



STATE ETHICS COMMISSION BULLETIN

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Electronic Filing of Statements of Financial Interests Available Now

SFIs due May 1 for appointed officials, May 31 for elected officials

The filing deadline for state and county appointed officials who are required to file annual statements of financial interests (SFIs) for calendar year 2004 is Monday, May 2, 2005. For elected officials in state and county government, the deadline is Tuesday, May 31, 2005.

This year, more than 4,245 officials are required to file financial disclosure forms. Each year, nearly 100% of filers meet the deadlines.

This year marks the third year of the availability of on-line filing. Last year, 64% of those required to file did so on-line 10% more than the previous year.

Commission staff members are available daily between 9 a.m. and 5 p.m. to provide walk-in or telephone assistance to filers who wish to file electronically.

Last year, only 153 individuals failed to file in a timely manner. Of this

number, 11 presented mitigating circumstances, 15 paid fines ranging from \$50 to \$1,000 for the late submission of an SFI and three are subjects of preliminary inquiries.

Failure to file a statement of financial interests by the deadline may result in civil penalties. These penalties are imposed according to the following schedule:

- 1-10 days delinquent: \$ 50
- 11-21 days delinquent: \$100
- 21-30 days delinquent: \$200
- 31 days or more: \$500

These 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, an employee who is required to file but who has not done so may not continue to perform his or her duties or receive compensation.

File electronically at www.eth.state.ma.us.

Governor Appoints New Commissioner

Governor Mitt Romney appointed Boston attorney Christopher D. Moore to the State Ethics Commission in December 2004. Moore replaces Commissioner Elizabeth J. Dolan.

Commissioner Moore, a partner at the Boston law firm Goodwin Procter LLP, is a resident of Sherborn. He specializes in litigating complex business disputes for financial services, real estate and commercial aviation clients. He has advised public and private companies on civil and criminal matters, including investigations by the Securities and Exchange Commission and other state and federal law enforcement agencies.

The Governor appoints the Chairman and two Commissioners to five-year terms to the Ethics Commission. 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. Commissioner Moore is unenrolled.

Ethics Primer: Self-Dealing and Financial Interests for State Employees

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 conflict of interest law, G. L. c. 268A, is intended to prevent, among other things, self-dealing. Section 6 of the conflict of interest law generally prohibits a state employee (paid or unpaid, appointed or elected, full-time or part-time) from participating in any particular matter in which the state

employee, an immediate family member, partner, or a business organization in which he or she has certain affiliations, has a financial interest.

Immediate Family

A state employee generally may not act on matters affecting the financial interest of the state employee him or herself, his or her spouse and/or the parents, siblings and children of both the state employee and the spouse. In-laws who marry into the "immediate family" are not considered to be members of the immediate family.

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From the Executive Director

"Drafting Regulations"

Following a detailed review of the conflict of interest law, with a goal to clarify and simplify it, the Commission unanimously concluded that it should seek regulatory authority to create reasonable exemptions to the substantive provisions of the conflict of interest law. This decision became the first major legislative initiative by the Commission in many years. On February 16, 2005, Chapter 399 of the Acts of 2004, which grants the Commission the authority to create reasonable exemptions from the conflict of interest law, became law.

Now that the Commission has authority to promulgate regulations providing for reasonable exemptions, the question becomes which sections of the law should be considered for regulatory action, in what order of priority and, more basically, how to proceed.

Over the next few months, the Commission will be considering how it should exercise its authority. There may be situations that the Commission believes should be addressed and, under Chapter 399, has the authority to address that are so substantive or otherwise significant that the issue should be addressed by the Legislature rather than the Commission. It also can not be emphasized how important it is for the Commission to proceed in a careful and deliberative manner.

During the initial informal review, we will consider areas that the Commission staff has already identified as well as other areas that are brought to our attention. Whether we include a particular area in the initial draft of regulations for Commission review and approval, the staff will report all suggestions or recommendations that are received. Once the Commission approves a set of draft regulations for promulgation, they will be subject to a public hearing and comment in accordance with G.L. c. 30A.

Peter Sturges

Commission Members Spring, 2005

E. George Daher, Chair
Christine M. Roach, Vice-Chair
J. Owen Todd
Tracey Maclin
Christopher D. Moore

Carol Carson
Editor

Commission Seeking Budget Increase

Over the past few years, the Commission has worked diligently to maintain the services that it provides to the public. In order to live within its significantly declining budget, it has sharply reduced staff, implemented new procedures and systems such as the SFI electronic filing system to reduce costs and taken numerous other steps to live within its appropriation.

On Friday, March 11, 2005, State Ethics Commission Executive Director Peter Sturges testified before the Joint Committee on Ways and Means regarding the Commission's FY06 budget. The Commission is seeking the Legislature's support for a \$282,957 increase over the previous year's budget which, for the prior two years, has remained at \$1,265,221.

Since 2001, the Commission's budget has either been reduced or level funded. This has resulted in a 25 percent reduction in staff. At the same time, the public's request for services provided by the Commission continues to increase. For example, since 2001 the three-year average of complaints filed with the Ethics Commission has increased from 728 (for the three years ending in FY00) to 889 (for the three years ending in FY04), a 22% increase. Similarly, requests for telephone advice about the conflict of interest and financial disclosure laws have increased just over the past two years from 5,269 to 5,835 or by 11%. In some cases, the Commission is simply not able to respond to the public request for services. Again, by way of example, the loss of the Commission's municipal training specialist has resulted in a substantial

curtailing of the Commission's seminar program, which conducted 247 seminars attended by 6,704 people in FY01 but only 65 seminars attended by 2,636 people in FY04.

In order to partially address the losses over the past few years, the Commission is seeking support for an FY06 budget in the amount of \$1,548,178. First and foremost, the Commission seeks funds to restore three positions: an attorney, an intake investigator and an administrative assistant to help to eliminate backlogs and provide critical administrative support. The Commission is also seeking funds to cover *per diems* for the members of the Commission, who, since FY01, have foregone their *per diems* in order to reduce the need for layoffs or other cutbacks at the Commission.

In order to avoid shutting down the Commission's e-file application for the filing of annual Statements of Financial Interests the Commission is seeking funds to cover increased charges for maintaining the Commission's servers. In addition, the Commission is requesting a one-time figure of \$11,000 to replace its antiquated telephone system, which is now seven years old. Last year alone the Commission handled almost 6,000 telephone calls from individuals seeking advice.

Finally, the Commission, which along with the Office of Campaign and Political Finance will be hosting the conference of the Council on Governmental Ethics Laws, which will be meeting for the first time in Boston in December 2005, is seeking funds to send its employees to the conference.

NEW ADVISORY

The Commission recently issued [Advisory 05-01, The Standards of Conduct.](#)

Staff notes

Ryan P. Dunn, a second year law student at New England School of Law, is serving as an intern as part of an administrative law clinic. He is a native of Peabody Massachusetts and a graduate of Vassar College.

Two Northeastern University students are spending a semester working at the Commission as part of

a cooperative education program. **Caleb Farrell**, a native of Burnt Hills, New York and graduate of Burnt Hills-Ballston Lake High School, is a sophomore majoring in English. Wilbraham native **Jacob Hulseberg**, who graduated from Minnechaug Regional High School, is enrolled in the criminal justice program.

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 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.

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 Disposition Agreements can be found on the Commission's website, www.mass.gov/ethics.

[In the Matter of Kevin Joyce](#)

The Commission fined former Boston Inspectional Services Department (ISD) Commissioner Kevin Joyce \$5,000 for violating the state's conflict of interest law by demoting, then firing a subordinate when she refused, as Joyce directed, to get two quotes higher than one previously received from a company where a friend of his was employed. During fall 2000, ISD selected Tekinsight.com, Inc. to update the mayorsfoodcourt website operated by ISD. TekInsight assigned its employee Melissa Fetzer, a friend of Joyce, to work on the project. When Joyce learned that the update would not be funded under a citywide contract, he directed Principal Administrative Assistant Julie Fothergill to obtain two quotes higher than \$7,900, the amount sought by TekInsight for the update, in order to secure payment for Fetzer and/or TekInsight. In January 2001, after Fothergill did not obtain the quotes Joyce requested, Joyce transferred her to the ISD Legal Division where she

was assigned an office with no phone or computer. Later in January, Fothergill notified Joyce through her attorneys that she intended to file a civil suit against Joyce and the City for the demotion. In February 2001, Joyce transferred her out of the ISD Legal Division into the Planning & Zoning Division. In May 2001, Joyce terminated Fothergill. By demoting and terminating Fothergill for disobeying his orders to commit illegal actions by getting two quotes higher than the amount sought by TekInsight, rather than on the merits of her work performance, Joyce used his ISD position to obtain an unwarranted privilege. The City of Boston paid Fothergill \$240,000 to settle her wrongful termination suit in September 2003. Joyce resigned as ISD Commissioner in April 2004 following the release of a report from the Boston Finance Committee finding Joyce responsible for Fothergill's wrongful termination, costing the City over \$400,000, as well as numerous administrative failures in contract and personnel matters.

[In the Matter of Michael H. Rotondi](#)

The Commission approved a Disposition Agreement in which former Stoneham Town Moderator Michael H. Rotondi admitted violating G.L. c.

268A, § 19, the state's conflict of interest law, and agreed to pay a \$2,000 fine for participating in a matter in which he had a financial interest.

According to the Disposition Agreement, in April 2003, Rotondi, who earned \$200 annually as town moderator, sought enrollment in the town pension system. The town retirement board informed him that he did not qualify because he did not earn more than \$200. Rotondi then asked the Town Administrator to change a Town Meeting warrant so as to authorize a transfer of \$5 from the town moderator's operational account to the salary account and changed the article on the May 5, 2003 Town Meeting warrant to increase Rotondi's salary from \$200 to \$205. Rotondi presided over the Town Meeting as moderator.

[In the Matter of Steven Silva](#)

The Commission fined Department of Corrections employee Steven Silva \$1,000 for violating the state's conflict of interest law by using his position as Superintendent of Operations at MCI-Cedar Junction to have a subordinate come to Silva's house to cut his hair. By using state resources and a state employee for an at-home haircut for himself, Silva violated § 23(b)(2).

SECTION BY SECTION THE CONFLICT OF INTEREST LAW, G. L. c. 268A

- Section 19 prohibits a municipal employee from officially participating in matters in which he 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.

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 one litigation matter.

John Doe v. State Ethics Commission

John Doe has appealed the Superior Court's decision that the Commission has authority to issue summonses to compel testimony during a preliminary

inquiry. This matter now is pending in the Massachusetts Supreme Judicial Court. Oral arguments are scheduled for the April sitting of the Court.

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Example: A sister-in-law, who is married to a state employee's brother, is not an immediate family member while the state employee's sister-in-law, who is his spouse's sister, is an immediate family member. Similarly, nieces, nephews, cousins and grandchildren are not immediate family members. (They are, however, kin and acting on matters involving kin may create the appearance of a conflict of interest. Section 23 of G.L. c. 268A addresses this.)

In determining if a state employee may act in matters involving a family member, the family member's financial interest must be considered.

Example: A particular matter before a state agency might affect the financial interest of the business organization that employs the mother of the state employee. That financial interest alone won't disqualify the employee from acting, however, unless the particular matter also affects the mother's financial interests.

Business Organization

A state employee who is an officer, partner, director, trustee or employee of an organization or who is negotiating for prospective employment with a person or organization, in general, may not participate in matters affecting the financial interest of that person or organization. It does not matter if the business organization is a private, for-profit business or a non-profit organization. The phrase business organization also includes a county or municipality as well as their agencies. For instance, a state employee may not participate in a decision that affects a municipality's financial interest if he holds an elected or appointed position in the municipality.

Example: An employee of a state environmental agency who is interviewing for a position with a private firm whose contract he oversees must disclose in writing to his appointing authority the fact that he is involved in such negotiations and may not continue to oversee the contract.

Financial interest

Although the conflict of interest law does not define the term financial

interest, the Commission has a long-standing interpretation of that phrase. The restrictions of the conflict of interest law apply in any instance when the private financial interests are directly and immediately affected or when it is reasonably foreseeable that the financial interests would be affected.

Example: A state employee who owns property abutting a state building project may have a financial interest in the project. The Commission presumes a financial interest in matters affecting abutting property.

The conflict of interest law generally prohibits any type of official action regardless of whether the financial interest is large or small and regardless of whether the proposed action would positively or negatively affect the private financial interest.

Example: A state engineer owns property abutting a proposed landfill. If the landfill is approved, it will negatively affect the value of the state engineer's property. The state engineer may not participate in the reviewing of proposals or discussions concerning the landfill.

Participating and voting

Participation includes not only voting or deciding on a matter but also formal and informal lobbying of colleagues, reviewing, discussing, giving advice and/or making recommendations on particular matters. Therefore, a state employee will be deemed to have participated in the particular matter if he discusses the matter but abstains from the final vote or decision. Often, discussing, providing advice or making recommendations about a particular matter may have more of an effect than the employee's single vote or final decision. It does not follow, however, that if a state employee votes or makes a final decision without participating in any discussion or otherwise acting regarding the matter in question, that vote or decision will not amount to participation. Regardless of whether the vote tally is unanimous or split, voting constitutes participation. The decision to delegate a matter to a co-worker or to a subordinate also constitutes participation in the particular matter.

Example: A state board member who discusses the license application of the private corporation in which she holds a majority of shares but abstains from the final vote will nevertheless have participated through her discussing the license application, even though she abstained from voting.

Exemption

The law includes an exemption from the general prohibition for *appointed* state employees. This exemption is *not* available to elected state employees.

An appointed state employee, whose duties would otherwise require him or her to participate in a particular matter, *must* make a written disclosure of the particular matter and the financial interest to his or her appointing authority. A copy must also be filed with the Ethics Commission. A state employee's appointing authority is not necessarily his or her immediate supervisor; the appointing authority is the official or board responsible for the state employee's appointment to his or her position.

Making an oral disclosure or making a written disclosure to an immediate supervisor who is not an appointing authority, a co-worker or a subordinate who is also involved in a matter is not sufficient disclosure.

After receipt of the written disclosure, the appointing authority then has the opportunity to take one of three steps:

- Assign the particular matter to another employee;
- Assume responsibility for the particular matter; or
- Make a written determination that "the interest is not so substantial as to be deemed likely to affect the integrity of the services which the commonwealth may expect from the employee."

Whether the state official receives the written determination rests solely in the discretion of the appointing authority. The Ethics Commission has no role in making the determination.

Like the disclosure, the determination must be in writing and must also be filed with the Ethics Commission where they are maintained as public records.