are presumed to *also* indirectly affect its geographic competitors. Because of this, §19 generally prohibits you from participating as a board member on matters involving a geographic competitor to any business owned by you, your immediate family members, business partners, private employers, prospective employers, or organizations for which you serve as an officer, director, partner or trustee. See *EC-COI-87-31; 87-1; 86-13*.

- **Actions Regarding Abutters:** Under the law, property owners are *presumed* to have a financial interest in matters affecting abutting and nearby property. Therefore, you generally may *not* act as a board member on any matter involving a business or property which directly abuts your own property, or which is close enough that the outcome of the matter will affect your own property's value. Also, you generally may not act in your official capacity on matters involving a business or property which is near to or directly 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. See *Commission Fact Sheet #6: Don't Vote on Matters Affecting Abutting or Nearby Property* for more information.
- **If you are Appointed to your Position:** before taking any action on a matter subject to §19 restrictions, you may disclose all the facts about the situation to your appointing authority³, and ask for a written determination that the financial interest involved is not likely to affect the integrity of your official actions. If you receive this type of "prior permission" from your appointing authority, you may then participate in the matter. Note that you may *not* use this exemption if you are elected to your position.

Appearances (§23)

The law prohibits you from taking any type of official action that could create an appearance of impropriety, or 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* make a full, written disclosure of all the relevant facts: if you were elected to the board of health, this disclosure should be filed with your City or Town Clerk; if you were appointed to the position, you must file this disclosure with your appointing authority. We also recommend that you make the disclosure public at the board meeting where the issue arises, and see that the minutes of the meeting reflect your disclosure. Instances where you should file such a disclosure include: actions affecting the financial interests of a relative who is not an immediate family member; and actions involving a friend, neighbor, business associate, past employer, 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 make the disclosure.

Acting on Behalf of Others and Private Employment (§§ 17 and 18)

- **Acting as Agent:** The law generally prohibits you from acting as agent or representative for anyone other than your municipality in connection with any matter of direct and substantial interest to your municipality. For instance, you may not contact a municipal agency on behalf of a private individual, company, not-for-profit organization, group, association, or other special interest. You may not appear before a municipal agency on someone else's behalf. You may not allow your name to be used on documents (such as applications, certifications, plans or surveys) which are submitted to a municipal board by someone else. You may not serve as spokesperson or otherwise represent anyone in connection with municipal business.

Also, except in very rare instances, you may *not* privately inspect septic systems for compliance with "Title V". Under "Title V", the inspector is generally considered to be acting on behalf of the private homeowner, both while performing the inspection and when a copy of the inspection report is filed with the municipality.

- **Private Compensation:** Section 17 also prohibits you from receiving pay or other compensation from anyone other than your city or town in connection with any matter (such as "Title V" inspections) that involves your municipality.^{4/}
- **Exemptions to Section 17:** There are some exemptions to these general prohibitions. For instance, if your position is designated as a "special municipal employee" position^{5/}, you generally *may* act as agent and be paid in connection with a matter involving your municipality, provided that: you have never personally participated in the matter as a municipal official; the matter is not within your official responsibility; *and* the matter is not pending before your municipal agency.

Also, 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, and *not* acting in any official capacity. You may even represent yourself before the municipal agency you work for (but remember that you may not take any type of official action on a matter that affects you).

There is also a "local option" exemption to §17, regarding the installation of septic systems. *If* your city or town has adopted the provisions of G.L. c. 111, §26G,^{6/} you may work privately as a septic system installer. However, neither you nor any other member of your board of health may perform an installation inspection of a septic system installed by you or your company: these inspections must be performed either by the board of health of a different municipality, or by a "special health agent" appointed by the mayor or board of selectmen. See *Commission Fact Sheet No. 7: Board of Health Members Installing Local Septic Systems* for more information about this exemption.

For information about other exemptions to §17, see State Ethics Commission *Advisory No. 13, Part A: Municipal Employees Acting as Agent*.

- **Restrictions on Business Partners:** Your business partners are generally subject to the same restrictions on private employment that you are.
- **Restrictions After you leave Government Service:** You may *never* be paid by anyone but your municipality in connection with a particular matter in which you participated as a public official. For example, you could not be paid as a consultant to help a local company correct the code violations you noted in a health inspection.

Also, there is a one-year "cooling off" period before you may personally appear before -- or telephone or write to -- a municipal agency in connection with a matter that was under your official responsibility, even if you did not participate in it.

For more information on these restrictions, see State Ethics Commission *Advisory No. 14: Negotiation for Prospective Employment and Summary of the Conflict of Interest Law for Former Municipal Employees*.

Multiple Office Holding (§20)

The law generally prohibits you from holding more than one position with the same municipality. However, there are many exemptions in this section of the law. You may hold as

many uncompensated positions as you wish, so long as *all* of the positions you hold are unpaid. You also may hold multiple elected positions, so long as *all* of the positions you hold are elected. For information about other exemptions, request *Advisory No. 7: Multiple Office Holding* from the State Ethics Commission.

Financial Interests in Contracts with Your Municipality (§20)

You are generally prohibited from having a direct or indirect financial interest in a contract with your municipality. However, 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 municipality. Also, if your position is designated as a "special municipal employee" position, the Board of Selectmen, City Council or Board of Aldermen may vote to grant you an exemption, provided that you also file a disclosure of your interest in the contract with the City or Town Clerk. For information about other exemptions, contact your Town Counsel, City Solicitor or the Legal Division of the State Ethics Commission.

Unwarranted Privileges (§23)

The law prohibits you from using your official position to obtain any type of "unwarranted privilege" for yourself or anyone else. For example: you may not use official resources (e.g., official cars, office equipment, stationery, the municipal seal) for personal or political purposes. You may not use your official position to get any type of preferential treatment for yourself or anyone else. You may not use your official title to endorse products, companies or activities.

Confidential Information (§23)

The law prohibits you from publicly revealing confidential information, and from using it for private or political purposes. Anything that is not a "public record" under the Massachusetts Public Records Law is considered confidential.

Bribes (§2)

You may not ever accept *anything* that is given to you with an "intent to influence" your official actions. 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).

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. Examples of regulated gratuities include: sports tickets, costs of drinks and meals, travel expenses, conference fees, gifts of appreciation, entertainment expenses, free use of vacation homes and complimentary tickets to charitable events. Generally, if the gift-giver is someone you deal with in your municipal position, then the gift is being given to you because of your official duties, and you may *not* accept it if it is worth \$50 or more.

Note that you may not accept multiple gifts from the same person or company if the total value of all the gifts is \$50 or more. Also, you may not accept gifts worth a total of \$50 or more from different sources sharing a "common interest". The law treats a standing offer (e.g., "I can get you Celtics tickets anytime you want them") as if it were a case of multiple gifts. You should refuse standing offers, since they may be considered to be worth \$50 or more.

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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 City Solicitor, or the Legal Division of the State Ethics Commission at (617) 727-0060.

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^{1/} Members of your "immediate family" include: your spouse; and the parents, siblings and children of both you and your spouse.

^{2/} Note that this prohibition applies both to for-profit and to charitable organizations.

^{3/} Your "appointing authority" is the person or board who appointed you to your position. Contact your Town Counsel or City Solicitor if you have any question about who your appointing authority is.

^{4/} However, your municipality *may* authorize "Title V" inspections to be performed by members of the board of health as part of the board members' official duties. *If* your city or town has accepted the provisions of G.L. c. 40, §22F, the municipality may charge fees for "Title V" inspections; this revenue may then, in turn, be used by the municipality to compensate board members for performing the inspections.

^{5/} Only part-time or unpaid positions may be designated as "special municipal employee" positions. This designation is granted by a vote of the Board of Selectmen, City Council or Board of Aldermen. Boards of Selectmen in towns of less than 10,000 population are automatically "special municipal employees". Mayors, Aldermen, and Selectmen in towns of more than 10,000 population may *never* be "special municipal employees".

^{6/} This provision is also known as Chapter 121 of the Acts and Resolves of 1988.

