

The Commonwealth of Massachusetts



EXECUTIVE DEPARTMENT
STATE HOUSE BOSTON 02133

MICHAEL S. DUKAKIS
GOVERNOR

June 6, 1975

TO THE HONORABLE SENATE AND HOUSE OF REPRESENTATIVES:

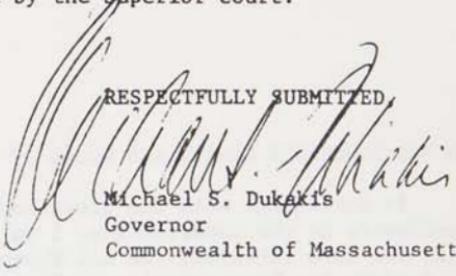
In accordance with the provisions of Article LVI of the Amendments to the Constitution, I am returning, herewith, House Bill No. 2376 entitled, "An Act Further Regulating the Standard of Conduct for Public Employees."

House Bill No. 2376 would repeal what many consider the heart of the conflict of interest law. It would strike the following underlined words in section 23 of Chapter 268A of the General Laws: "(d) use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others or give the appearance of such action." In 1967 the Supreme Judicial Court found that these words are essential to an effective conflict of interest statute. The Court wrote, "[The intent of a conflict of interest law] was as much to prevent the appearance of conflict as to suppress all tendency to wrongdoing." Board of Selectmen of Avon v. Linder, 352 Mass. 581, 583. At these times, when the acts of public officials have often fallen far below the standards the public has a right to expect, I cannot sign a bill that will undermine the state's basic code of conduct.

While I cannot sign House Bill No. 2376 in its present form, I realize that valid questions have been raised concerning the power of courts to deal with violations of the standards of conduct by elected public officials. Under the first paragraph of section 23 "appropriate administrative action as is warranted" may be taken by appointing authorities for violations of the standards of conduct. Thus it is clear that administrative action is the exclusive remedy for appointed officers or employees. This appears to be true even for those violations of Chapter 268A which carry criminal penalties. A court cannot remove the public employee or officer from office; only the appointing authority has this power.

In my view the same provisions should apply to elected public officers. If there is a violation of section 23, the role of the courts should be simply to declare the law. The electorate -- the equivalent to the appointing authority for elected officials -- must fashion whatever remedy is warranted. I believe that this is not only the proper policy, but also represents the correct interpretation of the current law. Nevertheless, in at least one case a court has seen fit to in effect remove an elected public official. Accordingly, the amendment I submit today is intended to clarify beyond reasonable doubt the role of the courts in the enforcement of Chapter 268A.

I therefore recommend that House Bill No. 2376 be amended by striking all after the enacting clause and inserting in place thereof the following: Section 23 of Chapter 268A of the General Laws is hereby amended by inserting after the first sentence the following sentence:- In the case of elected officials the existence of such violation may be declared by the superior court.

RESPECTFULLY SUBMITTED,

 Michael S. Dukakis
 Governor
 Commonwealth of Massachusetts