

## SUMMARY OF THE CONFLICT OF INTEREST LAW - NO. 5

### TREASURERS and COLLECTORS

Treasurers and Collectors are municipal employees covered by the conflict of interest law (Chapter 268A of the General Laws). All municipal employees, whether elected or appointed, full or part-time, paid or unpaid must abide by the restrictions of the conflict law.

The purpose of the conflict law is to ensure that your private financial interests and relationships do not conflict with your responsibilities as Treasurer or Collector. The law is broadly written to prevent you from even becoming involved in a situation which could result in a conflict or give the appearance of a conflict.

If you are part-time and have been designated as a "special," two sections of the conflict law -- Sections 17 and 20 -- apply less restrictively to you. (All other sections of the conflict law which affect municipal employees apply to special municipal employees in the same way.) See the Commission's Fact Sheet, "Special Municipal Employees" for information on eligibility and the process of designation.

### CONFLICT QUESTIONS AND ANSWERS

#### Accepting Gifts (Section 3)

**Q:** You apply for a mortgage from a bank in which the city has deposited funds. The bank waives the \$125 application fee citing your business relationship but has charged you the customary mortgage rate and points. Is this acceptable under the conflict law?

**A:** No. You may not accept a "gift" of substantial value (\$50 or more), which is given to you because you are the Treasurer from someone with whom you have official dealings -- even if the motivation for the gift is to express gratitude for a job well done or to foster goodwill. Under the conflict law waived fees, discounts, gift certificates and entertainment are all considered gifts; if their value amounts to \$50 or more, they are prohibited. It is not only a violation for a Treasurer or Collector to accept such a gift; it is illegal for a bank to even make the offer.

If the waived fee is valued at less than \$50, technically you may accept the gift, provided that it is not intended as a bribe. A bribe, no matter what its value, will violate the law.

The conflict of interest law permits municipal agencies to adopt stricter standards than those in the state law. Many local governments simply have an outright ban on accepting any gifts.

#### Prohibited Actions Affecting Financial Interests (Section 19)

**Q:** You are on the Board of Directors of a nonprofit corporation. The corporation is delinquent in its payment of real estate taxes in your town. May you, as Collector, arrange a monthly payment schedule?

**A:** No. You may not participate in any matter that affects the financial interest of a business organization for which you serve on the board of directors. You also may not act on a matter that affects your own financial interest or those of your "immediate" family, employer or a business for which you serve as officer, partner or trustee.

Immediate family is defined in the law as you and your spouse and both of your children, parents, brothers and sisters.

For example, you are prohibited from hiring your sister or from participating in any way in the hiring process.

There is an exemption to this restriction, available for appointed Treasurers and Collectors. If you are appointed, you may act on a matter affecting your own, your family's or your business' financial interest only if you receive written permission from your appointing authority prior to taking any action. Therefore, if the Board of Selectmen appointed you to your job, they could grant you permission to hire your sister.

If you are elected, this exemption is not available to you; you may never hire your sister.

NOTE: This section of the conflict law prohibits you from depositing municipal funds in any bank for which you work or serve as partner, officer, director or trustee. Though the conflict law would allow an appointed Treasurer to receive an exemption to this rule, M.G.L. c. 44, §55 prohibits you from depositing funds in any bank with which you are associated as an "officer" or employee or with which you were associated at any time during the three years immediately preceding the date of any such deposit.

### **Restrictions After Hours (Section 17)**

**Q:** You are a part-time Treasurer; you also work part-time for a computer company. May you represent the company in its negotiations with the School Department to provide computers and maintenance for a new school program?

**A:** If you are a regular municipal employee, no. You may not act as the agent or attorney for a private party before municipal boards or agencies. Representing the computer company before the School Department constitutes acting as that company's agent; it is prohibited.

If you are part-time and have been designated as a special municipal employee, it depends. You may represent private parties before other town boards or agencies (not your own) unless it is a matter in which you participated or which is now or within the past year was within your official responsibility as Treasurer. In this example, if the proposed contract would have to be approved by you or someone under you, you could not represent the computer company in its negotiations with the School Department.

### **Prohibited Financial Interest in Municipal Contracts & Multiple Jobs (Section 20)**

**Q:** You want to serve on the Parks and Recreation Committee. May you hold both positions as full-time Treasurer and part-time committee member?

**A:** It depends. You may hold as many elected positions as you want, paid and unpaid. Therefore, if both the Treasurers job and the Parks and Recreation Committee position are elected, you may hold both positions. If you are the elected paid Treasurer and the Parks Committee position is appointed and unpaid, you must be designated as a special municipal employee in the Parks Committee position to comply with the conflict law. You may hold both jobs, even if they are both appointed and paid, as long as you meet certain criteria (for example, if the committee job had been publicly advertised before being filled and the position was designated a "special" municipal position). Talk to your municipal lawyer or call the Ethics Commission at (617) 371-9500 if you are considering a second town position.

### **Misuse of Official Position (Section 23)**

**Q:** A local bank is about to foreclose on your brother's property. You presently are negotiating with the bank concerning a deposit of a large sum of city money. May you call the president of the bank and intervene on behalf of your brother?

**A:** No. The conflict law prohibits you from using your official position to secure an unwarranted privilege of substantial value (\$50 or more) for anyone. In this situation, where you have pending business with the bank, intervening on behalf of your brother would constitute an attempt to use your influence as Treasurer to benefit your brother financially.

**Q:** Your cousin is delinquent in his payment of real estate taxes. As Collector, may you set up a customary repayment

schedule?

**A:** Yes, provided that you publicly disclose your private relationship with your cousin in writing to your appointing authority (whatever board or person appointed you to the job) prior to taking any action. If you are elected, the written disclosure must be filed with the town or city clerk. The disclosure will dispel, by law, the impression of favoritism created when you act on matters affecting relatives or friends. In addition, you must be careful to act objectively and not attempt to obtain any unwarranted benefits for your cousin because of your relationship. Using your position to secure unwarranted privileges for people, such as being more lenient with repayment terms for family and friends, always violates the law, regardless of whether you disclosed your private relationship. See, Commission Fact Sheet, "Avoiding Appearances of Conflicts of Interests" for more detailed information.

### **Restrictions After You Leave Government Service (Section 18)**

**Q:** You have resigned as Treasurer and now work for a bank which has a major portion of the city's business. May you represent the bank in its dealings with the new Treasurer?

**A:** It depends. 1) You may not represent the bank before the Treasurer's office or any other city agency if the particular matter at hand is something in which you participated as Treasurer. 2) For one year after you leave the city, you may not appear before city agencies on a matter if it was before your department within two years before you left (even if you did not personally participate in the matter). 3) You may represent the bank before city agencies (including your own) with no "cooling off" period, on a matter you never dealt with and which was not before your department while you were a Treasurer.

For example, as Treasurer, you negotiated with the bank to give the city a highly favorable interest rate on certified deposits in exchange for depositing so much money per month. You may not now, as the bank's liaison with the city, attempt to renegotiate that very contract.

### **Advisory Opinion**

This summary presents a brief overview of the conflict law and suggests activities which you, as a Treasurer or Collector, must avoid. It is not a comprehensive review intended to cover every situation. You should consult your municipal lawyer or call the Ethics Commission's Legal Division at 371-9500 for particular advice on the conflict law.

If you have a question about your own activities, we urge you to request an opinion from your city or town counsel or directly from the Commission prior to engaging in the activity in question.

If you have questions about others' activities in your county, urge them to use the opinion process. In addition, complaints may be filed with our Enforcement Division in person, by phone (at the same number listed above) or by letter. The identity of complainants is kept confidential.

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Commission 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.

**ISSUED:** August 1987

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