



STATE ETHICS COMMISSION BULLETIN

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Summer 2003

Commission issues Decision and Order in Life Insurance Association of Massachusetts Matter

Ruling addresses new rules for gratuities

The Commission issued a [Decision and Order](#) in May 2003 finding that the Life Insurance Association of Massachusetts (LIAM) violated M.G.L. c. 268A, the state’s conflict of interest law, by illegally providing free meals on two occasions -- to a former Insurance Commissioner and to Massachusetts legislators. LIAM paid a civil penalty of \$4,000.

LIAM is a trade association of Massachusetts-based commercial life, health and disability insurers whose primary purpose is to represent its members on matters related to insurance. According to the Decision and Order, regulatory matters and legislation concerning the accreditation of the Massachusetts Insurance Commission by the National Association of Insurance Commissioners were pending before the Massachusetts Insurance Commission and the legislature.

The Decision and Order revisited a case first decided by the Commission

in 1997 when the Commission concluded that LIAM provided illegal gratuities on nine occasions and ordered the payment of a civil penalty of \$13,500. The Commission’s 1997 ruling was appealed to the Massachusetts Supreme Judicial Court along with a companion case in which the Commission had found that a legislator received illegal gratuities. In 2000, the SJC, in its first opportunity to examine §3, overturned a portion of the Commission’s decision in the companion case because the Ethics Commission had failed to prove a connection between gratuities given to the legislator and official acts performed or to be performed by him. In the LIAM case, the SJC directed the Commission to review the record and make “further findings and a determination whether LIAM’s expenditures were intended to influence a specific ‘official act performed or to be performed’ by public officials.”

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Commissioner R. Michael Cassidy Completes Term

Commissioner R. Michael Cassidy, who served on the Massachusetts State Ethics Commission since 2000, completed his term last year. Cassidy was one of five Ethics Commissioners who serve staggered five-year, non-renewable terms. The Commission and its staff thank him for his devoted service.

Cassidy is currently an associate professor, Boston College Law School. He was appointed to the Commission by Secretary of State William F. Galvin to complete the unexpired term of Judge Paul J. Liacos. Cassidy served as Chief of the Criminal Bureau in the Massachusetts Attorney General’s Office. He also served on the Special Commission on Ethics created by the Legislature in 1995.

A graduate of Notre Dame, he earned his J.D. at Harvard Law School.

“Mike Cassidy brought his considerable intelligence, expertise and experience to the Commission,” said Ethics Commission Chairman Augustus F.

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Ethics Primer: Gifts and Gratuities (Part I -Giving)

Periodically, the Bulletin will discuss a particular area of the conflict of interest law. The information provided is educational in nature and should not be considered legal advice. Persons with questions about a specific situation should contact the Ethics Commission for free confidential advice.

The state’s conflict of interest law, G. L. c. 268A, and the financial disclosure law, G. L. c. 268B, restrict gifts and gratuities given to state, county and municipal employees.

Specifically, depending on the amount and source of a gift, issues may be raised under G.L. c. 268A, §3 and G.L. c. 268B, §6. Section 3(a) prohibits

anyone from offering to a public employee anything of substantial value which is given for or because of an official act performed or to be performed by the public employee. In addition, G.L. c. 268B, §6 specifically prohibits legislative agents from offering or giving to a public employee or his or her immediate family gifts with an aggregate value of \$100 or more in a calendar year. (Similarly, public employees are prohibited by G.L. c. 268A, §3(b) from requesting, agreeing to receive or accepting such a gift.)

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From the Executive Director

“Why Written Disclosures Matter”

Several sections of the conflict law require public written disclosure. For example, the nepotism section requires a public employee to disclose in writing to his or her appointing authority the facts surrounding a potential conflict of interest when a matter before the public employee may affect the financial interests of the employee or his or her partners, immediate family members or organizations with which he or she has certain affiliations. The appointing authority then has the ability to determine whether the public employee may participate.

In other instances, public employees with financial interests in government contracts must make written disclosures with the municipal clerk or the Ethics Commission.

Similarly, public employees whose actions may create the “appearance” of a conflict must file written disclosures that are “public in nature.”

The law’s provisions for advanced written disclosure are not merely a technical requirement. They serve two important purposes. First, they cause public employees to pause and reflect upon the situation at hand. Just as importantly, written disclosures also give the public employee’s appointing authority and the public at large the opportunity to consider the issues raised when a public official acts in matters in which someone with whom the public employee has a significant relationship is involved.

Finally, all disclosures, in order to be effective, must be complete and accurate.

Peter Sturges

Commission Members Summer, 2003

Augustus F. Wagner, Jr., Chair
Christine M. Roach, Vice-Chair
Elizabeth J. Dolan
J. Owen Todd

Carol Carson
Editor

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In response to the SJC directive, the Commission, after reviewing the record and holding a hearing, found that LIAM violated §3(a) of the conflict of interest law by treating former Massachusetts Insurance Commissioner Katherine Doughty to dinner at the Four Seasons Restaurant in Boston in March 1992 and by providing dinner at the Ritz Carlton Hotel on Amelia Island, Florida for eight legislators and their guests in March 1993. The Four Seasons dinner, attended by Doughty, LIAM executive director William Carroll and LIAM lobbyist Luke Dillon, cost \$337.46 or \$112.35 per person. The Ritz Carlton dinner, attended by eight legislators and some of their guests, LIAM executive director William Carroll, and six other lobbyists with interests in Massachusetts legislation and some of their guests, cost \$3,089.16 or \$128.72 per person. The Commission also found that each meal was given to influence specific official actions regarding the accreditation of the Insurance Commission, a matter of great importance to LIAM and the insurance industry. Section 3 prohibits anyone from providing anything of substantial value to state employees, including legislators, “for or because of any official act . . . performed or to be performed” by them.

The Decision and Order marks the first time that the Commission has applied the standards established by the SJC that “there must be proof of a linkage to a particular official act, not

merely the fact that the official was in a position to take some undefined or generalized action” regarding the giver’s interest. The SJC decision followed the rationale of a U.S. Supreme Court decision involving alleged illegal gratuities given by Sun-Diamond Growers of California to former Agriculture Secretary Michael Espy.

“While this decision identifies a dozen factors to be used as guideposts in determining whether a gift to a public employee may constitute an illegal gratuity, the SJC did not create an easy ‘bright line’ test,” said Executive Director Peter Sturges. “Givers and recipients alike should seek advice from the Commission when there is a question about gifts to public employees.”

The Commission concluded that meals and entertainment expenditures provided by LIAM on seven other occasions were given to develop access unavailable to ordinary citizens and consumers and “undermined the spirit of the conflict of interest law,” but found that there was insufficient evidence to conclude that they violated the gratuity section of the law.

“The Commission does not question lobbying and other kinds of advocacy, which are federal and state constitutional rights and a crucial part of our democratic process,” said Chairman Augustus F. Wagner, Jr. “However, when such activities become interwoven with private lavish entertainment, even under the guise of good will, public confidence in government can be seriously eroded.”

Visit our website at

www.mass.gov/ethics

for the latest information on the Commission’s activities.

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Wagner, Jr. “The Secretary of State faces the difficult task of finding a replacement of Mike’s caliber. This is of paramount importance, particularly since the vacancy has existed for almost a year.”

The chairman and two Commission-

ers are appointed by the governor. The attorney general and the secretary of state each appoint one Commissioner. Only three of the five members and only two of the governor’s appointees may be of the same political party.

Secretary of State Galvin’s appointee will serve from the time of his or her appointment until September 2007.

Ethics Primer: Gifts and Gratuities

Continued from page 1

The phrase “public employee” includes all Massachusetts state, county and municipal officials and employees, whether part-time or full-time, paid or unpaid, elected or appointed.

What are gifts and gratuities?

G.L. c. 268A does not define the terms gift and gratuity; instead, the law prohibits “anything of substantial value.” Gifts may include honoraria and any free or discounted items or services, such as meals, entertainment event tickets, golf and travel expenses, for which payment is normally required.

Anything given to a public employee is an unlawful gift or gratuity if it is: (a) of *substantial value* and (b) offered for or because of an *official act*. (The public employee may not accept anything of substantial value for or because of an *official act* or an act within the public employee’s *official responsibility*.)

What is substantial value?

Anything worth \$50 or more is considered to be “of substantial value” for purposes of the conflict law. To determine substantial value, the Commission may consider, for example, the cost per person of entertainment hosted by the giver, the purchase price of an item for the public or the actual cost incurred by the giver in acquiring the gift given to the public employee. In some situations, the value of a gift will not be its retail price. The giver may have paid more, for example, than the face price of a ticket. Similarly, the value of a two year old computer is likely to be significantly less than its cost while the value of an item purchased many years ago that has become a collector’s item may be significantly greater than its cost. Finally, some items, e.g. ordinary and customary plaques or similar items honoring a public employee’s dedication or outstanding service, may, due to the inscription honoring the employee, have little intrinsic value once so inscribed.

There are also other special cases that public employees should keep in mind. For example, where the gift is a meal, the value of the meal will include the tax and gratuity paid as well as the retail (menu) price of the meal itself. In addition, where a gift is given to the public official and a person

accompanying the official, such as a spouse, family member or guest, the value of the official’s companion is included towards the \$50 “substantial value” threshold. Finally, under some circumstances, the Commission will consider a group or series of gifts, individually less than \$50 in value but adding up to \$50 or more, to be in aggregate a gift of substantial value for G.L. c. 268A purposes. For example, a meal and an entertainment event ticket, each valued at less than \$50, together could be valued at more than \$50.

What is an “official act?”

The term “official act” is defined as “any decision or action in a particular matter or in the enactment of legislation.” Official acts would include, for example, voting on a matter before a governmental body, preparing a Request For Proposals or RFP for a public agency, serving on a hiring committee or making a policy recommendation to one’s supervisor.

What makes the gift unlawful?

The Supreme Judicial Court has stated that there must be a “link” between a gift and a particular official act. Gifts offered and accepted solely as a gesture of goodwill would not violate §3 (although the acceptance of such gifts raises issues under § 23 for the public official). In general, therefore, a gift offered as a reward for an official act that a public employee has taken or will take, or to influence or induce any such official act will be considered to be for or because of the official act. Whether a gift is given for or because of an official act depends on giver’s intent as determined by the circumstances surrounding the gift. Such circumstances could include the identities or relationship of the giver and the recipient, the giver’s and recipient’s expressed intents, the timing of the gift, whether the recipient has acted or will act on matters affecting the giver, and the effect, if any, of the gift on the employee’s official acts. Other factors may include whether the gift is “repeated, planned and targeted,” whether it is a business expense, whether a personal friendship or reciprocity exists, the nature, amount and quality of the gift or the location of the entertainment and

the sophistication of the parties. In conclusion, the Commission will look at all of the circumstances surrounding the gift.

Gifts from legislative agents

In addition to the restriction of section 3, legislative agents may not offer or give gifts to public employees if the gifts have an aggregate value of \$100 or more in a calendar year. In G.L. c. 268B, a gift is defined as a payment, entertainment, subscription, advance, services or

anything of value, unless consideration of equal or greater value is received; the definition excludes a reported political contribution, a commercially reasonable loan, an inheritance, or gifts from certain family members. It

“Gifts of substantial value to any public employee - whether paid or unpaid, elected or appointed - are not expected or required in order to do business with the government.”

does not matter why the gifts are given. For example, a gift worth \$100 from a legislative agent violates §6 even if the agent and the employee are personal friends and the gift is given solely out of personal friendship. (**Note:** Most gifts to public employees that violate §6 are also prohibited by G.L. c. 3, §43, which applies to executive agents as well as legislative agents and is even more restrictive. For more information regarding the application of G.L. c. 3, s. 43, public employees should contact the Public Records Division of the Secretary of the Commonwealth.)

Conclusion

The conflict of interest law’s gift and gratuity provisions prohibit anyone from giving anything of substantial value to influence or induce a public employee to take an official act or to thank him or her for taking an official act. Gifts of substantial value to any public employee - whether paid or unpaid, elected or appointed - are not expected or required in order to do business with the government. Finally, as will be discussed in the next edition of the Bulletin, the conflict of interest law may require public disclosure of a gift that the employee has received even if its receipt is not prohibited.

Next Edition: Gift and Gratuities, (Part II - Receiving)

Recent Enforcement Matters

The Ethics Commission investigates numerous cases alleging violations of the conflict of interest and financial disclosure laws each year. While the Commission resolves most matters confidentially, it resolves certain cases publicly.

A decision and order concludes an adjudicatory proceeding or civil trial. The decision is a finding by the Commission that the law was or was not violated and the order determines the civil penalty or other remedy, if any. The Commission's decision may be appealed in Superior Court.

A disposition agreement is a voluntary written agreement entered into between the subject and the Commission in which the subject admits violating the law and agrees to pay a civil penalty. Disposition agreements are matters of public record once a case is concluded.

A public education letter (PEL) is issued where the Commission found reasonable cause to believe that the law was violated but chose to resolve the case with a PEL because it believes the public interest would best be served by doing so. A PEL does not require the subject to admit violating the law and is issued publicly with the subject's consent. (Prior to December 2002, these letters were referred to as Public Enforcement Letters.)

The Commission does not comment on any matter under investigation, nor does the office confirm or deny that it has received a specific complaint. The identity of any complainant is kept confidential.

Full texts of the Decisions and Orders, Disposition Agreements and Public Education Letters can be found on the Commission's website, www.mass.gov/ethics.

Decision and Order

[In the Matter of Life Insurance Association of Massachusetts](#)

The Massachusetts State Ethics Commission issued a Decision and Order finding that the Life Insurance Association of Massachusetts (LIAM) violated M.G.L. c. 268A, the state's conflict of interest law, by illegally providing free meals on two occasions — to a former Insurance Commissioner and to Massachusetts legislators. The Commission ordered LIAM to pay a civil penalty of \$4,000.

Disposition Agreements

[In the Matter of Hal Abrams](#)

Former Boston Inspectional Services Department Inspector Hal Abrams entered into a disposition agreement with the State Ethics Commission and agreed to pay \$2,440, a

\$2,000 civil penalty and a forfeiture of \$440 for violating G.L. c. 268A, the state's conflict of interest law. By receiving compensation from and acting as an agent for his private employer, Boston developer Global Ventures Ltd. (GVL), in connection with matters in which the City of Boston had an interest, Abrams violated §§17(a) and 17(c).

[In the Matter of John Ohman](#)

The Commission fined Barnstable County Delegate John W. Ohman \$1,000 for violating G.L. c. 268B, the state's financial disclosure law, for the second time, by filing his Statement of Financial Interests after the deadline. Ohman filed his 1999 Statement of Financial Interest 69 days late and was fined \$500. His 2001 Statement was 55 days late. This marks the first time that a late filer has paid double the penalty for the repeated late filing of a Statement of Financial Interests.

[In the Matter of Mary Jane Saksa](#)

Worcester County Sheriff's Office Director of Substance Abuse Programs Mary Jane Saksa was fined \$1,000 for soliciting subordinates. Saksa also forfeited \$1,320, the amount of compensation she received as a result of the solicitations. By soliciting subordinates to become associated with Excel, Saksa violated §23(b)(2). Such a business relationship was an unwarranted privilege because her subordinates' decisions to become associated with Excel were not entirely voluntary. By supervising subordinates that she had solicited to become Excel representatives and/or to purchase Excel products, Saksa also violated §23(b)(3).

[In the Matter of Tamarin Laurel-Paine](#)

Former Middlefield Planning Board member Tamarin Laurel-Paine paid a \$1,000 civil penalty to resolve allegations that she violated the state's con-

SECTION BY SECTION

THE CONFLICT LAW, G.L. c 268A

- Section 3 prohibits anyone from offering to a public employee anything of substantial value which is given for or because of an official act performed or to be performed by the public employee. Anything worth \$50 or more is considered to be "of substantial value" for purposes of the conflict law.
- Section 17(a) prohibits a municipal employee from receiving compensation for anyone other than the municipality in connection with a particular matter in which the municipality is a party or has a direct and substantial interest.
- Section 17(c) prohibits a municipal employee from acting as agent for anyone other than the municipality in connection with a particular matter in which the municipality is a party or has a direct and substantial interest.
- Section 19 generally prohibits a municipal employee from officially participating in matters in which an immediate family member has a financial interest.
- Section 23(b)(2) prohibits a public employee from using his or her position to obtain for the employee or others an unwarranted privilege of substantial value not properly available to similarly situated individuals.
- Section 23(b)(3) prohibits a public employee from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy the public employee's favor in the performance of his or her official duties.

THE FINANCIAL DISCLOSURE LAW, G.L. c 268B

- Section 5 requires public officials to file a statement of financial interests for each year that the public official holds office by the last Tuesday in May of the following year. Penalties for failure to file a Statement of Financial Interests by the deadline range from \$50 to \$500 and are imposed according to the schedule. Penalties are doubled for repeated late submission of an SFI. Failure to file may result in civil penalties of up to \$2,000. In addition, no employee required to file who has not done so may continue to perform his or her duties or receive compensation.

flict of interest law. According to a Disposition Agreement, Laurel-Paine, a Planning Board member between 1992 and 2002, took part in Planning Board discussions concerning a proposed rezoning that affected property she had recently purchased. By discussing the expansion of the business district to include property she owned, Laurel-Paine participated in a matter affecting her financial interest in violation of §19.

[In the Matter of Robert Kominsky](#)

The Commission fined West Bridgewater Police Chief Robert Kominsky \$1,000 for asking his subordinates to perform personal errands for him. By having a subordinate do personal errands for him on municipal time, Kominsky violated §23(b)(2). By asking subordinates to do personal errands for him while supervising those subordinates, Kominsky violated §23(b)(3).

[In the Matter of David F. McCarthy](#)

The Massachusetts State Ethics Commission fined Greenfield Police Chief David F. McCarthy \$4,000 for violating the state's conflict of interest

law. In a Disposition Agreement, Chief McCarthy admitted that he violated G.L. c. 268A, §19 by participating in personnel matters affecting his son, Daniel McCarthy. Chief McCarthy sought support for Daniel's candidacy, recommended to selectmen that two additional sergeant positions be created, approached one selectman and asked him not to oppose or postpone the promotions, and denied a grievance regarding the pay rate of the newly appointed sergeants. The Disposition Agreement notes that Chief McCarthy received advice about the conflict law on three previous occasions. On each occasion, he was advised not to participate in any matters involving his son's financial interest.

*Disposition Agreements and
Public Education Letter*

[In the Matter of Michael Kelleher,
Edward Felix and Steven Angelo](#)

The Massachusetts State Ethics Commission imposed civil penalties of \$2,000 each on Saugus Selectman

Michael Kelleher and Police Chief Edward Felix for violating G.L. c. 268A, the state's conflict of interest law regarding a January 2002 traffic stop. The Commission also cited former Town Manager Steven Angelo for his involvement in the same incident. According to two Disposition Agreements, Kelleher and Felix admitted violating §23 of the conflict of interest law. By calling his subordinate Angelo, Kelleher used his position as selectman to speak directly with Chief Felix, which he knew or should have known would send a clear implicit message that he wanted preferential treatment in violation of §23(b)(2). By using his position as police chief to request that his officers on the scene drive Kelleher home, Felix also violated §23(b)(2). In a Public Education Letter, the Commission stated there was reasonable cause to believe Angelo violated §23(b)(2) by using his position to secure preferential treatment from the police for Kelleher.

Litigation Update

The Executive Director, and by delegation, the Commission's Legal Division attorneys, have special assistant attorney general status. This status permits Legal Division attorneys to represent the Commission in court proceedings, under the oversight of the Office of the Attorney General. The Commission has recently been involved in two litigation matters.

Vineyard Conservation Society, Inc. et. al. v. State Ethics Commission

The Commission is defending a formal advisory opinion issued to Richard Toole, a member of the Martha's Vineyard Commission who wants to become a board member of the Vineyard Conservation Society, a private non-profit organization. Toole and the Society challenged the Commission's opinion in Suffolk Superior Court by means of a declaratory judgment action and writ of certiorari. In response, the Commission filed a motion to dismiss the action. The Court allowed in part the Commission's Motion by dismissing the claim for writ of certiorari and leaving only the claim for declaratory judgment.

Toole and the Society have filed a Motion for Judgment on the Pleadings asking the Court to enter a judgment in their favor. The Commission has filed an Opposition and requested either a judgment in its favor or alternatively, that the Court send the matter back to the Commission. Both parties have requested a hearing.

James B. Triplett v. Town of Oxford

In a case before the Supreme Judicial Court on the Court's own motion, the Ethics Commission and the Office of the Attorney General jointly filed an amicus brief in support of the Town of Oxford. Former Police Chief Triplett sought affirmance of a Superior Court interpretation of G.L. c. 258, §13 that would have potentially required the Town to indemnify him for his legal fees in successfully defending against charges of a criminal conflict of

interest by the Attorney General's Office, where his conviction was overturned by the Supreme Judicial Court, and civil conflict of interest charges by the State Ethics Commission, where several charges were jointly dismissed as part of a settlement agreement and two charges were dismissed after an adjudicatory hearing. In a unanimous July 11, 2003 decision, the Court ruled that G.L. c. 258, §13 does not authorize a town to reimburse a municipal officer for legal fees and costs incurred in defending against criminal indictments or ethics charges regardless of whether he is acquitted or his defense is otherwise successful. The Court accordingly reversed the Superior Court's denial of the Town's motion for summary judgment, vacated the Superior Court's order of partial summary judgment for Triplett and ordered that judgment be entered for the Town.

BACK AGAIN BY POPULAR DEMAND!

POCKET GUIDES TO THE CONFLICT OF INTEREST LAW

*Clip & Save**

The Top Ten Rules Municipal Employees Need to Know About the Conflict of Interest Law

10. Whether elected or appointed, paid or unpaid, part-time or full-time, **you are a municipal employee** subject to the conflict of interest law — even “consultants” may be considered municipal employees.
9. **Don’t** accept bribes (don’t sell or trade your official actions).
8. **Don’t** accept meals, tickets or gifts from anyone to thank or reward you for any official action you have taken or may take or to influence you in any official action.
7. **Be loyal** to your municipality:
 - **Don’t** accept money from **or** represent anyone other than your municipality for work involving your municipality.
 - **Don’t** accept paid, private work that is incompatible with your public position and duties.
 - **Don’t** improperly disclose or use confidential information that you obtained as a municipal employee.
6. **Don’t** use your official position to get special benefits for yourself or anyone else that are not available to the general public.
5. **Don’t** create appearances of conflicts of interest: Publicly disclose significant relationships or circumstances that might cause a reasonable person to think that you might be unfair or biased in your official actions.
4. **Don’t** act on any matter affecting your own financial interests or those of family members, partners or organizations with which you have a private relationship.
3. **Don’t** double dip. Don’t accept an additional (even unpaid) municipal position before seeking legal advice.
2. **After** you leave municipal service:
 - **Don’t** accept money from **or** represent anyone other than the municipality you served if the private work involves a matter that you participated in or worked on as a municipal employee.
 - Strictly **observe** the one-year “cooling off” rule: **Don’t** represent or appear before municipal agencies for a private party on matters that were under your “official responsibility” when you were a municipal employee.

AND THE NUMBER ONE RULE IS . . . Get Advice!

Most of these rules have exceptions. Some are simple; some are not. Free legal advice is readily available from your municipality’s attorney or the **State Ethics Commission (617-727-0060)**.

The Top Ten Rules State Employees Need to Know About the Conflict of Interest Law

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7. **Be loyal** to the state:
 - **Don’t** accept money from **or** represent anyone other than the state for work involving the state.
 - **Don’t** accept paid, private work that is incompatible with your public position and duties.
 - **Don’t** improperly disclose or use confidential information that you obtained as a state employee.
6. **Don’t** use your official position to get special benefits for yourself or anyone else that are not available to the general public.
5. **Don’t** create appearances of conflicts of interest: Publicly disclose significant relationships or circumstances that might cause a reasonable person to think that you might be unfair or biased in your official actions.
4. **Don’t** act on any matter affecting your own financial interests or those of family members, partners or organizations with which you have a private relationship.
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Most of these rules have exceptions. Some are simple; some are not. Free legal advice is readily available from your agency counsel or the **State Ethics Commission (617-727-0060)**.

*In addition to the above format, the Commission has developed these guides in a double business card format. At the present time, the Commission does not have sufficient funds to provide quantities of the pocket guides for distribution in your agency or municipality. If your agency or municipality is interested in providing them to employees, however, we can provide camera-ready copy for printing. Please contact Carol Carson at ccarson@eth.state.ma.us or 617-727-0060 for more information.