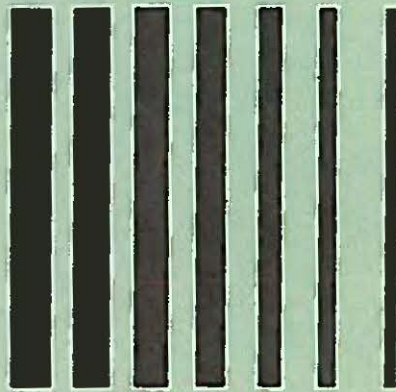


STATE
ETHICS
COMMISSION



MASSACHUSETTS

STATE ETHICS COMMISSION ANNUAL REPORT FISCAL YEAR 1991

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STATE ETHICS COMMISSION

This Report covers the activities of the Massachusetts State Ethics Commission during FY91. 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 FY91. Copies of the Annual Report provided to the Governor and General Court include a breakdown of the Commission's expenditures over the fiscal year.

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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. The conflict law 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 education, advice and information to public officials and employees regarding these laws, and administers the financial disclosure process, 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.

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, Statements of Financial Interest (SFI), Public Education and Enforcement.

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

Annual Overview

During Fiscal Year 1991 (FY91), the State Ethics Commission tried to do more with less. While there was either continued or increased need demonstrated for the Commission's various services, staffing and resource shortages resulting from budget cuts made keeping up with that demand a difficult task. Backlogs and an inability to address pressing issues -- both prophylactically through education and advice, and after the fact with thorough investigation of numerous complaints -- resulted from these shortages.

The Legal Division operated with between a 25 and 50 percent reduction of its staff for most of FY91. Nonetheless, the Division saw a 17.6 percent increase in the number of requests for legal opinions it received from public employees. In FY91 the Legal Division received 983 formal requests for advice -- a record number of requests for the second straight year. In addition, the Legal Division reviewed 168 legal opinions rendered by town counsels/city solicitors on the subject of the Conflict of Interest Law, ensuring that legal advice given to municipal employees is consistent and correct. The Legal Division faced a substantial backlog of unanswered opinion requests going into FY92.

The Statements of Financial Interests (SFI) Division spent the second fiscal year in a row with only half of its staff positions filled. Largely as a result of this lack of personnel, the Division was unable to contact public employees to remind them to file their SFIs, and in FY91 almost twice the number of designated employees failed to file their statements on time as filed late in FY90. In addition, the number of public employees who incurred fines for failure to timely file their SFIs more than tripled from FY90 to FY91. The SFI Division is no longer reviewing all statements for accuracy and completeness, which in the past saved numerous filers from public embarrassment when review of their forms by members of the media or other individuals uncovered errors or omissions on the forms.

The Public Education Division saw a 47 percent drop in the number of seminars it presented, due to the fact that state, municipal and county agencies and departments declined to request such seminars until their own internal staffing and budgetary problems were resolved. The one benefit of this drop in seminar requests was that it allowed the Public Education Division's depleted printing budget to cover the cost of re-printing existing publications in sufficient numbers to supply the substantially lower demand. However, the Division was unable to publish any new educational materials in FY91. Public awareness and understanding of the Commission and the conflict law apparently *increased*, however, as evidenced by the significant jumps in the number of opinion requests, "self-reported" violations of the law, and Enforcement Division investigations generated by reports in the media and other sources.

The Enforcement Division also spent FY91 operating with partial staffing and an increased workload. The number of complaints the Division received increased 5.6 percent in FY91 to 715, yet the staff closed 33.3 percent more cases following informal screenings than in FY90 because the personnel shortage required that the Division bypass investigating certain cases, pursuing instead only the most serious allegations. The Division completed almost 47 percent fewer formal investigations in FY91 than it did in FY90, but the number of "reasonable cause" findings that the conflict of interest law had been violated declined only 12.5 percent. In addition, while the number of individuals and entities fined in FY91 was slightly lower than in FY90, the amount of the fines imposed in FY91 was substantially higher -- \$34,280 as compared to the \$26,200 in fines imposed in FY90 -- an increase of 30.8 percent.

MEMBERSHIP

During FY91 the members of the Commission were:

Edward F. Hennessey, Chair
Former Chief Justice
Supreme Judicial Court
Boston, MA

Constance Doty
Administrator
Rent Equity Board
Boston, MA

Archie Epps
Dean of Students
Harvard College
Cambridge, MA

Herbert Gleason
Counsel
Smith, McNulty & Kearney
Boston, MA

Rev. F. Washington Jarvis
Headmaster
Roxbury Latin School
Boston, MA

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 FY91 Opinions

The Commission received 983 formal requests for advisory opinions during FY91. This represents approximately a 17.6 percent increase over the 836 formal requests received in FY90. Twenty-three of the FY91 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 FY91 were the following:

1. The limitations the conflict law places on the private business or political activities of public employees (See EC-COI-90-08, 90-09, 90-10, 90-17, 91-4, 91-6).
2. Restrictions the conflict law places on former public employees (See EC-COI-90-4, 91-1, 91-10).
3. The jurisdiction of the Conflict of Interest Law to quasi-public agencies and their employees (See EC-COI-90-2, 90-18, 91-03).

Municipal Advisory Opinion Regulations

A Commission regulation 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 ensure 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 FY91 the Commission reviewed 168 municipal opinions. The Commission staff concurred with 116 of the opinions, concurred with additional comments on 38 municipal opinions, and informed municipal lawyers in nine instances that their advice was inconsistent with Commission decisions, and therefore, would not be binding on the Commission. Five other opinions were moot.

FINANCIAL DISCLOSURE

Introduction

Massachusetts G.L. c. 268B requires annual disclosure of interests and associations that might result in conflict or the appearance of conflict between a person's public duties and private interests. The law covers all elected state and county officials, candidates and certain "designated" state and county employees. Municipal officials and employees are not covered by the disclosure requirements of 268B.

Designations and Action Toward Compliance

In order to determine which state and county employees are required to file SFIs, the Commission requests that by the first of each year, the administrative heads of each state and county agency submit a "designation list" of individuals holding major policy-making positions within their departments. By January 1, 1991, the Commission had received lists from over 200 agencies requiring SFI filing by a total of 4726 employees and officials. In FY91, the Commission fined 19 people \$3,200 for failure to file their SFIs in a timely fashion. Two filers had not submitted their SFIs to date, and face \$2,000 fines.

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 G.L. c. 268B. The Commission may levy fines of up to \$2,000 for each violation, and may also levy additional fines, withhold pay or seek criminal penalties for filing a false Statement.

In FY91, 679 of the 4,676 designated public employees and elected officials (approximately 14.4%) failed to file their SFIs on time. This is a substantially higher percentage than in FY90, when only 353 (less than 8%) of the designated filers missed the deadlines. This decrease in on-time filers is believed to be the result of confusion about filing requirements on the part of both new public employees and workers who left public service during the course of the year. In addition, staffing shortages at the Ethics Commission made it impossible for the SFI Division to send reminder postcards two weeks prior to the filing deadlines, or to contact designated employees to tell them to file once they missed the deadline.

This year, formal Notices of Delinquency were mailed to 292 individuals who missed the May filing deadlines. Of these 292 filers, 40 individuals failed to file in a timely manner after receiving notice of delinquency. This is a setback from FY90, when only 12 people failed to file after formal notice. Of the individuals who failed to file within 10 days of receipt of a Formal Notice:

1. The Commission authorized 32 preliminary inquiries that are in the process of being resolved.
2. Nine individuals filed shortly after an 8-10-day grace period, incurring fines of less than \$100.
3. One filer submitted documentation verifying that illness prevented the filer from submitting an SFI in a timely fashion.

Public Inspection of SFI Forms, Commission Assistance and Review

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 FY91, the Commission honored such requests from 300 sources, including private citizens, the media and law enforcement agencies. The statements of 880 filers were reviewed through this public inspection process in FY91, more than a 50 percent drop from the 1,776 filers whose SFIs were inspected in FY90. The decrease was largely the result of fewer elections being held in FY91 (FY90 was a statewide election year). Certain filers had more than one requestor view their SFIs; a total of 1,777 statements were provided to requestors in FY91.

During the year, Commission staff is available to assist filers in completing their Statements. Staff shortages have made it impossible for the Commission to review SFIs for accuracy and completeness, or to track amendments made to SFIs during the year.

PUBLIC EDUCATION

Introduction

The Public Education Division provides public employees, the media, concerned citizens and the communities of the Commonwealth with educational materials and a forum in which to learn about the Ethics Commission and the laws which the Commission enforces and interprets.

Seminars

The Public Education Division conducts seminars for public employees and officials to help them avoid conflicts between their private interests and public duties, to make them aware of the resources available to them for answering questions regarding the laws, and for reporting alleged violations. The Division also provides seminars to private groups or associations (such as the League of Women voters or newspaper staffs) to help them better understand the conflict law and the Commission's purpose. The seminars are given on an as-requested basis.

The Public Education Division conducted 37 seminars during FY91, with 1,640 people attending. This represents a 47.1 percent decrease from the 70 seminars given in FY90. The drop in the number of seminars conducted is attributed to statewide reaction to the Massachusetts budget crises; many state, municipal and county agencies or departments declined to sponsor seminars on the conflict law until staffing and budgetary concerns were resolved. However, the number of seminars sponsored by both municipal associations and private interest groups/associations *increased* slightly in FY91.

The seminars conducted in FY91 were sponsored by:

10 state agencies	12 municipalities
10 municipal associations	4 private interest groups or associations
1 county association	

Publications

The Commission writes, publishes, and distributes educational materials that explain various provisions of the conflict law and keep constituents informed of recent Commission rulings. The Division also writes and distributes the Commission's newsletter to an estimated 3,000 subscribers.

In FY91, approximately 12,843 publications/educational materials were distributed as follows:

- 3,900 On average ten callers (including reporters) per day request information and five "walk-ins" take information from the lobby
- 4,085 Educational materials were provided to seminar sponsors and copied for 1,640 seminar attendees
- 5,248 Educational materials sent to individuals as part of Commission legal opinions, enforcement actions, or written requests for information
- 3,000 The Bulletin
 - 400 The Annual Report
 - 100 Rulings

In FY91, the Public Education Division was not able to publish any new educational materials.

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 that do not suggest problems within the Commission's jurisdiction or that are clearly not worth pursuing are closed without delay. The remaining complaints are reviewed by the staff in an informal review 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 informal staff review, 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 the Conflict of Interest Law (G.L. c. 268A) or Financial Disclosure Law (268B) has been violated, the Commission terminates the inquiry confidentially. On the other hand, if "reasonable cause" is found, the case proceeds in one of the following ways:

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 agree to 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 violations 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 that 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 for personal gain, or the potential for serious impact on public confidence in government.

REVIEW OF FY91 ACTIVITIES

Complaints

In FY91, 715 complaints were brought to the Commission for investigation, a 5.6 percent increase from the 677 complaints filed in FY90. There were 119 complaints from FY90 that were not opened until FY91; therefore, a total of 834 complaints were before the Enforcement Division during FY91.

658 (about 78.9%) of the 834 complaints made to the Commission's Enforcement Division in FY91 alleged violations by municipal officials or employees. Another 127 (about 15.2%) involved individuals who work for the commonwealth, 29 complaints were made regarding county officials, 9 involved private individuals or corporations, and 11 complaints involved allegations against combinations of the above-mentioned groups.

Of the 834 complaints, 560 came from private citizens or public officials; 34 were referrals from law enforcement or other state, county or municipal agencies or officials; 34 were internally generated by Commission staff members from reports in the media or other sources; 24 were "self-reports" made by public employees regarding their own conduct; 5 resulted from staff review of financial disclosure forms and 177 were anonymous.

The Commission addressed the 834 complaints received or pending in FY91 as follows:

- 495 complaints were closed because the allegations made in the complaint did not suggest sufficient facts within the Commission's jurisdiction;
- 249 cases were assigned to an attorney/investigator team in the Commission's Enforcement Division for informal review;
- 62 complaints were consolidated with existing cases;
- 28 complaints had not yet been acted upon as of June 30, 1991.

Informal Reviews

In FY91 the staff closed 214 cases following informal staff reviews. Another 25 reviews led to formal investigations. These reviews were based on complaints received during FY91 and previous years. As of June 30, 1991, there were 78 ongoing reviews.

Of the 214 cases closed after informal review:

- 70 cases were closed because the staff determined there clearly was no violation of the conflict law, or that there was so little likelihood of a violation that the matter was not worth pursuing further;
- 140 cases were closed because the situation was one in which a private educational letter was appropriate;
- 3 cases were closed after the subject sought advice from the Commission's Legal Division.
- 1 case was dismissed, consolidated with existing cases or referred to other agencies.

Formal Investigations

The Commission authorized a total of 25 formal inquiries in FY91. These inquiries were based on complaints received during FY91 and previous years.

Of those 25 inquiries:

- 1 involved alleged violations of the financial disclosure law by state officials or employees;
- 24 involved alleged violations of the conflict of interest law by:
 - 9 municipal officials or employees
 - 2 county officials or employees
 - 13 state officials or employees

The Enforcement Division staff completed 36 formal inquiries during FY91. These inquiries included investigations initiated during FY91 and previous years.

These 36 cases resulted in the following findings:

- 21 "reasonable cause" findings that the law was violated (18 conflict law, 3 financial disclosure law);
- 8 Confidential Compliance Letters were approved (all conflict law);
- 2 Public Enforcement Letters were issued in lieu of finding "reasonable cause";
- 2 "no reasonable cause" findings that the law was violated (all conflict law);
- 2 cases were terminated without findings
- 1 case pending resolution

Public Resolutions

In FY91, 20 "reasonable cause" findings from FY91 and previous years resulted in:

- 16 Disposition Agreements involving violations of the conflict law;
- 4 Disposition Agreements involving a violation of the financial disclosure law;

As of June 30, 1989, there were five public proceedings pending for which an Order to Show Cause had been issued after a reasonable cause finding. There were eight additional cases where Reasonable cause had been found, but formal Commission action was still pending as of June 30, 1991.

Penalties

In FY91 the Commission assessed civil penalties totaling \$34,280 from 18 individuals and two public entities found to have violated the conflict of interest or the financial disclosure law.

FY91 ENFORCEMENT ACTIONS

In the Matter of Richard Singleton (July 2, 1990)

The State Ethics Commission fined Richard Singleton, former fire chief for the town of Tyngsborough, \$1,000 for telling the foreman of a local development project that Fire Department inspections on the development could take forever, after the foreman told Singleton he had not yet reached a decision on awarding drywall construction work that had been bid on by Singleton's son.

In a Disposition Agreement reached with the Commission, Singleton admitted his actions violated Section 23(b)(2) of the Conflict of Interest Law, and agreed to pay the fine. Section 23(b)(2) prohibits public employees from attempting to use their official position to secure an unwarranted privilege of substantial value for themselves or anyone else.

While the Commission may impose sanctions of up to \$2,000 for violations of the conflict law, the Commission imposed a \$1,000 fine in this case because Singleton apparently did not realize any economic advantage as a result of his conduct, and because there was no indication that Singleton withheld or delayed Fire Department inspections.

In the Matter of Robert A. Fowler
(July 2, 1990)

The Ethics Commission fined Tewksbury Planning Board member Robert Fowler \$1,000 for violating the Conflict of Interest Law by representing a real estate corporation and two individuals before his own board.

Fowler admitted violating Section 17 of the law in a Disposition Agreement with the Commission, and agreed to pay the fine. Section 17 prohibits municipal employees from representing anyone other than their city or town in matters in which the municipality has a substantial interest.

In the Matter of Malcolm FitzPatrick
(August 13, 1990)

Former Stow Selectman Malcolm FitzPatrick received a Public Enforcement Letter from the State Ethics Commission in connection with official actions FitzPatrick took involving a proposed affordable housing project near his home. The Public Enforcement Letter said that while FitzPatrick's actions appeared to violate Sections 19 and 21A of the conflict law, several mitigating factors warranted resolving the matter without imposing a fine or requiring FitzPatrick to admit he violated the law.

FitzPatrick appeared to violate Section 19 of the conflict law, which prohibits municipal employees from participating in their official capacity in matters affecting their own financial interests, when he participated as a Stow selectman in several zoning and approval matters regarding the Apple Farm affordable housing development. At its proposed site, Apple Farm was within 300 feet of FitzPatrick's property.

FitzPatrick also appeared to violate Section 21A of the law when the selectmen appointed him to Stow's Housing Partnership in May of 1988. Section 21A bars members of municipal boards from being appointed to positions supervised by that board without prior approval at annual town meeting. However, because the appointment was based on information provided in a handbook for local housing partnerships that did not discuss the conflict law, the Commission felt the matter would best be resolved with a Public Enforcement Letter. Editions of the handbook published after June, 1988, make clear that the conflict law applies to members of housing partnerships.

In the Matter of Robert Garvey
(August 22, 1990)

The Ethics Commission cited Hampshire County Sheriff Robert Garvey for hiring county jail employees to build a fence around the tennis court at his home, and for using a jail employee to help him move refrigerators to and from his vacation homes in New Hampshire and Maine.

Garvey admitted in a Disposition Agreement to violating Section 23 of the conflict law, which prohibits public workers from behavior that could cause the appearance of bias in their official duties.

"The Commission has consistently stated that public officials and employees must avoid entering into private commercial relationships with people they regulate in their public capacities," the Agreement said. "(T)he reason for this prohibition is two-fold. First such conduct raises questions about the public official's objectivity and impartiality ... Second, such conduct has the potential for serious abuse."

No fine was imposed in the case because of several mitigating factors, including that there was no evidence that favoritism was actually shown to the employees who did the work for the Sheriff and that the employees who built the fence were paid by the sheriff for their work, the Disposition Agreement said.

In the Matter of John Larkin, Jr.
(September 13, 1990)

A Disposition Agreement was reached between the Ethics Commission and former MBTA District Supervisor John Larkin, Jr., in which Larkin admitted to violating the conflict law in connection with his daughter's promotions at the MBTA.

The Commission declined to impose a fine against Larkin because he made a good faith, albeit ineffectual, effort to comply with Section 6 of the law, which generally prohibits state employees from participating in matters that could affect the financial interests of members of their immediate family. An exemption to the law allows appointed employees to make written disclosures to their appointing authority and receive written permission from that authority to participate in matters affecting their immediate family members.

However, Larkin made a written disclosure to his immediate supervisor rather than to his appointing authority, and therefore did not receive the exemption required under the law.

The Commission insisted on a public resolution to this case because, "(t)hese provisions are more than mere technicalities. They protect the public interest from potentially serious harm," the Agreement said.

In the Matter of Robert St. John
(October 18, 1990)

North Attleboro wiring inspector Robert St. John was fined \$5,000 for violating the Conflict of Interest Law by allowing his private business to perform electrical work on 13 properties in town without permits, and by inspecting electrical work done by his own company on at least 21 occasions.

St. John admitted to violating Section 19 of the conflict law, which prohibits municipal employees from participating in their official capacity in any particular matter that could affect their own financial interests. St. John also agreed to pay the fine.

In the Matters of Louis R. Nickinello, Charles Flaherty and Elizabeth Palumbo
(December 10, 1990)

The State Ethics Commission fined Massachusetts House of Representatives majority leader Charles F. Flaherty (D-Cambridge) \$500 for his acceptance of five skybox tickets to a November, 1988, Boston Celtics game from employees of Ackerley Communications of Massachusetts, Inc. (Ackerley), and also required Flaherty to forfeit the value of the tickets. The Commission also fined two of Ackerley's senior employees, Louis Nickinello and Elizabeth Palumbo, \$500 each for giving the tickets to Flaherty.

In Disposition Agreements reached with the Ethics Commission, Flaherty, Nickinello and Palumbo all admitted to violating Section 3 of the Conflict of Interest Law, which prohibits public employees from accepting anything of substantial value given to them because of their official position, and likewise prohibits anyone from offering public employees such gifts. In addition to paying the fine and agreeing to comply with the conflict law in the future, Flaherty paid a \$150 forfeiture for the value of the tickets and agreed to take measures to educate his colleagues regarding the statutes enforced by the Ethics Commission.

In the Matter of Robert Galewski
(January 24, 1991)

The Ethics Commission fined Braintree Assistant Building Inspector Robert Galewski \$1,250 for attempting to use his position as an inspector to persuade the developer of a luxury subdivision to sell him property in the development at a price "that he could afford."

In a Disposition Agreement, Galewski agreed to pay the fine and admitted that his actions in connection with the Buckingham Place development in Braintree violated Section 23(b)(2) of the Conflict of Interest Law. Section 23(b)(2) prohibits public employees from attempting to use their official position to secure an unwarranted privilege for themselves or anyone else.

"By asking the (developers) to sell him a lot when he knew (they) were not selling a lot, and by asking (one of the developers) to sell him a house that he could afford, Mr. Galewski sought unwarranted privileges of substantial value. By making these requests during the course of official inspections, Mr. Galewski knew or should have known that in effect he was using his position as an inspector to attempt to secure unwarranted privileges," the Disposition Agreement said. "Mr. Galewski maintains that he did not intend for his conduct to be perceived as an attempt to use his official position to secure any such unwarranted accommodation ... (However), even if Mr. Galewski did not intend for his conduct to be perceived as an attempt to secure an unwarranted privilege of substantial value, he had reason to know his conduct would be so perceived."

In the Matter of William Hart
(February 19, 1991)

The Ethics Commission fined Metropolitan District Commission (MDC) Deputy Director of Recreation William Hart \$1,500 for violating the Massachusetts Conflict of Interest Law by directing the recalculation of vacation time for certain MDC employees including his mother, and by interceding in an employee transfer that resulted in a supervisor with whom Hart's mother had a history of conflicts being transferred to another MDC facility and ultimately replaced by a Hart family friend.

In a Disposition Agreement reached with the Commission, Hart admitted his actions violated Sections 6 and 23 of the conflict law, and agreed to pay the fine. Section 6 of the law prohibits state employees from participating in their official capacity in particular matters in which members of their immediate family have a financial interest. Section 23 prohibits public employees from using their official position to secure unwarranted privileges for themselves or anyone else.

In the Matter of Clifford Marshall
(February 21, 1991)

The State Ethics Commission fined Norfolk County Sheriff Clifford Marshall \$10,900 for violating the Massachusetts Conflict of Interest Law by charging \$4,450 in personal expenses to a "company" credit card issued to him by the Norfolk County Deputy Sheriffs' Office (NCDSO), and for appointing two of his sons as deputy sheriffs. In addition, the one son who was still employed as a deputy sheriff when this matter came before the Ethics Commission resigned his post.

In a Disposition Agreement reached with the Ethics Commission, Marshall admitted that his actions violated the conflict law, and agreed to pay a \$2,000 fine for the illegal appointments and an \$8,900 penalty for repeated personal use of the credit card.

Marshall became Norfolk County Sheriff in 1975. Civil process is served in Norfolk County by deputy sheriffs appointed by the sheriff through the NCDSO. In or about 1980, the Disposition Agreement said, Marshall received an American Express card that had been issued to the NCDSO. According to the Disposition Agreement, Marshall understood that this card was to be used for "business-related expenses," meaning anything that could be said to promote the interests of the NCDSO. In Marshall's view, any expense that would benefit the Sheriff's Department would likewise benefit the NCDSO and would be a legitimate business expense, the Agreement stated.

Between December 1984 and April 1989, Marshall made at least 298 charges on his NCDSO credit card, totaling \$25,289.25. Marshall admitted that 54 of these charges were "personal," and totaled \$4,450.52, the Disposition Agreement said. These personal charges included, for example, various expenses incurred on trips to New York, Colorado, Rhode Island, Michigan, and Canada to watch his son play hockey; as well as airline tickets, birthday gifts, and dinners for family members, the Agreement said.

Marshall reimbursed the NCDSO \$4,450.52 for his personal charges, in addition to paying the \$8,900 fine for his personal use of the credit card. Marshall's personal use of the NCDSO credit card constituted a substantial unwarranted privilege, which violated Section 23(b)(2) of the conflict law, according to the Disposition Agreement. Section 23(b)(2) prohibits public employees from using their official positions to secure unwarranted privileges for themselves or anyone else.

The Commission also ruled that Marshall's obtaining the card, even if it were used solely for business purposes, still violated the conflict law. The Disposition Agreement stated that Marshall's use of the card for business related purposes violated Section 3 of the conflict law, which prohibits a public official from accepting anything of substantial value given to them because of their official duties. The Disposition Agreement stated that this was the first occasion in which the Commission had found a violation of Section 3 in such circumstances.

Marshall was also found to have violated the Conflict of Interest Law when he appointed two of his sons as Norfolk County Deputy Sheriffs. The two appointments violated Section 13 of the conflict law, which prohibits county employees from participating in their official capacity in any matter that affects their immediate family members' financial interest.

In the Matter of Lynwood Hartford
(February 22, 1991)

The Massachusetts State Ethics Commission fined former Freetown Building Inspector and Health Agent Lynwood "Butch" Hartford \$1,000 for violating the Conflict of Interest Law by securing a \$2,000 "finder's fee" in connection with the sale of property owned by a local developer with whom Hartford was dealing in his official capacity. The Commission also required Hartford to forfeit the \$2,000 "finder's fee."

In a Disposition Agreement, Hartford admitted that his actions violated Section 23 of the conflict law, and agreed to pay the fine and forfeiture. Section 23 of the law prohibits public employees from using their official positions to secure unwarranted privileges for themselves or anyone else, and also prohibits such employees from acting in a manner that would cause an objective observer to believe they would act with bias in carrying out their official duties.

The Disposition Agreement with Hartford was reached after the Ethics Commission's Enforcement Division issued Hartford an Order to Show Cause, which would have required an adjudicatory hearing on the matter.

In the Matter of Donald Whalen and George Nelson
(March 14, 1991)

In Public Enforcement Letters issued to two members of the Wellesley Police Department, the Ethics Commission ruled that requests by police officers for "consideration," or dismissal, of traffic citations based on the violator's personal connection with a police officer violate the conflict of interest law.

Although the Commission had previously fined a Bellingham selectman for pressing an officer to fix a speeding ticket issued to the selectman's friend, this was the first time the Commission addressed what the Public Enforcement Letters indicated was a wide-spread practice of police departments arranging for the dismissal of traffic citations as an accommodation to fellow police officers. Although one of the officers involved defended the practice as a "legitimate tool to further professional relationships among various police departments," the Commission rejected the rationale.

The Public Enforcement Letters explained that ticket-fixing is an unwarranted privilege that violates Section 23 of G.L. c. 268A, and added, "The ability of a police officer to seek special treatment for somebody because of that person's private relationship to a police officer is the kind of conduct that offends and troubles people. It demonstrates that there is one standard for the public, but a different standard for those with private connections to the police. In the area of law enforcement, the standards must be clear and be administered in an even-handed way."

Section 23 of the conflict law bars public employees from using their official position to secure substantial unwarranted privileges for themselves or anyone else, and also prohibits them from acting in a manner that would cause an objective observer to conclude they would act with bias in their official capacity.

In the Matter of Ackerley Communications
(March 15, 1991)

The State Ethics Commission fined Ackerley Communications of Massachusetts, Inc. \$500 for violating the Conflict of Interest Law through the actions of two of its employees, who illegally gave five skybox tickets to a Boston Celtics game to a State Representative.

In a Disposition Agreement reached with the Commission, Ackerley, through its Vice President Christopher Carr, admitted to violating Section 3(a) of the Conflict of Interest Law because Ackerley was responsible for the actions of its employees, Louis Nickinello and Elizabeth Palumbo. Nickinello and Palumbo gave a total of five Ackerley skybox tickets to Representative Charles Flaherty (D-Cambridge) for the November 16, 1988, Boston Celtics/Golden State Warriors basketball game at the Boston Garden. The two Ackerley employees gave the tickets to Flaherty in an effort to cultivate Flaherty's goodwill as a public official towards Ackerley, the Disposition Agreement said.

Ackerley agreed to pay the fine and also agreed to take steps that were acceptable to the Ethics Commission to ensure that no sporting event tickets or other gratuities owned by the corporation be given by Ackerley, or any of its agents, to any public employee in Massachusetts.

In the Matters of Leon Stamps and State Street Bank and Trust
(May 14, 1991)

The State Ethics Commission fined former Boston City Auditor Leon Stamps \$1,500 for violations of the Massachusetts Conflict of Interest Law involving business conferences that included substantial "frills."

The Commission's Enforcement Division also issued an Order to Show Cause against State Street Bank & Trust (State Street), which sponsored the conferences that Stamps attended. A public hearing was pending.

In a Disposition Agreement reached with the Commission, Stamps admitted to violating Section 3 of G.L. c. 268A, the conflict law, by attending two State Street conferences in Arizona at the bank's expense.

Section 3 prohibits public officials from seeking or accepting anything of substantial value that is given to them for or because of their official position, or for anything they could do in their official capacity. Section 3 also prohibits any person or entity in the private sector from offering or giving anything of substantial value to public employees because of their official position or because of anything they could or would do in their official capacity.

According to the Stamps Disposition Agreement, State Street's Trust Department has been custodian of the City of Boston Retirement Board's funds since 1979. The funds total an estimated \$780 million and, in the past few years, generated annual custodial fees of approximately \$400,000 to State Street. In September of 1988, the Retirement Board transferred \$70 million to a passive account at State Street that generates approximately \$70,000 in annual fees to the bank, the Disposition Agreement said. In 1987 and 1988, State Street's Trust Department held its "Annual Master Trust Client Conference" in Arizona. Clients of the bank's Trust Department were invited to attend these conferences, with all expenses other than airfare paid by the bank, the Agreement said. At the conferences, participants attended informational sessions in the mornings and were offered a variety of social events and entertainment in the afternoons and evenings. Stamps attended both conferences and all of his expenses except for airfare were paid by State Street, the Disposition Agreement said.

In the Matter of Stone & Webster
(May 14, 1991)

The Boston-based engineering firm Stone & Webster was fined by the Ethics Commission in May for violations of the Massachusetts Conflict of Interest Law involving educational seminars that included substantial "frills."

Stone & Webster, through a Disposition Agreement signed by its chairman, admitted to violating Section 3 of the conflict law by sponsoring two educational seminars for public employees that included harbor cruises. Stone & Webster paid a \$2,000 civil penalty for their violations of the law.

Section 3 prohibits public officials from seeking or accepting anything of substantial value that is given to them for or because of their official position, or for anything they could do in their official capacity. Section 3 also prohibits any person or entity in the private sector from offering or giving anything of substantial value to public employees because of their official position or because of anything they could or would do in their official capacity.

In the Matter of James N. Russo
(May 31, 1991)

The State Ethics Commission fined Hull Fire Chief James N. Russo \$750 for violating G.L. c. 268A, the conflict law, by appointing his wife's brother to the position of "permanent intermittent" firefighter, knowing that the appointment would place the brother-in-law in line for a full-time firefighting position.

In a Disposition Agreement reached with the Commission, Russo admitted that his action violated Section 19 of the Conflict of Interest Law, and agreed to pay the fine. Section 19 prohibits municipal employees from participating in their official capacity in any particular matter that affects an immediate family member of the employee or his or her spouse.

In the Matter of William E. Howell
(June 3, 1991)

The State Ethics Commission fined William E. Howell, the former division chief of the Attorney General's Industrial Accident Division, \$1,000 for violating the so-called "revolving door" section of the Conflict of Interest Law. That section prohibits former state employees from working in the private sector on certain matters they were previously responsible for as public employees.

In a Disposition Agreement reached with the Commission, Howell admitted to violating Section 5(b) of the conflict law when he privately represented a state employee in connection with a matter that was under his official responsibility while he was still heading the Attorney General's Industrial Accident Division. Howell also agreed to pay the fine. Three other conflict charges against him were dismissed. Section 5(b) of the conflict law prohibits former state employees, within one year after leaving public service, from acting as agent or attorney for anyone other than the Commonwealth in connection with any particular matter that was under their official responsibility during the last two years of their state service.

According to the Disposition Agreement, Howell was chief of the Industrial Accident Division from March 5, 1975, until January 20, 1987. During this time, he was responsible for representing the interests of the Commonwealth in workers' compensation claims made by state employees. Several weeks after Howell resigned from his state job, he began an association with attorney Augustus Camelio.

A state employee who was injured in 1984, and whose case came under Howell's official responsibility, filed an additional claim in 1987 seeking compensation for disfigurement she sustained from the 1984 injury, the Agreement said. Camelio originally represented the employee. Howell requested a legal opinion from the Ethics Commission several months after he left state service, asking how the conflict law would apply to his privately representing state employees regarding their workers' compensation claims. While his legal opinion was pending, Howell represented the employee mentioned above at a conciliation hearing, thereby violating Section 5(b).

In the Matter of Paul Pezzella
(June 27, 1991)

The State Ethics Commission fined Paul Pezzella, Deputy Chief of Staff in the Dukakis Administration, \$5,000 for violating the Conflict of Interest Law by taking certain actions, both publicly and privately, on behalf of Worcester developer Angelo Scola in connection with a publicly funded development project in Worcester, and by accepting a \$9,000 condominium downpayment, \$525 in mortgage application fees and free legal services from Scola at the same time he was assisting Scola on the project.

In a Disposition Agreement reached with the Commission, Pezzella agreed to pay the fine and admitted that his actions violated Sections 4, 23(b)(2) and 23(b)(3) of G.L. c. 268A, the conflict law. Section 4 prohibits state employees from acting as agent or attorney for anyone other than the Commonwealth in matters that are of substantial interest to the Commonwealth. Section 23(b)(2) prohibits public employees from using their official positions to secure unwarranted privileges for themselves or anyone else; Section 23(b)(3) prohibits public employees from acting in a manner that would cause an objective observer to believe that anyone can unduly enjoy their favor in the performance of their official duties.

According to the Disposition Agreement, Pezzella served as Deputy Legislative Director for then-Governor Michael Dukakis from March 1, 1985, until August 28, 1987, when he resigned to work on the Dukakis presidential campaign. Pezzella resumed state employment on December 19, 1988, when he became Dukakis' Deputy Chief of Staff, the Disposition Agreement said. Scola and Pezzella are friends of longstanding, and their families have been close for many years, the Disposition Agreement said. Scola and Pezzella frequently socialize. They exchange gifts on birthdays and at Christmas.

On August 15, 1988, the Worcester Redevelopment Authority (WRA) issued a request for proposals for a development plan for a vacant Worcester property known as Lot 35, the Disposition Agreement said. In September 1988 Scola, through his company Scola Development Group, submitted a proposal for Lot 35 that contemplated extensive development costing over \$100 million. Four other applicants submitted proposals at approximately the same time, according to the Agreement.

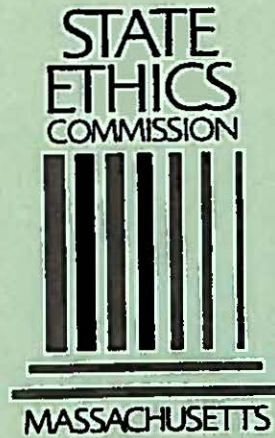
In February 1989, Pezzella telephoned WRA member Julie Carrigan on two occasions, asking her if she had made a decision on how she was going to vote on the Lot 35 proposals and encouraging her to support Scola's proposal. Pezzella and Carrigan knew each other through their association in Democratic party politics, and shortly before rejoining the Dukakis Administration, Pezzella had contacted Carrigan on Scola's behalf, reminded Carrigan that she was a gubernatorial appointee to the WRA, and encouraged her to support the Scola Lot 35 proposal. On March 2, 1989, the WRA voted 3 to 2 to designate Scola Development Group as the developer of Lot 35, the Agreement said. Carrigan voted for another developer.

Pezzella's phone calls to Carrigan violated Section 23(b)(2) of the conflict law, the Agreement said.

On April 6, 1989, the Massachusetts Industrial Finance Agency (MIFA) Board voted preliminary approval for \$86 million in taxable economic development revenue bonds to finance Scola's Lot 35 project, subject to certain conditions. Pezzella violated Section 4 of the conflict law by representing Scola in seeking MIFA financing of the Lot 35 development project, the Disposition Agreement said.

In addition, Pezzella's acceptance of a \$9,000 mortgage downpayment check from Scola, as well as his acceptance of \$525 in mortgage application fees and legal services provided by Scola, at the same time that Pezzella was making telephone calls to Carrigan urging her to support Scola's Lot 35 proposal, and thereafter assisting Scola in obtaining MIFA assistance for the project, violated Section 23(b)(3) of the conflict law, the Agreement said.

The matter was referred to the Ethics Commission by the Inspector General on June 27, 1990.



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