

STATE ETHICS COMMISSION

Annual Report

Fiscal Year 2003

Commissioners

Augustus F. Wagner, Jr., Chairman
R. Michael Cassidy
Elizabeth J. Dolan
Christine M. Roach
J. Owen Todd

Executive Director

Peter Sturges

Editor

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MESSAGE FROM THE CHAIRMAN

Fiscal Year 2003 was a challenging year for the Ethics Commission due to staff reductions, budget cuts and an increase in Commission litigation and adjudicatory proceedings. The Commission's main goal was to maintain its core functions. The areas most affected by the loss of staff were the Commission's municipal seminar programs, the investigative intake process and our ability to address pending formal opinions. Cutbacks also had an impact on the Commission's ability to address other pending matters, e.g., updating educational materials, a review of the Statement of Financial Interest or SFI form, instructions and regulations and the development of an adjudicatory proceeding manual. The good news is that we have been able to maintain the Commission's core functions for the most part and are in a good position to follow through on those goals that were not completed. In addition, the efforts of the Commission and its staff included a number of significant accomplishments.

The Commission continues to handle a large number of calls for legal advice about the conflict of interest law throughout the year and, during the SFI filing season, a large number of calls for advice in connection with electronic filing. The Legal Division also issued 400 informal staff opinion letters while the Enforcement Division issued 239 private educational letters. Opinion letters provide advice about future conduct while private educational letters, which play a significant role in the Commission's educational efforts, are issued after the division has completed an informal review. They are issued where it appears that a violation may have occurred but where a formal screening is not warranted.

Overall, the number of educational seminars dropped 59% due to the loss of the municipal training specialist; however, attendance dropped only 45%. A double business card, "The Top Ten Rules Public Employees Need to Know About the Conflict of Interest Law," was created and distributed and five primers about the conflict of interest law were published in the Commission's *Bulletin*, which is published three times yearly. The second year of electronic filing of Statements of Financial Interests saw a 20% increase in its use -- 54% of all filers filed electronically in 2003. Electronically filed SFIs were significantly less likely to require amendments; 49% of manually filed SFIs required amendments compared to less than 18% of electronically filed SFIs.

The Legal Division staff were engaged as Special Assistant Attorneys General in five pieces of litigation during the year. The Commission's Enforcement and Legal Division staff were also involved in 12 adjudicatory proceedings, of which four went to trial. For the second year in a row, the Enforcement Division significantly exceeded the 800 complaints per year average, notwithstanding the loss of the intake investigator. In response to some concern regarding the amount of the civil penalties assessed in disposition agreements, the average fines have increased approximately 15% and the percentage of smaller fines and disgorgement has decreased from 56% to 27%, while the percentage of larger fines and disgorgement has increased from 17% to 41%.

By the end of FY03, the Commission had almost completed its yearlong legislative review of G.L. c. 268A and 268B. The Commission approved draft legislation seeking limited regulatory authority which was submitted to the Governor for filing with the Legislature.

The Commission will continue to focus its energy on making every effort to ensure that the Commission performs, as effectively and efficiently as possible, its core functions. The goal, however becomes more and more difficult as the Commission's resources, like those of other agencies, are reduced. I must also note that it is difficult to operate when the Commission is without its full complement of five members for a significant period of time. Unfortunately, this has been the case for much of my tenure. Commissioners are supposed to serve five-year staggered terms to ensure a continual balance of stability and fresh perspective. Each of the appointing officers needs to make the effort to make appointments to the Commission in a timely manner.

As the Commission approaches its 25th anniversary and I complete my five-year term as chairman, I would like to add a personal note. I accepted the position of chairman primarily to ensure that private citizens and public servants alike were treated with fairness and compassion. In connection with a law that is often complicated and occasionally counterintuitive, this goal meant working hard to separate serious issues from minor matters and addressing each appropriately through advice, education or prosecution. Finally, I wanted to create a greater level of openness about the Commission's business. This, of course, is one of the primary reasons that the Commission has asked the Governor to file legislation granting limited regulatory powers to the Commission. As a review of the Commission's annual reports attest, over the past five years, although much work remains, much has also been accomplished.

Finally, I want to extend my deep appreciation and gratitude for the opportunity to have served with a number of extraordinary Commissioners and to have the support of a staff of extraordinary public servants, whose integrity, compassion and dedication are too often taken for granted. As I leave the Commission this fall, I do so confident that it is in good hands and that the future appointees of the responsible constitutional officers will continue a tradition of excellence for the next 25 years.

Respectfully submitted,

Augustus F. Wagner, Chairman

INTRODUCTION TO THE ETHICS COMMISSION

This report covers the activities of the Massachusetts State Ethics Commission during FY 03. It is issued pursuant to §2(l) of Chapter 268B and is intended to serve as an explanation of the Commission's responsibilities and as a record of its major activities during the fiscal year.

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 governs 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. The law requires that public servants give undivided loyalty to the government for which they work and 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, G.L. c. 268B, 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 provides free legal advice, education and other information regarding the conflict of interest and financial disclosure laws and serves as the primary civil enforcement agency for these laws.

MEMBERSHIP

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 and employ a full-time staff. Commissioners are paid on a per diem basis but voted to forego such payments for FY 03 in response to budget cuts.

Current Members

(One seat is vacant pending appointment by the Secretary of State)

Augustus F. Wagner, Jr., Chair

Partner
Nutter, McClennen & Fish
Hyannis, MA

Christine M. Roach

Partner
Roach & Carpenter
Boston, MA

Elizabeth J. Dolan

Superior Court Judge (retired)
Harwich, MA

J. Owen Todd

Partner
Owen & Todd
Boston, MA

Former Member

R. Michael Cassidy

Dean
Boston College School of Law
Chestnut Hill, MA

The Commission staff is made up of four separate divisions, under the supervision of the executive director. The Commission also appoints the General Counsel who is the chief legal officer of the Commission and head of the Commission's Legal Division, which provides free, confidential advice to public employees regarding the legality of proposed activities, advises the Commission during adjudicatory proceedings and represents the Commission in court. The Statements of Financial Interests Division administers the financial disclosure law and audits SFIs filed with the agency. The Communications and Public Education Division conducts free seminars for public employees, maintains the Commission's web site and publishes a wide range of educational materials. The Enforcement Division investigates and publicly prosecutes more serious violations of the laws. It resolves relatively minor violations privately with confidential educational letters.

SUMMARY OF FISCAL YEAR 2003

The Legislature appropriated \$1,265,221 for the Ethics Commission in FY 03, a decrease of more than 10% from the previous year. The FY 03 budget translates to a cost of approximately \$3.35 for each state, county and municipal employee under the Ethics Commission's jurisdiction and a cost of \$0.20 for each citizen of the Commonwealth of Massachusetts.¹ The Commission does not retain revenue.

The Legal Division handled 3,733 oral and written requests for confidential advice regarding the conflict of interest and financial disclosure laws, reviewed an additional 152 advisory opinions issued by municipal counsels, and prepared one formal Commission Advisory Opinion. There were 73 requests for advice pending at the end of FY 03.

During FY 03, 4,917 elected officials, candidates and designated major policy-making public employees filed Statements of Financial Interests with the Commission. All but three had filed by the end of the fiscal year. The SFI Division responded to 1,936 telephone inquiries relating to either the completion or amendment of SFIs.

A total of 3,403 people attended the 95 educational seminars conducted by the Communications and Public Education Division in FY 03.

The Commission's Enforcement Division reviewed 1,037 complaints in FY 03, issued 239 private educational letters, initiated 74 investigations and recommended 41 cases for formal review by the Commission. The Division issued two orders to show cause initiating public hearings, negotiated 24 Disposition Agreements, totalling \$49,050 in civil penalties, and issued one public education letter. There were also 12 adjudicatory hearings, several of which resulted in decisions and orders.

FISCAL YEAR 2003 VALUES AND GOALS

The conflict of interest and financial disclosure laws were enacted to promote public confidence in government and in the integrity of the Commonwealth's elected and appointed officials while still attracting talented public servants. The State Ethics Commission's FY 03 Statement of Values and Goals were derived from the fundamental principles codified by the Legislature in Chapters 268A and 268B. The Commission has five major values:

Administration: To cultivate a user-friendly, responsive agency whose primary goal is to ensure the fair and timely administration of the conflict of interest and financial disclosure laws.

Education and Advice: To provide timely and consistent advice, education and information to the Commission, elected and appointed public officials and members of the general public.

Disclosure: To provide accurate public disclosure of the statements of financial interest of elected and appointed officials; to use computer and Internet technology to facilitate the filing of SFIs.

Enforcement: To act as the primary civil law enforcement agency of the conflict and disclosure laws through impartial and timely enforcement of serious violations of these laws.

Legislation: To recommend and promote legislation that helps to clarify, simplify, and further the fundamental values of the conflict and disclosure laws.

To achieve these values, the Commission adopted three primary goals:

- Perform its core functions, as effectively and efficiently as possible
- Complete a comprehensive revising of its educational materials
- Seek passage of legislation providing for limited regulatory authority and, if enacted, promulgate regulations implementing the new law

¹These costs were calculated using information from the U.S. Census Bureau and the U.S. Department of Labor. The 2002 estimated population for Massachusetts is 6,427,801. The estimated number of state and local employees (county and municipal employees) is 377,400. These figures do not include uncompensated state, county and municipal officials such as voluntary board members who are also covered by the law.

ADVICE AND 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. The Legal Division consists of a chief, who also serves as the Commission's General Counsel, three attorneys and an administrative assistant. In addition to providing advice, the Legal Division advises the Commission during adjudicatory proceedings and represents the Commission in court.

COMMISSION OPINIONS

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 Division tries to answer written requests for advisory opinions within four to six weeks. Most requests for advice are handled over the telephone on the day of the call. In FY 03, the Commission's Legal Division handled 400 requests for advice through informal letters, and 3,333 requests via telephone.

Formal opinions are issued by the Commission. They address new issues and generally take longer to complete. 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. Informal opinions are based on prior formal Commission rulings, issued by an attorney and are not published. The Commission issued one formal advisory opinion in FY 03. Copies of formal advisory opinions are available on the Commission's website or from the Ethics Commission.

MUNICIPAL 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 FY 03, the Commission reviewed 152 municipal opinions.

LITIGATION

In *Angelo M. Scaccia v. State Ethics Commission*, the Superior Court affirmed the Commission's decision, on remand from the Massachusetts Supreme Judicial Court for a hearing regarding the civil penalty, to deny a motion for a new hearing and to reduce the civil penalty from \$3,000 to \$1,750.

In *Life Insurance Association of Massachusetts (LIAM) v. State Ethics Commission*, the Commission, following a hearing on remand from the Massachusetts Supreme Judicial Court for further findings, issued a decision and order finding that LIAM violated the conflict of interest law by illegally providing free meals on two occasions to state officials. LIAM paid a civil penalty of \$4,000.

In *State Ethics Commission v. Michael Jovanovic*, the Commission was successful in collecting a \$2,000 civil penalty, plus a \$500 interest charge, that was owed by Jovanovic for violations of G.L. c. 268A, §§2 and 3. Jovanovic had refused to pay the civil penalty levied by the Commission.

In *Vineyard Conservation Society v. State Ethics Commission*, the Commission is defending a formal advisory opinion issued to Richard Toole, a member of the Martha's Vineyard Commission who wants to become a board member of the Vineyard Conservation Society, a private non-profit organization.

In *James B. Triplett v. Town of Oxford*, a case before the Supreme Judicial Court on the Court's own motion, the Ethics Commission and the Office of the Attorney General jointly filed an amicus brief in support of the Town of Oxford. In a unanimous decision, the Court ruled that G.L. c. 258, §13 does not authorize a town to reimburse a municipal officer for legal fees and costs incurred in defending against criminal indictments or ethics charges regardless of whether he is acquitted or his defense is otherwise successful. The Court accordingly reversed the Superior Court's denial of the Town's motion for summary judgment, vacated the Superior Court's order of partial summary judgment for Triplett and ordered that judgment be entered for the Town.

LEGISLATION

The Commission continued its review of the conflict of interest and financial disclosure laws for the purpose of drafting legislation to simplify and clarify both statutes. The Commission approved draft legislation authorizing the Commission to establish exemptions through the regulatory process. Governor Mitt Romney is reviewing the legislation before filing it.

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.

The Financial Disclosure Division consists of the chief and a financial analyst. The division is responsible for distributing, collecting, reviewing and maintaining statements of financial interests and, in conjunction with the Enforcement Division, ensuring complete and accurate compliance.

DISCLOSURE & REVIEW

In FY 03, 4,917 public employees and elected officials were required to file SFIs. Staff review of SFIs resulted in a total of 1,732 filers amending their statements. Of this number only 388 electronic filers were required to amend while 1,344 individuals who filed manually were requested to amend or clarify their statements. In addition, the division responded to 1,936 telephone inquiries relating to either the completion or the amendment of SFIs.

ELECTRONIC FILING

Electronic filing of SFIs via the internet resulted in 54% of those required to file doing so electronically. A total of 2,663 filers submitted their statements electronically this year, which represents an increase of almost 10% from the previous year.

INSPECTION REQUESTS

Upon written request, any individual may inspect and obtain a copy of any SFI filed with the Commission. During FY 03, the Commission honored 715 such requests from 89 sources, including the media, private citizens and law enforcement agencies.

LATE FILING

Failure to file on time or to amend an inaccurate or incomplete statement within 10 days of receipt of a formal late notice is a violation of the financial disclosure law. The Commission may levy penalties of up to \$2,000 for each violation. The Commission has adopted the following schedule of penalties:

- 1-10 days late \$ 50
- 11-20 days late \$ 100
- 21-30 days late \$ 200
- 31 days or more \$ 500
- Non-filing of an SFI \$2,000

Penalties for the repeated late submission of an SFI are double that of the schedule above.

In the event a false statement is filed, the Commission may impose additional penalties. In addition, the law provides that employees who do not file may not perform their duties or be paid.

A total of 103 filers missed the May filing deadlines and were sent formal late notices. Of this number, 12 filers became the subject of preliminary inquiries. As of June 30, 2003, only three files had not complied with the filing requirements.

PENALTIES

The Ethics Commission assessed civil penalties totalling \$2,550 in FY 03 for violations of the financial disclosure law including, for the first time in the Commission’s history, twice the civil penalty paid by a filer for the repeated late filing of his statements. Penalties collected are deposited in the General Fund, as the Commission does not retain revenue.

TRAINING AND EDUCATION

During FY 03, the Communications and Public Education Division consisted of the director and a part-time administrative assistant. The Division provides free educational seminars throughout the state, maintains the Commission's web site and prints educational materials including *The Bulletin* and the *Annual Report*. The Division also serves as the public information office of the Commission and responds to a weekly average of more than ten requests for information from the media and from individuals.

SEMINARS

The Commission provides free seminars on the conflict of interest and financial disclosure laws. A total of 3,403 people attended the Commission's 95 seminars during FY 03. Seminar sponsors included 36 municipalities with a total of 1,251 attendees; 41 state agencies with a total of 1,330 attendees; and 18 professional associations with a total of 822 attendees.

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 web site. The Commission's newsletter, *The Bulletin*, is distributed three times annually. Since spring 2002, distribution of *The Bulletin* has been done electronically. The Commission's *FY 02 Annual Report* was distributed electronically during the fiscal year, as were copies of the annual compilation of the Commission's public actions, *State Ethics Commission Rulings*. The entire set of the Commission's *Rulings* (1978-2002) is available at the Commission's office and the Commission's *Rulings* are also available on the database at the Social Law Library website, www.sociallaw.com.

WEB SITE

The Commission maintains a web site on the Internet at www.mass.gov/ethics which was updated during FY 03 by adding the complete texts of Commission enforcement actions and advisory opinions from 1992 to the present as well as selected texts from enforcement actions and advisory opinions prior to 1992.

MEDIA AND PUBLIC RELATIONS

The Commission responds to inquiries from the media and the public about the Commission and the conflict of interest and financial disclosure laws. In FY 03, the Commission issued 28 press releases and handled almost 450 inquiries from the press and the public. The Commission does not confirm or deny that informal opinions have been issued or that investigations are being conducted. It does, however, provide explanations of the law, generally directing individuals with questions to the Commission's web site for additional information.

ENFORCEMENT

The Enforcement Division consists of four attorneys, four investigators and an administrative assistant. The division investigates and, where necessary, prosecutes violation of the conflict of interest and financial disclosure laws.

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 law. In FY 03, the Enforcement Division received 923 complaints from the following sources:

62.5% from private citizens	26% from anonymous sources
3% from media reports	1.5% from other law enforcement agencies
2% from financial disclosure form reviews	1.5% were generated by Commission staff
3.5% were "self-reports" made by public employees regarding their own conduct.	

These 923 complaints involved the following subjects: 78.5% were municipal employees, 18% state employees, 2% county employees and 1.5% private individuals or corporations.

A total of 1,037 complaints were received or pending in FY 03. The division closed 53% of those complaints because the allegations fell outside the Commission's jurisdiction, were clearly frivolous or otherwise did not justify continued investigation. The division consolidated 5% with existing cases and resolved 23% with private educational letters without any investigation. Finally, the division assigned 11% to an attorney/investigator team for further review.

STAFF INVESTIGATIONS

The Commission closed 30 cases following informal staff investigations: 19 were closed because the situation was one in which a private educational letter was appropriate and 11 were closed because staff determined there was little likelihood that the law had been violated. As of June 30, 2003, there were 22 ongoing informal staff investigations.

FORMAL INQUIRIES

The Commission authorized a total of 41 formal inquiries in FY 03: 24 regarding alleged violations of the conflict of interest law and 17 involving alleged violations of the financial disclosure law. Nineteen of the subjects of formal inquiries were municipal officials or employees, 18 were state officials or employees, three were county officials and one was a private entity. During FY 03, Enforcement Division staff completed 33 formal inquiries into alleged violations of the conflict of interest or financial disclosure laws.

In 24 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 six confidential Compliance Letters regarding conflicts of interest, advising subjects of their violations and explaining the consequences of future misconduct. Six cases were terminated without a finding.

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

PUBLIC RESOLUTIONS

In FY 03, the Commission conducted 12 adjudicatory hearings, several of which resulted in Decisions and Orders. The Commission also entered into 24 Disposition Agreements: seven with state officials, 15 with municipal officials and two with county officials. In these signed documents, subjects admit violating G.L. c. 268A or 268B, and agree to pay civil penalties of up to \$2,000 per violation. In some instances subjects also agree to forfeitures. In addition, the Commission issued one Public Education Letter, stating that there was reasonable cause to believe that the conflict law had been violated, but resolving the matter with the subject's consent through this public letter because it believed education rather than a penalty was appropriate.

PENALTIES

The Ethics Commission assessed civil penalties for violations of the conflict of interest law totalling \$46,500 and collected forfeitures of \$1,860 in FY 03. Penalties collected are deposited in the General Fund, as the Commission does not retain revenue.