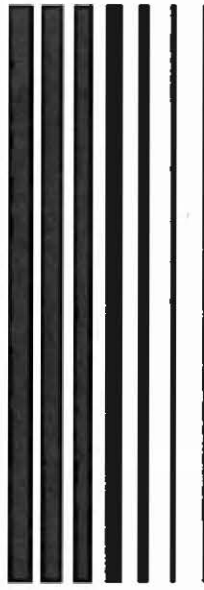


STATE ETHICS COMMISSION

Annual Report

Fiscal Year 1999

**STATE
ETHICS
COMMISSION**



MASSACHUSETTS

STATE ETHICS COMMISSION

ANNUAL REPORT

FISCAL YEAR 1999

IN MEMORY OF
Commissioner Paul J. Liacos

Table of Contents

Introduction to the Commission

History	1
Summary of Fiscal 1999	2
Membership	3
20th Anniversary Symposium	3

Advisory Opinions

Commission Opinions	4
Municipal Advisory Opinions	5

Financial Disclosure..... 6

Public Education

Seminars	7
Internet Home Page	8
Publications	8

Investigation and Enforcement

Complaints	9
Staff Investigations	9
Formal Inquiries	9
Public Resolutions	10
Penalties	10

FY 99 Enforcement Actions..... 11

STATE ETHICS COMMISSION

This report covers the activities of the Massachusetts State Ethics Commission during FY99. It is issued pursuant to the mandate of §2(l) of Chapter 268B and is intended to serve both as an explanation of the Commission's responsibilities and as a record of its major activities during the fiscal year.

INTRODUCTION TO THE ETHICS COMMISSION

HISTORY

Since 1963, the Massachusetts conflict of interest law has regulated the conduct of public officials and employees in the Bay State. Massachusetts General Laws c. 268A 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. It also sets standards of conduct required of all state, county and municipal employees and officials, articulating the premise that public servants owe undivided loyalty to the government they work for and must act in the public interest rather than for private gain. Until the law was revised in 1978, it was enforced solely as a criminal matter under the jurisdiction of the Attorney General and the various local District Attorneys.

In addition to strengthening the conflict of interest statute, Chapter 210 of the Acts and Resolves of 1978 established a financial disclosure law requiring public officials, political candidates and certain designated public employees to annually file a statement of their financial interests and private business associations. Chapter 210 also created the State Ethics Commission, and empowered it to interpret and enforce G.L. c. 268A and 268B. The Commission now serves as the primary civil enforcement agency for the conflict of interest and financial disclosure laws. It also provides free legal advice, education and other information regarding these laws.

The non-partisan Commission consists of five members appointed to staggered, five-year terms. Three 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 of the Commission as a whole -- 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, under the supervision of the executive director. The Legal Division provides free, confidential advice to public employees regarding the legality of proposed activities; it also represents the Commission in court. The Statements of Financial Interests ("SFI") Division administers the financial disclosure law and audits SFIs filed with the agency. The Public Education Division conducts free seminars for public employees and publishes a wide range of educational materials. The Enforcement Division investigates and prosecutes alleged violations of the laws.

**SUMMARY OF
FISCAL YEAR
1999**

The Legislature appropriated \$1,395,249 for the Ethics Commission in FY99. This translates to a cost of approximately \$3.87 for each state, county and municipal employee under the Ethics Commission's jurisdiction and a cost of \$0.23 for each citizen of the Commonwealth of Massachusetts.¹ The Commission does not retain revenue.

The Legal Division handled 4,504 oral and written requests for confidential advice regarding the conflict of interest and financial disclosure laws, reviewed an additional 191 advisory opinions issued by municipal counsels, and prepared six formal Commission Advisory Opinions. The division carried a backlog of 44 unanswered requests for advice into FY00.

During FY99, 4,601 elected officials, candidates and designated major policy-making public employees filed Statements of Financial Interest ("SFIs") with the Commission.

A total of 5,776 people attended the 212 educational seminars and workshops conducted by the Public Education Division in FY99. A homepage on the internet was established in April 1998. Since then, an estimated 4,000 visits to the site each month have occurred.

The Commission's Enforcement Division reviewed 752 complaints in FY99. It issued 193 educational letters, conducted 104 initial investigations and recommended 65 cases for formal review by the Commission. The Division negotiated 25 Disposition Agreements, totalling \$8,150 in fines, and issued four public enforcement letters. There was also one adjudicatory hearing which resulted in a decision.

On Wednesday, October 21, 1998, the Commission sponsored a symposium, "Twenty Years Later: Do Ethics Panels Work?", to mark the occasion of the Commission's 20th anniversary. The Commission spent \$5,770 of the \$15,000 earmarked for the event and reverted \$9,230 to the general fund.

¹These costs were calculated using information from the U.S. Census Bureau and the U.S. Bureau of Labor Statistics. The 1998 estimated population for Massachusetts is 6,147,132. The estimated number of state employees is 101,400 and of local employees (county and municipal employees) is 258,500. These figures do not include uncompensated state, county and municipal officials such as voluntary board members who are also covered by the law.

MEMBERSHIP

During FY99 the members of the Ethics Commission were:

George D. Brown, Chair
Professor
Boston College Law School
Newton Center, MA

Augustus F. Wagner, Jr., Chair
Partner
Goodwin, Proctor & Hoar
Boston, MA

Lynne E. Larkin, Vice Chair
Attorney
Arlington, MA

Edward D. Rapacki
Partner
Ellis & Rapacki
Boston, MA

Stephen E. Moore
Partner
Warner & Stackpole
Boston, MA

Paul Liacos
Former Chief Justice
Supreme Judicial Court
Boston, MA

20TH ANNIVERSARY SYMPOSIUM

On Wednesday, October 21, 1998, the Commission sponsored "Twenty Years Later: Do Ethics Panels Work?" to mark the occasion of the Commission's 20th anniversary. The symposium was held at the State House and consisted of a panel discussion and a keynote address luncheon. Eighty-four people attended.

The keynote speaker was U.S. Congressman Barney Frank. The panel discussion addressed the question, 'Can Ethics be Regulated/Legislated?' The panel was moderated by former Ethics Commissioner and former Corporate Counsel for the City of Boston, now of Counsel, Chaote, Hall & Stewart, Herbert P. Gleason and included: Frank Anechariarico, Professor of Government and Law, Hamilton College, co-author of *The Pursuit of Absolute Integrity: How Corruption Control Makes Government Ineffective*; Martin Healey, Executive Director of the Rhode Island Ethics Commission; Carol Lewis, Professor of Political Science, University of Connecticut, author of *The Ethics Challenge in Public Service: A Problem-Solving Guide*; and Meredith McGehee, Vice-President for Legislative Policy, Common Cause.

The Commission received \$15,000 from the Legislature to sponsor the seminar, spent \$5,770 and reverted \$9,230 to the Commonwealth's general fund.

ADVISORY OPINIONS

COMMISSION OPINIONS

Individuals covered by G.L. c. 268A and G.L. c. 268B are entitled to receive confidential advice about whether proposed activities are permissible under the laws. Most requests for advisory opinions are answered fully within four to six weeks. In FY99, the Commission's Legal Division handled 548 requests for advice through informal letters, and 3,950 requests via telephone calls.

Formal opinions of the Commission serve as a legal defense in subsequent proceedings concerning the requesting individual's conduct, unless the request omits or misstates material facts. The Commission issued six formal advisory opinions in FY99. Although advisory opinions issued by the Commission are confidential, the Commission publishes summaries of formal advisory opinions as well as public versions of such opinions with the identifying information deleted. Copies of these opinions are available from the Ethics Commission. The Commission issued the following formal advisory opinions during FY99:

- **EC-COI-98-6** - For the purposes of G.L. c. 268A, §4, the term "serves" as it appears in the phrase "serves on no more than sixty days" means substantive services performed on any portion of a calendar day. Some of the functions a lawyer or paralegal perform may be ancillary and should not be counted toward the 60-day limit.
- **EC-COI-98-7** - A state employee is advised under §4 that she may not, in her private law practice, represent employees in their claims of unlawful discrimination against their employers filed and pending with the Massachusetts Commission Against Discrimination because the MCAD has a direct and substantial interest in such matters.
- **EC-COI-99-1** - G.L. c. 268A, §5(a) would prohibit a former state employee from being compensated by, or acting as agent for, a company in selling or marketing its services under a statewide blanket contract to individual public agencies because the company's contractual relationship with individual agencies is part of the same particular matter (the statewide blanket contract) which the former state employee participated in as a member of the procurement management team that helped to select that company.
- **EC-COI-99-2** - A city councilor would have a financial interest in a contract with his city that is prohibited under §20 if, as an associate in a law firm, he were to provide legal services to the partner in his firm who is counsel under contract to the school committee. For the purposes of the city councilor's qualifying for the §20(b) exemption, in his

capacity as a city councilor, he is not employed by an agency that regulates the activities of the school committee, and he does not have official responsibility for any of the activities of the school committee.

- **EC-COI-99-3** - Section 17 prohibits a call firefighter who is also a professional engineer, and who is not a special municipal employee, from designing fire protection systems for installation in that town given that such designs must be approved by the fire department before a building permit may issue. Because the firefighter's own agency is the equivalent of a permit-granting agency, the 1998 amendment to §17 allowing greater latitude for "moonlighting" employees does not apply to these facts. Section 17 also prohibits another firefighter who is a full-time employee from performing, in his private capacity, oil burner work which requires a permit from the fire department. The permit is a matter in which the town has "a direct and substantial interest," and, because the firefighter is seeking a permit from his own agency, the 1998 amendment to §17 does not apply.

- **EC-COI-99-4** - Section 19(a) prohibits a selectman from approving or disapproving a school department payroll warrant because such approval or disapproval constitutes participation in a particular matter in which the selectman's immediate family has a financial interest. By following the procedures for invoking the rule of necessity, the selectman would be allowed to approve or disapprove a school department payroll warrant under circumstances where a statute requires the town to pay town employees weekly (or on another prescribed basis); another selectman is absent; and, due to the disqualification of the selectman under §19, the board cannot obtain a quorum to act before it is statutorily required to do so.

**MUNICIPAL
ADVISORY
OPINIONS**

All conflict of interest opinions issued by city solicitors or town counsel must be filed with the Commission for review, to ensure that these opinions are consistent with Commission precedent. The Commission has 30 days to notify the municipal counsel of any objections to an opinion; if there are no objections, the advisory opinion can serve as a legal defense in any subsequent Commission proceeding. A municipal counsel's opinion is legally binding only with respect to the person who requested the opinion, and is not binding if material facts were omitted or misstated by the requestor, if the opinion was not obtained in advance of the relevant action, or if the requestor otherwise acted in bad faith in securing the opinion. In FY99, the Commission reviewed 191 municipal opinions, concurring with 75% of them. The Commission staff provided clarification of 31 municipal opinions, and informed municipal lawyers in 16 instances that their advice was inconsistent with Commission precedent and therefore would not be binding on the Commission.

FINANCIAL DISCLOSURE

Massachusetts G.L. c. 268B requires the annual disclosure of financial interests and private business associations by all elected officials, candidates and "designated" public employees of state and county governments. "Designated" employees include individuals holding major policy-making positions within their employing agencies. Commission staff are available to assist filers in completing their Statements of Financial Interests ("SFIs"). 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 the financial disclosure law. The Commission may levy fines of up to \$2,000 for each violation. In the event a false statement is filed, the Commission may levy additional fines, withhold pay or seek criminal penalties.

In FY99, 4,601 public employees and elected officials were required to file SFIs. A total of 189 filers missed the May filing deadlines and were sent formal notices of delinquency. Of these, 159 people filed during the 10-day grace period. Twenty-eight delinquent filers failed to file within the 10-day grace period and became the subjects of preliminary inquiries. An additional two delinquent filers could not be located.

Upon written request, any individual may inspect and obtain a copy of any SFI filed with the Commission. During FY99, the Commission honored 1,138 such requests from 125 sources, including the media, private citizens and law enforcement agencies.

PUBLIC EDUCATION

SEMINARS

The Commission provides free seminars on the conflict of interest and financial disclosure laws. A total of 5,776 people attended the Commission's 212 seminars during FY99, an increase of 50% more seminars from the previous year. Seminar sponsors included:

Municipalities

Agawam Police Academy, Auburn, Barre, Blackstone, Boston Department Managers, Boston Department of Neighborhood Development, Boston Inspectional Services, Boston School Department, Boxborough, Buckland, Burlington, Cambridge Police Department, Cambridge, Carver, Chelmsford, Chicopee, Concord, Cummington, Dartmouth, Deerfield, Dennis, Eastham, Halifax, Hatfield, Holden, Holland, Hopkinton, Hull, Kingston, Lancaster, Lee, Lenox, Leverett, Lexington, Littleton, Lunenburg, Lynn Housing Authority, Marshfield, Mendon, Merrimac, Milford, Millis, Nantucket, North Attleborough Water Dept., Norton, Otis, Reading, Royalston, Seekonk, Sharon, South Hadley, Springfield Police Academy, Stockbridge, Stow, Swampscott, Townsend, Wayland, Webster, Wenham, West Boylston, West Newbury, Westport

County Agencies:

Barnstable County Fire Training Academy
Barnstable County Sheriff's Office

State Agencies:

Administration & Finance/Human Resources Division, Board of Library Commissioners, Clerk Magistrates/Northampton, Committee on Criminal Justice, Corporation for Business, Work and Learning, Department of Corrections Training Academy/Medfield/Bridgewater, Department of Economic Development, Department of Elder Affairs Citizens Advisory Committee, Department of Environmental Protection/Springfield, Department of Public Safety Bureau of Special Investigations/Taunton, Department of Telecommunications and Energy, Disabled Persons Protection Commission, Division of Banks, Division of Medical Assistance, Executive Office of Environmental Affairs, Freshman Representatives, Holyoke Community College, Human Services Council, Lottery Commission, Mass. Finance Development Agency/Ft. Devens, MASSPORT/Fire Rescue Service, National Guard Headquarters Military Division, Northwestern Office of the District Attorney, Office of Probation, Office of the State Auditor - Auburn/Boston/Brockton, Operational Services Division Spring Vendor Fair, Pension Reserve Investment Management Board, Soldiers Home/Holyoke, State Police/Curry College/Boston, State Laboratory Institute, State Treasurer's Office, Trial Court Administrative Offices, UMass/Boston Harbor Campus/ Facilities Operations/Learning Center, Western Office of the Attorney General/Springfield and Westfield State College Staff

Professional Associations:

Braintree League of Women Voters, Cable TV Talk Show -Methuen, Cape Cod Commission Economic Development Council, City Solicitors & Town Counsels Association, East Coast Investigating Services, Environmental Management Association, Essex Cable Access Show, Franklin Regional Council of Governments- Greenfield, Hampshire Regional Council of Governments - Northampton, Mass. Association of Assessing Officers, Mass. Association of Health Boards - Lowell/ Marlborough/Northampton/Taunton, Mass. Association of School Committees, Mass. Association of Town Finance Committees, Mass. Certified Public Purchasing Officials Program - Boston/Northampton/ Andover, Mass. City Clerks Association, Mass. Collectors & Treasurers Association, Mass. Councils On Aging Association, Mass. Water Resources Association, National Association of Housing Redevelopment Organization., Plumbing and Gas Inspectors Association, Small Town Administrators of Mass. Association, Southeastern Mass., Cape Cod and the Islands Councils on Aging, Suffolk University/ Legislative Process/MPA Program, TeenPact, Time Warner Cable Talk Show, Worcester Region District 6 Building Inspectors - Hubbardston

**INTERNET
HOME
PAGE**

The Commission maintains a home page on the Internet at www.state.ma.us/ethics. In FY99, summaries of all advisory opinions and enforcement actions were added to the site to increase public access to the Commission's precedent. The home page also includes: an agency profile and history; a summary of the previous fiscal year; explanations of the law for both the public and private sector; most of the Commission's educational materials and disclosure forms, which can be copied; and a list of Commission services.

PUBLICATIONS

The Commission publishes a wide variety of educational materials explaining various provisions of the conflict law and keeps constituents informed of recent rulings. Most of this information is available on the Commission's home page. The Commission's newsletter, *The Bulletin*, is distributed to an estimated 3,550 subscribers each spring and fall. About 90 copies of the Commission's *FY98 Annual Report* were distributed during the fiscal year, as were 38 copies of the annual compilation of the Commission's public actions, *State Ethics Commission Rulings*. The Commission also issued 14 press releases describing its public enforcement actions.

INVESTIGATION AND ENFORCEMENT

COMPLAINTS

Anyone may call, write or visit the Commission to make a complaint regarding an alleged violation of the conflict of interest or financial disclosure laws. In FY99, the Enforcement Division received 664 complaints from the following sources: 47% from private citizens, 28% from anonymous sources, 5% from media reports, 3% from other law enforcement agencies, 8% from reviews of financial disclosure forms, 4% were generated by Commission staff, and an additional 5% were "self-reports" made by public employees regarding their own conduct. About 74% of the complaints alleged violations by municipal employees, 20% implicated state employees, 3% referenced county employees and 3% cited private individuals or corporations.

A total of 752 complaints were received or pending in FY99. About 48% were closed within two weeks of being received because the allegations fell outside the Commission's jurisdiction, were clearly frivolous or otherwise did not justify continued investigation. About 7% of the complaints were consolidated with existing cases. About 26% of the complaints were resolved with private educational letters without any investigating being done.

STAFF INVESTIGATIONS

About 11% of the complaints received or pending in FY99 were assigned to an attorney/investigator team in the Commission's Enforcement Division. The Commission closed 39 cases following informal staff investigations: 51% because the situation was one in which a private educational letter was appropriate and 49% because staff determined there was little likelihood that the conflict laws had been violated. About 48% of the informal staff investigations led to formal inquiries. As of June 30, 1999, there were 100 ongoing informal staff investigations.

FORMAL INQUIRIES

The Commission authorized a total of 65 formal inquiries in FY99: 37 regarding alleged violations of the conflict of interest law and 28 involving alleged violations of the financial disclosure law. Thirty-one of the subjects of preliminary inquiries were municipal officials or employees, 29 were state officials or employees and five were county officials or employees.

During FY99, Enforcement Division staff completed 40 formal inquiries into alleged violations of the conflict of interest or financial disclosure laws.

In 25 instances, the Commission found "reasonable cause" to believe that the subject had violated one or both of the laws, and authorized adjudicatory proceedings against the subject; many of these cases were later resolved by Disposition Agreements between the subject and the Commission. The Commission also issued 12 confidential Compliance Letters regarding conflicts of interest, advising subjects of their violations and explaining the consequences of future misconduct. Three cases were terminated without a finding.

At the end of the fiscal year, the Commission had two public hearings pending; in one additional case, the Commission had found "reasonable cause" to believe laws had been violated, but had yet to institute the formal hearing process.

**PUBLIC
RESOLUTIONS**

In FY99, the Commission entered into 25 Disposition Agreements: 12 with state officials, six with municipal officials, six with county officials and one with a private party. In these signed documents, subjects admit violating G.L. c. 268A or 268B, and agree to pay civil fines of up to \$2,000 per violation. The Commission issued one Decision and Order during FY99 in which the Commission found that the matter was outside the Commission's statute of limitation.

The Commission also issued four Public Enforcement Letters, stating that there was reasonable cause to believe that the conflict law had been violated, but resolving the matters by means of educational letters rather than fines.

PENALTIES

The Ethics Commission levied civil penalties totalling \$8,150 in FY99. Penalties collected are deposited in the General Fund, as the Commission does not retain revenue.

FY 99 ENFORCEMENT ACTIONS

In the Matter of Philip T. Corson (July 23, 1998)

The Commission fined former City of Lynn Department of Public Works associate commissioner Philip T. Corson, who was responsible for all activities of the Pine Grove Cemetery, \$10,000 for seven violations of G.L. c. 268A, the state's conflict of interest law. The violations stemmed from three instances in which Corson borrowed a total of \$22,000 from three funeral home directors; one instance in which Corson borrowed \$2,600 from a subordinate; and one instance in which he failed to turn over \$3,000 intended to purchase cemetery perpetual care services. Section 23(b)(2) of the conflict law prohibits a municipal employee from using his position to obtain for himself or others an unwarranted privilege. Section 23(b)(3) prohibits a municipal employee from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy the municipal employee's favor in the performance of his official duties. In a Disposition Agreement, Corson admitted to violating §23(b)(2) of the conflict law by using his position to avoid repaying a loan of \$2,600 from Assistant Cemetery Superintendent Harold Hayes. Corson continued to interact officially with Hayes while owing him money, which, according to the Disposition Agreement, had the effect of implicitly putting pressure on Hayes not to seek repayment. Corson also admitted to violating §23(b)(3) in connection with his supervision of Hayes. A reasonable person having knowledge of the unpaid loan would conclude that Hayes could unduly enjoy Corson's favor in personnel matters. Corson also admitted violating §23(b)(2) by soliciting a loan of \$15,000 from Walter Cuffe of Cuffe Funeral Home in 1992 and by continuing to interact officially with Cuffe while owing him this money, which had the effect of implicitly putting pressure on Cuffe not to seek repayment. In addition, Corson violated §23(b)(3) by soliciting loans of \$6,000 from Richard Parker of Parker Funeral Home in 1992 and \$1,000 from David Solimine, Sr. of Solimine Funeral Home in 1996 and the \$15,000 loan from Cuffe while having an official relationship with them which conduct would cause a reasonable person to conclude they could unduly enjoy Corson's favor in the performance of his official duties. (While the loans from Parker and Solimine also raise issues of Corson using his official position to get unwarranted privileges of substantial value, i.e., the loans, the Commission decided to accept Corson's assertion that the motive underlying loans from Parker and Solimine was friendship and past private business favors, respectively, and not any intent by Corson to use his official position.). Finally, by appropriating for personal use \$3,000 given to him by Len Sanford for two 20-year endowment flower beds, Corson violated §23(b)(2). According to the Disposition Agreement, he used his position to secure an unwarranted privilege of substantial value when he appropriated these funds. Corson, who resigned from his DPW position on June 6, 1997, entered into an agreement for judgment with the City of Lynn to repay the city the misappropriated endowment funds. Corson has repaid approximately \$1,800 of those funds. He has made partial repayments to Parker and Solimine but has made no repayments to Hayes and Cuffe.

In the Matter of John Massa
(August 20, 1998)

The Commission cited Lynn Health Inspector John Massa for, as a health inspector, inspecting property that was managed by businesses for which he regularly served papers as a constable. Section 23(b)(3) of the conflict law prohibits public employees from acting in a manner which would cause a reasonable person to conclude that anyone can improperly influence or unduly enjoy their favor in the performance of their official duties. In a Public Enforcement Letter, the Commission explained that Massa was responsible as a health inspector for conducting apartment inspections in four buildings managed by International Realty and two buildings managed by Crowninshield Realty, two of the largest apartment management companies in Lynn. As a Lynn constable from approximately 1978 to 1996, Massa served and enforced eviction notices and court orders giving tenants 30 days to vacate apartments in these same buildings for International Realty and Crowninshield Realty. As a constable, Massa earned approximately \$6,000 per year from International Realty and approximately \$3,000 per year from Crowninshield Realty. The Public Enforcement Letter states that an inspector receiving \$2,000 or \$3,000 a year in private fees from a landlord would probably have a bias in favor of that landlord when it came time to inspect the landlord's property as a health inspector. The Letter notes that inspectors have a particularly important role in protecting the public health and safety. No inspector should act as an inspector regarding any situation where he has a potentially compromising relationship with the party he is inspecting without *first* fully disclosing the relevant facts to his appointing authority. For the purpose of giving guidance, the Commission stated that, "an inspector who in one year receives \$100 or more in fees from someone he inspects must first disclose that fee relationship to his appointing authority or not inspect." The purpose of § 23 of the conflict law is to deal with appearances of impropriety. This subsection goes on to provide that the appearance of impropriety can be avoided if the city employee discloses in writing to his appointing authority all of the relevant circumstances which would otherwise create the appearance of conflict. Massa did not file a detailed written disclosure that he had a steady, fairly high volume constable business relationship with two apartment management companies whose property he was responsible for inspecting. Issuance of a Public Enforcement Letter does not require the subject to pay a fine or admit to violating the law, but the subject must waive his right to a hearing on the matter and consent to publication of the Enforcement Letter.

In the Matter of William J. Devlin
(August 26, 1998)

The Commission cited former Springfield Historical Commissioner William J. Devlin for violating the state's conflict of interest law, G.L. c. 268A, by preparing plans concerning property within the historic district that his clients submitted to the Springfield Historical Commission for approval. The Ethics Commission is using Devlin's situation as an opportunity to educate the public on the point that a municipal employee violates the conflict law by receiving compensation from or acting as agent for a private party in connection with submitting documents to a municipal board, *even if* the municipal employee avoids making any personal appearances before the board. In a Public Enforcement Letter, the Ethics Commission cited Devlin, president of a small architectural firm, William J. Devlin AIA, Inc., for receiving compensation from and acting as an agent for private architectural clients in relation to matters pending before the Historical Commission. Section 17(a) prohibits a municipal employee from receiving compensation from anyone other than the city in connection with any matter in which the city has a direct and substantial interest. Section 17(c) prohibits a municipal employee from acting as agent for anyone other than the city in connection with any matter in which the city has a direct and substantial interest. The Public Enforcement Letter states that Devlin was appointed to the Commission in 1992. At the time of his appointment, Devlin stated his intention to do architectural work that would be submitted to his own board. Neither Historical Commission Chairman Francis Gagnon nor members of the city council subcommittee with which Devlin met just prior to his appointment stated any problem in his doing so. In 1994, he was informed by Gagnon that he should not represent clients before his own board. Devlin refrained from appearing on behalf of clients, but continued to submit work to the Historical Commission. In June 1995, Deputy City Solicitor Harry P. Carroll advised Devlin in a letter that he could not act as an agent or receive compensation from any party appearing before the Historical Commission. Carroll also advised Devlin to seek advice from the Ethics Commission. Devlin submitted a request for an opinion from the Ethics Commission in December 1995. In February 1996, the Legal Division of the Ethics Commission concurred with Carroll's advice that Devlin could not act as an agent or receive compensation from any third party appearing before the Historical Commission. On the same day that Devlin received this advice, he was removed from the Historical Commission by the mayor of Springfield. Issuance of a Public Enforcement Letter does not require the subject to pay a fine or admit to violating the law, but the subject must waive his right to a hearing on the matter and consent to publication of the Enforcement Letter.

In the Matter of James H. Quirk, Jr.
(September 23, 1998)

The Commission issued a Decision and Order dismissing the adjudicatory hearing of James H. Quirk, Jr., a Yarmouth attorney and former member of Yarmouth's Conservation Commission. The Commission found that the statute of limitations prohibiting the Commission from initiating the adjudicatory proceedings more than three years after a "disinterested person" knew or should have known of the violation barred the Commission's Enforcement Division from proceeding in the matter. On August 8, 1996, the Enforcement Division of the Commission issued an order to show cause alleging that Quirk received compensation from private landowners for their lawsuit against the Town of Yarmouth for damages for land taken by eminent domain for conservation purposes at a time when Quirk was a member and chairman of the Yarmouth Conservation Commission. Section 17(a) of G.L. c. 268A in general prohibits a municipal official from receiving compensation from or acting as an agent for anyone other than the town in connection with matters in which the town has a direct and substantial interest. The Commission alleged that Quirk voted as a Conservation Commissioner to request that the town acquire the land in question for conservation purposes in 1987. After questions arose about Quirk's representation of the landowners, Quirk sought an opinion from special town counsel on April 7, 1992 which was reviewed by the Executive Director of the Ethics Commission, Andrew Crane, in June of 1992. Thus, according to the Decision, the Executive Director knew that Quirk's representation of the landowners was a potential violation as of June 1992 and the Ethics Commission knew or should have known of the alleged violations more than three years prior to the date that proceedings against Quirk were initiated.

In the Matter of Paulin J. Bukowski
In the Matter of Herbert Hohengasser
(October 22, 1998)

The Commission fined Greenfield Plumbing and Gas Fitting Inspector Paulin J. Bukowski \$1,500 and Alternate Plumbing and Gas Fitting Inspector Herbert Hohengasser \$1,000 for their participation in inspections of work performed by immediate family members. In a Disposition Agreement, Bukowski admitted that he violated G.L. c. 268A, §19 by, between September 1992 and August 1994, issuing seven permits to and conducting seven inspections of work performed by his brother, Robert Bukowski, a Greenfield plumber. In a separate Disposition Agreement, Hohengasser admitted that he violated G.L. c. 268A, §19 by, between August and September 1995, issuing four permits to and conducting nine inspections of work performed by his son, Daniel, owner of Hohengasser Plumbing & Heating, Inc. Section 19 of the conflict law generally prohibits a municipal employee from officially participating in matters, such as employment decisions, in which an "immediate family" member has a financial interest.

In the Matter of Robert Muzik
(January 20, 1999)

The Commission fined Robert Muzik, former owner of Muzik's Limousine and Sedan Service of Vineyard Haven, \$500 for violating the conflict law by giving illegal gratuities in 1993 and 1995 to Woods Hole, Martha's Vineyard and Nantucket Steamship Authority terminal agents. In a Disposition Agreement, Muzik admitted that he violated G.L. c. 268A, §3 (a) by giving items of substantial value, i.e., a \$200 gift certificate in 1993 and \$50 in cash in 1995, to terminal agents. Section 3(a) generally prohibits the giving or offering of anything of substantial value to any public official for or because of any official act or acts performed or to be performed by such employee. According to the Agreement, Muzik regularly used Steamship Authority ferries to transport his limousine and his clients between Woods Hole and Martha's Vineyard. On some occasions during peak usage periods, Muzik could not secure return trips for his limousine. Instead of calling the Steamship Authority reservations number, he contacted assistant terminal agents who were responsible for determining the number of vehicles allowed onto the ferry to persuade them to allow Muzik's limousine on the ferry as a special circumstance. Otherwise, Muzik would have to send his client on the ferry as a walk-on passenger while he waited with the vehicle as a standby passenger, in which case Muzik would arrange for alternate transportation for the client when the ferry docked. In June 1993, Muzik gave a \$200 gift certificate to a Woods Hole assistant terminal-agent and his wife. The assistant terminal agent turned the gift certificate over to the Steamship Authority's general counsel who returned the gift to Muzik with a letter warning Muzik that the gift violated the conflict of interest law. In December 1995, Muzik sent another assistant terminal agent a Christmas card containing a \$50 bill. The assistant terminal agent immediately turned it over to the Steamship Authority's general counsel. In the Disposition Agreement, Muzik acknowledges that he gave these gifts to assistant terminal agents for or because of official acts performed or to be performed by the assistant terminal agents, i.e. allowing Muzik's limousine on the ferry when he did not have a reservation.

In the Matter of C. Samuel Sutter
(January 20, 1999)

The Commission's Enforcement Division issued a Disposition Agreement in which former Bristol County Assistant District Attorney C. Samuel Sutter admitted violating the conflict law by participating as an assistant district attorney in a matter in which the law firm Casey & Thompson P.C. had an interest at a time when the law firm was representing him in a personal matter. Casey & Thompson P.C. is a law firm practicing in Bristol County. John Casey and Bruce Thompson are shareholders in the firm. Between December 1994 and March 14, 1995, Sutter solicited legal advice from Casey concerning his recent separation from his wife. On March 14, 1995, Sutter, as an assistant district attorney, represented the Commonwealth regarding a motion to dismiss in district court as to which Thompson represented the defendant. At the time of this motion, Sutter was still consulting with Casey regarding the separation and he expected that the law firm of Casey & Thompson

would represent him on the matter if it continued. Sutter did not disclose to the District Attorney his private relationship with the law firm of Casey & Thompson. Sutter admitted that he violated G.L. c. 268A, §23(b)(3) by participating as an assistant district attorney in a matter in which Casey & Thompson had an interest at a time when he had, through his dealings with Casey, a private relationship with the law firm. Section 23(b)(3) prohibits a state employee from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy the state employee's favor in the performance of his official duties. According to the Agreement, Sutter had no prior knowledge that Thompson would be representing the defendant in the motion to dismiss and, because he had been dealing only with Casey about his personal matter, it did not occur to him that his litigating a matter with Thompson would create an appearance problem. Nevertheless, the Commission concluded that Sutter had the opportunity and obligation to inform the judge that he had a conflict, obtain a continuance, disclose the conflict to the District Attorney and have the District Attorney decide who should handle the matter.

In the Matter of Jennie Caissie
(February 25, 1999)

The Commission cited Oxford Selectman Jennie Caissie for participating in a decision to issue a permit to a competitor of her family's fruit stand. According to a Public Enforcement Letter, Caissie was significantly involved in the discussion concerning the issuance of an outdoor business permit in 1997 to Gary Kettle for a fruit stand while Caissie's family operated a competing outdoor fruit stand. Section 19 of G.L. c. 268A, the state's conflict of interest law, in general prohibits a municipal official from officially participating in matters in which an "immediate family" member has a financial interest. The Public Enforcement Letter states that Caissie's family's fruit stand and Kettle's proposed fruit stand were in the same business and operated 2 ½ miles away from each other at basically the same times during the year. Because Kettle's proposed fruit stand would compete with Caissie's family's fruit stand, Caissie's family had a financial interest in the decision to award the permit. While Caissie participated significantly in the selectmen's discussion by, for example, questioning the environmental and traffic impacts of Kettle's proposed fruit stand, she abstained from the final vote. As the Public Enforcement Letter explains, a 1976 Massachusetts Supreme Judicial Court decision concluded that participating involves more than just voting, and includes any significant involvement in a discussion leading up to a vote. Issuance of a Public Enforcement Letter does not require the subject to pay a fine or admit to violating the law, but the subject must waive his right to a hearing on the matter and consent to publication of the Enforcement Letter.

In the Matter of David Ellis
(March 16, 1999)

The Commission fined Lynn City Councilor David Ellis \$500 for exploiting his official regulatory power to coerce Lynn business owner Emilio Rosario to take down Ellis' opponent's campaign signs. Rosario owns and operates Commercial Auto Body at 165 Commercial Street in Lynn. In a Disposition Agreement, Ellis admitted to violating G.L. c. 268A, §23(b)(2) by using his official position as a City Councilor to effect the removal of his opponent's signs in a political election. Section 23(b)(2) of the conflict law prohibits a municipal official from using his position to obtain an unwarranted privilege of substantial value. "The use of signs in a political campaign" is of substantial value, according to the Disposition Agreement. According to the Disposition Agreement, in August 1997, Rosario allowed Ellis and subsequently Ellis' opponent, Peter Capano to put signs on the side of Rosario's building. Soon after Capano put up his campaign signs next to Ellis' campaign signs, Ellis began tearing down Capano's signs. When Rosario questioned Ellis about his actions, Ellis told Rosario that he (Ellis) could have a car which was illegally parked in front of Rosario's shop towed. Ellis also reminded Rosario of a December 1996 Council hearing at which the City Council considered revoking Rosario's license to operate and told Rosario that he (Ellis) had assisted Rosario in resolving that matter. "Rosario feared retaliation from Ellis if he did not allow Ellis to remove [Capano's] signs," the Disposition Agreement states. The Agreement also notes Ellis' assertion that he did not intend to cause Rosario to fear retaliation.

In the Matter of Frank Martin
(April 21, 1999)

The Commission cited Lawrence firefighter Frank Martin for receiving compensation in connection with fuel storage tank removals which required permits from the Lawrence Fire Department. Martin was also cited for "pulling" permits for most of the tank removals for which he was paid. Section 17(a) of the conflict of interest law prohibits a municipal employee from receiving compensation from anyone other than the city in connection with any matter in which the city has a direct and substantial interest. Section 17(c) prohibits a municipal employee from acting as agent for anyone other than the city in connection with any matter in which the city has a direct and substantial interest. In a Public Enforcement Letter, the Ethics Commission explained that Martin, doing business as Martin Oil Burner Service & Underground Tank Removal, was paid in connection with 29 tank removals in the City of Lawrence between March 1994 and April 1997. The Fire Department, which requires permits for the removal of any tank which has been used for the storage of flammable materials, issued permits for each removal. Martin personally

"pulled" permits for 26 of the 29 tank removals. According to the Public Enforcement Letter, "The city has a direct and substantial interest in these matters because those permits involve activities which can potentially significantly affect the public health and safety." Issuance of a Public Enforcement Letter does not require the subject to pay a fine or admit to violating the law, but the subject must waive his right to a hearing on the matter and consent to publication of the Enforcement Letter.

In the Matter of Harry L. Brougham
In the Matter of Hugh K. Hubbard
(May 3, 1999)

The Commission cited Belchertown Water District commissioners Harry L. Brougham and Hugh K. Hubbard for violating the conflict law by signing warrants for payments to family members. Brougham signed warrants authorizing payments to his son Michael Brougham who owns M. Brougham Excavating Company. Hubbard signed warrants approving salary payments for his wife, Carol Hubbard, the water district clerk treasurer. In Disposition Agreements, Brougham and Hubbard admitted that they violated G.L. c. 268A, §19 by signing the warrants. According to the Disposition Agreements, between 1994 and 1997, M. Brougham Excavating Company performed work totaling \$34,470 for the District. During this time period, Brougham signed 25 warrants approving a total of \$17,350 in payments for bills to the company. Hubbard's wife, Carol, was appointed clerk treasurer in September 1994. She is supervised by the commissioners, including her husband, and receives an annual salary of approximately \$10,000, as set by town meeting. During the period of 1992 through 1998, Hubbard as a water district commissioner approved weekly warrants authorizing his wife to receive a total of \$45,000 in salary payments. Section 19 of the conflict law generally prohibits a municipal employee from officially participating in matters, such as employment decisions, in which an "immediate family" member has a financial interest.

STATE ETHICS COMMISSION

ROOM 619

ONE ASHBURTON PLACE

BOSTON, MA 02108

617-727-0060