

11-1-1988/187

The Commonwealth of Massachusetts State Ethics Commission

GOVERNMENT DOCUMENTS
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FEB 2 1993



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COMMISSION FACT SHEET

Board of Health Members Installing Local Septic Systems

In July of 1988, the Legislature amended Massachusetts G.L. c. 111 to allow local board of health (BOH) members to install septic systems in their own towns, provided that certain guidelines are followed. (See c. 121 of the Acts and Resolves of 1988, reprinted at the end of this Fact Sheet.) Board of health members had previously been prohibited from installing septic systems in their own municipalities under Section 17 of G.L. c. 268A, the conflict of interest law. These restrictions were intended to prevent potential conflicts that arise when an individual is the town "regulator" of the very work he or she is doing for private parties.

This fact sheet outlines the basic rules BOH members must follow in order to install local septic systems.

Municipal BOH members may now install septic systems in their own city or town as long as the municipality has approved their doing so by a vote of either the city or town council, or town meeting. If such approval has not been sought (or is not granted), the prohibition against BOH members installing local septic systems still applies.

Even when town approval to install local septic systems is granted, additional steps must be taken by BOH members to comply with the new law. If a BOH member has received voter approval to install septic systems in his or her own community, neither the installer nor any other members of the BOH may inspect the work.

The Legislative amendment states that inspection of such work must be done by either the BOH of a different city or town, or by a special assistant health agent appointed specifically for the purpose of inspecting sewer installations performed by BOH members. The special assistant health agent must be appointed by the Mayor, Board of Selectmen, Board of Aldermen or other governing board. If the governing board also serves as the BOH, any board members who wish to install septic systems in the community may not participate in the appointment of the special assistant health agent.

Without the city or town approval, the conflict law prohibits all town employees, including BOH members, from being paid by private parties to do work that is "in relation to" a matter of concern to the town. Municipalities have a direct and substantial interest in many matters related to the installation of septic systems (such as the issuing of a septic permit, the ongoing oversight of the installation and the final inspection). For these reasons, the Ethics Commission has ruled that if a BOH member installed septic systems for private parties, that member would be privately paid "in relation to" matters of interest to the town in violation of the conflict law.

The conflict law also prohibits BOH members from representing private clients before town boards or agencies. Therefore, a BOH member, absent the city or town approval outlined above, may not meet with the local Health Agent on behalf of his customer to discuss an inspection of his work.

If BOH members are designated as "special" municipal employees, they qualify for an exemption to the conflict law (regardless of whether town approval to install local septic systems has been granted) that permits them to represent clients before other town boards -- but not their own board. "Specials" may also be paid by private clients for doing work that requires town permits, as long as the permit issues from an agency different from their own. For example, in an August 1987 opinion (See EC-COI-87-31), the Commission told a BOH member that he could connect local water and sewer service lines because approvals for these connections were handled by the Water and Sewer Departments.

ISSUED: May 1, 1989

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Commission Fact Sheets are prepared and issued by the Public Education Division of the State Ethics Commission. They are intended to provide guidance to public officials and employees concerning practical applications of the conflict of interest law.

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BOARD OF HEALTH MEMBERS—SEPTIC TANK INSTALLATION

CHAPTER 121

AN ACT authorizing certain board of health members to engage in septic tank installation in certain areas.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to immediately authorize board of health members to engage in septic tank installation in certain areas, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Chapter 111 of the General Laws is hereby amended by inserting after section 26F the following section:—

Section 26G. In any city, town or district which accepts the provisions of this section notwithstanding the provisions of section seventeen of chapter two hundred and sixty-eight A, a septic system installer who is appointed or elected to the board of health may engage or work at the business of septic system installation within the area over which the board of health has jurisdiction while serving as a board member; provided, however, that neither the board of health member nor the board shall inspect a septic system installation done by said board of health member, or said member's partner, employer, employee or co-employee. The inspection of work so done shall be performed either by the board of health of another city, town or district or by a special assistant health agent who is appointed solely for the purpose of performing such inspections by the mayor of a city, the board of selectmen of a town or the governing board of a district. If the board of selectmen also serves as the board of health, said septic system installer shall not participate in the appointment of special assistant health agent.

This section shall take effect upon its acceptance in a city, by the vote of the city council, subject to the provisions of the charter of such city; in a town, by a vote of town meeting, in a municipality having a town council form of government, by a vote of the town council, subject to the provisions of the charter of such municipality; and, in a district, by the vote as above provided of the cities and towns of the districts.

Approved July 14, 1988