

ADVICE



EDUCATION



DISCLOSURE



ENFORCEMENT

2019
Advisory Opinions
Enforcement Actions

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION
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Included in this publication are:

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State Ethics Commission
Advisory Opinion and Advisories
2019

Advisory 19-1: Gifts and Gratuities 938

ADVISORY 19-1: GIFTS and GRATUITIES

I. Introduction

This Advisory, which updates and replaces Advisory 04-02: Gifts and Gratuities, explains how the conflict of interest law, G.L. c. 268A, applies when a public employee is offered a gift, meal, entertainment, travel expenses, or other things of value.

Public employees generally may not accept gifts worth \$50 or more (also called a gift of “substantial value”) given (1) for or because of the employee’s official position, or (2) for or because of any official action the employee has performed or will perform in the future. There are also some rules about acceptance of gifts worth less than \$50. Additional gift restrictions apply to statewide elected officials and major policymaking employees who are required to file a Statement of Financial Interests (“SFI”) with the State Ethics Commission (“Commission”). Exemptions to the gift restrictions can be found in the Commission’s regulations, 930 CMR 5.00. Some of these exemptions are discussed below. Additionally, public agencies may impose stricter gift restrictions on their employees than those set forth in the conflict of interest law. *See* § 23(e).

For purposes of this Advisory, a “public employee” is any person, paid or unpaid, elected, appointed or volunteer, who provides services to a state, county, or municipal agency or board, including “special” public employees. In the conflict of interest law, a “gift” is anything of value, including a meal, ticket to an event, gift card, loan, discount, travel expenses, etc., without something of equivalent value being given in return. The \$50 limit is calculated by adding together the value of all gifts from the same source within any 365-day period. Whichever is higher, the cost, the face value or the fair market value at the time of the gift, is used to determine the value of the gift.

II. Gifts Public Employees May Not Accept

Public employees are prohibited from soliciting or receiving anything with a value of \$50 or more for or because of the public employee’s official position, unless it is authorized by statute or regulation. *See* § 23(b)(2)(i). A gift is given because of an employee’s official position if it would not have been given had the employee not held the status, authority, or duties associated with the employee’s public position.

- *Example:* Members of the planning board,

conservation commission, zoning board of appeal, and the board of health are sent gift certificates worth \$50 from a construction company for “all their hard work over the last year.”

- *Example:* The school district’s maintenance staff offers free landscaping and painting services to the superintendent for his home.

Public employees are also prohibited from accepting anything worth \$50 or more for or because of any official act that the public employee has performed or will perform in the future. *See* § 3.

- *Example:* A developer has concluded a meeting in the public employee’s office during which they discussed an upcoming permit application. A week later, the public employee is invited to play golf at the developer’s club which costs \$50 or more. The developer offers to pick up the cost. The two individuals do not socialize and have not played golf together until now. The permit application is pending.
- *Example:* A business association’s representatives regularly meet at the State House with legislators who specialize in association issues. A few weeks after a significant association bill has been approved by the Legislature, and news reports indicate that the Governor will sign it, association representatives offer the bill’s sponsors tickets to a concert. The face value of each ticket is \$50 or more.

Public employees are always prohibited from accepting corrupt gifts, commonly known as bribes, regardless of value. *See* § 2.

- *Example:* A highway inspector may not receive money or anything else, regardless of value, from a vendor in exchange for lenient inspections of the vendor’s work and timely processing of the vendor’s paperwork.

III. Gifts Public Employees May Accept

The conflict of interest law does not prohibit public employees from accepting certain gifts. Some examples are listed below.

CAUTION: If the giver is a lobbyist, special restrictions may apply as explained below in Section IV.

Gifts worth less than \$50. If a gift is worth less than \$50 and is not a bribe, it may be accepted, but a disclosure may be required. *See 930 CMR 5.07.*

Gifts worth more than \$50. If a gift is worth more than \$50 and is not a bribe, it may be accepted under certain circumstances, including the following:

- *Gifts unrelated to official action or position.* Generally, a public employee may accept a gift that is unrelated to official action or position. For example, in most cases, a public employee may accept a wedding gift from an old friend. Usually, no disclosure is required, unless the public employee recently took action regarding the giver or is called upon to take action regarding the giver soon after receiving the gift. *See 930 CMR 5.06.*
- *Retirement gifts.* Retirement gifts of substantial value given in anticipation of retirement may be accepted from the public as long as they are appropriate to the occasion and not a reward for a specific official action but instead reflect general goodwill. There are no restrictions on retirement gifts given after a public employee has retired. *See 930 CMR 5.08(10).*
- *Travel and event expenses.* Travel and event expenses, including the cost of admission to a conference or event, which are paid, reimbursed or waived by outside sources, may be accepted by public employees for work-related purposes under certain circumstances. In some situations, disclosures must be filed and/or approved in advance. *See 930 CMR 5.08(2)-(6).*
- *Unsolicited perishables.* Unsolicited perishables such as a fruit basket may be accepted on behalf of a public employee's agency if shared with all agency employees and/or the public, to the extent possible, thereby making them available for public rather than private use. *See 930 CMR 5.08(11).*
- *Class gifts to teachers.* A public school teacher may accept gifts during the school year totaling up to \$150 if a gift is identified as being from the class and the names of the givers and amounts given are not identified to the teacher. No disclosure is required. A teacher receiving a class gift may not knowingly accept additional gifts from the

parents or students who participated in the class gift. *See 930 CMR 5.08(14).*

- *Gifts to a public agency.* Gifts to a public agency for the agency's use do not violate the conflict of interest law. For example, a gift of personal computers for use in a school does not violate the conflict of interest law because the gift is for public, rather than private use. The agency, however, must have the legal authority to accept gifts, and proper procedures must be followed to accept them.

IV. Gifts from Lobbyists

The financial disclosure law, G.L. c. 268B, § 6, prohibits statewide elected officials, major policymaking employees who are required to file an SFI, and members of their immediate family from accepting gifts of any kind from a lobbyist (also known as executive or legislative agents, as defined in the Lobbying Law, G.L. c. 3, § 39). For purposes of § 6 of the financial disclosure law, the definition of "legislative agent" includes the holder of a gaming license (i.e. casino) in Massachusetts as well as certain individuals and entities affiliated with the casino as set forth in G.L. c. 23K, § 14. Because § 6 prohibits all gifts, this provision is often called the "not a cup of coffee or stick of gum rule."

A very narrow exemption allows certain gifts from lobbyists given solely because of a family relationship or established personal friendship. *See 930 CMR 5.09.*

V. Frequently Asked Gift Questions

1. How do I politely decline a gift?

To politely decline a gift, you may thank the giver and tell him or her that state law prohibits you from accepting valuable gifts given because of your official actions or official position.

2. What should I do if I receive a gift that I can't accept?

If you receive a gift that you cannot accept, you should return the gift to the sender.

3. What should I do if I am unable to return a gift to the sender or identify the giver?

If you are unable to return a gift to the sender or if you receive a gift of substantial value from an anonymous giver and have been unable to identify the giver you may give the gift to your public agency if your public

agency has the legal authority to accept gifts. You should consult agency legal counsel as to whether your agency may accept gifts. As a last resort, you may give the gift to a local charity if your agency cannot accept it. If you donate the gift, you should get a receipt to document how the gift was disposed of and you should not claim the donation on your tax returns.

4. How do I determine the value of a gift?

The value of a gift is its fair market value (the price a willing buyer would pay a willing seller) at the time of the gift, its cost, or its face value, whichever is highest. *See 930 CMR 5.05.*

5. A person has given me several small gifts over the past year to thank me for my public service. Is that a problem?

It could be. In determining substantial value, the Commission may add together the value of all gifts by a person or entity to a public employee within any 365-day period. If the total is \$50 or more, the gifts are prohibited.

6. If a constituent sends me a gift consisting of two \$25 gift cards as a thank you for my official actions, may I accept them?

No. Because the gift cards are part of the same gift, the total value is \$50 and you may not accept them. Likewise, a gift card of \$50 could not be accepted.

7. A member of the public took me and a group of my colleagues out to lunch. How do I value the gift?

If a gift is given to a group of persons, the value to each person is the total value of the gift divided by the number of persons in the group, unless a person is able to show (with a receipt, or if not, an affidavit) that the cost of items consumed by that person and any guest, plus tip, was less than \$50. *See 930 CMR 5.05.*

8. What should I do if I don't know what the value is of the gift that was given to me?

If you do not know the value of the gift, you should ask the giver or look up the item on the internet. If you are unable to determine the value of the gift, you should return the gift. However, you may generally assume that small handmade tokens of appreciation (such as a batch of cookies or a small craft item) are not of substantial value.

9. I attended a conference where a sandwich and

a bag of chips was provided. How should I value this meal if the cost was not covered by the admission fee?

You may estimate the value based on what the take-out cost of the meal would be at a restaurant.

10. May I accept free meals or discounts offered to all public employees?

A discount of \$50 or more on goods or services is a gift of substantial value. However, a public employee may accept a public employee discount of substantial value if the discount is available to all public employees, to all public employees of a city, town, county, or state, or to a geographically defined class of public employees. *See 930 CMR 5.08(7).* However, a public employee may not accept a public employee discount of substantial value available to only a subset of public employees such as first responders.

11. If a constituent gives me a ticket to an event as a thank you for my official actions, may I accept it if I purchase the ticket from the constituent at face value?

Only if tickets to the event are widely available to the public. Tickets that are limited in number and not readily available to the general public for purchase at face value (such as a ticket to the Superbowl, for example) may not be accepted.

12. May I accept financial assistance offered by a friend or family member?

Yes, provided the gift is being given for reasons other than your official position or official action. *See 930 CMR 5.06.* **CAUTION:** If the friend or family member is a lobbyist and you are an SFI filer, special restrictions may apply as explained above in Section IV.

13. May I accept a gift from a coworker?

Public employees generally may accept gifts from coworkers for holidays or occasions of personal, religious, or professional significance. However, with few exceptions, public employees may not give gifts to their superiors and the superiors may not accept such gifts. *See 930 CMR 5.08(8).*

14. May I accept a prize that I won at a random drawing at an event that I attended as part of my job?

Yes. *See 930 CMR 5.08(16).*

15. My agency has a policy allowing it to award gifts (such as gift cards) to meritorious employees in certain situations. May I accept them?

Yes. These kinds of gifts are considered a benefit of your employment with the agency.

16. May I accept gifts from a crowdsourcing fundraiser (i.e. GoFundMe)?

Yes, but only if the gifts are being given for reasons other than your official action or your official position, public resources are not used to create the crowdsourcing site, your official title/position is not referenced in the site, and no targeted solicitations to contribute to the fundraiser are made to individuals or entities under your official authority or with whom you have official dealings.

17. I want to start a fundraiser for a public employee who is experiencing a traumatic life event. Will the person and/or her family be able to accept the money raised?

Contact the Commission before doing so. Generally, a public employee will be able to accept the money as long as the money is raised for reasons other than the public employee's official position or official action, public resources are not used in the fundraiser, the public employee's official title/position is not referenced in the fundraiser, and no targeted solicitations are made to individuals or entities under the public employee's official authority or with whom the public employee has official dealings.

18. May I accept a gift from a lobbyist?

If you hold a position which requires you to file an SFI, you may not accept a gift of any value from a lobbyist unless the requirements of the very narrow exception in *930 CMR 5.09*, described above, are met.

19. What should I do if I am offered or receive a gift and a matter comes before me in my public position involving the giver?

If you have been offered or received a gift (regardless of value) and a matter comes before you in your public position involving the giver in which you can be fair and impartial, you may need to file a disclosure pursuant to § 23(b)(3) before taking action on the matter to dispel the "appearance" of a conflict of interest. If you cannot perform your duties fairly and objectively, or if you do not wish to file a disclosure, you must recuse yourself. Under Section 23(b)(3), the

Commission considers all the circumstances, including the type and value of the gift, the timing of the gift, the substance and significance of the matter before the public employee, and the personal relationship between the giver and the recipient. See *also 930 CMR 5.07*.

VI. The Limits of this Advisory

This Advisory, which is intended to summarize the Commission's advice concerning compliance with the conflict of interest law and financial disclosure law, is informational in nature. It is not a substitute for advice specific to a particular situation, nor does it mention every aspect of the law that may apply to a particular situation. For specific questions, public employees should contact their state, county or municipal counsel (as applicable), or the Commission's Legal Division by submitting an online request, by calling the Commission at (617) 371-9500 and asking to speak to the Attorney of the Day, or by submitting a written request for advice to the Commission at One Ashburton Place, Room 619, Boston, MA 02108, Attn: Legal Division.

Issued: December 19, 2019

This Advisory updates and replaces *Advisory 04-02: Gifts and Gratuities*, issued May 12, 2004.

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In the Matter of Donald Pipczynski

The Commission approved a Disposition Agreement in which former Hadley Select Board member Donald Pipczynski admitted to violating the conflict of interest law by invoking his official position to threaten a private club that had expelled him, and by voting as a Select Board member against forwarding complaints about his conduct to the State Ethics Commission. Pipczynski paid a \$5,000 civil penalty. In August 2016, after the Young Men's Club of Hadley voted to revoke his membership, Pipczynski visited the private club and stated, "If I've been kicked out, I'm going to be the second Select Board member in town to have a problem with this club and you're going to have a major issue on your hands." The Select Board is responsible for renewing the club's liquor and entertainment licenses. The Select Board received two additional complaints that Pipczynski had invoked his position or flashed his Select Board member's badge in private disputes. In both instances, the Select Board voted to send the conflict of interest complaints to the State Ethics Commission. Pipczynski participated in both votes, voting each time against forwarding the complaints. By using his status as a Select Board member to threaten the Young Men's Club of Hadley in an attempt to regain his club membership, Pipczynski violated Section 23(b)(2)(ii) of the conflict of interest law, which prohibits public employees from using or attempting to use their official positions to secure unwarranted privileges of substantial value that are not properly available to similarly situated individuals. Section 19 of the conflict of interest law prohibits municipal officials from participating in matters in which they know they have a financial interest. Each time he voted as a Select Board member against forwarding complaints about his own conduct to the State Ethics Commission, Pipczynski knew that, because the Commission can impose civil penalties for violations, he had a financial interest in the votes.

In the Matter of John DeRosa

The Commission approved a Disposition Agreement in which former North Adams City Solicitor John DeRosa admitted to violating the conflict of interest law by representing and doing compensated legal work for parties other than the city in connection with proposed North Adams redevelopment projects while he was City Solicitor, and for advising the city on those projects as City Solicitor during that same time. DeRosa paid a \$7,500 civil penalty. While City Solicitor, DeRosa was also a trustee of and legal counsel for the Massachusetts Museum of

Contemporary Art (MASS MoCA). MASS MoCA compensated DeRosa for his legal services by giving him a significant discount on office space he rented from the museum. In 2011, MASS MoCA was interested in redeveloping Western Gateway Heritage State Park (Heritage Park), which was owned by the North Adams Redevelopment Authority (NARA), a city agency. In 2011 and 2012, DeRosa, as City Solicitor, advised the Mayor of North Adams and NARA about the redevelopment of Heritage Park, spoke with the Mayor about asking MASS MoCA to do the redevelopment, and worked on two requests for proposals to find a private entity to redevelop the park. At the same time, DeRosa was also advising MASS MoCA about the park redevelopment as the museum's legal counsel. As advised by DeRosa, MASS MoCA responded to one of the park RFPs through a nonprofit corporation DeRosa had previously helped the museum create and which he served as an officer until November 2012. NARA accepted the proposal in June 2012, pending approval from state agencies. DeRosa was also a compensated officer and director of a nonprofit organization, the North Adams Partnership (NAP), which he helped form in 2011 to support revitalization and redevelopment in North Adams. Acting as NAP president, DeRosa met in 2013 and 2014 with officials from the state Department of Conservation and Recreation (DCR) regarding the Heritage Park redevelopment project. After the Heritage Park redevelopment project was abandoned in 2015, DeRosa, as City Solicitor, and the North Adams Mayor approached MASS MoCA founder Thomas Krens about a new redevelopment project for the park. Krens proposed creating the Extreme Model Railroad and Contemporary Architecture (EMRCA) Museum. In January 2016, DeRosa drafted and filed EMRCA Museum corporate documents on behalf of Krens. As City Solicitor, DeRosa edited and reviewed a memorandum of understanding between the city, NAP, and Krens' company regarding the EMRCA Museum. In November 2016, DeRosa, as City Solicitor, reviewed an RFP regarding architectural services for the EMRCA Museum. Section 17 of the conflict of interest law requires that a municipal employee represent and be compensated by only the municipality in matters involving the municipality. DeRosa violated this section by receiving compensation from MASS MoCA and NAP in connection with the proposed Heritage Park redevelopment project, a matter in which he also represented the city as City Solicitor; by representing NAP in meetings about the project with DCR officials;

and by drafting and filing corporate documents on behalf of the EMRCA Museum. DeRosa also violated Section 19 of the conflict of interest law, which prohibits a municipal employee from participating in matters in which he knows a business organization that employs him has a financial interest, by participating as City Solicitor in matters relating to the Heritage Park redevelopment project knowing his non-city employer, MASS MoCA, had a financial interest in those matters. DeRosa violated Section 23(b)(3) of the conflict of interest law, which requires that whenever there are circumstances that would cause someone to reasonably conclude that a public employee would be biased or subject to undue influence while performing official actions, that the public employee not perform those actions without first filing a public disclosure that explains the factors that create the appearance of a conflict of interest. While DeRosa filed a disclosure in 2013, it was more than a year after the city approved the redevelopment proposal, and he did not disclose his role as MASS MoCA's legal counsel.

In the Matter of Daniel O'Connell

The Commission approved a Disposition Agreement in which Daniel O'Connell, the former Superintendent-Director of the North Shore Technical High School and Essex North Shore Agricultural & Technical School districts, admitted to violating the conflict of interest law on multiple occasions and paid a \$23,000 civil penalty. O'Connell was Superintendent-Director of North Shore from 2010 until June 2014, when it merged with two other schools to form Essex Tech. During the merger O'Connell served as Superintendent-Director of both North Shore and Essex Tech, then he continued as Essex Tech Superintendent-Director until 2015. The Essex Tech School Committee authorized O'Connell to receive a \$20,000 stipend until June 2014. In October 2014, O'Connell directed the Essex Tech business manager to reinstate his stipend, retroactive to July 2014. By doing so, O'Connell used his public position for personal gain and violated the conflict of interest law. O'Connell also unlawfully used his Superintendent-Director position in a private dispute with Salem Plumbing over more than \$1,200 worth of bathroom fixtures he had purchased for his home. Dissatisfied with the fixtures, O'Connell used his school email account to contact the company, which did business with Essex Tech, and requested free replacement fixtures in exchange for "continu[ing] our business partnership." Days later, when the company submitted a bid for an Essex Tech purchase, O'Connell, as Superintendent-Director, replied that he would not accept any of the company's bids until the private dispute was resolved. The company then replaced the fixtures free of charge. O'Connell did not

first disclose his personal dispute with Salem Plumbing to the Essex Tech School Committee. He violated the conflict of interest law when he acted as Superintendent-Director on the company's bid for Essex Tech work, as his actions created the appearance that he would be unduly influenced by that dispute and act with bias in his actions as Superintendent-Director regarding the company's business with Essex Tech. O'Connell also violated the conflict of interest law when he used his Superintendent-Director position to benefit his son by twice raising his salary, allowing him to use an Essex Tech truck for his private business, and placing him in charge of snow removal at Essex Tech. O'Connell further violated the conflict of interest law by unlawfully using public resources for his own benefit when a developer gave O'Connell surplus bricks from a job at the former North Shore campus and O'Connell ordered Essex Tech employees to use a school-owned truck and public worktime to pick up the bricks and deliver them to his home.

In the Matter of Frederick Brack

The Commission approved a Disposition Agreement in which former Boston Public Health Commission (BPHC) worker Frederick Brack admitted to violating the conflict of interest law by repeatedly using BPHC supplies, equipment, and worktime to do private snowplowing. Brack paid a \$10,000 civil penalty. During the winter of 2016-2017, Brack worked at the BPHC's Mattapan campus. That same winter, Brack's side business, Brack & Sons, provided private snow removal services for Horizons and the SPARK Center, which were located close to the BPHC campus. On five separate occasions that winter, Brack used a BPHC plow truck during his BPHC work hours to clear snow for Horizons and the SPARK Center, which separately paid him a total of \$3,275. Additionally, he allowed his daughter to take several bags of rock salt from a BPHC garage. The salt was later used for Brack & Sons' private work. Brack's actions violated the conflict of interest law, which bars public employees from using public resources for private purposes.

In the Matter of Oscar Walker

The Commission allowed a joint motion to dismiss an adjudicatory proceeding against former Roxbury Community College Director of Public Safety Oscar Walker after Walker paid a \$100 civil penalty for failing to file a 2017 Statement of Financial Interests (SFI) on time. The Commission's Enforcement Division filed an Order to Show Cause alleging that Walker violated the Financial Disclosure Law, which requires elected state and county officials, candidates for state office, and state and county employees in designated major policymaking positions to annually

disclose their financial interests and private business associations by filing an SFI with the State Ethics Commission. Because he worked for more than 30 days in 2017 in a designated major policymaking position, Walker was required to file an SFI for that year. After the Enforcement Division issued the Order to Show Cause, which initiated adjudicatory proceedings, Walker filed his 2017 SFI. In allowing the joint motion to dismiss, the Commission acknowledged Walker's payment of the \$100 civil penalty and dismissed the adjudicatory proceedings.

In the Matter of Randall Walker

The Commission approved a Disposition Agreement in which New Braintree Select Board Member Randall Walker admitted to violating the conflict of interest law by voting to authorize the sale of town-owned land he wished to buy, then privately purchasing that land from the town when it was publicly auctioned. Walker paid a \$5,000 civil penalty. Shortly after moving back to his childhood home, a farm in New Braintree, in 2003, Walker became interested in acquiring adjacent parcels of land, which were part of the original Walker family farm more than a century ago. The town had taken two of the adjacent parcels in tax-title in 1998 for nonpayment of taxes by the previous owner and had foreclosed on the parcels in February 2007. Before the foreclosure, Walker twice made efforts to purchase the land, which contained a water source he sought to protect for his farm. Around the time Walker was elected to the Select Board in 2013, the town considered auctioning certain parcels of town-owned land – including the parcels adjacent to Walker's farm – to raise revenue. The conflict of interest law prohibits municipal employees from participating in any matter in which they know they have a financial interest so that governmental decisions are not influenced by the private financial interests of the public employees making them. Walker violated the conflict of interest law when he participated as a Select Board member in discussions about the land auction, then voted to authorize the auction. In 2016, Walker won the auction with a winning bid of \$35,000. He took ownership of the land the following month. Walker's purchase of the land while a Select Board member violated the conflict of interest law's prohibition against municipal employees contracting with their municipalities, which protects against city and town employees having an "inside track" to municipal contracts.

In the Matter of Stephanie Viens

The Commission approved a Disposition Agreement in which South Hadley High School Teacher Stephanie Viens admitted to violating the conflict of interest law by accepting travel points and thousands

of dollars in stipends from a travel company for organizing school trips to Europe. Viens paid a \$7,000 civil penalty. Beginning in 2007, Viens, as faculty advisor for the South Hadley High School Diversity/Cultural Exchange Club, organized student trips through educational travel company EF Tours and recruited students, parents and chaperones for the trips. EF Tours enrolled Viens in its rewards program as a group leader, giving her travel points and stipends based, in part, on the number of students, parents, and chaperones she recruited to go on the trips. In a 2013 email to Viens, the South Hadley public school business administrator raised conflict of interest concerns regarding payments from EF Tours for organizing school trips. The business administrator asked Viens to confirm that no one received money from EF Tours. Viens did not reply to the email and went on to organize additional trips and accept additional payments from the tour company. From 2013-2017, Viens received \$5,530 in stipends and 4,516 travel points from EF Tours. During that time, she redeemed the travel points for airline tickets and a European vacation. The conflict of interest law generally prohibits public employees from accepting any valuable gifts given to them because of their public positions or in connection with any actions they perform as part of their public jobs. In addition, under the law, whenever a city or town has a direct and substantial interest in a matter, employees of the city or town generally may not be paid by anyone else in relation to that matter. The law also prohibits municipal employees from participating in their official positions in matters involving their own financial interests. Viens violated these sections of the conflict of interest law when she accepted the travel points and stipends as a reward for organizing the trips and recruiting students, parents, and chaperones.

In the Matter of Roland Nutter

The Commission approved a Disposition Agreement in which former Pepperell Selectman Roland Nutter admitted to violating the conflict of interest law by, on multiple occasions, voting against authorizing the investigation of a grievance involving his wife, the town Treasurer-Collector, and by participating in matters affecting her employment contract and salary. Nutter paid a \$6,000 civil penalty. In 2016, before serving as Selectman, Nutter sought advice from the State Ethics Commission's Legal Division about potential conflicts of interest regarding his wife's position if he were to be elected to the Board of Selectmen. The Legal Division advised Nutter not to participate in matters involving his wife's financial interests, such as the negotiation of her Treasurer-Collector employment contract, her performance evaluations, or disciplinary matters relating to her.

After Nutter's election to the Board of Selectmen, the Town Administrator negotiated a new employment contract for Nutter's wife in 2018 and presented it to the Board for approval. Although Nutter did not sign the contract, he publicly pressured and berated a fellow Selectman for not signing it. Two months later, the Town Administrator provided the Selectmen with a list of proposed appointments to town positions, including the three-year re-appointment of Nutter's wife, whose contract as Treasurer-Collector was due to expire in five days. Nutter voted to approve the appointments. In addition, despite being asked by a colleague to recuse himself, Nutter participated in the Board of Selectmen's discussion of a grievance alleging that the Town Administrator had allowed some employees, including Nutter's wife, to file false timesheets, and voted against authorizing an independent investigation into the allegations. The conflict of interest law generally prohibits municipal employees from participating in matters affecting the financial interests of themselves or their immediate family. Nutter violated this section of the law when he pressured his colleague to sign his wife's contract, when he voted to approve his wife's re-appointment as Treasurer-Collector, and when he discussed and voted against the investigation of the grievance that named his wife. Additionally, by pressuring his fellow Selectman to sign his wife's contract, Nutter violated the law's prohibition against public employees attempting to use their positions to obtain valuable unwarranted privileges for others.

In the Matter of Katherine Touafek

The Commission approved a Disposition Agreement in which Katherine Touafek, Director of the School to Careers Partnership for the Blue Hills Regional Technical School District, admitted to violating the conflict of interest law by repeatedly participating in hiring her son to do paid work for the Partnership. Touafek paid a \$4,000 civil penalty. The Schools to Career Partnership connects high school students with work-based learning. As Director of the Partnership, Touafek secured placement for students in internships, and organized speakers, tours and seminars, among other duties. The Blue Hills Regional Technical School District Superintendent appointed Touafek, and the Superintendent or his designee signed her contact. From 2013 through 2015, Touafek decided to hire her son on multiple occasions to improve the Partnership's website, for which the school district paid him \$6,800. She also decided to hire her son three times to speak at Partnership symposiums and authorized \$475 in payments to him. By deciding to hire her son, Touafek violated the conflict of interest law, which generally prohibits municipal employees

from participating in matters affecting the financial interests of themselves or their immediate family.

In the Matter of Fayette Mong

The Commission approved a Disposition Agreement in which Division of Professional Licensure Prosecutor Fayette Mong admitted to violating the conflict of interest law by repeatedly invoking her state position when seeking town inspections of a Braintree house she sought to purchase. Mong paid a \$2,500 civil penalty. In July 2017, after Mong's offer to purchase the Braintree house was accepted, her private home inspector identified electrical and plumbing issues and recommended additional electrical and plumbing inspections. Mong suspected the house had undergone work without proper permits. While Mong and the seller were negotiating a purchase and sale agreement, Mong contacted three Town of Braintree inspectors to request an inspection of the home. In communicating with the Braintree inspectors, Mong repeatedly referred to her position as a prosecutor with the Division of Professional Licensure – which investigates and prosecutes complaints regarding licensed plumbers, electricians, gas fitters, and other tradespeople – even though the private home sale was unrelated to her state job. The inspectors agreed to do the inspections, however, on the day they were to inspect the house, the homeowner refused to let them enter. Mong then withdrew from her planned purchase of the house. By repeatedly invoking her position as a Division of Professional Licensure prosecutor when requesting town inspections of the house, Mong created the risk that the inspectors would be unduly influenced by her status as a Division of Professional Licensure prosecutor. In addition, had the inspections identified code violations, Mong would have gained significant leverage in her negotiations with the seller. No prospective homebuyer may lawfully invoke their public position in order to improve their bargaining position in their private purchase of a house. Accordingly, Mong's conduct violated the conflict of interest law, which prohibits public employees from using their official positions to obtain valuable benefits that are not properly available to them.

In the Matter of Kenneth Michna

The Commission approved a Disposition Agreement in which Agawam Junior High School Band Director Kenneth Michna admitted to violating the conflict of interest law by accepting \$1,750 in payments from a nonprofit organization to help organize and judge a series of band competitions during his public work hours, and by giving a \$2,000 payment for the school's music department to a private, parent-run booster

association. Michna paid a \$2,500 civil penalty. When Michna was hired as the Agawam Junior High School Band Director, he was asked to continue the school's prior involvement as a host for the Great East Music Festivals, a series of one-day music festivals for students in Massachusetts and surrounding states. As Band Director, Michna helped schedule the Great East Music Festivals at the junior high school for five Fridays in 2017. For each of the five festival dates, which were during the school day, Michna was paid his usual Band Director salary. For the same days, Michna was also paid by Inspire Arts and Music, the nonprofit that ran the Festivals, a total of \$1,750 for his work as a site coordinator and a judge. Inspire Arts and Music paid Agawam Junior High School a \$2,000 fee for hosting the 2017 festival with a check payable to the Agawam Junior High School Music Department. Michna received the payment as Band Director and gave the check to the AJHS Band Parents Association, a private, independent, parent-run booster organization that supports the school band program and is not subject to school oversight. Michna's actions violated multiple sections of the conflict of interest law, which generally bars municipal employees from participating in matters affecting their own private financial interests, and from being paid by a private entity for a matter involving the municipality, and from using their positions to obtain unwarranted private benefits.

William F. Galvin Public Education Letter

The Commission issued a Public Education Letter to Secretary of the Commonwealth William Francis Galvin to resolve allegations that he violated the conflict of interest law. According to the letter, Secretary Galvin, a candidate for re-election in 2018, benefitted politically from early voting signs that prominently featured his name and an *Information for Voters* booklet that provided him with free positive publicity, which were created and distributed by his office. The Secretary of the Commonwealth is Massachusetts' chief election official. Prior to general state elections, the Secretary's office is required to publish an *Information for Voters* booklet informing voters about statewide ballot questions, which is mailed to all residential addresses in Massachusetts. The *Information for Voters* booklet for 2018 included as extra content descriptions of instances when the Securities Division of the Secretary's office assisted victims of investment fraud, referring repeatedly to "Secretary Galvin's office." This repeated use of his name provided Secretary Galvin with a political benefit: free positive publicity for him during his reelection campaign, as it highlighted and in effect personally credited him with specific achievements of the Securities Division. Secretary Galvin's Office also

distributed 1,000 early voting signs to election officials throughout the Commonwealth. Secretary Galvin's name was prominently featured on the signs giving them the appearance and likely effect of campaign signs for his re-election. The conflict of interest law prohibits public employees from using their official positions to obtain valuable benefits that are not properly available to them. According to the letter, omitting or reducing the prominence of Secretary Galvin's name on the early voting signs and omitting the repeated use of his name in the *Information for Voters* booklet would not have lessened the usefulness of the signs and the booklet to the public. Therefore, the benefits to Secretary Galvin from the prominent inclusion of his name on the early voting signs and the free positive publicity in the *Information for Voters* booklet were unwarranted, and the Commission found reasonable cause to believe that Secretary Galvin violated the conflict of interest law by using his official position to secure them. The Commission chose to resolve this matter through a Public Education Letter, rather than through adjudicatory proceedings, because the type of actions described in the letter have not been the subject of a Commission decision, formal opinion, or advisory and because the Commission determined the public interest would be best served by publicly explaining how the conflict of interest law applies to Secretary Galvin's alleged actions.

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION
ADJUDICATORY
DOCKET NO. 19-0001

IN THE MATTER OF
DONALD PIPCZYNSKI

DISPOSITION AGREEMENT

Introduction

The State Ethics Commission (“Commission”) and Donald Pipczyński (“Pipczyński”) enter into this Disposition Agreement pursuant to Section 3 of the Commission’s *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On February 16, 2017, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A. On January 23, 2019, the Commission concluded its inquiry and found reasonable cause to believe that Pipczyński violated G.L. c. 268A, §§ 19 and 23(b)(2)(ii).

The Commission and Pipczyński now agree to the following findings of fact and conclusions of law:

Threatening a Private Club for Revoking his Membership

Findings of Fact

1. Pipczyński, a resident of Hadley, Massachusetts, was a member of the Hadley Select Board (“Select Board”) during the relevant time.
2. In the 1980s, Pipczyński was a member of the Young Men’s Club of Hadley, a private club (“Club”) in Hadley, until the Club revoked his membership.
3. Pipczyński rejoined the Club in 2015 in order to be able to rent the Club’s pavilion at the members’ discount. At all relevant times, the pavilion rental fee was \$350.00 for Club members and \$625.00 for non-members.
4. On August 7, 2016, the Club voted to revoke Pipczyński’s membership and notified him of the revocation by letter dated August 15, 2016.
5. On August 19, 2016, Pipczyński attempted

unsuccessfully to enter the Club using his member card key. The Club’s bartender buzzed him in. Upon entry, Pipczyński asked, “Have I been kicked out again?” and stated, “If I’ve been kicked out, I’m going to be the second Select Board member in town to have a problem with this club and you’re going to have a major issue on your hands.”

6. The Select Board is responsible for renewing the Club’s liquor and entertainment licenses.

7. On September 11, 2016, the Club affirmed its decision to revoke Pipczyński’s membership.

Conclusions of Law

8. Section 23(b)(2)(ii) of G.L. c. 268A prohibits a municipal employee from, knowingly, or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.

9. As a Select Board member, Pipczyński was a municipal employee as that term is defined in G.L. c. 268A, § 1(g).

10. Club membership was a privilege.

11. Club membership reinstated because of Pipczyński’s position as a Select Board member or difficulties he could cause for the Club as a Select Board member would have been an unwarranted privilege.

12. By invoking his status as a Select Board member in an attempt to cause the Club to reinstate his membership, Pipczyński knowingly or with reason to know used his official position to secure for himself an unwarranted privilege.

13. Pipczyński’s use of his Select Board member’s position and power in an attempt to cause the Club to restore his revoked membership was not properly available to similarly situated individuals.

14. Substantial value is \$50 or more. The Club membership was of substantial value to Pipczyński because it made available to him the \$275 Club member discount on the fee for renting the Club’s pavilion.

15. Therefore, by invoking his Select Board member position in an attempt to cause the Club to reinstate his membership, Pipczyński knowingly or with reason to know used his official position to secure for himself an unwarranted privilege of substantial value that was not properly available to similarly situated individuals. In so doing, Pipczyński violated § 23(b)(2)(ii).

Voting Against Complaints to the Commission

Findings of Fact

16. Pipeczynski took the online conflict of interest training in May 2016. The training has a subsection titled “Penalties for Violation of the Law.”

17. The Select Board received two additional complaints that Pipeczynski had invoked his position and/or flashed his Select Board member’s badge in private disputes.

18. On September 7, 2016, and November 29, 2016, the Select Board voted to send the complaints against Pipeczynski to the Commission. On both occasions, Pipeczynski voted as a Select Board member against sending complaints to the Commission.

Conclusions of Law

19. Except as otherwise permitted, § 19 of G.L. c. 268A prohibits a municipal employee from participating^[1] as such an employee in a particular matter^[2] in which, to his knowledge, he has a financial interest.^[3]

20. Each of the two votes by the Select Board deciding whether to send the complaints against Pipeczynski to the Commission was a particular matter.

21. Pipeczynski personally and substantially participated in those two particular matters as a municipal employee by voting as a Select Board member against sending the complaints to the Commission.

22. Each time he participated in the Select Board votes, Pipeczynski knew he had a financial interest in the decision to send complaints to the Commission because he knew that a finding by the Commission that he had violated the conflict of interest law could result in the imposition of civil penalties against him.

23. Therefore, by participating as a Select Board member in the two votes on whether to file a complaint against him with the Commission, Pipeczynski participated as a municipal employee in particular matters in which he had to his knowledge a financial interest. In so doing, Pipeczynski violated § 19.

Resolution

In view of the foregoing violations of G.L. c. 268A by Pipeczynski, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the following terms and conditions agreed to by Pipeczynski:

1. that Donald Pipeczynski pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$5,000 as a civil penalty for violating G.L. c. 268A, §§ 19 and 23(b)(2)(ii); and
2. that Donald Pipeczynski waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

[1] “Participate” means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. *G.L. c. 268A, § 1(j)*.

[2] “Particular matter” means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. *G.L. c. 268A, § 1(k)*.

[3] “Financial interest” means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. See *Graham v. McGrail*, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. See *EC-COI-84-98*. The interest can be affected in either a positive or negative way. *EC-COI-84-96*.

DATE: March 25, 2019

COMMONWEALTH OF MASSACHUSETTS STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION
ADJUDICATORY
DOCKET NO. 19-0002

IN THE MATTER OF
JOHN DeROSA

DISPOSITION AGREEMENT

The State Ethics Commission ("Commission") and John DeRosa ("DeRosa") enter into this Disposition Agreement pursuant to Section 3 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On May 18, 2017, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by DeRosa. On November 16, 2017, and March 29, 2018, the Commission amended the preliminary inquiry. On April 19, 2018, the Commission concluded its inquiry and found reasonable cause to believe that DeRosa violated G.L. c. 268A, §§ 17, 19, 20, and 23.

The Commission and DeRosa now agree to the following findings of fact and conclusions of law:

1. DeRosa, a resident of North Adams, was at all relevant times the City Solicitor of North Adams and, as such, a municipal employee of the City.
2. The North Adams Mayor ("Mayor") appoints the City Solicitor.
3. Western Gateway Heritage State Park ("Heritage Park" or the "Park") is a 7-acre property consisting of several historic railroad buildings located in the business section of North Adams.
4. Heritage Park is owned by the North Adams Redevelopment Authority ("NARA"). NARA is a City agency whose purpose is to engage in urban renewal projects.
5. Heritage Park tenants pay rent to NARA, except the Department of Conservation and Recreation ("DCR") that operates a visitor center in the Park, and the North Adams Historic Commission that operates a local museum of science and history in the Park.
6. The Massachusetts Museum of Contemporary Art ("MASS MoCA"), a nonprofit corporation, is a museum housed in a converted factory building complex, that was a public/private economic development project funded in 1988 by a special act of the Legislature in the amount of \$35,000,000.
7. MASS MoCA is also a commercial landlord, which leases and rents space to tenants. In 2018, the lease and rental payments accounted for a little more than ten percent of the museum's eleven-million-dollar operating revenue.
8. MASS MoCA is located less than one half mile from Heritage Park.

9. At all relevant times, DeRosa was the Clerk of MASS MoCA's Board of Trustees (the "MASS MoCA Board") and its legal counsel. During the years 2011, 2012 and 2014, he was also the MASS MoCA Board's Treasurer.

10. At all relevant times, MASS MoCA compensated DeRosa for his legal services by providing him with a significant annual credit against his total rent for office space he leased in a MASS MoCA building.

11. In 2001, DeRosa, as MASS MoCA's legal counsel formed the North Adams Development Trust, Inc. ("NADT"), a nonprofit corporation to acquire real estate for MASS MoCA. NADT's Articles of Organization state, in part, that its purpose is "to exclusively support and operate for the benefit of MASS MoCA.

12. From its creation in 2001 until November 5, 2012, DeRosa and Joseph Thompson, Director of MASS MoCA ("Thompson") served as directors and officers of NADT. During that period MASS MoCA did not acquire real estate.

13. In 2011, the City was responsible for the Park's upkeep and operating expenses Heritage Park which had few tenants and had fallen into disrepair.

14. In or before 2011, Mass MoCA was interested in the redevelopment of Heritage Park. As MASS MoCA's legal counsel, DeRosa was aware of this interest.

15. In 2011, DeRosa, as City Solicitor, advised the Mayor regarding the disposition of Heritage Park. DeRosa discussed with the Mayor asking MASS MoCA to redevelop the Park, and if the Museum was not interested, the idea of the Museum soliciting its friends to invest in the Park.

16. In 2011, DeRosa, with Thompson and Mary Grant, President of MCLA, formed the North Adams Partnership ("NAP"), a nonprofit corporation whose mission was to enhance the economy of North Adams and to carry out the revitalization, development and redevelopment of the neighborhoods in North Adams, particularly the neighborhoods that adjoin and impact the Museum.

17. From 2011 to 2015, DeRosa served as an officer of NAP. In 2011 and 2012, DeRosa was also a NAP director.

18. According to tax records, NAP paid DeRosa \$57,481; \$52,000; and \$6,000 in fiscal years 2014, 2015 and 2016^[1], respectively.

19. From September to December 2011, two MASS MoCA employees, Thompson and the Head of Real Estate and Development Blair Benjamin ("Benjamin") drafted an

RFP to be issued by NARA to find a private entity to redevelop Heritage Park ("the Park RFP").

20. DeRosa, as Mass MoCA's legal counsel, reviewed a draft of the Park RFP and provided legal advice to Thompson and Benjamin. At the time that DeRosa reviewed the Park RFP, DeRosa was aware that MASS MoCA had an interest in responding to the Park RFP.

21. DeRosa then submitted the draft RFP to Mike Nuvallie ("Nuvallie"), the City's Director of the Office of Community Development, for review.

22. On December 8, 2011, at the request of the Mayor, DeRosa, as City Solicitor, appeared at a NARA meeting with the Mayor, and advised the NARA members that the Park RFP should be issued to find a private entity to redevelop Heritage Park.

23. On December 15, 2011, DeRosa appeared at a NARA meeting with the Mayor and advised the NARA members that the Park RFP was complete and that, if NARA did not receive acceptable responses, NARA could re-issue the Park RFP.

24. On December 15, 2011, NARA approved the Park RFP and it was issued with a deadline of February 2, 2012.

25. Between December 2011 and January 2012, Thompson and Benjamin drafted a response to the Park RFP on behalf of MASS MoCA. DeRosa reviewed and revised the response as Mass MoCA's legal counsel.

26. On January 22, 2012, there was a meeting of the MASS MoCA Board during which the Board discussed MASS MoCA's interest in redeveloping Heritage Park and considered the Response to the Park RFP. DeRosa was present at the meeting in his role as MASS MoCA Trustee. The Board was concerned about the effect that the redevelopment of Heritage Park project would have on MASS MoCA's limited resources and decided not to submit the Response.

27. DeRosa, as MASS MoCA legal counsel, gave legal advice to Thompson regarding the legal structure that the Museum might use should it decide to purchase the Park. DeRosa suggested that the Museum might create a separate LLC and DeRosa provided a sample prototype operating agreement to Thompson.

28. DeRosa as MASS MoCA's legal counsel, also advised Thompson that MASS MoCA could utilize its existing corporation, NADT, to respond to the Park RFP. DeRosa discussed with Thompson the idea that a volunteer group might file the response using NADT.

29. On or about February 1, 2012, DeRosa, as MASS MoCA's legal counsel, amended the Articles of Organization of NADT. This amendment changed the name of the corporation but did not change the officers.

30. As of February 2012, DeRosa and Thompson were the sole officers of NADT.

31. In or about February 2012, the Response was modified by Thompson and the MASS MoCA staff to be submitted by MASS MoCA through NADT. DeRosa, as MASS MoCA's legal counsel, reviewed the modified response ("NADT's Proposal").

32. Neither Thompson, MASS MoCA, nor NADT, submitted NADT's Proposal to the Park RFP in February 2012.

33. On February 2, 2012, the City received one response to the Park RFP from an unrelated party. The Mayor, unsatisfied with the response, asked DeRosa whether the City could issue a second Park RFP. DeRosa advised the Mayor that a second Park RFP could be issued.

34. On February 13, 2012, NARA approved the issuance of a second Park RFP.

35. From February 2012 to March 2012, DeRosa, as City Solicitor, revised the second Park RFP. During this time, DeRosa was aware that MASS MoCA, through NADT, had an interest in responding to the second Park RFP.

36. On March 25, 2012, DeRosa sent a revised draft of the second Park RFP to City Community Development Director Nuvallie. Responses to the second Park RFP were due on June 1, 2012.

37. On March 26, 2012, DeRosa, as City Solicitor, met with DCR regarding Heritage Park.

38. On March 26, 2012, DeRosa was aware that MASS MoCA, through NADT, had an interest in responding to the second Park RFP.

39. On April 19, 2012, the second Park RFP was presented to NARA. DeRosa, as City Solicitor advised the NARA members on the expected steps to be taken after a proposal was accepted. The second Park RFP was issued on May 2, 2012.

40. In or about May 2012, DeRosa, as MASS MoCA's legal counsel, revised and reviewed NADT's Proposal to the second Park RFP.

41. On May 30, 2012, NADT filed a Proposal to the second Park RFP ("NADT's Second Proposal") with the

City. NADT's Second Proposal was signed by Bruce Grinnell as Chairman of NADT. As of this date, DeRosa was an officer of NADT.

42. Thompson and DeRosa discussed how the Museum might divest itself of its relationship with NADT. DeRosa, as MASS MoCA's legal counsel, advised Thompson that he and Thompson resign their positions, and DeRosa should file a change of officers and directors form with the Secretary of State's office.

43. A Certificate of Change of Directors for NADT which named Grinnell, Malcom Smith, and Duncan Brown as officers of NADT was signed on November 2, 2012 and received by the Secretary of State's office on November 5, 2012.

44. At the June 19, 2012 NARA meeting, NADT's Proposal was reviewed. At the end of the meeting, NADT's Proposal was accepted by NARA pending approval from state agencies.

45. NADT's Second Proposal stated that the redevelopment project would work under contract and in collaboration with Mass MoCA. Mass MoCA would receive financial compensation for the work.

46. At the June 19, 2012 NARA meeting, DeRosa, answered questions about NADT's Second Proposal.

47. DeRosa advised the Mayor that because the park property was part of an Urban Renewal Plan, it was not subject to the procurement provisions of Chapter 30B; but that the Mayor could issue a request for proposals (RFP) under the provisions of Chapter 30B.

48. On June 24, 2013, more than a year after NADT submitted its Second Proposal, DeRosa filed a Disclosure of Conflict of Interest under c. 268A, Section 23(b)(3). In the disclosure, he stated that he did not draft the RFP. The disclosure did not address DeRosa's role as legal counsel for MASS MoCA.

49. In the fall 2013 and in February 2014, DeRosa, as president of NAP, attended meetings with DCR regarding Heritage Park.

50. In the spring of 2015, the Heritage Park Project was abandoned.

51. Shortly after, DeRosa suggested to the Mayor that he and DeRosa speak with Thomas Krens ("Krens"), the founder of MASS MoCA in the 1980s.

52. In March 2015, DeRosa and the Mayor approached Krens regarding the redevelopment of Heritage Park.

Krens proposed creating the Extreme Model Railroad and Contemporary Architecture Museum ("EMRCA Museum"). It was estimated that the EMRCA Museum would generate rent payments of over half a million dollars a year to the City through NARA.

53. In October 2015, Krens requested \$100,000 from NAP for a Concept Development Study to advance the EMRCA Museum project. NAP provided \$50,000 to Krens through his company, Global Cultural Asset Management ("GCAM") for the Concept Development Study.

54. In December 2015, the City began to provide rent-free office space at Heritage Park to GCAM to advance the development of the EMRCA Museum.

55. In January 2016, DeRosa, on behalf of Krens, drafted and filed corporate documents for EMRCA.

56. In January 2016, DeRosa, as City Solicitor, and on behalf of the City, edited and reviewed a Memorandum of Understanding ("MOU") between the City, NAP, and GCAM regarding the EMRCA Museum.

57. On January 8, 2016, the Mayor and Krens signed the MOU.

58. In April 2016, DeRosa, in his role as NAP director, participated in drafting a solicitation email to potential investors regarding the EMRCA project.

59. In July 2016, when GCAM staff contacted the Mayor regarding issues raised as tenants of the park, the Mayor directed the GCAM staff to contact DeRosa, as City Solicitor, for assistance.

60. In September 2016, NAP agreed to lend \$200,000 to EMRCA. An attorney, on behalf of EMRCA, sent a convertible note subscription agreement and promissory note regarding this loan to DeRosa, and asked DeRosa whether he agreed with the terms of the documents.

61. In November 2016, DeRosa participated as City Solicitor by reviewing an RFP for the City regarding architectural services for the EMRCA Museum.

Conclusions of Law

62. As City Solicitor, DeRosa, was a municipal employee as that term is defined in G.L. c. 268A, §1(g).

Section 17(a)

63. Section 17(a) of G.L. c. 268A prohibits a municipal employee from, otherwise as provided by law for the proper discharge of official duties, directly or indirectly

receiving compensation^[2] from anyone other than the municipality in relation to a particular matter in which the municipality is a party or has a direct and substantial interest.

64. Contracts and decisions relating to the redevelopment of Heritage Park were particular matters.

65. North Adams had a direct and substantial interest in particular matters involving Heritage Park because the property is owned and managed by the City, through the NARA.

Compensation from MASS MoCA

66. By receiving an annual credit against the total cost of his rent for office space in exchange for performing legal work for MASS MoCA including reviewing, and revising drafts of the Park RFP as written by MASS MOCA employees, and reviewing and revising drafts of the responses to the Park RFP, DeRosa received compensation from someone other than the City in relation to particular matters, in which the City had a direct and substantial interest. DeRosa's receipt of this compensation was not as provided by law for the proper discharge of his official duties as City Solicitor. By doing so, DeRosa violated § 17(a).

Compensation from the NAP

67. By receiving compensation from the NAP for work performed for the partnership, including meeting with DCR on behalf of NAP, DeRosa received compensation from someone other than the City in relation to a particular matter, the City's decision to pursue the redevelopment of Heritage Park in which the City had a direct and substantial interest. DeRosa's receipt of this compensation was not as provided by law for the proper discharge of his official duties as City Solicitor. By doing so, DeRosa violated § 17(a).

Section 17(c)

68. Section 17(c) of G.L. c. 268A prohibits a municipal employee from otherwise than in the proper discharge of his official duties acting as agent for anyone other than the municipality in connection with a particular matter in which the municipality is a party or has a direct and substantial interest.

Acting as Agent for the NAP

69. By representing the interests of the NAP during meetings with DCR regarding the redevelopment of Heritage Park, DeRosa acted as agent for someone other than the City in connection with a particular matter, the

City's decision to redevelop the Park, in which the City had a direct and substantial interest. DeRosa's representation of the NAP was not in the proper discharge of his duties as City Solicitor. By doing so, DeRosa violated § 17(c).

Acting as Attorney for Krens

70. The decision to enter the MOU regarding EMRCA Museum was a particular matter.

71. North Adams had a direct and substantial interest in the particular matter because the EMRCA Museum would potentially provide half a million dollars in rent to the City via NARA.

72. By, in January 2016, drafting and filing corporate documents on behalf of EMRCA, DeRosa acted as attorney for someone other than the City in connection with particular matters in which the City was a party and/or had a direct and substantial interest. DeRosa's representation of EMRCA was not in the proper discharge of his duties as City Solicitor. By doing so, DeRosa violated § 17(c).

Section 19

73. Except as otherwise permitted,^[3] § 19 of G.L. c. 268A prohibits a municipal employee from participating^[4] as such an employee in a particular matter^[5] in which, to his knowledge, he, an immediate family member,^[6] his partner or a business organization in which he is serving as an officer, director, trustee, or employee has a financial interest.^[7]

74. Decisions related to the redevelopment of Heritage Park were particular matters.

75. DeRosa participated in these particular matters as a City Solicitor by:

- a. reviewing and revising the Park RFP from September to December 2011;
- b. reviewing and revising the second Park RFP from April 2012 to May 2012;
- c. advising the Mayor and NARA regarding the Park RFPs from December 2011 to June 2012; and
- d. discussing the Heritage Park redevelopment plan at meetings with DCR in the fall of 2013 and February 2014.

76. MASS MoCA is a business organization^[8] because its activities involve regularly organizing and presenting exhibitions of art and performing arts events; and renting

space to commercial tenants. These activities generate income for the support of the museum.

77. MASS MoCA, a business organization in which DeRosa, as compensated legal counsel, was an employee and, as Treasurer, was a board member, had a financial interest in the above-listed particular matters, as MASS MoCA would benefit financially from the successful redevelopment of Heritage Park.

78. At the time of his participation as City Solicitor, DeRosa knew that MASS MoCA, had a financial interest in the above-listed particular matters.

79. Accordingly, by participating as City Solicitor in the above-listed particular matters concerning the redevelopment of Heritage Park, DeRosa violated § 19.

Section 23(b)(3)

80. Section 23(b)(3) of G.L. c. 268A prohibits a municipal employee from knowingly, or with reason to know, acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. The section further provides that it shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

81. From 2011 through 2017, by participating as City Solicitor regarding the redevelopment of Heritage Park while having private relationships with MASS MoCA, NAP, and Krens, DeRosa knowingly or with reason to know, acted in a manner which would cause a reasonable person, having knowledge of all the relevant circumstances, to conclude that MASS MoCA, NAP, and/or Krens could unduly influence or enjoy DeRosa's favor in the performance of his official duties. DeRosa did not file a disclosure that was sufficient to dispel this appearance of undue influence and favoritism. In so acting, DeRosa violated G.L. c. 268A, § 23(b)(3).

Resolution

In view of the foregoing violations of G.L. c. 268A by DeRosa, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the following terms and conditions agreed to by DeRosa:

1. that DeRosa pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$7,500.00 as a civil penalty for violating G.L. c. 268A, §§17, 19, and 23; and
2. that DeRosa waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

[1] The payment in fiscal year 2016 occurred on or about July 2015.

[2] "Compensation" means any money, thing of value or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another. *G.L. 268A, § 1(a)*.

[3] None of the exemptions applies.

[4] "Participate" means to participate in agency action or in a particular matter personally and substantially as a state, county, or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. *G.L. c. 268A, § 1(j)*.

[5] "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. *G.L. c. 268A, § 1(k)*.

[6] "Immediate family" means the employee and his spouse, and their parents, children, brothers, and sisters. *G.L. c. 268A, § 1(e)*.

[7] "Financial interest" means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. *See Graham v. McGrail*, 370 MASS. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate, or reasonably foreseeable. *See EC-COI-84-98*. The interest can be affected in either a positive or negative way. *EC-COI-84-96*.

[8] In determining whether a non-profit organization is substantially engaged in business activities, the

Commission has considered the following factors: (1) whether the organization's activities involve commerce, trade, the sale of goods or the provision of services in exchange for fees (or other compensation) or any other activities, including professional activities, that are commonly understood to be business activities; (2) whether the organization's business activities are engaged in for its support or profit; (3) whether the organization's business activities are continuously or regularly engaged in; and (4) whether the organization's business activities constitute a significant rather than a *de minimus* portion of the total activities of the organization. *EC-COI-07-2*. MASS MoCA is a business organization under this definition because its activities involve the real estate transactions and the sale of goods.

DATE: March 27, 2019

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

SUFFOLK, ss.

**COMMISSION
ADJUDICATORY
DOCKET NO. 19-0004**

**IN THE MATTER OF
DANIEL O'CONNELL**

DISPOSITION AGREEMENT

The State Ethics Commission ("Commission") and Daniel O'Connell ("O'Connell") enter into this Disposition Agreement pursuant to Section 3 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On December 15, 2016, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A. On May 17, 2018, the Commission concluded its inquiry and found reasonable cause to believe that O'Connell violated G.L. c. 268A, §§ 19 and 23.

The Commission and O'Connell now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. From 2010 to 2014, O'Connell was the Superintendent-Director of the North Shore Technical High School District ("North Shore") in Middleton. O'Connell's appointing authority was the North Shore Technical High School

District School Committee ("North Shore School Committee").

2. In 2012, construction began on Essex North Shore Agricultural & Technical High School ("Essex Tech"), a merger of North Shore, Peabody Technical High School and Essex Agricultural and Technical High School.

3. The North Shore campus closed in or about June 2014.

4. The Essex Tech campus opened in September 2014.

5. In March 2013, prior to the opening of Essex Tech, O'Connell was hired to be the Superintendent-Director of the Essex North Shore Agricultural & Technical School District. His appointing authority was the Essex North Shore Agricultural & Technical School District School Committee ("Essex Tech School Committee").

6. From 2013 to 2014, O'Connell was Superintendent-Director of both the North Shore and Essex Tech school districts.

7. From July 2014 to 2015, O'Connell was the Superintendent-Director of the newly merged Essex Tech school district.

O'Connell's Son at North Shore

8. In October 2010, O'Connell's son was hired as an outside maintenance worker by North Shore.

9. On October 20, 2010, O'Connell completed M.G.L. c. 268A, §§ 19 and 23 (b)(3) disclosure forms. In the disclosure forms, O'Connell stated that the Principal and the Facilities Director hired his son and the Principal handled all postings and interviews and made his recommendation for hire.

10. In or about July 2012 and July 2013, O'Connell, as North Shore Superintendent-Director, determined the amount of and approved pay raises for the custodial staff including his son for the 2012-2013 and 2013-2014 school years respectively.

11. O'Connell did not disclose to his appointing authority, the North Shore School Committee, that he was acting as Superintendent-Director on his son's pay raise and did not receive the committee's approval to so act.

O'Connell's Son at Essex Tech

12. From September 2014 to the present, O'Connell's son has been employed by Essex Tech as an outside maintenance worker, a position without supervisory duties.

13. Prior to January 2015, the Maintenance Supervisor at Essex Tech managed snow removal at the school; assessing the school's snow removal needs and scheduling the necessary maintenance workers.

14. As of January 2015, other maintenance workers at Essex Tech, including the Maintenance Supervisor, had more snow removal experience and expertise than O'Connell's son, who did not have any special experience with or expertise regarding snow removal at the school.

15. On or after January 2015, O'Connell, as Essex Tech Superintendent-Director, changed how snow removal would be managed at Essex Tech. O'Connell directed that, in the event of a snowstorm, his son was to supervise the snow removal.

16. O'Connell, by assigning his son to supervise the snow removal, caused his son to accrue more snow removal overtime than other employees.

17. From January to March 2015, O'Connell's son worked 121.5 hours of overtime and earned \$4,753.08 in overtime pay. In doing so, he worked more than 37 more hours of overtime and earned \$1,500 more in overtime pay than any other Essex Tech maintenance worker.

18. In or about June 2015, O'Connell, as Essex Tech Superintendent-Director, authorized his son to use an Essex Tech-owned vehicle for his son's private business.

19. O'Connell's son's use of the school vehicle for a private purpose was not duly authorized by law, regulation, or policy.

20. The value of the use of the school truck was \$50 or more.

21. O'Connell did not disclose to his appointing authority, the Essex Tech School Committee, that he was acting as Superintendent-Director on management, overtime and school vehicle matters involving his son and did not receive the committee's approval to so act.

O'Connell's Stipend

22. In March 2013, when O'Connell was hired as the Superintendent-Director of Essex Tech, the Essex Tech School Committee voted to authorize a \$20,000 stipend for O'Connell, in addition to his salary at North Shore, for holding both positions. The Essex Tech School Committee authorized O'Connell to receive the stipend until June 30, 2014, when North Shore would close, and O'Connell would no longer have two roles.

23. O'Connell received the stipend until June 30, 2014, when the stipend stopped. O'Connell did not receive the stipend from July to September 2014.

24. In October 2014, O'Connell, as Essex Tech Superintendent-Director, directed the Essex Tech Business Manager, his subordinate, to reinstate his stipend and make it retroactive to July 2014.

25. The Business Manager reinstated O'Connell's stipend in October 2014.

26. The reinstatement of O'Connell's stipend in October 2014 was not authorized by the Essex Tech School Committee, although it required such authorization.

27. O'Connell did not disclose to his appointing authority, the Essex Tech School Committee, that he was acting as Superintendent-Director on the matter of his stipend.

Salem Plumbing

28. In or about February 2015, Salem Plumbing, a wholesale and retail supply company, was a vendor doing business with Essex Tech.

29. In or about February 2015, O'Connell purchased \$1,200 in bathroom fixtures from Salem Plumbing for his home. O'Connell was dissatisfied with the purchased fixtures.

30. On February 21, 2015, O'Connell wrote an email on his School account to the President of Salem Plumbing, and proposed that Salem Plumbing replace the fixtures in O'Connell's home at no cost to O'Connell. O'Connell requested the replacement in exchange for "continu[ing] our business partnership." O'Connell stated that "between our personal purchases and my business purchases we have spent between 70 to 90 thousand dollars at Salem plumbing this year." O'Connell's signature included his title "Superintendent-Director."

31. On February 23, 2015, Kevin Dash, a Salem Plumbing employee, submitted a bid for an Essex Tech purchase via email to O'Connell.

32. O'Connell responded to Dash via email that read, "Sorry Kevin no bids accepted from sal [sic] plumbing until my situation is resolved." O'Connell's email was sent from his Essex Tech email account with his signature and title "Superintendent-Director." "[M]y situation" referred to O'Connell's dissatisfaction with the fixtures purchased from Salem Plumbing for his home.

33. Thereafter, Salem Plumbing replaced approximately \$1,200 worth of fixtures in O'Connell's home at no cost to him.

34. O'Connell did not file a disclosure with the Essex Tech School Committee regarding his personal business relationship and official dealings with Salem Plumbing.

The Bricks

35. In or about November 2014, the former campus of North Shore was sold to private developers.

36. In the spring of 2015, the developers gave surplus bricks at the former campus to O'Connell.

37. O'Connell, as Essex Tech Superintendent and Director, directed Essex Tech workers to load the bricks into a school-owned truck and transport the bricks to O'Connell's residence.

38. The Essex Tech workers loaded and transported the bricks during their regularly scheduled work hours.

39. The value of the use of the school truck and the time of the Essex Tech workers to load and transport the bricks to O'Connell's home was \$50 or more.

40. O'Connell did not disclose to his appointing authority, the Essex Tech School Committee, that, as Superintendent-Director, he was directing school employees to use a school truck and school work time to transport bricks to his home.

Conclusions of Law

41. O'Connell, both as Superintendent-Director of North Shore and as the Superintendent-Director of Essex Tech, was a municipal employee as that term is defined in G.L. c. 268A, § 1 (g).

Section 19

42. Except as otherwise permitted^[1], § 19 of G.L. c. 268A prohibits a municipal employee from participating^[2] as such an employee in a particular matter^[3] in which, to his knowledge, he, or an immediate family member^[4] has a financial interest^[5].

Son's Pay Raises

43. O'Connell's decisions in July 2012 and 2013 to raise his son's pay were particular matters because they were determinations regarding compensation.

44. O'Connell participated in these particular matters as a municipal employee by making the decision as North Shore Superintendent-Director to raise his son's pay.

45. O'Connell's son is a member of O'Connell's immediate family.

46. O'Connell's son had a financial interest in the particular matters of his pay raises.

47. At the time of his participation, O'Connell knew that his son had a financial interest in the particular matters of his pay raises.

48. Accordingly, by participating as North Shore Superintendent-Director in the particular matters of his son's pay raises, O'Connell violated § 19.

Son's Overtime

49. O'Connell's decisions as Essex Tech Superintendent-Director in or about January 2015 to change how snow removal was managed at Essex Tech and to assign his son to manage that snow removal were particular matters.

50. O'Connell participated in these particular matters as a municipal employee by making the decision as Essex Tech Superintendent-Director to change the existing practice and to place his son in charge of snow removal during the winter of 2015.

51. O'Connell's son had a financial interest in these particular matters because they related to his ability to earn overtime pay.

52. At the time of his participation, O'Connell knew that his son had a financial interest in the snow removal management particular matters.

53. Accordingly, by participating as Superintendent-Director in the particular matters concerning the management of snow removal at Essex Tech, O'Connell violated § 19.

Section 23(b)(2)

54. Section 23(b)(2) of G.L. c. 268A prohibits a municipal employee from knowingly or with reason to know (i) soliciting or receiving anything of substantial value^[6] for such officer or employee, which is not otherwise authorized by statute or regulation, for or because of the officer or employee's official position; or (ii) using or attempting to use such official position to secure for such

officer, employee or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.

Reinstatement of Stipend

55. By, as Essex Tech Superintendent-Director, directing the Business Manager to reinstate his stipend without the authorization of the full School Committee for holding two superintendent positions and by receiving the stipend, O'Connell knowingly or with reason to know solicited and received something because of his official position.

56. The reinstatement of the stipend was not otherwise authorized by statute or regulation.

57. The reinstatement of the stipend was unwarranted because the Essex Tech School Committee did not approve O'Connell's receipt of a stipend after June 30, 2014.

58. The reinstated stipend was of substantial value because it was more than \$50.00.

59. Accordingly, by, as Essex Tech Superintendent-Director, directing the Business Manager to reinstate his stipend for holding two superintendent positions and by receiving the stipend, O'Connell knowingly or with reason to know solicited and received something of substantial value for himself, which was not otherwise authorized by statute or regulation, for or because of his official position in violation of § 23(b)(2)(i).

60. In addition, by using his official position as Essex Tech Superintendent-Director to direct the Business Manager to reinstate his stipend, O'Connell knowingly or with reason to know used his Superintendent-Director position to secure for himself an unwarranted privilege of substantial value not properly available to other similarly situated individuals in violation of § 23(b)(2)(ii).

Son's Overtime

61. The opportunity to manage snow removal at Essex Tech and earn extra compensation is a privilege.

62. The privilege was unwarranted for O'Connell's son because he was not a supervisor and, unlike other maintenance workers with greater qualifications and more experience, did not have any special experience or expertise regarding snow removal or management at the school.

63. This privilege was of substantial value because it allowed O'Connell's son to work more overtime hours than he would otherwise have had and earn \$1,500 more than any other worker.

64. This privilege was not properly available to similarly situated individuals no other maintenance worker was assigned by O'Connell to supervise the snow removal.

65. By assigning his son to supervise snow removal, O'Connell used his official position to secure an unwarranted privilege for his son.

66. Accordingly, by using his official position as Essex Tech Superintendent-Director to change the existing snow removal procedure, O'Connell knowingly or with reason to know used his Superintendent-Director position to secure for his son an unwarranted privilege of substantial value not properly available to other similarly situated individuals in violation of § 23(b)(2)(ii).

Son's Use of School Truck

67. The opportunity to use a school-owned truck was a privilege.

68. When O'Connell granted his son this privilege for his son's personal business, the privilege was unwarranted because it was the use of a public resource for a private purpose.

69. This privilege was of substantial value because the use of the truck was worth \$50 or more.

70. This privilege was not properly available to similarly situated individuals because private use of public property is not lawful unless it is duly authorized by law, regulation, or policy.

71. By, as Essex Tech Superintendent-Director, allowing his son to use a school vehicle for a private purpose, O'Connell used his official position to secure this unwarranted privilege for his son.

72. Accordingly, by using his official position as Essex Tech Superintendent-Director to allow his son to use a school vehicle for a private purpose, O'Connell knowingly or with reason to know used his Superintendent-Director position to secure for his son an unwarranted privilege of substantial value not properly available to other similarly situated individuals in violation of § 23(b)(2)(ii).

O'Connell's Use of Position in Private Dispute with Salem Plumbing

73. The opportunity to use the title of "Superintendent-Director" is a privilege.

74. O'Connell's use of his position as Essex Tech Superintendent-Director in his private dealings with Salem Plumbing, including his refusal to take bids from Salem

Plumbing until the resolution of his private dispute with the company over \$1,200 worth of bathroom fixtures, was unwarranted and not properly available to similarly situated persons because an official position and title may only be used in the public interest and not for private purposes.

75. This unwarranted privilege of using his official title for his private purposes was of substantial value because it gave O'Connell substantial leverage in his dispute with Salem Plumbing over \$1,200 worth of bathroom fixtures, which was resolved with Salem Plumbing's replacement the fixtures at no cost to O'Connell.

76. Accordingly, by using his official position as Essex Tech Superintendent-Director in his private dealings with Salem Plumbing to apply pressure on the company to satisfy his demands, O'Connell knowingly or with reason to know used his Superintendent-Director position to secure for himself an unwarranted privilege of substantial value for himself that are not properly available to other similarly situated individuals in violation of § 23(b)(2)(ii).

O'Connell's Use of School Resources

77. The opportunity to use a school-owned truck and public employee staff time is a privilege.

78. When O'Connell, as Essex Tech Superintendent-Director ordered school employees to use the school-owned vehicle to transport bricks to his home, the privilege was unwarranted because it was the use of a public resource for a private purpose.

79. This privilege was of substantial value because the value of the use of the school truck and the time of the Essex Tech workers to load and transport the bricks to O'Connell's home was \$50 or more.

80. This privilege was not properly available to similarly situated individuals, those in need of transportation of bricks, because private use of the work time of public employees and publicly owned vehicles is not lawful unless it is duly authorized by law, regulation, or policy.

81. By directing Essex Tech employees to perform private work on public work time and use a school vehicle for a private purpose, O'Connell used his official position to secure this unwarranted privilege for himself.

82. Accordingly, by using his official position as Essex Tech Superintendent-Director to direct school employees to use a school-owned truck to transport bricks to his home, O'Connell knowingly or with reason to know used his Superintendent-Director position to secure for himself an unwarranted privilege of substantial value not properly

available to other similarly situated individuals in violation of § 23(b)(2)(ii).

Section 23(b)(3)

83. Section 23(b)(3) of G.L. c. 268A prohibits a municipal employee from knowingly or with reason to know acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. The section further provides that it shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

84. By taking official action as Essex Tech Superintendent-Director concerning Salem Plumbing while engaged in private dealings with the company, O'Connell knowingly or with reason to know acted in a manner which would cause a reasonable person, having knowledge of his private dispute with the company, to conclude that O'Connell would act unfavorably towards the company in the performance of his official duties. O'Connell did not disclose in writing his private dealings with Salem Plumbing to his appointing authority, the Essex Tech School Committee, to dispel this appearance of impropriety. In so acting, O'Connell violated G.L. c. 268A, § 23(b)(3).

Resolution

In view of the foregoing violations of G.L. c. 268A by O'Connell, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the following terms and conditions agreed to by O'Connell:

1. that O'Connell pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$23,000 as a civil penalty for violating G.L. c. 268A, §§ 19 and 23; and
2. that O'Connell waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

[1] None of the exemptions applies.

[2] “Participate” means to participate in agency action or in a particular matter personally and substantially as a state, county, or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. *G.L. c. 268A, § 1(j)*.

[3] “Particular matter” means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties, and districts for special laws related to their governmental organizations, powers, duties, finances, and property. *G.L. c. 268A, § 1(k)*.

[4] “Immediate family” means the employee and his spouse, and their parents, children, brothers, and sisters. *G.L. c. 268A, § 1(e)*.

[5] “Financial interest” means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. *See Graham v. McGrail, 370 Mass. 133 (1976)*. This definition has embraced private interests, no matter how small, which are direct, immediate, or reasonably foreseeable. *EC-COI-84-98*. The interest can be affected in either a positive or negative way. *EC-COI-84-96*.

[6] “Substantial value” is \$50.00 or more. *930 CMR 5.05*.

DATE: May 16, 2019

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

SUFFOLK, ss.

**COMMISSION
ADJUDICATORY
DOCKET NO. 19-0006**

**IN THE MATTER OF
FREDERICK BRACK**

DISPOSITION AGREEMENT

The State Ethics Commission (“Commission”) and Frederick C. Brack (“Brack”) enter into this Disposition Agreement pursuant to Section 3 of the Commission’s *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On September 20, 2018, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Brack. On April 18, 2019, the Commission concluded its inquiry and found reasonable cause to believe that Brack violated G.L. c. 268A, § 23(b)(2).

The Commission and Brack now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Brack was during the relevant time an employee of the Boston Public Health Commission (“BPHC”).

2. In 2011, Brack began operating a landscape and snow removal service under the name Brack & Sons.

3. During the winter of 2016/2017, Brack was assigned to BPHC’s Mattapan campus, which includes a garage at 205 River Street (“BPHC Garage”). The public does not have access to the BPHC Garage. Salt is stored at the BPHC Garage.

4. During the winter of 2016/2017, Brack & Sons provided snow removal services for multiple clients, including Horizons, a shelter for victims of abuse, and the SPARK (Supporting Parents and Resilient Kids) Center at the Boston Medical Center (“the SPARK Center”), a medically-therapeutic childcare facility and day program. These properties are adjacent to each other and located about .2 miles from the BPHC Garage.

5. During the winter of 2016/2017, Brack was observed standing in front of the BPHC garage while he allowed his daughter to enter the BPHC garage and remove several bags of rock salt purchased by the BPHC and place them in her private vehicle. The salt was later used for Brack & Sons’ private work.

6. On December 17, 2016, Brack worked from 8 a.m. to 7:30 p.m. for BPHC.

7. On December 17, 2016, during his BPHC work hours, Brack used a BPHC snowplow truck (“snowplow”) to clear snow for the SPARK Center and Horizons as part of his private Brack & Sons’ snowplowing business.

8. Brack was paid a total of \$655 by the SPARK Center and Horizons for plowing snow on December 17, 2016.

9. On January 31, 2017, Brack worked from 8:02 a.m. to 10:18 p.m. at BPHC.

10. On January 31, 2017, during his BPHC work hours, Brack used a BPHC snowplow to clear snow at both Horizons and the SPARK Center.

11. Brack was paid a total of \$655 by the SPARK Center and Horizons for plowing snow on January 31, 2017.

12. On February 9, 2017, during his BPHC work hours, Brack used a BPHC snowplow to clear snow at both Horizons and the SPARK Center.

13. Brack was paid a total of \$1,310 by the SPARK Center and Horizons for plowing snow on February 9, 2017.

14. On February 11, 2017, Brack worked from 8:02 a.m. to 10:18 p.m. at BPHC.

15. On February 11, 2017, during his BPHC work hours, Brack used a BPHC snowplow to clear snow at both Horizons and the SPARK Center.

16. Brack was paid a total of \$655 by SPARK Center and Horizons for plowing snow on February 11, 2017.

17. On March 14, 2017, Brack worked from 8:00 a.m. to 9:00 p.m. at BPHC.

18. On March 14, 2017, during his BPHC work hours, Brack used a BPHC snowplow to clear snow at both Horizons and the SPARK Center.

19. Brack was paid a total of \$655 for plowing snow at the SPARK Center and Horizons on March 14, 2017.

Conclusions of Law

20. Section 23(b)(2)(ii) of G.L. c. 268A prohibits a municipal employee from, knowingly or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.

21. As a BPHC employee, Brack was at all times relevant to this matter a municipal employee as defined in G.L. c. 268A, § 1.

22. Brack's BPHC work hours, the BPHC snowplow, and the BPHC salt were public resources. The use of these public resources was a privilege.

23. Brack's use of these public resources to perform private work for Brack & Sons was unwarranted because such private business use of such public resources is not permitted by law or regulation.

24. The unwarranted privilege secured by Brack for himself was of substantial value^[1] because Brack's use of the BPHC resources earned him \$3,275. Additionally, Brack's BPHC work hours, use of a BPHC snowplow and the BPHC salt were independently of substantial value: Brack's BPHC's compensation, in the winter of 2016/2017, was approximately \$33 per hour, a snowplow would have cost \$81.64 to \$118.50 an hour to rent, and the BPHC paid \$8.98 for each bag of salt that Brack used for his business.

25. This privilege was not properly available to similarly situated individuals because private citizens are prohibited from using public resources to further their business interests. Moreover, no other private landscaping/snow removal business properly had access to BPHC resources.

26. By, as described above, using public resources to perform work for his private business, Brack knowingly used his official position to secure for himself an unwarranted privilege of substantial value.

27. Thus, by using his official position as a BPHC employee to obtain and use BPHC resources for his private business activities, Brack knowingly used his BPHC position to secure for himself an unwarranted privilege of substantial value not properly available to other similarly situated individuals. In so doing, Brack violated § 23(b)(2)(ii) on six occasions.

Resolution

In view of the foregoing violation of G.L. c. 268A by Brack, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Brack:

1. that Brack pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$10,000 as a civil penalty for violating G.L. c. 268A, § 23(b)(2)(ii); and
2. that Brack waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

^[1] The Commission has established a \$50.00 threshold to determine "substantial value." *930 CMR 5.05*.

DATE: June 24, 2019

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION
ADJUDICATORY
DOCKET NO. 18-0009

IN THE MATTER OF
OSCAR WALKER

Parties: Candies Pruitt Doncaster, Esq.
Counsel for Petitioner

Oscar Walker, *Pro se*

Commissioners: Maria J. Krokidas, Ch., David A. Mills,
Thomas J. Sartory, R. Marc Kantrowitz and Josefina
Martinez

Presiding Officer: Commissioner R. Marc Kantrowitz

ORDER REGARDING PENALTY

In an Order to Show Cause (“OTSC”) filed on December 17, 2018, Petitioner, the State Ethics Commission, alleged that Oscar Walker served as the Director of Public Safety for Roxbury Community College for more than 30 days in 2017 and violated G.L. c. 268B, § 5 because he failed to file a 2017 Statement of Financial Interests by May 1, 2018. Petitioner also alleged that Mr. Walker was sent a Formal Notice of Lateness (“Notice”) on May 2, 2018 but failed to file the SFI within 10 days after he received the Notice. In accordance with a schedule of penalties adopted by the Commission, Petitioner demanded that Mr. Walker pay a civil penalty of \$2,500, stating that a penalty of up to \$10,000 would be due if he failed to file the 2017 SFI before a Decision and Order was issued by the Commission.

A Certificate of Service indicates that Petitioner served the OTSC on Mr. Walker electronically at his last known e-mail address on December 17, 2018. Notices about the case were sent by the Legal Advisor to his last-known residential address. Mr. Walker did not receive information about the case because it was sent to an e-mail address he no longer used and an address where he no longer resided. By way of a motion, Petitioner informed the Presiding Officer that Enforcement Staff Counsel eventually found information about Mr. Walker’s new address and mailed copies of the OTSC and case-related papers there on January 31, 2019. Shortly thereafter, Mr. Walker filed his 2017 SFI on February 8, 2019.

Accordingly, the only issue left unresolved is the penalty to be assessed against Mr. Walker for filing his 2017 SFI late. Having engaged in settlement negotiations, the parties reported at a Pre-Hearing Conference on April 10, 2019 that Petitioner’s last proposal was \$300 and Respondent’s last offer was \$100. In lieu of an adjudicatory proceeding on the single issue, the parties agreed to engage in the following alternative process to resolve this matter: The Presiding Officer would recommend a penalty. The parties would have an opportunity to file written responses to the recommended penalty by May 6, 2019 and to make oral arguments to the full Commission on May 16, 2019. The parties agreed to accept the Commission’s decision about a penalty.

On April 25, 2019, the Presiding Officer made a recommendation of a penalty of \$175.00, taking into account the ability of the Respondent to pay a penalty. The parties submitted written responses on May 6, 2019 and had the opportunity to make oral arguments on May 16, 2019 as planned.

The Commission sets civil penalties based on its schedule of penalties, but the Commission has discretion to adjust a civil penalty in recognition of mitigating or aggravating circumstances in individual cases and may take into consideration a respondent’s ability to pay a penalty assessed. *See In re Cole*, 2010 SEC 2339 (penalty of \$1,000 for repeated failure to file an SFI reduced to \$250 where Respondent and his wife were primary caregivers for his mother, who had leukemia and was in declining health, and Respondent had been unemployed for two years and had no income from other sources); *In re McNamara*, 1984 SEC 150 (no mitigating factors found, but penalty reduced from \$250 to \$100 where Respondent had been unemployed for five months).

Petitioner argues for the higher penalty of \$300 in part because Mr. Walker previously failed to file a 2016 SFI and paid a \$100 penalty, and because he contacted the Commission on May 10, 2018 after receiving the Notice relating to the 2017 SFI and was informed by Commission staff that he was required to file the 2017 SFI. At a Pre-Hearing Conference on March 6, 2019, Mr. Walker stated that he misunderstood that the phone call in May 2018 was about the SFI he previously failed to file, but he took responsibility for the misunderstanding.

Mr. Walker has provided information indicating that he was unemployed for a period of time after his state job ended, and that he had to give up his residence and lived with friends or relatives. Some delay in filing his 2017 SFI reasonably can be attributed to the fact that, for some time, he had no home or address where delivery of notices about the current case against him could be received. The

4. Parcels 17 and 23 were taken by the Town in tax-title in or about October 1998 for nonpayment of property taxes by the previous owner. The Town foreclosed on the Parcels 17 and 23 in Land Court in or about February 2007.

5. Walker first became interested in acquiring the Parcels soon after moving back to the Farm in or about 2003. He sought to protect the land and its water source for his farm and cattle.

6. Sometime after moving back in 2003 and before the Town foreclosed in 2007, Walker made efforts to purchase the Parcels on two occasions. He did not purchase the Parcels at those times.

7. After the Town foreclosed on the land, Walker remained interested in the Parcels. He “kept an eye on” them by periodically asking the Town Treasurer/Tax Collector about their status, both before and after he was elected to the Select Board in 2013.

8. In 2013, the Town began considering the auction of town-owned land, including Parcels 17 and 23, to increase revenue.

9. As a Select Board member, Walker participated in the discussion of whether to auction town-owned land with his fellow Select Board members and the Town Treasurer/Tax Collector. Specifically, Walker advocated for the sale of town-owned properties. On February 22, 2016, Walker participated in the vote to approve an auction of town-owned land, including Parcels 17 and 23. The vote was unanimous.

10. At the time that he voted to authorize the auction, Walker remained interested in purchasing Parcels 17 and 23.

11. Soon after the vote to authorize the auction, Walker began to seek funding to purchase Parcels 17 and 23. Walker had previously worked with a local land trust (“Trust”) to conserve parts of his property. The Trust secured a grant for Walker to purchase Parcels 17 and 23 in exchange for placing a conservation restriction on the land.

12. The auction was held on November 9, 2016. The Town Treasurer/Tax Collector decided to auction Parcels 17 and 23 together upon the advice of the auctioneer. Walker was the winning bidder at \$35,000. Walker paid a \$5,000 deposit and closing costs. The remainder was funded by the grant secured by the Trust. Walker took title to the property from the Town on or about December 7, 2016.

13. Walker has worked with the Trust to place a conservation restriction on the land.

14. Walker cooperated with the Commission’s investigation.

Conclusions of Law

Section 19

15. Section 19 of G.L. c. 268A prohibits a municipal employee from participating^[1] as such an employee in a particular matter^[2] in which, to his knowledge, he or an immediate family member^[3] has a financial interest.^[4]

16. As a member of the New Braintree Select Board, Walker was a municipal employee as that term is defined in G.L. c. 268A, § 1(g).

17. The Select Board’s decision to authorize an auction of town-owned land was a particular matter.

18. Walker participated in that particular matter as Chair of the Select Board by discussing with his fellow Select Board members and the Town Treasurer/Tax Collector whether to auction town-owned land, including Parcels 17 and 23, and by voting to approve the auction at the February 22, 2016 Select Board meeting.

19. At the time of his participation, Walker had a reasonably foreseeable financial interest in the particular matter. Specifically, Walker knew that he was interested in purchasing Parcels 17 and 23.

20. At the time of his participation, Walker knew that Parcels 17 and 23 directly abutted his own property, the Farm and Parcel 20. At the same time, Walker knew that he had a financial interest in acquiring Parcels 17 and 23 as protection for the water source for his cattle. As a matter of law, Walker, as an abutter, had a presumed financial interest in the auction of Parcels 17 and 23; and, consequently, presumed knowledge of that financial interest.^[5]

21. Therefore, Walker violated § 19 by participating as Chair of the New Braintree Select Board in the Select Board’s February 22, 2016 decision to auction town-owned land, including Parcels 17 and 23.

Section 20

22. Section 20 of G.L. c. 268A prohibits a municipal employee from having a financial interest, directly or indirectly, in a contract made by his municipality, in which the municipality is an interested party, and of which

financial interest he knows or has reason to know. There are a number of exemptions in § 20, but none are applicable here.

23. Upon acceptance of his bid, the Town made a contract with Walker for the purchase and sale of Parcels 17 and 23.

24. The Town was an interested party in the sale because it benefits from the sale's proceeds.

25. Walker had a direct financial interest in this contract because it required him to pay the Town the amount of his bid in exchange for the land.

26. Walker knew that he had a financial interest in that contract.

27. By having a financial interest in the contract for the sale of land with the Town of New Braintree while serving as the Chair of the Select Board, Walker violated § 20.

Section 23(b)(3)

28. Section 23(b)(3) of G.L. c. 268A prohibits a public employee from knowingly, or with reason to know, acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy the public employee's favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. The section further provides that it shall be unreasonable to so conclude if such employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner, which is public in nature, the facts which would otherwise lead to such a conclusion. Such disclosure must be made before taking any official action.

29. By participating in the Select Board's discussion and vote to auction town-owned land, Walker acted officially as Chair of the Select Board. When he so acted, Walker knew that he had an interest in purchasing two of the properties. By so participating, Walker acted in a manner that would cause a reasonable person, with knowledge of the relevant circumstances, to conclude that he was acting as a Select Board member in his furtherance of his own private interests.

30. Walker did not file a written disclosure to dispel this appearance of a conflict prior to participating in the decision to auction town-owned land. Therefore, in so acting, Walker violated § 23(b)(3).

Resolution

In view of the foregoing violations of G.L. c. 268A by Walker, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Walker:

1. that Walker pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$5,000 as a civil penalty for violating G.L. c. 268A, §§ 19 and 20; and
2. that Walker waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

[1] "Participate" means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. *G.L. c. 268A, § 1(j)*.

[2] "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. *G.L. c. 268A, § 1(k)*.

[3] "Immediate family" means the employee and his spouse, and their parents, children, brothers and sisters. *G.L. c. 268A, § 1(e)*.

[4] "Financial interest" means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. *See Graham v. McGrail, 370 Mass. 133 (1976)*. This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. *See EC-COI-84-98*. The interest can be affected in either a positive or negative way. *EC-COI-84-96*.

[5] *See In re Anderson, 2009 SEC 2205; Commission Advisory No. 05-02: "Voting on Matters Affecting Abutting or Nearby Property,"* which states: "Under the conflict of interest law, a property owner is presumed to have a financial interest in matters affecting abutting and nearby property."

DATE: June 25, 2019.

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION
ADJUDICATORY
DOCKET NO. 19-0009

IN THE MATTER OF
STEPHANIE VIENS

DISPOSITION AGREEMENT

Introduction

The State Ethics Commission (“Commission”) and Stephanie Viens (“Viens”) enter into this Disposition Agreement pursuant to Section 3 of the Commission’s Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On June 28, 2018, the Commission initiated a preliminary inquiry, pursuant to G.L. c. 268B, § 4(a), into possible violations of the conflict of interest law, G.L. c. 268A. On June 20, 2019, the Commission concluded its inquiry and found reasonable cause to believe that Viens violated G.L. c. 268A, §§ 3(b), 17(a) and 19.

The Commission and Viens agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Viens, a resident of Ware, Massachusetts, was during the relevant time a South Hadley High School History teacher and separately served as the South Hadley High School Cultural Diversity/Cultural Exchange Club (“Culture Club”) Advisor, an unpaid position.
2. South Hadley High School is part of the South Hadley Public Schools District.
3. As Culture Club Advisor, Viens’ duties included organizing overseas school trips for South Hadley High School students by recruiting trip attendees and chaperones.
4. EF Tours is a company that provides educational tours geared towards high school and college students.
5. EF Tours has a rewards program, which includes stipends and travel points based, in part, on the number of

paying trip participants. Rewards recipients may use the travel points towards goods and future trips. EF Tours automatically enrolls group leaders into the rewards program, but group leaders may opt out.

6. Beginning in 2007, Viens organized overseas school trips for the Culture Club through EF Tours by recruiting students, parents and chaperones for the trips. Viens was a group leader for the purposes of the EF Tours rewards program. Viens did not opt out of the rewards program.

7. From 2007 through 2017, EF Tours awarded Viens travel points and stipends of \$600-\$2,000 per school trip based, in part, on the number of paying trip participants.

8. As of 2013, Viens had organized four EF Tours Culture Club school trips to Europe as Culture Club Advisor.

9. On or about October 9, 2013, the South Hadley Public Schools Business Administrator sent an email to Viens regarding, in part, conflict of interest concerns related to the acceptance of payments from EF Tours and other tour companies for organizing school trips. The Business Administrator asked Viens to confirm that no one received money from EF Tours.

10. Viens did not respond to the Business Administrator. Instead, she organized two additional Culture Club school trips through EF Tours and received additional stipends and travel points under the EF Tours rewards program.

11. From 2013 through 2017, Viens received \$5,530 in stipends and 4,516 travel points from EF Tours for organizing school trips to Europe through the Culture Club as the club’s advisor, including recruiting students, parents and chaperones for the trip. During that same period, Viens redeemed the travel points for airline tickets and a European vacation.

12. Viens did not disclose to her appointing authority, the South Hadley High School principal, that she was receiving travel points and stipends from EF Tours.

Conclusions of Law

Unlawful Gifts - § 3(b)

13. General Laws Chapter 268A, § 3(b) prohibits a municipal employee from knowingly, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly, asking demanding, exacting, soliciting, seeking, accepting, receiving or agreeing to receive anything of substantial value: (i) for himself for or because of any official act or act within his official responsibility performed or to be performed by him; or

(ii) to influence, or attempt to influence, him in an official act taken.

14. As Culture Club Advisor, Viens was a municipal employee as that term is defined in G.L. c. 268A, § 1(g).

15. Viens knowingly accepted for herself the reward of travel points and stipends from EF Tours for organizing and recruiting students, parents and chaperones to participate in overseas school trips, which were among her official acts and responsibilities as Culture Club Advisor.

16. The stipends and travel points were of substantial value because they were worth at \$50 or more.

17. Viens' receipt of travel points and stipends was not as provided by law for the proper discharge Viens' official duties as Culture Club Advisor. No law permitted Viens to receive stipends and travel points from EF Tours for the performance of her duties as Culture Club Advisor.

18. Therefore, Viens violated § 3(b) by knowingly, otherwise than as provided by law for the proper discharge of her duties as the Culture Club Advisor, accepting stipends and travel points from EF Tours for or because of her official acts and acts within her official responsibility as Culture Club Advisor in organizing overseas school trips through the Culture Club, including recruiting students, parents and chaperones.

Divided Loyalty - § 17(a)

19. Section 17(a) of G.L. c. 268A prohibits a municipal employee from, otherwise as provided by law for the proper discharge of official duties, directly or indirectly receiving compensation^[1] from anyone other than the municipality in relation to a particular matter^[2] in which the municipality is a party or has a direct and substantial interest.

20. Viens' decisions to organize the Culture Club's overseas school trips with EF Tours, including decisions relating to the recruitment of students, parents and chaperones for those trips, were particular matters.

21. The South Hadley School District had a direct and substantial interest in the organization of the school trips because the trips were sponsored by the South Hadley High School through the Culture Club and were taken by district students.

22. EF Tours compensated Viens for recruiting students for the school trips by awarding her with travel points and stipends.

23. Viens' receipt of travel points and stipends from EF Tours was not as provided by law for the proper discharge Viens' official duties as the Culture Club Advisor.

24. Therefore, by, otherwise than as provided by law for the proper discharge of official duties, receiving compensation from EF Tours in relation her decisions as Culture Club Advisor in organizing the overseas school trips, including decisions relating to her recruitment of students, parents and chaperones, Viens violated § 17(a).

Self-Dealing - § 19

25. Except as otherwise permitted^[3], § 19 of G.L. c. 268A prohibits a municipal employee from participating^[4] as such an employee in a particular matter in which, to his knowledge, he or an immediate family member^[5] has a financial interest^[6].

26. The decisions to organize Culture Club school trips, including decisions to arrange the trips through EF Tours and decisions relating to the recruitment of students, parents and chaperones for those trips, were particular matters.

27. Viens participated in those particular matters as Culture Club Advisor by deciding to arrange and arranging the overseas school trips through EF tours and by deciding to recruit and recruiting students, parents and parents for the school trips.

28. Viens knew she would receive travel points and stipends from EF Tours based, in part, on the number of paying Culture Club school trip participants she recruited.

29. Therefore, by, as the Culture Club Advisor, arranging overseas school trips through EF Tours and recruiting students, parents and chaperones for those school trips, while knowing she would receive travel points and stipends from EF Tours based, in part, on the number of paying trip participants she recruited, Viens violated § 19.

In view of the foregoing violations of G.L. c. 268A by Viens, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Viens:

(1) that Viens pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$7,000 as a civil penalty for violating G.L. c. 268A, §§ 3(b), 17(a) and 19; and

(2) that Viens waive all rights to contest, in this or any other administrative or judicial proceeding to which

the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

[1] “Compensation” means any money, thing of value or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another. *G.L. 268A, § 1(a)*.

[2] “Particular matter” means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. *G.L. c. 268A, § 1(k)*.

[3] No exemption applies.

[4] “Participate” means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. *G.L. c. 268A, § 1(j)*.

[5] “Immediate family” means the employee and his spouse, and their parents, children, brothers and sisters. *G.L. c. 268A, § 1(e)*.

[6] “Financial interest” means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. *See Graham v. McGrail, 370 Mass. 133 (1976)*. This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. *See EC-COI-84-98*.

DATE: September 25, 2019

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

SUFFOLK, ss.

**COMMISSION
ADJUDICATORY
DOCKET NO. 19-0010**

**IN THE MATTER OF
ROLAND NUTTER**

DISPOSITION AGREEMENT

Introduction

The State Ethics Commission (“Commission”) and Roland Nutter (“Nutter”) enter into this Disposition Agreement pursuant to Section 3 of the Commission’s Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On January 23, 2019, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A. On June 20, 2019, the Commission concluded its inquiry and found reasonable cause to believe that Roland Nutter violated G.L. c. 268A, §§ 19 and 23(b)(2)(ii).

The Commission and Nutter now agree to the following findings of fact and conclusions of law:

A. Background

1. Nutter, a resident of Pepperell, was at all relevant times a member of the Town of Pepperell (“Town”) Board of Selectmen (“Board”). Nutter was appointed Board chair on April 30, 2018. Nutter’s term expired in April 2019 and he did not seek reelection.

2. Nutter’s wife is and was at all relevant times the Town Treasurer/Collector. Town Treasurer/Collector is a fulltime paid municipal position. Nutter’s wife has served as Town Treasurer/Collector for approximately eight years.

3. On February 2, 2016, Nutter sought advice from the Legal Division of the State Ethics Commission about potential conflicts of interest with his wife’s position if he were elected to the Board. The Legal Division advised Nutter not to participate in particular matters in which his wife had a financial interest, such as contract negotiations, performance evaluations, and/or disciplinary matters. The Legal Division also advised Nutter to abstain from budget line items and payroll warrants that would affect his wife.

B. Discussing his Wife’s Employment Contract

Findings of Fact

4. Nutter’s wife’s employment agreement with the Town was due to expire on June 30, 2018. She negotiated her next employment contract, and base compensation of \$81,000, with the Town Administrator, and they reached agreement on April 10, 2018.

5. Under the Town Charter, a contract negotiated by a Town employee and the Town Administrator requires

approval by the Board. The Board approves a contract when it is signed by at least two of its three members.

6. On April 10, 2018, the Board Administrative Assistant notified the Board members that Nutter's wife's contract and other town documents were ready to be signed. Nutter did not sign his wife's contract. The then Board chair signed the contract, and the third Board member declined to sign the contract.

7. At the April 17, 2018 Board meeting, Nutter discussed his wife's unsigned contract. Speaking as a Selectman, he told his Board colleague who did not sign the contract that she was in "dereliction of her duties." Nutter asserted that the Town Administrator negotiates the contracts and the Board is "just supposed to sign them."

8. At the April 23, 2018 Board meeting, Nutter again discussed his wife's unsigned contract. Speaking as a Selectman, he told his Board colleague, "It's your responsibility to sign these things, and like always, you keep putting things off and don't want to do your job. It's unfair to the taxpayers of this town, where you are supposed to represent them, and you are supposed to execute these contracts."

9. Nutter's Board colleague did not sign the contract.

10. The Board members did not express any concerns about Nutter's wife's ability to competently perform the duties of Treasurer/Collector.

Conclusions of Law

Section 19

11. Except as otherwise permitted, § 19 of G.L. c. 268A prohibits a municipal employee from participating^[1] as such an employee in a particular matter^[2] in which, to his knowledge, he or an immediate family member^[3] has a financial interest^[4].

12. As a member of the Board, Nutter was a municipal employee as that term is defined in G.L. c. 268A, § 1(g).

13. Nutter's wife is a member of his immediate family.

14. The Board's decision whether to approve Nutter's wife's April 10, 2018 employment contract was a particular matter.

15. Nutter's wife, as a paid municipal employee, had a financial interest in the particular matter of the Board's approval of her employment contract.

16. Nutter participated in this particular matter as a municipal employee by, during the April 17, 2018 and

April 23, 2018 Board meetings, as a Selectman discussing the fact that his Board colleague had not signed his wife's contract and asserting that it was her duty and responsibility as a Board member to do so.

17. When he participated as a Board member in this particular matter, Nutter knew that his wife had a financial interest in whether her employment contract was approved by the Board.

18. Therefore, by participating as a Board member in the Board's decision whether to approve his wife's employment contract, Nutter participated as a municipal employee in a particular matter in which he knew his immediate family member had a financial interest. In so doing, Nutter violated § 19.

Section 23(b)(2)(ii)

19. Section 23(b)(2)(ii) of G.L. c. 268A prohibits a municipal employee from knowingly, or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions, which are of substantial value^[5], and which are not properly available to similarly situated individuals.

20. Having her April 10, 2018 municipal employment contract approved by the Board would have been a privilege of substantial value for Nutter's wife, because under the contract she would have been paid a base salary of \$81,000 for serving as Town Treasurer/Collector.

21. The privilege would have been unwarranted had the Board approved the contract due to undue pressure upon or intimidation of a Board member by Nutter.

22. By, as a Board member, publicly berating his Board colleague for not signing the contract, Nutter knowingly or with reason to know used his official position to attempt to secure the privilege for his wife through undue pressure and intimidation.

23. The privilege was not properly available to Nutter's wife or to other similarly situated individuals because no Town employees are lawfully entitled to have their employment contracts approved by the Board as a result of intimidation or undue pressure by a member of the Board.

24. Therefore, by, as a Board member, criticizing his Board colleague for not signing his wife's employment contract, Nutter, knowingly or with reason to know, attempted to use his official position to secure for his wife a privilege of substantial value that was not properly available to similarly situated individuals. In so doing, Nutter violated § 23(b)(2)(ii).

C. Voting to Approve His Wife's Appointment

Findings of Fact

25. On June 25, 2018, the Board had not approved Nutter's wife's employment contract. Her existing contract was scheduled to expire five days later.

26. On June 25, 2018, the then Interim Town Administrator submitted a list of proposed one-year and three-year appointed employees to the Board, pursuant to the Town Charter. Nutter's wife was included on the list as a proposed three-year appointment to the Town Treasurer/Collector position.

27. Nutter knew that his wife was included on the list of proposed appointments.

28. Nutter voted in favor of approving the list of appointments. The Board unanimously approved the list of appointments.

Conclusions of Law

Section 19

29. The Board's decision to accept the Town Administrator's proposed appointments was a particular matter.

30. As Town Treasurer/Collector is a compensated position, Nutter's wife had a financial interest in the Board's decision to accept the Town Administrator's proposed appointment of her.

31. Nutter participated in the particular matter as Board chair by voting to approve the appointments.

32. When he participated as Board chair in the particular matter, Nutter knew that his wife's appointment was included on the list of appointments, and that she was otherwise without a contract on June 30, 2018.

33. Therefore, by participating as Board chair in the Board's decision and vote to approve the Town Administrator's appointments, Nutter participated as a municipal employee in a particular matter in which he knew his immediate family member had a financial interest. In so doing, Nutter violated § 19.

D. Discussing Grievance that Named Nutter's Wife

Findings of Fact

34. On February 12, 2018, a town employee filed a grievance with the Board against the former Town

Administrator. Part of the grievance related to an allegation that the former Town Administrator authorized time sheets for some Town employees, including the "Tax Collector/Treasurer," that claimed they worked forty hours each week when they, in fact, worked fewer than forty hours.

35. Nutter knew that his wife was named in the grievance as a town employee who allegedly was allowed to file false time sheets.

36. On September 10, 2018, the Board met for approximately one hour in executive session to discuss the grievance.

37. Nutter personally and substantially involved himself, as Board chair, in discussing the merits of the allegations despite having been asked to recuse himself by another Board member. The grievance was not resolved during the executive session.

38. On December 3, 2018, the Board extensively discussed the grievance during its public meeting. Nutter personally and substantially involved himself, as Board chair, in discussing the merits of the allegations. Speaking as Board chair, Nutter stated his opinion that the alleged conduct did not constitute fraud and asserted that the allegations had already been investigated by two outside attorneys. Nutter voted against authorizing an independent investigation into the allegations. The majority of the Board members voted to authorize an independent investigation.

Conclusions of Law

Section 19

39. Nutter's wife is a member of his immediate family.

40. The Board's decisions to investigate the grievance, and the decision whether to authorize an independent investigation, were particular matters.

41. As a compensated municipal employee who was a subject of the grievance allegations and a potential subject of investigation, Nutter's wife had a financial interest in these particular matters.

42. Nutter participated in these particular matters by, as Board chair, discussing the merits of the allegations at the September 3, 2018 executive session and at the December 3, 2018 Board meeting, and by voting against authorizing an independent investigation into the claims at the December 3, 2018 Board meeting.

43. When he participated as Board chair in these particular matters, Nutter knew that his wife had a financial interest in an investigation of the allegations.

44. Therefore, by participating as Board chair in the Board's decisions of whether investigate the Town employee's claims and whether to authorize an independent investigation, Nutter participated as a municipal employee in particular matters in which he knew his immediate family member had a financial interest. In so doing, Nutter violated § 19.

Resolution

In view of the foregoing violations of G.L. c. 268A by Nutter, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the following terms and conditions agreed to by Nutter:

- (1) that Nutter pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$6,000 as a civil penalty for violating G.L. c. 268A, §§ 19 and 23(b)(2)(ii); and
- (2) that Nutter waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

[1] "Participate" means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. *G.L. c. 268A, § 1(j)*.

[2] "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. *G.L. c. 268A, § 1(k)*.

[3] "Immediate family" means the employee and his spouse, and their parents, children, brothers and sisters. *G.L. c. 268A, § 1(e)*.

[4] "Financial interest" means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. *See*

Graham v. McGrail, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. *See EC-COI-84-98*. The interest can be affected in either a positive or negative way. *EC-COI-84-96*.

[5] "Substantial value" is \$50 or more.

DATE ISSUED: October 21, 2019

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

SUFFOLK, ss.

**COMMISSION
ADJUDICATORY
DOCKET NO. 19-0011**

**IN THE MATTER OF
KATHERINE TOUAFEK**

DISPOSITION AGREEMENT

Introduction

The State Ethics Commission ("Commission") and Katherine Touafek ("Touafek") enter into this Disposition Agreement pursuant to Section 3 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On April 19, 2018, the Commission initiated a preliminary inquiry, pursuant to G.L. c. 268B, § 4(a), into possible violations of the conflict of interest law, G.L. c. 268A. On September 19, 2019, the Commission concluded its inquiry and found reasonable cause to believe that Touafek violated G.L. c. 268A, § 19.

The Commission and Touafek now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Katherine Touafek ("Touafek"), a resident of Providence, RI, was at all relevant times the Director of the School to Careers Partnership for the Blue Hills Regional Technical School District ("BHR"). The BHR includes the towns of Avon, Braintree, Canton, Dedham, Holbrook, Milton, Norwood, Randolph and Westwood, all but two of which are BHR School to Careers Partnership members.

2. The goal of the BHR School to Careers Partnership is to facilitate a prepared workforce by connecting public high school students with work-based learning.

3. At all relevant times, Touafek's duties as Director of the BHR School to Careers Partnership included identifying and securing placement for students in internships, organizing speakers, tours and seminars, and facilitating business connections for students and teachers.

4. At all relevant times, Touafek's appointing authority as Director of the BHR School to Careers Partnership was the BHR Superintendent. Touafek signed annual employment contracts with the Superintendent or his designee.

5. On three occasions in 2013 through 2015, Touafek, as the BHR School to Careers Partnership Director, participated in hiring her son to be a paid speaker at School to Careers Partnership symposiums and authorized payments to him totaling \$475.

6. On June 21, 2013, August 14, 2015, September 24, 2015 and November 4, 2015, Touafek, as the School to Careers Partnership Director, participated in hiring her son to provide compensated personal services including branding, designing, redesigning and upgrading the School to Careers Partnership website.

7. Between 2013 and 2015, Touafek's son was paid a total of approximately \$6,800 by the BHR for the School to Careers Partnership website work that Touafek hired him to perform.

Conclusions of Law

8. Except as otherwise permitted^[1], § 19 of G.L. c. 268A prohibits a municipal employee from participating^[2] as such an employee in a particular matter^[3] in which, to his knowledge, he or an immediate family member^[4] has a financial interest^[5].

9. As the BHR School to Careers Partnership Director, Touafek was at all relevant times a municipal employee as defined in G.L. c. 268A, § 1(g)^[6], given that in that capacity she personally performed services for the BHR, a municipal agency^[7], by contract of hire and/or by appointment.

10. Touafek's son is a member of her immediate family.

11. The decisions to hire her son to perform compensated services for the BHR School to Careers Partnership were particular matters in which Touafek participated as Director of the Partnership.

12. Each time Touafek decided to hire her son to provide compensated services to the BHR School to Careers Partnership, she knew he had a financial interest in her decision.

13. Therefore, by, as the BHR School to Careers Partnership Director, repeatedly participating in the hiring of her son to perform compensated work for the Partnership, Touafek violated § 19.

Resolution

In view of the foregoing violations of G.L. c. 268A by Touafek, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the following terms and conditions agreed to by Touafek:

1. that Touafek pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$4,000 as a civil penalty for violating G.L. c. 268A, § 19; and
2. that Touafek waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

^[1] None of the exemptions applies.

^[2] "Participate" means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. *G.L. c. 268A, § 1(j)*.

^[3] "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. *G.L. c. 268A, § 1(k)*.

^[4] "Immediate family" means the employee and his spouse, and their parents, children, brothers and sisters. *G.L. c. 268A, § 1(e)*.

^[5] "Financial interest" means any economic interest of a particular individual that is not shared with a substantial

segment of the population of the municipality. See *Graham v. McGrail*, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. See *EC-COI-84-98*. The interest can be affected in either a positive or negative way. See *EC-COI-84-96*.

[6] “Municipal employee” includes “a person performing services for or holding an office, position, employment or membership in a municipal agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis.” *G.L. c. 268A, §1(g)*; see *Commission Advisory 06-01*, 2006 SEC 862. While Touafek stated that she thought she was a private employee of a public-private partnership and that the BHR did not provide her with the conflict of interest law summaries required by *G.L. c. 268A, § 27*, or require her to complete the online training for municipal employees required by *G.L. 268A, § 28*, she was nonetheless a municipal employee as defined in the conflict of interest law and subject to the restrictions thereof.

[7] “Municipal agency” includes any instrumentality of city or town government. A regional school district is an instrumentality of each of its member municipalities and, thus, a municipal agency. *McMann v. State Ethics Commission*, 32 Mass. App. Ct. 421, 428 (1992).

DATE: October 22, 2019

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

SUFFOLK, ss.

**COMMISSION
ADJUDICATORY
DOCKET NO. 19-0012**

**IN THE MATTER OF
FAYETTE MONG**

DISPOSITION AGREEMENT

Introduction

The State Ethics Commission (“Commission”) and Fayette Mong (“Mong”) enter into this Disposition Agreement pursuant to Section 5 of the Commission’s Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to *G.L. c. 268B, § 4(j)*.

On November 27, 2017, the Commission initiated, pursuant to *G.L. c. 268B, § 4(a)*, a preliminary inquiry into possible violations of the conflict of interest law, *G.L. c. 268A*, by Mong. On May 16, 2019, the Commission concluded its inquiry and found reasonable cause to believe that Mong violated *G.L. c. 268A, § 23(b)(2)(ii)*.

The Commission and Mong now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Mong was admitted to the Massachusetts Bar in 2008.
2. At all times relevant, Mong was an attorney employed in the Office of Prosecutions of the Division of Professional Licensure (“DPL”).
3. DPL oversees twenty-eight boards of registration, including the Board of State Examiners of Plumbers and Gas Fitters and the Board of State Examiners of Electricians.
4. DPL has an Office of Investigations and an Office of Prosecutions. The Office of Investigations investigates complaints regarding licensees of the twenty-eight boards of registration. When warranted, the Office of Prosecutions prosecutes these matters.
5. Attorneys in DPL’s Office of Prosecutions negotiate agreed-upon disciplinary outcomes and litigate all hearings, including adjudicatory and sanctions hearings, and are ultimately responsible for resolving complaints.
6. In July 2017, Mong wished to purchase a house in Braintree (“the House”). At the time, Mong was on maternity leave from her position at the DPL.
7. On July 12, 2017, Mong made an offer to purchase the House which was accepted on July 13. The offer was contingent upon, among other things, a satisfactory property inspection and a mutually agreed upon purchase and sale agreement by July 21, 2017. The offer provided for Mong to have the House inspected on or before July 26, 2017 and gave Mong the option of revoking the agreement on or before July 31, 2017, if the property inspection revealed “serious structural, mechanical or other defects and if the repair of such defects would cost [Mong]... more than \$1,000.”
8. On July 15, 2017, Mong had the House inspected by a private home inspector. The inspector identified certain electrical and plumbing issues and recommended additional investigation by a licensed electrician and a licensed plumber.

9. The seller agreed to have certain electrical and plumbing issues repaired by July 31, 2017.

10. The parties extended the time to enter into a purchase and sale agreement beyond July 21, 2017 and continued to negotiate the terms of that agreement. As of July 30, 2017, Mong was trying to negotiate a purchase and sale agreement that would include several contingencies requiring the seller to make at seller's expense specific electrical, plumbing, HVAC and other repairs before the conveyance of the property to Mong.

11. The Town of Braintree ("Town" or "Braintree") Building Division ("Building Division") is responsible for the enforcement of the Town's zoning ordinances and local and state codes related to construction on, or the development, redevelopment or use of real estate in Braintree.

12. In July 2017, Andrew Lyne ("Lyne") was the Braintree Gas Inspector. At that time, Lyne held an active license with the Board of State Examiners of Plumbers and Gas Fitters.

13. On July 20, 2017, at 8:48 a.m., Mong spoke by telephone with Lyne. During the conversation,

- a. Mong identified herself as a prosecutor for DPL;
- b. Mong stated that she was interested in purchasing the House; and
- c. Mong told Lyne that she was concerned that the House had undergone gas and/or plumbing work without the appropriate permits.

14. In July 2017, Gerald Graham ("Graham") was the Braintree Inspector of Wires. At that time, Graham held an active license with the Board of State Examiners of Electricians.

15. On July 20, 2017, Mong left a voicemail for Graham regarding the House. In the voicemail, she identified herself as a prosecutor for DPL.

16. On July 27, 2017, Mong and Lyne spoke by telephone. They discussed arranging a time for several Building Division inspectors to visit the House. Lyne told Mong that the inspectors had agreed to inspect the House and he asked Mong to pick a date. Mong chose July 31, 2017.

17. In July 2017, Russell Forsberg ("Forsberg") was the Braintree Inspector of Buildings and Code Compliance Officer and held an active license with the Board of State Examiners of Electricians.

18. On Sunday, July 30, 2017, at 10:54 p.m., Mong sent an email to Lyne, Graham and Forsberg entitled, "[address of the House], Braintree, Ma code compliance." The email began, "I'm the prosecutor from the Division of Professional Licensure meeting you at 10 am Monday morning [July 31]."

19. In the July 30th email, Mong described many issues with the House and work she believed had been performed without permit or inspection.

20. In the July 30th email, Mong stated that her goal in obtaining an official inspection was to have all of the House's wiring, plumbing, gas, HVAC systems permitted, inspected, and fully up to code prior to the conveyance of the property to her.

21. The identification of all of the House's building code deficiencies on July 31, 2017 would have substantially aided Mong in negotiating to have the seller agree in the purchase and sale agreement to make all repairs to the House required to bring it fully up to code at the seller's expense prior to the conveyance of the property, or to lower the selling price, prior to the expiration of Mong's option to revoke the agreement.

22. On July 31, 2017, Marybeth McGrath, the Town of Braintree Director of Municipal Licenses & Inspection, contacted the owner of the House who told McGrath that she did not give her permission for Town inspectors to enter the House.

23. Given that Building Division requires permission from the current property owner in order to inspect a property, McGrath informed Mong, via email, that without the owner's permission, the Building Division inspectors would not inspect the House.

24. After receiving McGrath's email, Mong called Graham and left a voicemail for him regarding the inspection of the House. In the voicemail, Mong identified herself as "Fayette Mong, the prosecutor for the DPL," and expressed alarm that the inspectors were not coming to inspect the House, and asked Graham to call her back and let her know whether he was coming or not. Graham did not call Mong back.

25. Mong contacted the owner of the House and asked her to contact the Building Division and provide permission for the Building Division inspectors to enter the House.

26. The owner of the House informed Mong that it would be more appropriate for Mong to bring her private inspector back to the House. Mong did not do so.

27. On the afternoon of July 31, 2017, Mong's realtor informed the seller that Mong was not moving forward with the purchase, thus terminating the agreement.

Conclusions of Law

28. Section 23(b)(2)(ii) of G.L. c. 268A prohibits public employee from, knowingly, or with reason to know, using or attempting to use her official position to secure for herself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.

29. As a DPL prosecutor, Mong was a state employee as defined in G.L. c. 268A, § 1(q).

30. Mong, knowingly, or with reason to know, used her official position when she sought to arrange for Town of Braintree inspectors to inspect a house that she wished to privately purchase by repeatedly identifying herself as a prosecutor for DPL in her spoken and written communications with the Building Division.

31. Mong's use of her DPL position in connection her request for Town inspections of a house she wished to privately purchase was without legal basis or justification and, thus, unwarranted. The requested inspections were wholly unrelated to Mong's public duties. When she made the request, Mong should have been aware that her repeated invocation of her DPL prosecutor position created the risk that the Building Division would be unduly influenced by her official position in its response to her request for the inspections.

32. Had her request to the Building Division for the July 31, 2017 inspections of the House been honored, Mong would have secured inspections performed by licensed professionals, with the authority of the Building Division to enforce code compliance, at a time when the inspections and the identification of code issues very likely would have been highly advantageous to Mong in her negotiation of the purchase and sale agreement with the seller.

33. No similarly situated prospective homebuyers could properly invoke their public positions in requesting municipal inspections in order to expedite and ensure the

occurrence of the inspections at a time that would benefit their bargaining position in the purchase of a house.

34. Official inspections by the Building Division on July 31, 2017 as requested by Mong would have been of substantial value to her. If code violations had been identified, the owner of the house would have been legally required to remedy them, which would have given Mong significant leverage in her negotiation of the purchase and

sale agreement and very likely would have greatly aided her in accomplishing her goal of having the House brought fully up to code at the seller's expense before the conveyance of the property to her, or, alternatively, could have resulted in the lowering of the purchase price paid by Mong. Even if the Town inspectors had not found code violations, Mong would have had greater peace of mind when purchasing the House, which would have been of substantial value to her. In either case, the benefit to Mong would have been worth \$50 or more.

35. Accordingly, Mong's use of her DPL position to try to ensure that the House was inspected by three municipal inspectors on July 31, 2017 was the use of that position to attempt to secure for herself an unwarranted privilege of substantial value.

36. Thus, by invoking her position as a prosecutor at DPL with the Building Department, Mong, knowingly, or with reason to know, used her official position to attempt to secure for herself an unwarranted privilege of substantial value which was not properly available to similarly situated individuals. In so doing, Mong violated G. L. c. 268A, § 23(b)(2)(ii).

Resolution

In view of the foregoing violation of G.L. c. 268A by Mong, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, upon the following terms and conditions agreed to by Mong:

- (1) that Mong pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$2,500 as a civil penalty for violating G.L. c. 268A, § 23(b)(2)(ii); and
- (2) that Mong waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

DATE: October 23, 2019

COMMONWEALTH OF MASSACHUSETTS STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION
ADJUDICATORY
DOCKET NO. 19-0013

IN THE MATTER OF

KENNETH MICHNA
DISPOSITION AGREEMENT

Introduction

The State Ethics Commission (“Commission”) and Kenneth Michna (“Michna”) enter into this Disposition Agreement pursuant to Section 3 of the Commission’s Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On January 23, 2019, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A. On July 18, 2019, the Commission concluded its inquiry and found reasonable cause to believe that Michna violated G.L. c. 268A, §§ 17, 19, and 23(b)(2)(ii).

The Commission and Michna now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Michna is and was at all relevant times the Agawam Junior High School (“AJHS”) Band Director.
 2. The Great East Music Festivals (or “Festivals”) are a series of one-day music festivals for students in Massachusetts and surrounding states. The Festivals are held at several schools (“Host Schools”) during school hours, and occasionally on Saturdays, each spring. Music groups from schools in the area of each Host School perform, then receive an instructional clinic and evaluations from Festivals judges before spending the afternoon at a local theme park.
 3. During 2016 and 2017, the Festivals were operated by Inspire Arts and Music (“IAM”), a not-for-profit organization. At this time, IAM used both “Great East Music Festivals” and “Great East Festivals” as its “doing business as” name in operating the Festivals.
 4. In exchange for providing their facilities and equipment for the Festivals, IAM pays most Host Schools a flat fee of \$400 per day (“Hosting Payment”).
 5. A designee from the Host School’s music department (usually the Band Director or other staff member who facilitates the festival) serves as a host site coordinator (“Coordinator”) to provide site-specific information alongside an outside coordinator hired by IAM for the Festivals. Coordinators are paid a flat fee of \$100 per day (“Coordinator Payment”).
 6. IAM also hires two judges per festival to evaluate and critique students’ performances. Judges are paid a daily rate – either \$300 or \$350 per day – depending on the number of groups that perform.
- Judging and Coordinator Duties in 2017**
7. Because AJHS is located approximately ten minutes from Six Flags New England, it has served as a Festivals host school for many years.
 8. When Michna was hired as Band Director in 2014, he was asked to continue the school’s involvement in the Festivals. Michna has, in his capacity as Band Director, facilitated the school’s involvement in the Festivals each year. Michna discussed and obtained approval for festival dates with AJHS administration each year, but otherwise coordinated festival details as Band Director.
 9. In 2017, Michna was aware IAM paid individuals who served as host site coordinators and/or judges at the Festivals.
 10. In 2017, Michna coordinated with the Festivals director to schedule AJHS to host the Festivals on five Friday dates. Michna signed a contract between AJHS and IAM d/b/a Great East Music Festivals for AJHS to host the Festivals at a rate of \$400 per day for five days, totaling \$2,000. In the contract, Michna was listed as the school’s “primary contact,” and he signed the contract in his capacity as “representative from host school.”
 11. As Band Director of the host school, Michna served as a Coordinator on each of the five days that AJHS hosted the Festivals.
 12. Michna also worked as a judge on four of the five days that AJHS hosted the Festivals.
 13. Michna performed his Festivals judge and Coordinator duties during school days for which he was paid his usual Band Director salary.
 14. Michna was paid \$1,250 by IAM for judging the 2017 Festivals (\$300 per day on three days where eight or fewer groups performed and \$350 on one day that more than eight groups performed).
 15. Michna was also paid \$500 by IAM for Coordinator duties (\$100 per day that AJHS served as a host site).
 16. In total, IAM paid Michna \$1,750 for his services in connection with the Festivals hosted at AJHS in 2017.

Hosting Payment

17. In 2017, IAM issued a \$2,000 check payable to the “Agawam Junior High School Music Department” in payment for AJHS hosting the 2017 Festivals.

18. In his capacity as Band Director, Michna received the IAM payment and gave it to the AJHS Band Parents’ Association. The payment was then deposited into the Band Parents’ Association bank account.

19. The AJHS Band Parents’ Association is a private, parent-run booster organization. It operates independently of the school and is not subject to school oversight. Michna did not have any role in the creation or operation of the Band Parents’ Association bank account.

20. At the time, AJHS did not have an “Agawam Junior High School Music Department” bank account. Michna and at least some of his predecessors gave prior years’ Hosting Payments to the AJHS Band Parents’ Association to be deposited in the Association’s bank account and used to support the band.

21. After the completion of the 2017 Festivals, the AJHS Principal revised the school’s procedures for the Festivals. AJHS staff members no longer adjudicate at the Festivals or accept Coordinator Payments. Michna, in fact, has not judged at the Festivals since 2017. In addition, AJHS created a revolving bank account for the school band through its central office to replace the AJHS Band Parents’ Association account.

Conclusions of Law

Section 17(a)

22. Section 17(a) of G.L. c. 268A prohibits a municipal employee from, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receiving compensation from anyone other than the municipality in relation to a particular matter^[1] in which the municipality is a party or has a direct and substantial interest.

23. As AJHS Band Director, Michna is a municipal employee as that term is defined in G.L. c. 268A, § 1(g).

24. The contract with IAM under which AJHS agreed to host and hosted the 2017 Festivals was a particular matter in which the Town of Agawam, through AJHS, was a party and had a direct and substantial interest.

25. In 2017, Michna acted as a Coordinator in relation to AJHS’s contractually agreed hosting of the Festivals.

26. In 2017, Michna also served as a judge for four Festivals dates.

27. In 2017, Michna was paid a total of \$1,750 by IAM to perform these Coordinator and judging duties at the Festivals hosted by AJHS.

28. Michna’s receipt of this private compensation was not as provided by law for the proper discharge of his official duties as Band Director.

29. By receiving compensation from IAM for his judge and Coordinator duties at the 2017 Festivals, Michna received compensation from someone other than the Town of Agawam in relation to a particular matter in which the Town of Agawam was a party and had a direct and substantial interest. In so doing, Michna violated G.L. c. 268A, § 17(a).

Section 19

30. Except as otherwise permitted, § 19 of G.L. c. 268A prohibits a municipal employee from participating^[2] as such an employee in a particular matter in which, to his knowledge, he has a financial interest^[3].

31. The decision to have AJHS host the 2017 Festivals and AJHS’s contract with IAM to host the 2017 Festivals were particular matters.

32. Michna participated in these particular matters by, as Band Director, participating in the decision to have AJHS host five Festival dates in 2017 and signing a contract with IAM for AJHS to host the Festivals.

33. When he participated as Band Director in these particular matters, Michna knew he would be compensated as a Coordinator and likely also as a judge at the Festivals at AJHS.

34. Therefore, by participating as AJHS Band Director in AJHS’s decision and contracting to host five days of the 2017 Festivals, Michna participated as a municipal employee in particular matters in which he knew he had a financial interest. In so doing, Michna violated G.L. c. 268A, § 19.

Section 23(b)(2)(ii)

35. Section 23(b)(2)(ii) of G.L. c. 268A prohibits a municipal employee from knowingly, or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions, which are of substantial value, and which are not properly available to similarly situated individuals.

36. Michna’s AJHS Band Director work hours are a public resource. Michna’s use of this public resource to perform

privately compensated work at the 2017 Festivals was a privilege.

37. The privilege was of substantial value because Michna received his Band Director salary for his AJHS work hours and IAM paid Michna \$1,750 in 2017 for the work he performed during school hours.

38. The privilege was unwarranted because Michna's use of his paid public employee work hours to do privately paid work was not authorized by law or regulation.

39. The privilege was not properly available to Michna as a paid AJHS employee or to other similarly situated individuals.

40. Therefore, by using his AJHS Band Director work hours to do privately paid work at the 2017 Festivals, Michna knowingly or with reason to know used his official position to secure for himself an unwarranted privilege of substantial value that was not properly available to similarly situated individuals. In so doing, Michna violated G.L. c. 268A, § 23(b)(2)(ii).

41. In addition, the 2017 \$2,000 hosting payment check from IAM payable to the "AJHS Music Department" was of substantial value.

42. Michna, in his capacity as Band Director, received from IAM the \$2,000 payment and gave it to the AJHS Band Parents' Association.

43. The AJHS Band Parents' Association receipt of the \$2,000 IAM payment was a privilege of substantial value. The AJHS Band Parents Association's receipt and deposit of the IAM payment check was unwarranted because the check was made payable to the AJHS Music Department and no law or regulation authorized the Association, a private organization, to receive and deposit into its own account a check made out to a school department.

44. This unwarranted privilege was not properly available to the Association or similarly situated individuals.

45. Therefore, by, as Band Director, giving the Hosting Payment to the AJHS Band Parents' Association, Michna knowingly or with reason to know used his official position to secure for the Association an unwarranted privilege of substantial value that was not properly available to the Association or similarly situated individuals. In so doing, Michna violated of G.L. c. 268A, § 23(b)(2)(ii).

Resolution

In view of the foregoing violations of G.L. c. 268A by Michna, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Michna:

(1) that Michna pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$2,500 as a civil penalty for violating G.L. c. 268A, §§ 17, 19, and 23(b)(2)(ii); and

(2) that Michna waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

[1] "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. *G.L. c. 268A, § 1(k)*.

[2] "Participate" means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. *G.L. c. 268A, § 1(j)*.

[3] "Financial interest" means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. *See Graham v. McGrail*, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. *See EC-COI-84-98*. The interest can be affected in either a positive or negative way. *EC-COI-84-96*.

DATE: October 23, 2019

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

**IN THE MATTER OF
WILLIAM FRANCIS GALVIN**

PUBLIC EDUCATION LETTER

November 22, 2019

Dear Secretary Galvin:

As you know, the State Ethics Commission conducted a preliminary inquiry into whether you violated the conflict of interest law by using your position as Secretary of the Commonwealth (“Secretary”) to engage in political activity in support of your reelection to that office in 2018. You cooperated fully with the inquiry. On May 16, 2019, the Commission voted to find reasonable cause to believe that your actions, as described below, violated section 23(b)(2)(ii) of the conflict of interest law, General Laws chapter 268A, and authorized adjudicatory proceedings.

The Commission has determined that, in lieu of adjudicatory proceedings, the public interest would be better served by publicly discussing the facts revealed by the preliminary inquiry and explaining the application of the law to those facts in this Public Education Letter. The Commission chose this resolution because the application of the conflict of interest law to the type of actions described in this letter and to similar actions of other election officials is not explained in the Commission’s Public Employee Political Activity advisory and has not been the subject of a Commission decision or formal opinion. The Commission expects that, by resolving this matter through this Public Education Letter, you, and other public employees in similar circumstances, will have a clearer understanding of the conflict of interest law and how to comply with it in connection with future elections.

The Commission and you have agreed that this matter will be resolved publicly with this educational letter and that there will be no formal proceedings against you. You have chosen not to exercise your right to a hearing before the Commission. By agreeing to this public letter as a final resolution of this matter, you do not necessarily admit to the facts or the legal conclusions discussed below.

I. The Facts

You have served as Secretary since January 1995. The Secretary is elected statewide, serves a four-year term of office, and is the state’s chief election officer under the constitution and laws of the Commonwealth. Among other duties and responsibilities, the Secretary is charged with the supervision and administration of elections in conjunction with local election officials and has the authority to ensure, including by order, that local election officials comply with the law. The Secretary is also the chief securities regulator for Massachusetts. In 2018, you were a candidate for election as Secretary.

Information for Voters Booklet

Under the Massachusetts constitution and state law, the Secretary’s office is required to print and distribute an “Information for Voters” booklet prior to each general state election providing specified information on all statewide ballot questions. In order to reach all voters in the Commonwealth, the booklet is mailed to all residential addresses and post office boxes in the state and to other Massachusetts addresses, including public libraries, municipal clerks’ offices, dormitories and nursing homes, and is required to be available at all polling places.

To publish the Information for Voters booklet in a timely fashion, the Secretary’s office must issue a Request for Responses for the printing and delivery of the booklet before the exact number of ballot questions is known. This process commonly results in the booklet containing more pages than required to fulfil the Secretary’s legal duties. To fill pages which would otherwise be left blank, the Secretary’s office customarily includes in the booklet additional information relating to available governmental services. The 2018 edition of the booklet, like prior editions, contained information in addition to the required ballot-question related information. Indeed, the 2018 edition included exactly the same additional information as the 2016 edition, including the information that is the subject of this letter. In 2016, you were not candidate for election.

In the 24-page 2018 edition of the Information for Voters booklet, the top two thirds of page 21 is dedicated to descriptions of seven situations in which the Securities Division of the Secretary’s office helped victims of investment fraud, under the heading “If you have been the victim of investment fraud, Secretary Galvin’s office might be able to help.” Each description refers to assistance by “Secretary Galvin’s office,” rather than by “the Secretary of the Commonwealth” or “the Secretary’s office” or “the Securities Division.” The phrase “Secretary Galvin’s Office” appears twelve times on page 21. Page 20, by contrast, lists the “Services of the Secretary of the Commonwealth,” and does not use your name to describe ways the Secretary’s office can help Massachusetts residents. The remaining third of page 21 references services for domestic violence victims provided by the Secretary and does not use your name.

You told us that no one from your election campaign staff had any involvement in determining the content of the Information for Voters booklet. You also told us that you did not see the final 2018 booklet before its publication and did not know of the content of page 21, although you did know the booklet would contain “filler pages” and had reason to know that those pages would contain information from a prior booklet. You further told us that you had seen

the 2016 edition of the booklet and were aware it had content regarding the Securities Division, but you did not recall the specific language used in 2016.

Early Voting Signs

Massachusetts first implemented Early Voting for the 2016 general election. The Secretary's office is charged with the implementation, facilitation, and operation of Early Voting. The law requires the Secretary to prepare and print informational materials to assist local election officials with Early Voting.

The law requires municipalities to have at least one Early Voting location. As Early Voting locations are generally not the same as established polling places, in the early fall of 2016, the Secretary's office, in response to inquiries from local election officials concerning Early Voting signage, produced signs to be distributed to municipalities to identify Early Voting locations. These signs, stating "Early Voting Here" in large print on the top half, included on the bottom fifth your full name directly above "Secretary of the Commonwealth" and next to the state seal. While your name and title were printed in a font that was smaller than that used for "Early Voting Here," they were nonetheless a prominent feature of the sign. The graphics of the Early Voting sign are the same as used for other material distributed by your office, including Register to Vote signs. The 2016 Early Voting sign design was used without change again in 2018. For the 2018 election, approximately 1,000 of the Early Voting signs were printed and distributed to local election officials throughout the Commonwealth. You told us that you did not require local election officials to use the signs or mandate that they be displayed in any specific way. You also told us that you did not personally review the signs before they were printed and distributed in 2018, and that no one from your election campaign staff had any involvement in the signs.

II. The Conflict of Interest Law

Section 23(b)(2)(ii)

As Secretary, you are an elected state official and a state employee subject to the restrictions of the conflict of interest law, G.L. c. 268A. Section 23(b)(2)(ii) of the law prohibits a public employee from, knowingly or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals. The Commission has construed §23(b)(2)(ii) to prohibit public employees from using resources of their public offices to conduct election-related political activity. In the absence of a law or regulation permitting it, such use

of public resources is an unwarranted privilege that is not properly available to similarly situated individuals, such as other candidates for office, and, when the resources are of substantial value, it violates §23(b)(2)(ii).

Application of the Conflict of Interest Law to the Facts

Information for Voters Booklet

As Secretary, you are required to publish the Information for Voters booklet. It is not a conflict of interest law issue to include on otherwise blank pages of the booklet bona fide neutrally stated public service information. Because it serves the public interest to include such information, its inclusion is justified and not unwarranted. The above-described material on page 20 of the 2018 booklet and on the bottom third of page 21 of the 2018 booklet meet this description and their inclusion was not inconsistent with the conflict of interest law. The same is true of the registration and voting information on pages 16 through 19 of the 2018 booklet. By contrast, the inclusion in the booklet of material not required by law and providing a political advantage to a candidate on the ballot would not be in the public interest, not justified and not warranted.

As described above, the material on the top two-thirds of page 21 of the 2018 booklet repeatedly uses your name in describing investment fraud help provided by the Securities Division of the Secretary's office. The use of your name in the phrase "Secretary Galvin's office," was not required by law and was not necessary to inform potential victims of investment fraud of what the Securities Division can do for them.

The repeated use of the phrase "Secretary Galvin's office" in the Information for Voters booklet provided you with a political benefit as it highlighted and in effect personally credited you with specific achievements of the Securities Division during your service in the position to which you were seeking reelection. It was free positive publicity for you during your reelection campaign. This free publicity in an official state publication issued in connection with the general state election and distributed to all voters in the Commonwealth was a substantially valuable unwarranted privilege that was not properly available to you or any other candidate for elected office.

Early Voting Signs

Even if your office staff used the graphics which included your name on the Early Voting signs with no intent other than to ensure that they appeared authentic or official, the prominence of your name on the signs gave them the appearance and likely the effect of campaign signs for your election as Secretary. Candidates often expend considerable sums of money for signs bearing their names

and the office they are seeking and distribute them in visible locations to encourage name recognition by voters. The prominence of your name on the Early Voting signs resulted in voters likely seeing your name immediately before entering the voting location. As the Early Voting signs would have looked equally official if they had simply said “Secretary of the Commonwealth’s Office” and/or included the state seal without your name, the inclusion of your name on the signs was not necessary. Accordingly, the prominence of your name on Early Voting signs was a substantially valuable unwarranted privilege that was not properly available to you.

Reason to Know of Use of Official Position

As the Commonwealth’s chief election officer, you are ultimately responsible for the administration of elections, including the development and printing of the Information for Voters booklet and Early Voting signage. Before they were published and distributed in 2018, you had reason to know that the booklet repeatedly referred to “Secretary Galvin’s office” and the signs prominently featured your name given that you were aware they were being produced by the Secretary’s office with the same information and in the same form as had been used in 2016. Consequently, when as Secretary you allowed the publication and distribution of the 2018 Information for Voters booklet and Early Voting signs, you had reason to know that those materials would promote you as Secretary and provide you with substantially valuable unwarranted benefits.

Legal Conclusion

When as Secretary you published the 2018 Information for Voters booklet with language that in effect promoted your candidacy for re-election, and allowed the distribution of Early Voting signs on which your name and office were prominently printed, you had reason to know that you were using your official position to secure for yourself substantially valuable unwarranted privileges that were not properly available to you or any candidate for elected office. Accordingly, the Commission voted to find reasonable cause to believe that you violated §23(b)(2)(ii) of G.L. c. 268A.

Further Guidance

The Commission recognizes that it can be difficult to draw a line between legitimate public information and self-serving political activity when an elected public official uses his or her name or title purportedly to inform the public about the work or services of a public agency. The Commission concludes, however, that when the communication is made by an election official in connection with an election under that official’s authority, §23(b)(2)(ii) requires that it contain only truly neutral

information and not in any way promote the election official or any other candidate for office.

The Commission is not suggesting that the conflict of interest law requires you to entirely discontinue the use of your name on election-related materials when you are a candidate on the ballot. The Commission is aware that the law requires the Secretary to certify the ballot using his or her name. In addition, there are circumstances where the use of your name on election-related materials, while not required by law, serves a legitimate public purpose even if it may result in some incidental private benefit to you. For example, the “Dear Voter” letter signed by you as Secretary (on the second page of the Information for Voters booklet) was not unwarranted given that you provided important factual information to the public about registration, voting and the purpose of the booklet in your role as Secretary. Similarly, in general, the inclusion of your name and title on the bottom of the front page of the Information for Voters booklet was not unwarranted given that it served to identify you as the booklet’s publisher. In determining whether the use of your name in election-related materials when you are a candidate on the ballot is warranted under the circumstances, the key question is whether the public purpose of the materials can be accomplished without the use of your name and, thus, without any private benefit to you. In this case, omitting, or at least substantially reducing the prominence of your name on the Early Voting signs and omitting the repeated use of your name on page 21 of the booklet would not have lessened the public utility of the sign or booklet, but would have avoided a significant private benefit to you as a candidate. Accordingly, the use of your name as described above on the Early Voting sign and on page 21 of the booklet was not warranted.

III. Disposition

Based upon its review of this matter, in which you fully cooperated, the Commission has determined that the public interest would be best served by the issuance of this Public Education Letter and that your receipt of this letter should be sufficient to ensure your understanding of and future compliance with the conflict of interest law.

This matter is now closed.

Very truly yours,

David A. Wilson
Executive Director

ADVICE



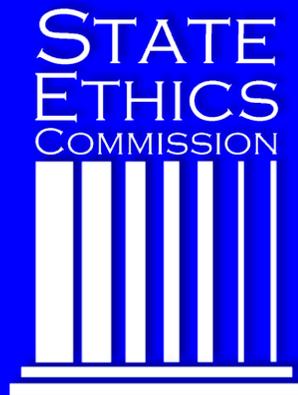
EDUCATION



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