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Executive Office for Administration and Finance
Division of Capital Planning and Operations

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GOVERNMENT DOCUMENTS
COLLECTION

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University of Massachusetts
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MEMORANDUM

TO: All Employees and Resident Engineers
FROM: Stuart D. Lesser, Deputy Commissioner
RE: Code of Conduct

Attached please find the revised Code of Conduct which has been developed by this agency with the approval of the State Ethics Commission. It is essentially the same document that had been previously developed in December of 1980 by the State Ethics Commission and the Bureau of Building Construction. The revisions in the new document reflect the change in agency status from the Bureau of Building Construction to the Division of Capital Planning and Operations. Please be advised that the "conflicts of interest" law applies to all public employees. The attached Code of Conduct is intended to assist Division employees in recognizing potential conflict situations that may develop in the course of their employment.

STUART D. LESSER
Deputy Commissioner

SDL/MAC/mc

Attachment

CONFLICT OF INTEREST CODE OF CONDUCT FOR
DIVISION OF CAPITAL PLANNING AND OPERATIONS EMPLOYEES

1. PRINCIPLES AND PURPOSES

The Massachusetts conflict-of-interest law, G.L. Chapter 268A, addresses situations in which personal interests of government employees conflict with the duties with which they have been entrusted by the public. Most of the provisions of the conflict law impose prohibitions on specific conflict situations. These provisions are interpreted by, with civil enforcement power in the hands of, the State Ethics Commission. Criminal enforcement is conducted by the Attorney General's Office.

One Section of the conflict law, section 23, establishes additional standards of conduct which are based on a definition of conflict which includes the appearance of wrong as well as actual wrongful conduct. Rather than imposing criminal penalties, section 23 is enforced by agency heads by means of "appropriate administrative action". The State Ethics Commission encourages governmental agencies to promulgate their own codes of conduct under section 23 in order that the agencies may recognize and deal with conflicts affecting them in particular and unique ways.

The conflict-of-interest law applies to all public employees, however, this Code of Conduct (the "Code") is tailored to address those general and specific problem situations that might confront any Division of Capital Planning and Operations (DCPO) employee. The Code is intended to provide a helpful guideline to DCPO employees that will enable them to recognize and avoid an actual conflict or an appearance of conflict, in the performance of their job duties.

In the Code, a concrete nexus is established between the standards of section 23, attached here as Appendix A, and the three subjects under which conflict problems are most likely to arise at the DCPO: outside employment, gifts, and confidential information. If a DCPO employee has any questions regarding the application of the Code, he may seek assistance from the Deputy Commissioner of the DCPO (the "Deputy Commissioner"). The Code will be revised as the need arises.

Please note that the Code pertains only to the standards established by section 23 of G.L. Chapter 268A. Although it may overlap other provisions of the conflict law, it cannot be relied on as an interpretation of any such provisions. The State Ethics Commission is available to render written advisory opinions on the requirements of all sections of G.L. Chapter 268A.

2. OUTSIDE EMPLOYMENT

a. Policy

DCPO employees may engage in outside employment provided that such employment activity is compatible with the full and proper discharge of the duties and responsibilities of their DCPO employment. Compatible activity may include paid work completely unrelated to the operations of the DCPO as well as civic, charitable, religious and community undertakings. It may also include some paid or unpaid outside activities which would contribute to technical or professional development. There are certain types of employment activity, however, which give rise to a real or apparent conflict of interest. Such activities are prohibited by the guidelines and limitations of 2c below.

b. Definitions

For the purpose of this Code, the following words shall have the following meanings:

"Immediate Family", the DCPO employee's spouse and the parents, children, brothers and sisters of the DCPO employee and his spouse.

"Outside Employment", any work, service or other activity performed with or without compensation by a DCPO employee other than in the performance of his official duties. It includes, but is not limited to, self-employment, consulting, teaching, lecturing, and writing.

"Participate", to participate in agency action or in a particular matter personally and substantially as a DCPO employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise.

"Particular Matter", any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge accusation, arrest, decision, determination or finding.

"Person or Organization", a business, individual, corporation, union, association, firm partnership, committee, or other organization or group of persons.

c. Guidelines and Limitations

Outside employment is incompatible, and hence prohibited, if it involves:

1. Employment during normal working hours unless the terms and conditions of DCPO employment permit it.
2. The use of DCPO facilities (e.g., office machines, supplies, office space, and telephones) and secretarial services.
3. Employment by a person or organization which:
 - a. Has, seeks to enter into, or could reasonably be expected to enter into, contractual or other direct or indirect business or financial relations with the DCPO.
 - b. Currently supplies, seeks to, or could reasonably be expected to supply, goods, and/or services that are subject to approval or review by the DCPO.
 - c. Holds interests that may be affected by the DCPO employee's performance or non-performance of his official duties; or
 - d. Is in any way attempting to affect the DCPO employee's official actions(s).
4. In addition to the absolute prohibitions of Chapter 3 above, guidance regarding prohibitions shall be found in parts (a), (b), (e) and (f) of section 23 such that DCPO employees may not perform outside activities which
 - ° impair their independence of judgment in the exercise of their duties (section 23 (a)).

- ° require them to disclose confidential information gained as a result of their DCPO employment [section 23 (b)].
- ° give a reasonable basis for the impression that their outside employer can affect the performance of their official DCPO duties (section 23 (e)).
- ° raise suspicion among the public that they are likely to be engaged in acts that violate the trust placed in them as DCPO employees (section 23 (f)).

d. Prospective Employment

1. If a DCPO employee contemplates terminating his employment with DCPO, he may negotiate future employment on his own behalf with all employment sources, including those covered by 2 c. 3 above. However, he may not participate as a DCPO employee in a particular matter in which to his knowledge the person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest without first making a written disclosure of the negotiations and arrangements concerning prospective employment to the Deputy Commissioner and the State Ethics Commission. The Deputy Commissioner, upon disclosure, shall determine whether to reassign any of the employee's work responsibilities in accordance with the procedures of section 6 of G.L. Chapter 268A, the conflict-of-interest law.
2. If a DCPO employee receives an unsolicited offer of employment from a person or organization covered by 2c.3 above, he may not, even though he does not pursue the offer by entering into negotiations or arrangements relating to it, participate in a particular matter as a DCPO employee in which to his knowledge the person or organization offering him employment has a financial interest without first making a written disclosure of the unsolicited offer to the Deputy Commissioner. The Deputy Commissioner upon disclosure, shall determine whether to reassign any of the employee's work responsibilities in order to avoid the impression of a conflict-of-interest.
3. A DCPO employee may not, directly or indirectly, negotiate employment with a person or firm that would fall under the prohibitions of 2c.3 above, on behalf of a member of the employee's immediate family.

e. Disclosure for Family Members

A DCPO employee shall disclose to the Deputy Commissioner those situations in which a member of his immediate family or his partner or business associate is an employee of a person or organization disallowed under 2c. 3 above. Disclosure shall be made in writing within thirty days of the publication of this Code or as soon as possible after the DCPO employee has reason to know of the existence of such an employment relationship.

3. GIFTS

a. Policy

A DCPO employee shall not solicit or accept, directly or indirectly, any

gift from a person or organization restricted under 2C 3 above.

b. Definitions

"Gift" as used in this Code means a payment, entertainment, subscription, advance, services, or anything of value. It shall include loans, the use of credit cards, travel and other reimbursement, tickets to any event, meals, holiday gifts, and goods and services supplied at less than fair market value (unless purchased in the ordinary course of business). It shall not include acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities, such as home mortgage loans; or anything of value received from a relative of the DCPO employee when the circumstances make it clear that the familial relationship rather than the business of the persons concerned are the motivating factors.

c. Gifts to Relatives

If a member of a DCPO employee's immediate family solicits or accepts anything of value from an individual or an organization covered by 2c. 3 above, there shall be a presumption that such transaction is prohibited under this section by virtue of a direct or indirect solicitation or acceptance of such thing of value by the DCPO employee.

To rebut such a presumption, an employee may, within seven days of learning of such a transaction, inform the Deputy Commissioner that the transaction occurred.

Such disclosure shall be in writing, and shall satisfactorily explain how a member of the employee's immediate family developed a relationship with a 2c. 3 source independent of the employee's relationship with the DCPO.

d. Return of Gifts

Anything of value received in violation of 3a shall be returned to the donor. If return is not possible, the item(s) shall be donated to a public or charitable institution. A report of such action, explaining why return was impossible shall be made to the Deputy Commissioner of the DCPO. When possible, the donor shall also be informed of this action.

4. CONFIDENTIAL AND INSIDE INFORMATION

a. Policy

A DCPO employee shall not directly or indirectly use confidential or inside information to further his own financial interests or that of members of his immediate family, his business associates or friends. For example, a DCPO employee shall not use DCPO information to give anyone an advantage in the bidding of contracts, the purchase of real estate, or other speculative or investment purposes. Such a use of information is a violation of section 23 (c) as well as a violation of a public trust under section 23 (f). Even if there is a legal right for a member of the public to receive certain confidential or inside information, a DCPO employee must not disclose it outside the mechanisms by which such information is normally, legally disseminated.

b. Definition

"Confidential or inside information", for the purpose of this Code, means information not generally available to the public that is intended to be available to DCPO employees only for a DCPO purpose and not for anyone's personal benefit.

5. ADMINISTRATION OF CODE

a. Applicability

This Code shall apply to all employees of the DCPO, except that, with respect to the Resident Engineers, the rules apply only to the construction project(s) with which they are associated as Resident Engineers for the DCPO.

b. Affirmative Duty to Make Inquiry

Prior to accepting outside employment from any person or organization associated with the building construction industry, and prior to soliciting or accepting a gift from such a person or organization, it shall be the affirmative duty of a DCPO employee to ascertain from the Deputy Commissioner of the DCPO that such person or organization does not fall within the prohibition of 2c. 3 above.

c. Reporting Violations

DCPO employees who have knowledge of violations of this Code by their fellow employees should report such violations to the Deputy Commissioner. If it is inappropriate to report such violations to the Deputy Commissioner, they should be reported to the State Ethics Commission.

d. Sanctions

In addition to sanctions which the State Ethics Commission may impose pursuant to G.L. Chapter 268A, any violation of sections 2, 3, or 4 of this Code by a DCPO employee may result in his suspension or termination from employment by the Deputy Commissioner.

e. Notification to Employees

A copy of this Code and a copy of all revisions thereof shall be provided to:

1. each DCPO employee, including Resident Engineers, at the time of issuance;
2. each new DCPO employee, including Resident Engineers upon beginning work for the DCPO; and
3. firms in the building construction industry doing business with the DCPO.

f. Authority

This Code is promulgated pursuant to G.L. Chapter 268A, section 23.

