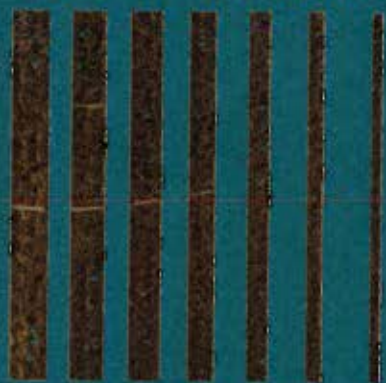
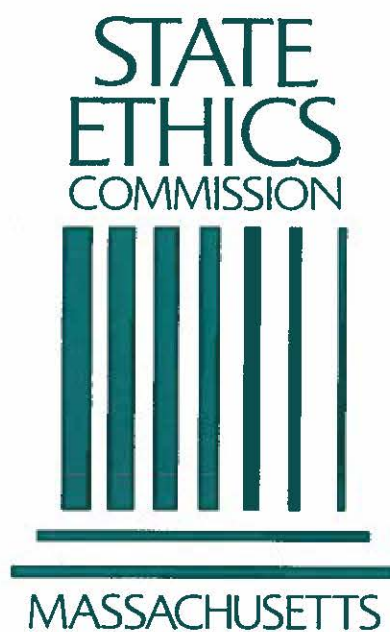


STATE
ETHICS
COMMISSION



MASSACHUSETTS

TENTH ANNIVERSARY EDITION
ANNUAL REPORT • FISCAL YEAR 1988



TENTH ANNIVERSARY EDITION
ANNUAL REPORT • FISCAL YEAR 1988

Table of Contents

Introduction to the Commission	
History.....	1
Membership.....	2
Investigation and Enforcement	
Introduction.....	3
Review of FY88 Activities.....	4
FY88 Enforcement Actions.....	6
Advisory Opinions	
Introduction.....	11
Summary of FY88 Opinions.....	11
Municipal Advisory Opinion Regulations.....	11
FY88 Commission Advisories.....	11
Court Cases.....	12
Financial Disclosure	
Introduction.....	13
SFI Filings for FY88.....	13
Public Education.....	14

State Ethics Commission

This Report covers the activities of the Massachusetts State Ethics Commission during FY88. It is issued pursuant to the mandate of Section 2 (1) of Chapter 268B and is intended to serve as a guide to the responsibilities of the Commission and as a record of its major activities and decisions during FY88. Copies of the Annual Report provided to the Governor and General Court include a breakdown of the Commission's expenditures over the fiscal year.

Introduction to the Commission

History

In 1978, the Massachusetts Legislature passed, and Governor Michael S. Dukakis signed, landmark legislation creating the State Ethics Commission. The enabling statute, Chapter 210 of the Acts and Resolves of 1978, revised and strengthened the existing conflict of interest law. In addition, it created a second law to provide for annual disclosure of private business associations and financial interests by certain public officials and employees. The new, independent Commission was empowered to interpret these two laws and to enforce them with civil penalties and sanctions.

General Laws c. 268A, the Massachusetts conflict of interest law, has regulated the conduct of public officials and employees in the Bay State since 1963. The law limits what public employees may do on the job, what they may do after hours or "on the side," and what they may do after they leave public service and return to the private sector. It also sets the standards of conduct required of all state, county and municipal employees in Massachusetts, articulating the premise that public employees owe undivided loyalty to the government they serve, and must act in the public interest rather than for private gain.

Until 1978, the conflict law was only enforced on the criminal level, under the jurisdiction of the Attorney General and District Attorneys. The Ethics Commission was established to serve as the primary civil enforcement agency for the conflict of interest and financial disclosure laws. The non-partisan Commission also provides advice and information to public officials and employees regarding the laws, and administers the financial disclosure law, which covers some 5,000 candidates, elected officials, and employees holding major policy-making positions in the legislative, executive and judicial branches of state and county government.

In the past ten years, the Commission's inner structure has remained intact, while its outer focus has shifted to meet the changing needs of the public employees who are subject to the laws enforced by the agency.

The Commission consists of five members appointed to staggered, five-year terms. Three of the commissioners are selected by the Governor, one by the Secretary of State and one by the Attorney General. No more than two of the gubernatorial appointments and no more than three members in all may be from the same political party. The commissioners serve part-time, are paid on a per diem basis, and employ a full-time staff.

The Commission staff is made up of four separate divisions: Legal, Enforcement, Statements of Financial Interest (SFI), and Public Education.

The Legal Division provides free, confidential legal advice regarding the conflict law, and issues both formal and informal opinions on specific future actions being considered by public employees. The Enforcement Division investigates alleged breaches of the laws, and represents the state at Commission hearings for individuals charged with conflict violations. The Public Education Division conducts educational seminars for public employees and issues explanatory materials and other publications detailing the Commission's activities. The SFI Division administers the financial disclosure law and inspects all SFIs filed with the agency.

Each division has undergone a number of shifts in direction as the needs and demands of public employees upon the Commission have changed, all the while maintaining the Commission's basic structure and procedures.

The Legal Division has moved in the course of the decade from concentration on formal advisory opinions to its current emphasis on informal staff letters and review of municipal conflict opinions rendered by town counsel. In Fiscal Year 1979, the Commission's first full year of operation, the agency issued 72 formal opinions and answered 70 other queries through informal staff letters; by FY82, the number of formal opinions nearly tripled to 193, while 85 informal staff letters were issued. In FY88, the Commission issued just 32 formal opinions, but wrote 726 informal staff letters and reviewed 198 opinions rendered by town counsel. This shift reflects the fact that as precedents set by the formal opinions established more of the law's general guidelines, the ability to address individual situations through informal correspondence, often re-stating opinions previously addressed by the Commission, increased.

The Enforcement Division has seen the number of complaints it receives rise from 50 in FY79 to 762 in FY88. Municipal employees, who in 1979 were not subjects of any complaints, are currently the subjects of nearly 80 percent of the complaints received by the Commission. From 1979 to 1985, the Enforcement Division saw a steady increase in the number of formal enforcement actions taken against individuals believed to have violated the law; but in 1985, questions regarding the Commission's jurisdiction forced a halt to most enforcement proceedings until the agency's jurisdiction was clarified through legislation the following year. Since then, there again has been an increase in the agency's enforcement actions.

The Public Education Division has written 43 advisories, guides and fact sheets explaining different aspects of the conflict of interest and financial disclosure laws, and has sponsored hundreds of seminars to help increase public awareness and understanding of the statutes. The seminar program has increased dramatically since the Commission began, from an average of 27 workshops and seminars from 1979 to 1983, to 60 seminars in FY88. The Public Education division has redirected its educational efforts from state to municipal employees, as local officials currently make up the largest percentage of the Commission's complaint subjects. The Public Education staff also compiles and distributes the Commission's Annual Reports, annual Rulings publications, and tri-annual Bulletin newsletter. An estimated 20,000 copies of Commission publications were distributed in FY88.

The Statements of Financial Interest division has collected and reviewed approximately 45,000 SFI documents since the creation of the financial disclosure law in 1979. What began as one of the Commission's major activities has become a routine matter within the agency, and a basically accepted requirement of public life for those officials and employees who must file. The SFI division has constantly achieved a high on-time filing percentage--more than 95 percent of those required to file in 1988 submitted their forms before the deadline. This high compliance rate can be attributed to the division's practice of mailing of Statements at least two months before the deadline, sending special letters to individuals who leave state service during the year reminding them of their obligation to file, sending reminder cards to all those who do not file by April 15, and imposing stiff civil penalties on those who fail to file on time.

Today, the State Ethics Commission of Massachusetts is recognized across the country as one of the nation's preeminent ethics commissions, with the widest jurisdiction and the greatest range of educational and enforcement activity. In September, 1988, the commission held a symposium to commemorate its Tenth Anniversary and renew its decade-long commitment to the pursuit of excellence and integrity in public service.

Membership

During FY88 the members of the Commission were:

Colin S. Diver, Chairman
Dean
Boston University School of Law

Archie C. Epps
Dean of Students
Harvard College

Frances M. Burns, Vice-Chairman
Supervisor, Student Prosecutor Program
Boston University School of Law
Term expired at the October meeting.

Reverend F. Washington Jarvis
Headmaster
Roxbury Latin School

Andrea W. Gargiulo
Chairwoman
City of Boston Licensing Board
Resigned at the April meeting.

A. John Pappalardo
Chief
Criminal Bureau
Attorney General's Office

Joseph J. Basile, Jr.
Senior Counsel
United Technologies
Hartford, CT

Investigation and Enforcement

Introduction

The Commission may initiate a confidential inquiry into any alleged violation of the conflict of interest or financial disclosure law. Anyone may call, write or visit the Commission to make a complaint. Complaints which do not suggest problems within the Commission's jurisdiction or which are clearly not worth pursuing are not opened. The remaining complaints are reviewed by the staff in a screening process. Many complaints involve situations which raise concerns under the conflict law, but formal investigation and enforcement is not considered appropriate because of the nature of the violation or mitigating circumstances. In these cases, a private educational letter providing information to ensure future compliance with the law is sent to the subject of the complaint.

After the staff review or screening, if the staff determines a case should be investigated further, authorization is sought from the appointed Commissioners to conduct a formal investigation called a "Preliminary Inquiry." The Staff investigates the matter and prepares a report of its findings for the Commission to consider. If the inquiry indicates that there is "no reasonable cause to believe" that either law (G.L. c. 268A or 268B) has been violated, the Commission terminates the inquiry confidentially. On the other hand, if "reasonable cause" is found, the Commission has a number of enforcement options:

1. The Commission may authorize the issuance of an Order to Show Cause. The Order serves as a formal complaint and initiates an adjudicatory hearing to determine whether a violation of the law has occurred. After the hearing is held, the Commission issues a Decision and Order deciding the case.
2. The Commission may, at its discretion, enter into a Disposition Agreement. A Disposition Agreement is a negotiated document in which the subject admits to having violated the law and agrees to pay a civil fine. The Commission has the authority to impose up to a \$2,000 fine for each violation of either G.L. c. 268A or 268B.
3. The Commission may authorize the issuance of a Public Enforcement Letter, with the subject's consent. A Public Enforcement Letter lays out the facts of the case and violations of law. The subject, however, does not have to admit to having violated the law or pay a civil fine.
4. The Commission may sue in Superior Court to recover any economic advantage gained by individuals or businesses in violation of the conflict law and may seek to recover up to three times that amount in additional damages.
5. The Commission may refer any matter to the Attorney General, a district attorney or the United States Attorney for criminal investigation and prosecution.

Short of finding reasonable cause, and in lieu thereof, the Commission may issue a confidential compliance letter to advise an individual of violations and to explain the consequences of future misconduct. The issuance of a compliance letter is limited to situations which do not involve willful misconduct, significant economic advantage or gain by the subject, significant economic loss to the commonwealth, the use of undue influence or confidential information, or the potential for serious impact on public confidence in government.

Review of FY88 Activities

Complaints

In FY88, 762 complaints were brought to the Commission for investigation. This represents approximately a 7% increase over the 712 complaints filed in FY87. There were 55 complaints from FY87 which were not opened until FY88; therefore, the following statistics will reflect a total of 817 complaints acted on during FY88.

623 (about 76%) of the 817 complaints alleged violations by municipal officials or employees, another 149 involved people who work for the commonwealth, 21 complaints involved county officials, 9 involved private individuals or corporations and 15 complaints involved combinations of the above.

Of the 817 complaints, 544 came from private citizens or public officials; 16 were referrals from law enforcement or other state, county or municipal agencies or officials; 25 were generated by Commission staff members; 51 were drawn from information reported by the media; 19 were generated from staff review of financial disclosure forms and 162 were anonymous. The Commission responded as follows to these complaints:

- 435 complaints were closed because the complaint did not suggest sufficient facts within the Commission's jurisdiction
- 183 cases were opened (i.e. put into screening)
- 78 complaints were merged with other cases already opened because they alleged the same or additional violations by the same subject and
- 121 complaints had not yet been acted upon as of June 30, 1988

Screening

In FY88 the staff closed 213 cases following informal staff screenings. Another 47 screenings led to a formal investigation. These screenings were based on complaints received during FY88 and FY87. As of June 30, 1988 there were 78 ongoing screenings.

Of the 213 cases closed after screening:

- 11 cases involved no violation of the conflict law.
- 72 cases were closed because the staff decided not to pursue the matter further.
- 2 cases involved SFI violations, which closed at the screening stage.
- 120 cases were closed because the situation was one in which a private educational letter seemed appropriate.
- 8 were dismissed or referred to other agencies.

Formal Investigation

The Commission authorized a total of 78 formal inquiries in FY88. These inquiries were based on complaints received during FY88 and previous years.

Of those 78 inquiries:

- 8 involved alleged violations of the financial disclosure law by:
 - 5 state officials or employees
 - 3 county officials
- 70 involved alleged violations of the conflict of interest law by:
 - 51 municipal officials or employees
 - 19 state officials or employees

The staff completed 44 formal inquiries during FY88. These inquiries included investigations initiated during FY88 and previous years.

These 44 cases resulted in:

- 19 "reasonable cause" findings that the law had been violated (14--conflict law, 5--financial disclosure law)
- 5 "reasonable cause" findings that the conflict law had been violated but in lieu of authorizing adjudicatory hearings, the Commission issued Public Enforcement Letters
- 10 Confidential Compliance Letters issued in lieu of finding "reasonable cause" (all conflict law))
- 1 was resolved with a combination of the above-mentioned procedures
- 8 "no reasonable cause" findings that the law had been violated (7--conflict law, 1--financial disclosure law)
- 1 termination without findings (conflict law).

Public Resolutions

In FY88 29 "reasonable cause" findings resulted in:

- 6 Decision and Orders involving violations of the law (5--conflict law, 1--financial disclosure law)
- 11 Disposition Agreements involving violations of the conflict law
- 6 Disposition Agreements involving a violation of the financial disclosure law
- 3 Public Enforcement Letters involving violations of the conflict law
- 1 Disposition Agreement involving a violation of the financial disclosure law
- 2 Conflict of interest cases were dismissed

In addition, there were 9 reasonable cause findings which had not yet resulted in the release of a Disposition Agreement or the issuance of an Order to Show Cause as of June 30, 1988.

As of June 30, 1988 there were 22 public proceedings pending for which an Order to Show Cause had been issued after a reasonable cause finding.

Penalties

In FY88 the Commission assessed civil penalties totaling \$15,000 from 22 individuals who were found to have violated the conflict of interest or the financial disclosure law.

FY88 Enforcement Actions

In the Matter of James V. Thompson (August 4, 1987)

In a Disposition Agreement with the Commission, James V. Thompson, Ludlow Town Counsel, admitted to having violated the conflict law by representing his private development company before the planning board during 1986 in a request for a zoning change. After this meeting, Thompson, acting as town counsel, advised the board to rehear all matters considered at the meeting, including his company's request.

Also during 1986, Thompson was retained by a private client to represent him on the sale of a piece of property in Ludlow. The land subsequently went to the town for a 90 day right of first refusal. Thompson noticed a mistake on his client's notice concerning the 90 day notice when he was reviewing correspondence to the board of selectmen. Thompson wrote up a corrected form and filed it with the board on behalf of his client.

Thompson admitted he violated Section 17 of the conflict law by representing his company before the planning board and by acting as attorney for a client when resubmitting the corrected notice to the board of selectmen. He violated Section 19 by recommending that the planning board rehear all matters at their August meeting, including his company's request for a zoning change. He was fined \$500 for these violations.

In the Matter of Walter Brewer (August 28, 1987)

Walter Brewer, Massachusetts Civil Defense Agency (CDA) Supply Officer, was fined \$2,000 for sending CDA vehicles to his son's Southboro automotive garage on 110 occasions between 1985 and 1987 for a total bill to the state of almost \$9,000. In a Disposition Agreement with the Commission, Brewer admitted he violated Section 6 of the conflict law, which prohibits state employees from participating in any matter which affects their children's financial interest.

In the Matter of Roger H. Muir (September 17, 1987)

The Commission fined Roger H. Muir, Division of Employment Security (DES) Northeast Regional Director, \$250 for his involvement in the 1985 promotion of his son to a position under his supervision.

Muir admitted in a Disposition Agreement that he violated Section 6 of the conflict law by signing his son's promotion recommendation in March of 1985 and by signing off on his son's performance evaluations in 1986 and 1987.

In the Matter of William Highgas, Jr. (October 1, 1987)

William Highgas, Jr., Massachusetts Trial Court Associate Justice of the Probate and Family Court Department, admitted in a Disposition Agreement that he twice violated the financial disclosure law. He was fined \$1,500 for the violations.

Highgas violated the financial disclosure law when he concealed from public scrutiny the fact that he was involved in private financial dealings with an attorney by failing to disclose certain information on his 1983 and 1984 financial disclosure forms.

The private attorney, pursuant to an understanding with Highgas, put up a \$10,000 down payment and purchased a lot of land for Highgas in December of 1982 the Disposition Agreement said. A month later Highgas paid the \$60,000 purchase price for the lot and the attorney's \$10,000 was returned to him. But the title remained in the attorney's name for almost a year. During and after this time, from 1983 to 1986, Highgas made numerous court probate appointments to the attorney, which garnered him almost \$25,000 in fees, according to the Disposition Agreement.

Highgas failed to indicate on his 1983 Statement of Financial Interests (SFI) that the attorney was the record owner of the lot during 1983. Highgas also failed to identify the December 1984 transfer to him and his wife of the deed and legal title to the lot from the attorney on his 1984 SFI.

The Disposition Agreement states that Highgas' filing of false SFIs "whether or not intentional, were detrimental to the public interests protected by (the conflict of interest and financial disclosure laws) in that they concealed from public scrutiny the fact that Judge Highgas was involved in personal financial dealings...with an attorney to whom he made numerous probate appointments."

In the Matter of James Geary (October 5, 1987)

The Commission issued a Decision and Order concluding its nepotism case against Avon Selectman James Geary. The Commission imposed a \$250 fine, ruling that Geary violated section 19 of the conflict law by voting for his brother's appointment as acting and then permanent police chief in 1985. Geary, as selectman, also violated the law when he signed the chief's three-year contract with the town.

In the Matter of Edward Rowe (October 6, 1987)

The Commission fined Edward Rowe, Massachusetts Bay Transit Authority (MBTA) Engineering and Maintenance Department Acting Chief Engineer, \$250 for signing off on documents which authorized the hiring of his son as a temporary and then permanent employee for the MBTA. In a Disposition Agreement with the Commission, Rowe admitted he violated Section 6 of the conflict law, which prohibits state employees from official participation in the hiring process of an immediate family member.

In the Matter of Yvonne B. Desrosiers (October 6, 1987)

In a Disposition Agreement, The Commission fined Yvonne B. Desrosiers, Acushnet Treasurer/Tax Collector, \$250 for hiring her son as a Deputy Tax Collector in 1984. After being notified by the Commission that the appointment of her son raised conflict concerns, Desrosiers dismissed her son effective April 1987.

In the Matter of Mary L. Padula (October 30, 1987)

The Commission fined State Senator Mary L. Padula (R. Lunenburg) \$750 for requesting that her daughter be hired as a legislative aide for her district office working out of Padula's home in Lunenburg. Padula admitted in a Disposition Agreement with the Commission to violating Section 6 of the conflict law by participating in the hiring of her daughter. Padula's daughter resigned her position effective January 14, 1987.

In the Matter of Robert P. Sullivan (October 30, 1987)

In a Decision and Order, the Commission ordered Robert P. Sullivan, Tewksbury Planning Board member, to pay a civil fine of \$1,000 for violating Section 17 of the conflict law on two occasions in 1984 by representing a development corporation of which he was president and 50% owner before the planning board. The issues before the planning board involved the development of condominiums in Tewksbury.

Section 17 of the conflict law prohibits municipal officials from acting as the agent for a private party before town boards.

The legal dispute in the case centered on whether Sullivan was acting as "agent" for the corporation or whether he was acting on his own behalf when he spoke at the planning board meetings about the condominium development. Municipal officials may represent their own personal interests before town boards or agencies. The Commission concluded that Sullivan was acting on behalf of his corporation and his 50% partner when he spoke at the planning board meetings.

In the Matter of Marguerite Coughlin (November 5, 1987)

In a Disposition Agreement, Marguerite Coughlin, Beverly Planning Board member, admitted she violated the conflict law by voting on a zoning matter affecting her neighbor. There were no fines assessed in the case because Coughlin's actual financial interest in her neighbor's plan was minimal.

In the Matter of Abdullah Khambaty (November 16, 1987)

In a Decision and Order, the Commission cleared Abdullah Khambaty, Gloucester School Committee member, of one allegation that he participated officially at a city council meeting in a matter affecting his wife's financial interest. The Commission found that Khambaty spoke at this meeting not as a school committee member but as a private citizen.

But Khambaty was found to have violated Section 19 of the conflict law by participating officially at two school committee executive sessions involving the same issue. Because of the minor nature of the violation, no fine was imposed.

Khambaty's case centered on a local controversy surrounding the acceptance of professional development grants for Gloucester teachers and the terms and conditions under which these state funds were to be distributed to the teachers. Khambaty's wife is a Gloucester school teacher.

In the Matter of George Prunier (November 18, 1987)

In a Public Enforcement Letter, the Commission said that George Prunier, Grafton Selectman, appeared to have violated Section 19 of the conflict law by participating in the deliberation and negotiations for the town's purchase of a private landfill site directly across the street from his home. But the Commission decided against taking formal action against Prunier because he did not stand to gain financially by his participation and, in fact, placed the town's interest before his own.

The Letter issued to Prunier states, "Without exception, abutting property owners are presumed to have a financial interest in matters affecting the value of the abutting property...It is irrelevant whether the matter beneficially or adversely affects your financial interest. As long as there is some effect, Section 19 prohibits your participation."

In the Matter of John P. Burke (December 3, 1987)

The Ethics Commission reprimanded State Senator John Burke (D. Holyoke) in a Public Enforcement Letter for receiving a rifle worth over \$400 from a Westfield company in 1986. Burke accepted the rifle as a token of gratitude from Savage Industries, a gun manufacturing company, for his extensive efforts during 1985 and 1986 to obtain state assistance and refinancing for the company, which was in danger of going bankrupt.

Section 3 of the conflict law prohibits any public employee from accepting a gift of substantial value (\$50 or more) from anyone with whom the official has or has had official dealings--even if the motivation for the gift is to express gratitude or to foster goodwill.

The Commission resolved Burke's case with a Public Enforcement Letter--rather than going forward with formal enforcement proceedings--because of several mitigating factors. The role that Burke took in assisting the company located in his district was a normal part of his constituency services. He listed the gift on his financial disclosure form. The gift was given after Burke's involvement in getting state assistance to Savage, so that it clearly represented a token of appreciation rather than an inducement for him to intervene on behalf of the company. And finally, Burke returned the rifle to Savage.

In the Matter of Paul X. Tivnan (January 11, 1988)

In a Disposition Agreement reached with the Ethics Commission, Paul X. Tivnan, Worcester County Commissioner, was fined \$500 for voting to approve then Sheriff-elect John Flynn's transfer request to fund promotional changes for House of Correction employees.

Tivnan's son, Michael, and his daughter, Maureen Anderson, are employees at the Worcester County House of Correction. They were two of seventeen individuals who received promotions and salary increases under Flynn's proposed reorganization of the Jail and House of Correction.

Section 13 of the conflict law prohibits county officials from participating in promotion or salary decisions which will affect the financial interest of their children. In the Disposition Agreement, Tivnan admitted he violated this section of the conflict law when he voted and signed the request form to fund Flynn's suggested salary increases.

In the Matter of Robert Egan (February 11, 1988)

The Commission fined Robert Egan, Natick Zoning Board of Appeals (ZBA) member, \$1,000 for representing a private client before the ZBA while he served on the ZBA and again shortly after he resigned.

On November 13, 1985, Egan represented Sharrat Associates before the ZBA in support of their appeal. On November 20, 1985, Egan again appeared before the ZBA on the issue of offstreet parking.

By representing the developers before the ZBA concerning their special permit application, Egan violated sections 17 and 18 of the conflict law.

In the Matter of Clarence D. Race (February 24, 1988)

Clarence D. Race, Egremont Board of Selectmen Chairman, was fined \$250 by the Ethics Commission for sending a letter under his official signature as Chairman of the Board to the Department of Environmental Quality Engineering (DEQE) in November of 1983 concerning a parcel of land he owned.

Race was in the process of selling the parcel of land, which was located in a watershed area. He wrote to DEQE in his official capacity to ask for their review of the engineer's plans for a septic system on the site.

Section 19 of the conflict law prohibits a municipal employee from officially acting on any particular matter which affects his own financial interest.

In the Matter of Michael Riley (February 24, 1988)

The Commission ordered Michael Riley, Boston Public Library and Boston School Department Custodian, to give up one of his jobs within 30 days. The Commission found Riley in violation of the conflict law by holding the two paid municipal positions.

Section 20 of the conflict law generally prohibits a municipal employee from holding more than one paid job with the same city or town.

The Commission said in its Decision and Order that if Riley did not resign one of his jobs within 30 days, he would be fined \$1,000.

In the Matter of Frank Magliano (March 3, 1988)

The Commission fined Frank Magliano, Brockton Building Inspector, \$1,000 for hiring his son in 1986 as a storekeeper in the Public Property Department, in violation of the conflict of interest law.

Section 19 of the conflict law prohibits municipal officials from participating in the hiring of an immediate family member. Immediate family is defined as the municipal official and his or her spouse and both of their children, parents, brothers and sisters. This section of the law also prohibits municipal officials from participating in salary or promotion decisions or from supervising immediate family members.

The Disposition Agreement stated that the proposed position of storekeeper was approved by the City Council in the spring of 1986. Magliano subsequently made a provisional appointment of his son, Daniel, to the position effective June 30, 1986.

After media inquiries and reports of possible conflict of interest, Daniel Magliano resigned his position effective April 1987.

In the Matter of Rev. Benjamin Lockhart (May 16, 1988)

In a Disposition agreement reached with the Commission, Reverend Benjamin Lockhart, Agawam Town Councillor, admitted to having violated the conflict law by voting on a pay raise ordinance that included a salary increase for his son. Reverend Lockhart was fined \$250 for the violation.

Reverend Lockhart voted on a salary increase package for the Agawam Fire Department that included a pay increase of more than \$1,000 for a position held by Reverend Lockhart's son.

In the Matter of Paul H. Sullivan (May 23, 1988)

The Commission fined Paul H. Sullivan, Tewksbury Selectman, \$500 for violating the Massachusetts conflict of interest law by representing a local development firm in a matter of direct and substantial interest to the town.

In a Decision and Order, the Commission ruled that Sullivan acted as agent for FIC Associates when he spoke on the firm's behalf at Town Planning Board meetings on September 24 and 26, 1984, thereby violating Section 17 of the conflict law.

Section 17 prohibits municipal officials from acting as the "agent" or attorney for a private party before town boards.

The Commission also cleared Sullivan of alleged violations of Section 19 of the conflict law, which bars a municipal official from participating in matters which are of financial interest to an immediate family member. Sullivan's father, Kevin, is a partner in FIC Associates.

In the Matter of Joseph D. Cellucci (May 23, 1988)

Joseph D. Cellucci, Cambridge Inspectional Services Department (CISD) Director, was ordered to pay \$1,000 in fines for three violations of the state's conflict of interest law. The Commission found that Cellucci attempted on three separate occasions to control jurisdiction over inspection and enforcement of the state's sanitation code for a property owned by members of his immediate family.

In a Decision and Order, the Commission stated Cellucci tried to secure exclusive jurisdiction over a two-family dwelling at 150 Holworthy Street in Cambridge, first for his own department and then for the state. At all times relevant to the investigation, the property was owned by members of Cellucci's immediate family.

Section 19 of the conflict law prohibits municipal officials from participating in particular matters in which they or their immediate family members have a financial interest.

In the Matter of William Turner (May 27, 1988)

In a Disposition Agreement reached with the Commission, William Turner, West Bridgewater Zoning Board of Appeals (ZBA) Chairman, admitted he violated the conflict law by acting as agent for a real estate trust for which he was a trustee, and by asking the ZBA to grant permits for that trust. He was fined \$1,000.

Turner appeared before the ZBA on behalf of Turner Industrial Park Realty Trust (TIRPT) on three occasions between 1982 and 1986, and filed building permit and variance applications on behalf of TIRPT in 1985 and 1986, the Agreement said.

At all times pertinent to the Commission's investigation, Turner was a trustee and one-third owner of TIRPT, as well as chairman of the ZBA, the Disposition Agreement said. Section 17 of the conflict law prohibits a municipal employee from acting as agent or attorney for anyone other than the municipality in connection with a particular matter that is of direct and substantial interest to the town.

In the Matter of Donald P. Zerendow (May 27, 1988)

In a Disposition Agreement, the former chief of the Medicaid Fraud Control Unit (MFCU) in the Office of the Attorney General was fined \$1,000 by the Commission for violating the conflict of interest law, Section 5(b), by personally appearing before the MFCU in connection with a criminal investigation that was within his official responsibility while he was a state employee.

Mr. Zerendow admitted he violated Section 5(b) of the conflict law by having a meeting, telephone conversations and written correspondence with an MFCU attorney and investigator in connection with an alleged Medicaid fraud case that was opened while he was still head of the MFCU.

In the Matter of Kenneth Cimeno (June 21, 1988)

Kenneth Cimeno, Dedham Assistant Building Inspector, was fined \$500 for violating the conflict of interest law by signing and issuing building permits for two sites owned by a realty trust for which he and his parents served as trustees.

In a Disposition Agreement reached with the Commission, Cimeno admitted to having violated Section 19 of the conflict law and agreed to pay the fine. Section 19 prohibits municipal officials from acting in their official capacity on any matter in which they or members of their immediate family have a financial interest.

Advisory Opinions

Introduction

Individuals covered by the conflict of interest and financial disclosure laws are entitled to receive advice about whether their proposed activities are permissible under G.L. c. 268A or G.L. c. 268B. State, county and municipal employees may submit a written request to the Commission for an advisory opinion. Most requests will be answered fully within two weeks, and all formal opinions of the Commission serve as a legal defense in subsequent proceedings concerning the requesting employee's conduct, unless the request omits or misstates material facts.

Although advisory opinions issued by the Commission are confidential, the Commission publishes summaries of advisory opinions and prepares public versions of the opinions with identifying information deleted. Copies of these opinions are available from the Commission.

Summary of FY88 Opinions

The Commission received 748 formal requests for advisory opinions during FY88. This represents a 23% increase over the 608 formal requests received in FY87. Thirty-two of the FY88 requests were answered with formal Commission advisory opinions; the remaining requests were handled through informal letters issued by the Commission's Legal Division. Among the topics addressed by the Commission's formal advisory opinions during FY88 were the following:

1. The propriety of receiving gifts and discounts by public employees (see EC-COI-87-37, 87-38, 88-5).
2. The types of matters which are of direct and substantial interest to municipalities and therefore are beyond the permissible outside activities of municipal employees (see EC-COI-87-31, 88-1, 88-6, 88-7 and 88-9).
3. The types of organizations whose financial interests will require abstention by public officials who also serve as organization board members (see EC-COI-88-4).
4. The types of activities subject to the one year "personal appearance" ban applicable to former public employees (see EC-COI-87-27).
5. The degree of involvement in a matter which will constitute personal and substantial participation (see EC-COI-87-32).

Municipal Advisory Opinion Regulations

The Commission requires all conflict of interest opinions issued by city solicitors or town counsels to be filed with the Commission for review. The regulation is intended to insure that opinions issued to municipal employees and officials are consistent with Commission precedent. The rule requires the Commission to be bound by all municipal opinions, unless the Commission notifies the city or town counsel within 30 days of any objections to the opinion. The opinion will be binding on the Commission in any subsequent proceedings only with respect to the person who requested the opinion and those upon whose behalf he or she requested the opinion. The Commission will not be bound by municipal opinions if material facts were omitted or misstated by the person or if the person acted in bad faith in securing the opinion.

In FY88 the Commission reviewed 198 municipal opinions. The Commission staff concurred with 183 of the opinions and informed municipal lawyers in 10 instances that their advice was inconsistent with Commission decisions, and therefore, would not be binding on the Commission. Five other opinions were moot.

FY88 Commission Advisories

Advisories are informational and are intended to explain Commission precedents and policy in subject areas of frequent inquiry. The advisories are reprinted in the BULLETIN, distributed to some 3,000 subscribers.

Advisory No. 13 - Agency. This advisory explains Section 17 of the conflict law, which generally prohibits municipal officials from representing private parties before the town they serve.

Quinn V. State Ethics Commission (SJC November, 1987)

In December 1987, the Supreme Judicial Court (SJC) ruled in favor of the Ethics Commission in its case against Robert Quinn of Norwood, comptroller for the Massachusetts Water Resources Authority. Quinn has served in state government since 1977; he has also served as a bail commissioner for Norfolk County during that time.

Quinn had appealed to the SJC the Commission's May 1986 decision which prohibited him from serving as a full-time state employee and collecting compensation as a bail commissioner. At the time, the Commission said that all 34 of the state's 87 bail commissioners who are full-time state employees must either stop setting bail for compensation or leave their full-time state position to comply with the law. Implementation of the court's decision has been temporarily delayed in order to minimize any adverse impact on bail setting practices.

The SJC agreed with the Commission's ruling that a bail commissioner did have a contract with the state and was acting "primarily to fulfill the interests of the Commonwealth." Section 7 of the conflict of interest law prohibits state employees from having a financial interest in a contract made by a state agency.

There is an exemption that would allow a full-time state employee to serve as bail commissioner. Under Section 7(b), if the bail commissioner's job was publicly advertised and certain other conditions were satisfied, a qualified full-time state employee could apply for and be appointed as bail commissioner. The Officer of Bail Administrator, however, in the past has selected the bail commissioners without public notice or advertising.

Financial Disclosure

Introduction

When the financial disclosure law was enacted in 1978, Massachusetts became the forty-first state to require certain public employees and elected officials to disclose certain information concerning their private financial interests. Chapter 268B requires annual disclosure of interests and associations which might give rise to conflict or the appearance of conflict between a person's public responsibilities and his private interests. The law covers all elected officials, all candidates and certain designated employees of state and county government. Municipal officials and employees are not included among those covered by the disclosure requirements of chapter 268B.

SFI Filings for FY88

Designations

In order to determine which state and county employees should be required to file SFI's, the Commission requests that by the first of each year, the administrative head of each state and county agency submit a "designation list" of individuals holding major policy-making positions within his or her department. By January 1, 1988, the Commission had received lists from over 200 heads of state and county agencies requiring SFI filing by a total of 4397 public employees and elected officials.

Staff Inspection of SFI's-Action Toward Compliance

Failure to file on time, or to amend a deficient or incomplete Statement within 10 days of receipt of a Formal Notice of Delinquency, is a violation of c. 268B. The Commission may levy penalties, including fines of up to \$2,000 for each violation. The statute also provides criminal penalties of fines and imprisonment for filing a false Statement.

In FY88, all but 187 of 4,713 designated public employees and elected officials (over 95 percent) filed on time. This is a slightly higher percentage than in FY87 when 227 of 4,397 designated filers missed the deadline.

This year, formal Notices of Delinquency were mailed to the 187 individuals (159 appointed employees and 28 elected officials) who missed the May deadlines. Of the 187, only 26 individuals failed to file in a timely manner. Of the 26 individuals who failed to file within 10 days of receipt of a Formal Notice:

1. The Commission authorized eight preliminary inquiries, which are in the process of being resolved.
2. Nine individuals filed shortly after their 10-day grace period expired, incurring fines of less than \$100.
3. One individual was hand served a Formal Notice and has yet to respond.
4. Nine filers could not be located and their cases were closed.

Chapter 268B provides that any individual who submits a written request to the Commission may inspect and obtain a copy of any Statement filed with the Commission. In FY88, the Commission honored requests from 183 different sources, including requests from private citizens, journalists and representatives of law enforcement agencies. The statements of 1,300 filers were reviewed by persons making such requests, the bulk of them in May, June and July, just following the Commission's receipt of Statements filed for calendar year 1987. This represents an increase over the 956 filers whose SFI's were distributed in FY87.

Education, Assistance and Review

Throughout the year, Commission staff is available to assist filers in completing their Statements. The Commission also reviews each SFI filed to determine completeness, consistency with prior years' filings, possible conflict-of-interest violations and compliance with the Financial Disclosure Law. In FY88, 1,200 filers were required to amend their Statements. The majority of the amendments were the result of misunderstanding of the SFI instructions and were relatively minor in nature.

However, the Commission has been increasingly concerned with the number of mistakes resulting from carelessness, especially on behalf of those filers who make the same mistake year after year.

In FY89, the Commission plans to address this issue by informing filers that by filing a negligent or carelessly completed Statement they risk incurring a civil penalty.

Public Education

Seminars

The Public Education Division conducts conflict of interest seminars for public employees and elected officials to help them avoid potential conflicts that may arise between their private interests and public positions. The Commission staff conducted 60 seminars during FY88. These 60 seminars included 2,480 attendees from:

- 20 state agencies
- 26 municipalities
- 12 municipal associations
- 2 newspapers

Publications

The Commission writes, publishes, and distributes guides, pamphlets, advisories and fact sheets that explain various provisions of the conflict law and keep constituents informed of recent Commission rulings. The Public Education Division also writes and distributes the Commission's newsletter, which is sent to an estimated 3,000 subscribers.

In FY88, approximately 20,470 publications/educational materials were distributed:

3,900	On average ten callers (including reporters) per day request information and five "walk ins" take information from the lobby
9,920	2,480 seminar attendees on average took four publications
6,000	The Bulletin/issued three times a year
400	The Annual Report
250	Rulings

In FY88, the Public Education Division wrote and distributed several new educational materials:

Fact Sheets for municipal officials regarding voting on matters affecting abutters, for Board of Health members who wish to install septic systems, and for public employees who wish to serve as agents for private clients in matters concerning the state or municipality...

Summaries of the Conflict of Interest Law for City Councilors, Town/City Clerks, and Board of Health members...

Advisory No. 13 - Agency

During FY88, three new pamphlets for state, county and municipal officials and employees were distributed at Commission seminars, and have been given to reporters and private citizens upon request. One community asked for 200 copies of the municipal pamphlets to be included in employees' paycheck envelopes. A "paycheck enclosure" initiative in other communities is planned for FY89.

Two Practical Guides to the Conflict Law were also written, one for state and one for municipal officials and employees. The State Guide has been distributed to every Legislator and reporter at the State House, and the Municipal Guide has been distributed at municipal seminars. A targeted mailing is planned for FY89. The County Guide will be written during FY89.

STATE ETHICS COMMISSION



MASSACHUSETTS

The State Ethics Commission
One Ashburton Place
Room 619
Boston, MA 02108
(617) 727-0060

FY88 Commission members

Colin S. Oliver, *Chairman*
Joseph J. Bonito, Jr.
Frances M. Burns
Anne C. Epp
Andrea W. Gargallo
Reverend F. Washington Jarvis
A. John Pappalardo

Executive Director

Andrew B. Crane