

STATE ETHICS COMMISSION

SUMMARY OF THE CONFLICT OF INTEREST LAW - NO. 17

MUNICIPAL BUILDING OFFICIALS

This summary provides an overview of the application of the conflict of interest law, G.L. c. 268A, to municipal building officials. As a municipal building official -- even if you are elected, unpaid or serve part-time -- you are a municipal employee within the meaning of the conflict of interest law and are subject to the provisions of that statute. Municipal building officials include, among others: building inspectors; assistant or associate building inspectors; building commissioners; plumbing and gas fitting inspectors; wiring inspectors; septic system inspectors; and members of municipal boards with responsibilities for enforcing or overseeing municipal building codes and regulations. The purpose of the conflict of interest law is to ensure that your private interests and relationships do not conflict with your responsibilities as a public official. In addition, for certain municipal building officials, there may be statutes other than the conflict of interest law that will allow them to perform work provided he meets certain requirements. See Appendix below.

Self-Dealing and Nepotism (§ 19)

The law generally prohibits you from taking any action as a public official on matters affecting your own financial interests, or the financial interests of your immediate family members⁽¹⁾ business partners, anyone with whom you are negotiating or have an arrangement concerning prospective employment, or business organizations in which you serve as an officer, director, partner, employee or trustee.⁽²⁾ This prohibition is very broad: If a prohibited financial interest is involved, you may not, in your municipal position, participate in any way. More specifically, you may not:

1. issue permits, conduct inspections, assess fees or take any type of enforcement action;
2. participate in, moderate or chair discussions;
3. delegate matters to a subordinate;
4. prepare official analyses or other documentation; or
5. take any other type of official action.

For example, if an immediate family member seeks a permit from an agency of your municipality, you may not review the permit application or approve that permit. If you are an abutter to a property as to which a permit is sought, you may not participate as a municipal employee in discussions about the permit. If your brother or sister has received a municipal permit to perform work for a client, you may not conduct any inspections of his or her work. If you are on the board of a charitable organization, you may not issue a stop work order for a building expansion involving the organization. You may not hire your son or any other immediate family member as an assistant inspector.

Note that, if you are appointed to your position, there is an exemption. Before taking any action on a matter subject to §19 restrictions, you may disclose in writing all the facts about the situation to your appointing authority,⁽³⁾ 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 such prior written "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. In addition, if you receive your appointing authority's written determination allowing you to participate notwithstanding the financial interest, you still must act fairly and impartially pursuant to § 23(b)(2) discussed below. (For a downloadable form, See no .8 on the Commission website, www.mass.gov/ethics/Formlist.htm.)

Unwarranted Privileges (§23)

The law prohibits you from using your official position to obtain an "unwarranted privilege" with a value of \$50 or more (substantial value) 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, e.g., expediting a permit application or waiving a required fee for a friend.. You may not use your official title to endorse businesses, products or activities.

Appearances (§23)

The law prohibits you from acting in a manner that could cause a reasonable person to believe that your official actions are tainted with bias or favoritism or, in other words, from creating an appearance of impropriety or conflict of interest. Before taking any type of action that could appear to be biased, you must first file a full, written disclosure of all the relevant facts with your City or Town Clerk. Instances where you should file such a disclosure include: actions affecting the financial interests of a relative who is not an immediate family member, such as inspecting a nephew's work; and actions involving a friend, neighbor, business associate, or anyone with whom you have a significant personal or professional relationship, such as approving a permit for your best friend. If you are in doubt as to whether there is an "appearance problem", the safest approach is to make the disclosure. (See downloadable form no. 11 at www.mass.gov/ethics/Formlist.htm.)

Acting on Behalf of Others/Private Employment (§17)

The law generally prohibits you from acting as an agent, attorney or representative for anyone other than your municipality in connection with any matter involving your municipality. For instance, you may not apply for a permit on behalf of a client or anyone other than yourself. You may not appear before a municipal agency, such as the Board of Health, on someone else's behalf. You may not allow your name to be used on documents that are submitted to a municipal board by someone else. For example, you may not certify plans as an engineer or an architect if those plans will be or are likely to be filed with the municipality. You may not serve as spokesperson or otherwise represent anyone in connection with municipal business by, for example, appearing on behalf of a neighborhood group at a public hearing before selectmen.

You may not be paid (or receive any other type of compensation), by anyone other than your municipality in connection with any matter that involves your municipality. For example, you may not be paid by a developer to serve as a consultant on a subdivision which is being submitted to the Planning Board.

There are some exemptions to this general prohibition. For instance, a municipal employee who is not employed by or does not provide services to the permit-granting agency or an agency that regulates the activities of the permit-granting agency, may apply on behalf of anyone for a building, electrical, wiring, plumbing, gas fitting or septic system permit, and receive compensation in relation to any of these particular permits. For example, a wiring inspector could apply for a permit from the board of health for a septic system permit on behalf of another, provided that the wiring inspector's department is not responsible for reviewing or issuing the permit subsequently; a wiring inspector cannot apply for a wiring permit.

If your position is designated as a "special municipal employee" position,⁽⁴⁾ 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.

For information about other exemptions, see State Ethics Commission Advisory 88-01: Municipal Employees Acting as Agent. In addition, for certain municipal building officials, there may be statutes other than the conflict of interest law that will allow them to perform private work provided he meets certain requirements. See Appendix below.

Representing Yourself

You may always act as a private citizen on your own behalf, and you may state, as a private citizen, your own personal points of view, but only on the same terms and conditions as other private citizens. You should, however, always make it clear that you are acting on your own behalf, and not acting in any official capacity. You may even represent yourself (provided you have no partners and are representing only your own interests) 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).

Financial Interests in Contracts with Your Municipality and Multiple Office Holding (§20)

You are generally prohibited from having a direct or indirect financial interest in a contract with your municipality. This includes holding more than one position with the same municipality. There are, however, 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. You may hold more than one appointed position if your municipality has a population of less than 3,500 persons and the selectmen approve your exemption. You may hold more than one elected position. 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.⁽⁵⁾ For information about other exemptions, contact your Town Counsel, City Solicitor or the Legal Division of the State Ethics Commission for advice before accepting an additional position.

Confidential Information (§23)

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

Corrupt Gifts/Bribes (§2)

You may never accept or agree to accept anything that is given to you with a corrupt "intent to influence" your official actions nor may you corruptly seek or receive anything in return for being influenced to do or not do any official action. Anything -- of any value -- may be considered a bribe or corrupt gift 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). The violation is completed upon the agreement to be influenced, regardless of whether the agreement is carried out.

Gifts and Gratuities (§§3 and 23)

You may not ask for, accept or agree to accept anything worth \$50 or more if you know or have reason to know that it is being offered or given to you to influence a present official act, induce a future official act or reward you for any official action. This is so even if it is given or received without corrupt intent or any agreement to be influenced. Examples of 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 and the gift is worth \$50 or more, you should contact your Town Counsel, City Solicitor or the Legal Division of the State Ethics Commission for advice before accepting. The value of a gift to someone accompanying you to an event or otherwise associated with you may be attributed to you.

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 more than a total of \$50 worth of gifts from different sources sharing a "common interest." You should also decline standing offers (e.g., "I can get you Celtics tickets anytime you want them"), since they may be considered to be worth more than \$50.

Even if the gift is valued at less than \$50 or is worth more than \$50 but is not given to you to influence your actions, you may be required to file a written disclosure to dispel the "appearance of conflict." See the discussion of Appearances above. For additional information about receiving gifts or gratuities, contact your Town Counsel, City Solicitor or the Legal Division of the State Ethics Commission.

Private Employment When You Leave Public Service (§ 18)

The conflict law restricts your private employment and business activities when you leave public service in the following ways:

- You may never be paid by anyone but your municipality in connection with a particular matter in which you participated as a municipal official. For example, if you approved a permit while you were a building official, you may not be paid by a private company in connection with that permit when you leave public service.
- There is a one-year "cooling off" period before you may personally appear before a municipal agency in connection with any matter that you did not participate in as a municipal employee but was under your official responsibility for the two year period before you left public service. For example, if a permit application was being reviewed by your subordinate when you left public service but you did not act on it, you cannot appear on behalf of your private client, send a letter on behalf of your client or contact your replacement by phone or email on behalf of your private client unless more than a year has elapsed.
- Your business partners are generally subject to similar restrictions.

For more information on these restrictions, see State Ethics Commission Advisory No. 90-01: Negotiation for Prospective Employment and Summary No. 13: Former Municipal Employees.

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Summaries are prepared and issued by the Public Education Division of the State Ethics Commission. They are intended to provide general 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) 371-9500.

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ENDNOTES

- ¹Members of your "immediate family" are: your spouse; and the parents, siblings and children of both you and your spouse.
- ²Note that this prohibition applies to for-profit, non-profit and religious and charitable organizations.
- ³Your "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.
- ⁴Only part-time positions totalling less than 800 hours for the previous 365 days 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".
- ⁵You are also required to file a disclosure of your interest in the contract with the City or Town Clerk.

APPENDIX

Legislation other than the conflict of interest law may be applicable to certain types of building officials and may provide additional exemptions. Notwithstanding the restrictions of G.L. c. 268A, §17, municipal building officials may be able to work and be compensated in connection with matters in which the town has an interest provided they can meet the requirements of the statutes listed below. Individuals should consult with municipal counsel to determine if and/or how the statutes below or other statutes apply to them.

Part-time Building Inspectors

G.L. c. 143, § 3Z allows a part-time building inspector to work in the area in which he is certified, licensed or registered provided that:

1. The municipality accepts G.L. c. 143, § 3Z by a vote of the city council, town meeting, town council or by the vote of the cities and towns of the district; and
2. He does not act as an inspector for work done by himself, his employer, employee or one employed with him; and
3. The inspection of such work is done by the inspector of another municipality or by a special assistant inspector appointed by the mayor, board of selectmen or governing board of a district.

Wiring Inspectors

G.L. c. 166, § 32A allows a wiring inspector to work as an electrician provided that:

1. The municipality accepts G.L. c. 166, § 32A by a vote of the city council, town meeting, town council or by the vote of the cities and towns of the district; and
2. He does not act as an inspector for work done by himself, his employer, employee or one employed with him; and
3. The inspection of such work is done by an assistant inspector appointed by the municipality or district.

Plumbing and Gas Fitting Inspectors

G.L. c. 142, § 12 allows a plumbing and/or gas fitting inspector, who does not receive an annual salary, to work as a plumber or gas fitter provided that:

1. He does not act as an inspector for work done by himself, his employer, employee or one employed with him; and
2. The inspection of such work is done by an assistant inspector appointed by the building inspector or board of health; and
3. An inspector who receives an annual salary may perform the work of a journeyman plumber or gas fitter outside the area over which he exercises jurisdiction as an inspector.

Septic System Installers

G.L. c. 111, § 26G allows a septic system installer who is appointed or elected to the Board of Health to work as a septic system installer provided that:

1. The municipality accepts G.L. c. 111, § 26G by a vote of the city council, town meeting, town council or by the vote of the cities and towns of the district; and
2. Neither he nor the Board of Health inspects for work done by himself, his partner, his employer, employee or one employed with him; and
3. The inspection of such work is done by the Board of Health of another city town or district or by a special assistant health agent who is appointed solely for the purpose of performing such inspections by the mayor, board or selectmen or governing board of a district.

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