

The Commonwealth of Massachusetts State Ethics Commission

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SUMMARY OF THE CONFLICT OF INTEREST LAW - NO. 1

SELECTMEN

Selectmen 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 law also regulates the activities of former employees and business partners of current and former employees.

The purpose of the conflict law is to ensure that your private interests and relationships do not conflict with your responsibilities as selectman. 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.

"Special Municipal Employee" Designation

Some municipal employees may be designated as "special municipal employees" by the board of selectmen. Only those selectmen serving in a town with a population of less than 10,000 can designate themselves as specials.

Sections 17 and 20 of the law apply less restrictively to specials. All other sections of the conflict law which affect municipal officials apply to special municipal officials in the same way.

An employee may be designated as a special on formal vote by your board at any time provided that the employee:

1. is not paid; or
2. holds a part-time position which allows him or her to engage in other employment during normal working hours; or
3. was not paid by the municipality for more than 800 hours during the preceding 365 days.

Typically, specials include members of boards and commissions serving part-time. All employees holding the same office or position must be treated equally -- having the same classification as special municipal employee. For example, if one member of a school committee is classified as a special, all members should be so classified. The selectmen's vote must be specific -- expressly naming the positions being designated. You may not vote a blanket designation for members of every board or commission in town to be named specials; votes should be taken individually for each board.

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See the Commission's Fact Sheet, "Special Municipal Employees" for more information on how the conflict law applies to specials.

Prohibited Actions Affecting Financial Interests (Section 19)

The law recognizes that your objectivity can be compromised when you act on matters in which you -- or a family member or close business associate -- have a financial stake. To discourage "self-dealing", the law prohibits you from participating in a particular matter in which you or any of the following have a financial interest:

1. your immediate family (you, your spouse and both of your parents, children, brothers and sisters);
2. your partner(s);
3. a business organization in which you serve as an employee, officer, director, trustee or partner (including a non-profit organization); and
4. any person or organization with whom you are negotiating or have any arrangement concerning prospective employment.

For example, as a selectman you should not participate in any discussions or vote on awarding a contract to your brother's company nor should you act on competing applications. The best course of action is to leave the room during any discussions or votes concerning the matter.

In an October 1983 enforcement case, the Commission found a Mansfield selectman in violation of this section of the law by participating in the approval of a contract between the town and his wife's employees' union.

A "particular matter" is defined by statute to include almost any proceeding, application, request for determination, contract, claim, finding, decision or controversy which might come before you. The definition refers to specific matters and proceedings rather than general issues. Section 19 does not apply if the particular matter involves a determination of general policy and your interest is shared with a substantial segment of the population of the town. For example, you could vote on raising or lowering local property tax rates, even if you are a homeowner, because your personal financial interest is shared with the majority of citizens in your town.

There is another exemption under Section 19 available to non-elected municipal employees. Appointed municipal employees may act on a matter affecting their own, their family's or their business' financial interest only if they receive written permission from their appointing authority prior to taking any action. As a member of the board of selectmen (the appointing authority for many municipal employees) you may be called upon to make the determination that an employee's financial interest in a matter is not so substantial as to affect his or her integrity and impartiality.

Prohibited Municipal Contracts and Multiple Jobs (Section 20)

In general, Section 20 prohibits a municipal employee from having a financial interest in a contract with the town or any municipal agency. This section prohibits you, as a selectman, from having a financial interest in any contract with your town.

In July 1983, the Commission found that an Easthampton selectman who owned a printing firm violated the law by contracting with his town.

There are a number of exemptions to this general rule, which cannot adequately be explained in this summary of the law. Please be sure to ask the Ethics Commission or your town counsel for advice concerning contracting with your town.

Section 20 also generally restricts municipal employees to having one paid town position. You may, however, hold any number of other elected positions in addition to selectman and receive pay for all of them.

There is a specific provision for selectmen which allows you to hold an appointed paid municipal position while serving as selectman. You may work for a town agency and also be elected selectman, provided:

1. you were a town employee before you became a selectman;
2. you receive only one pay (You have the right to choose which compensation you will receive.); and
3. as a selectman you do not vote on matters within the authority of the agency you work for.

A selectman who does not hold a municipal position before being elected may not be appointed to a municipal position afterwards. In fact, once one's term as selectman expires or one resigns, there is a six month waiting period before being eligible to be appointed to a municipal position. However, a selectman may be routinely reappointed to a previously held position.

Those selectmen designated as specials do not have to comply with the above restrictions. Special selectmen may hold other, paid town positions whether they obtain those positions before or after their election as selectman. If a special selectman does have another town position, he or she may vote on matters under the authority of the agency of that second job. If special selectmen want to be appointed to a second paying town job under the supervision of the board of selectmen, they must obtain town meeting's approval or resign as selectmen and wait 30 days before they can be eligible for the appointment.

Restrictions After Hours (Section 17)

The law limits what you may do for someone other than the municipality you work for -- in other words what you may do on the side. This section is designed to protect the selectman and the municipality from the problems resulting when people "serve two masters."

While you are a selectman, you may not act as agent or attorney for a private party before any town board, even if you are not paid. You also may not be compensated by anyone else in relation to any "particular matter" in which any agency of the same municipality is a party or has

a direct and substantial interest.

For example, if you were a lawyer in private practice, being a selectman would preclude you from representing a client before any municipal agency.

The Commission found a Swampscott selectman in September 1982 in violation of this section by acting as the agent for a private party in connection with the sale of property which was the subject of foreclosure proceedings by his town. The selectman paid a \$1,000 civil penalty for the violation.

The law also restricts the activities of business partners of current municipal employees. Your partner may not act as agent or attorney for anyone other than your town in connection with a particular matter in which you participate or which is subject to your official responsibility. For example, your business partner may not represent a restaurant owner in her application to the board of selectmen for a liquor license. (This particular restriction is contained in Section 18.)

Misuse of Official Position (Section 23)

Section 23 provides a general code of ethics for all public employees.

The conflict law prohibits you from using or attempting to use your official position to secure an unwarranted privilege for anyone or from giving a reasonable basis for the impression that you can be improperly influenced in the performance of your official duties. The law also prohibits you from disclosing confidential information obtained on the job and from accepting outside employment which will impair your independence of judgement in the exercise of your official duties.

In 1983, the Commission found a selectman to have violated this section of the law by accepting golfing privileges at a local golf club extended to him because he was a selectman.

In a 1982 case the Commission found Lowell's city manager to have violated Section 23 by asking a developer whose hotel project was under consideration by the city to make arrangements for his Florida vacation and by accepting "VIP" treatment and direct billing privileges from the developer's Florida hotel. The Commission found the city manager, by his actions, to have given the developer the impression that he could be improperly influenced.

Restrictions on Accepting Gifts (Section 3)

It is illegal to request or accept anything of "substantial value" from anyone with whom you have had or are likely to have official dealings (absent some family or social relationship which otherwise explains the gift) even if the motivation for the gift is to express gratitude for a job well done or to foster goodwill.

It is also illegal for a private party to offer or give anything of substantial value to a public official or employee if it is given "for or because of" some act the official has performed or will perform; this is true even if there is no corrupt intent on the part of either the giver or the receiver.

The courts and the Commission have deemed "substantial value" to be \$50 or more, in

most cases. 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.

In February 1983, the Commission found a Stoneham selectman to have violated this section of the law by receiving financial assistance, in the form of loans and loan guarantees, from a developer whose site plans were subject to approval by the board of selectmen. The selectman paid a civil penalty of \$1,000 and an additional \$900 forfeiture of the economic advantage he gained as a result of the violation.

Bribes (Section 2)

Section 2 of the conflict law prohibits the most obvious kind of corruption: bribes. The law imposes criminal penalties, not only on officials who seek or receive payoffs or kickbacks, but also on private parties who offer or pay them.

Restrictions After You Leave Government Service (Section 18)

Former selectmen may not use their past friendships and associations within government or use confidential information obtained while serving the government to derive unfair advantages for themselves or others. The law does not prevent you from using general expertise developed while a selectman. Rather, it focuses on particular matters you worked on while a selectman.

If you participated in a particular matter as a selectman you can never become involved in that same matter for a private party after you leave municipal service, except on behalf of your town. (This same restriction applies to your business partners for one year after you leave the board).

If you had official responsibility for a particular matter as selectman, even if you did not actually participate in it, you may not appear before any municipal agency on behalf of a private party in connection with that matter -- for one year after leaving the board.

For example, if you voted to award a company a contract to provide computer services for your town, you may not leave town government and work for the company on the same contract you voted on. You may, however, work for that company on other projects and you may also work for the company on town contracts proposed and awarded after you left the board.

ADVISORY OPINIONS

This summary presents a brief overview of the conflict law and suggests activities which you, as a selectman, must avoid. It is not a comprehensive review. You may call the Ethics Commission's Legal Division at 727-0060 for particular advice on the conflict law, as well as seek an advisory opinion from your town or city counsel. As of April 1986, the Commission regularly reviews town counsel opinions on the conflict law.

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

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