

STATE ETHICS COMMISSION

Annual Report

Fiscal Year 1998

STATE
ETHICS
COMMISSION



MASSACHUSETTS

STATE ETHICS COMMISSION

ANNUAL REPORT

FISCAL YEAR 1998

Table of Contents

Introduction to the Commission

History	1
Summary of Fiscal 1998	2
Membership	3

Advisory Opinions

Commission Opinions	4
Municipal Advisory Opinions	6

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 98 Enforcement Actions..... 11

STATE ETHICS COMMISSION

This report covers the activities of the Massachusetts State Ethics Commission during FY98. 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
1998**

The Legislature appropriated \$1,282,518 for the Ethics Commission in FY98. This translates to a cost of approximately \$4.37 for each state, county and municipal employee under the Ethics Commission's jurisdiction and a cost of \$0.21 for each citizen of the Commonwealth of Massachusetts.¹ The Commission does not retain revenue.

The Legal Division handled 4,423 oral and written requests for confidential advice regarding the conflict of interest and financial disclosure laws, reviewed an additional 197 advisory opinions issued by municipal counsels, and prepared seven formal Commission Advisory Opinions. Due to staff shortages, the division carried a backlog of 124 unanswered requests for advice into FY99.

During FY98, 4,760 elected officials, candidates and designated major policy-making public employees filed Statements of Financial Interest ("SFIs") with the Commission.

A total of 4,036 people attended the 141 educational seminars and workshops taught by the Public Education Division in FY98. The Division distributed almost 14,000 copies of various educational materials during the year, and created one new publication. A homepage on the internet was established in April 1998. Almost 1,400 people visited this site between April and June 30, 1998.

The Commission's Enforcement Division reviewed 768 complaints in FY98. It issued 185 educational letters, conducted 100 initial investigations and recommended 45 cases for formal review by the Commission. The Division negotiated 25 Disposition Agreements, totalling \$6,000 in fines, and issued two public enforcement letters. There was also one adjudicatory hearing which resulted in a decision and order imposing a \$13,500 fine.

¹These costs were calculated using information from the U.S. Census Bureau and the Massachusetts Institute of Social and Economic Research. The 1997 estimated population for Massachusetts is 6,117,520. The estimated number of state employees is 97,485 and of local employees (county and municipal employees) is 196,209. 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 FY98 the members of the Ethics Commission were:

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

Paul F. McDonough, Jr., Vice 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

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 FY98, the Commission's Legal Division handled 497 requests for advice through informal letters, and 3,919 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 seven formal advisory opinions in FY98. 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 FY98:

- **EC-COI-97-4** - Section 23(b)(2) does not prohibit elected or appointed officials from accurately identifying their current or past official titles in privately-funded advertisements of their services. A member of a Board of Selectmen who was also a private attorney wished to list membership on the Board as part of qualifications for providing municipal legal services.
- **EC-FD-97-1** - An individual who is required to file a statement of financial interests (SFI) under G.L. c. 268B, §5, who also practices law privately, is advised that, because two loans from an institutional lender to his law firm are "debts incurred in the ordinary course of business," he is not required by G.L. c. 268B, §5(g)(3) to report them on his SFI.
- **EC-COI-98-1** - Under §4 of G.L. c. 268A, a member of the Fire Safety Commission and Automatic Sprinkler Appeals Board may not receive compensation from a client if he knows or reasonably should know that his services will require him to prepare reports or other submissions to the Automatic Sprinkler Appeals Board or will result in Appeals Board proceedings. The Commission member is also prohibited by §4 from receiving compensation from a client to provide testimony under oath before the Sprinkler Appeals Board.
- **EC-COI-98-2** - Section 23(b)(2) of G.L. c. 268A permits the Chief of the Administrative Law Division of the Office

the Attorney General to use state time and state resources, to the extent necessary to perform duties as chair of the public law section of the Massachusetts Bar Association that are (i) in furtherance of the public interest; (ii) interconnected with her duties as division chief; and (iii) not used toward partisan political ends; provided that she obtains, in advance, her appointing authority's written approval of her proposed use of state time and resources and such written approval specifies that her use of state time and resources satisfies these three conditions.

- **EC-COI-98-3** - Under §18 of G.L. c. 268A, a former city councilor may represent a business association in a Superior Court appeal of a City board of Health decision regarding citing a solid waste facility because his participation in certain City Council votes was not sufficiently personal and substantial participation in the siting decision such that he would be barred from acting as an attorney in a potential appeal of the decision.

- **EC-COI-98-4** - A member of the Massachusetts Turnpike Authority (MTA) Retirement Board, who was elected, as provided by statute, from among the current and retired employees of the MTA, may participate in his Board's determinations about whether to effect cost of living adjustments for retired members of the MTA Employees' Retirement System and their beneficiaries, as provided by statute, notwithstanding his personal financial interest, as a retiree-member, in such matters.

- **EC-COI-98-5** - Section 19(a) prohibits an elected member of a local school committee from approving payments to a non-profit corporation which is a vendor to the schools, where the school committee member sits on the non-profit's board of directors. Previously, in *EC-COI-87-32*, the Commission had opined that under certain circumstances the signing of payroll warrants could be considered merely ministerial. In the current opinion, the Commission concluded that the approval of payment warrants is not ministerial, and reversed *EC-COI-87-32* to the extent that it holds otherwise.

**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 FY98, the Commission reviewed 197 municipal opinions, concurring with 76 % of them. The Commission staff provided clarification of 37 municipal opinions, and informed municipal lawyers in 11 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 FY98, 4,596 public employees and elected officials were required to file SFIs. An additional 264 individuals who are seeking office filed as candidates. A total of 174 filers missed the May filing deadlines and were sent formal notices of delinquency. Of these, 154 people filed during the 10-day grace period. Nineteen delinquent filers failed to file within the 10-day grace period and became the subjects of preliminary inquiries.

Upon written request, any individual may inspect and obtain a copy of any SFI filed with the Commission. During FY98, the Commission honored 1,181 such requests from 145 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 4,036 people attended the Commission's 141 seminars during FY98, an increase of 23% from the previous year. Four workshops for city solicitors and town counsels were provided as well as a workshop for state agency managers. Seminar sponsors included:

Municipalities:

Amesbury	Hingham	Pittsfield
Ashburnham	Holliston	Plymouth
Belchertown	Hopedale	Provincetown
Boston	Huntington	Quincy
Brimfield	Longmeadow	Randolph
Brookfield	Mansfield	Reading
Burlington	Mattapoisett	Rehoboth
Charlton	Middleborough	Rochester
Dedham	Middleton	Shrewsbury
Duxbury	Millville	Sunderland
East Brookfield	New Braintree	Truro
Eastham	Northborough	Wales
Easton	North Reading	Walpole
Everett	Oakham	West Brookfield
Framingham	Orange	Weymouth
Freetown	Palmer	Winthrop
Hanover	Peabody	Wrentham
Harvard	Pembroke	Yarmouth

County Agencies:

Essex County Sheriff's Office
Hampshire County Regional Services Department

State Agencies:

Administration & Finance Human Services Division, Agawam Police Academy, Cape Cod Regional Employment Board, Department of Corrections, Department of Economic Development, Department of Telecommunications and Energy, Division of Registration, Inspector General's Office Certified Public Purchasing Officials Program, Massachusetts Housing Finance Agency, Massachusetts Manufacturing Partnership, Office For Refugees and Immigrants, Office of Child Care Services, Office of Coastal Zone Management, Office of the Comptroller, Office of Commissioner of Probation, Operational Services Division, State Police, Teachers Retirement Board

Professional Associations:

Barnstable District Alliance, Bristol County Assessors Association, Fire Chiefs' Association of Massachusetts, Inc., Massachusetts Association of School Committees, Massachusetts Collectors and Treasurers Association, Massachusetts Federation of Planning and Appeals Boards, Massachusetts Association of Planning Directors, Municipal Managers Association, New England Association of Plumbing, Gas and Mechanical Inspectors, Plymouth/Norfolk Accountants Association, Southeastern Massachusetts Building Officials Association, School Services Association, Suffolk University, TeenPact, Town Counsel & City Solicitors Association, Western Massachusetts Housing Authorities

**INTERNET
HOME
PAGE**

The Commission has established a home page on the Internet at www.magnet.state.ma.us/ethics. The home page includes: an agency profile and history; a summary of the previous fiscal year; explanations of the law for both the public and private sector; all Commission educational materials and disclosure forms, which can be copied; and a list of Commission services. Plans are underway to post all of our advisory opinions and enforcement actions on this site to increase public access to the Commission's precedent. Since its creation in April 1998, almost 1,400 people have visited the site.

PUBLICATIONS

The Commission publishes a wide variety of educational materials explaining various provisions of the conflict law and keeps constituents informed of recent rulings. The Commission's newsletter, *The Bulletin*, is distributed to an estimated 4,000 subscribers. About 1,500 copies of publications were distributed in FY98 in response to phone, written or "walk-in" requests for information, and about 14,000 copies of publications were provided to seminar sponsors to be copied for seminar participants. The Commission distributed about 3,700 copies of publications to individuals as part of enforcement actions and of legal opinions including *Commission Advisory 98-1: The Conflict Law and Legislators' Private Employment*. About 411 copies of the Commission's *FY97 Annual Report* were distributed during the fiscal year, as were 107 copies of the annual compilation of the Commission's public actions, *State Ethics Commission Rulings*. The Commission also issued seven 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 FY98, the Enforcement Division received 768 complaints from the following sources: 67% from private citizens, 18% from anonymous sources, 3% from media reports, 3% from other law enforcement agencies, 3% from reviews of financial disclosure forms; 2% were generated by Commission staff, and an additional 4% were "self-reports" made by public employees regarding their own conduct. About 76% of the complaints alleged violations by municipal employees, 18% implicated state employees, 3% referenced county employees and 3% cited private individuals or corporations.

A total of 823 complaints were received or pending in FY98. About 44% 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 5% of the complaints were consolidated with existing cases. About 22% of the complaints were resolved with private educational letters without any investigating being done.

STAFF INVESTIGATIONS About 27% of the complaints received or pending in FY98 were assigned to an attorney/investigator team in the Commission's Enforcement Division. The Commission closed 46 cases following informal staff investigations: 43% because the situation was one in which a private educational letter was appropriate; and 57 % because staff determined there was little likelihood that the conflict laws had been violated. About 25% of the informal staff investigations led to formal inquiries. As of June 30, 1998, there were 70 ongoing informal staff investigations.

FORMAL INQUIRIES The Commission authorized a total of 47 formal inquiries in FY98: 23 regarding alleged violations of the conflict of interest law and 24 involving alleged violations of the financial disclosure law. Sixteen of the subjects of preliminary inquiries were municipal officials or employees, 21 were state officials or employees and nine were county officials or employees.

During FY98, Enforcement Division staff completed 41 formal inquiries into alleged violations of the conflict of interest or financial disclosure laws.

In 20 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 seven confidential Compliance Letters regarding conflicts of interest, advising subjects of their violations and explaining the consequences of future misconduct. Twelve cases were terminated without a finding.

At the end of the fiscal year, the Commission had three public hearings pending; in two 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 FY98, the Commission entered into 25 Disposition Agreements: 14 with state officials, three with municipal officials, seven with county officials and none with private companies. 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 FY98 in which the Commission found that the subject had violated the conflict law.

The Commission also issued two 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 \$19,500 in FY98. Penalties collected are deposited in the General Fund, as the Commission does not retain revenue.

FY 98 ENFORCEMENT ACTIONS

In the Matter of Walter Hewitson

(August 13, 1997)

The State Ethics Commission cited Bridgewater Conservation Commissioner Walter Hewitson for receiving compensation from and acting as an agent for private parties in relation to Bridgewater Conservation Commission matters. Section 17 of G.L. c. 268A, the state's conflict of interest law, 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. In a Public Enforcement Letter, the Ethics Commission cited Hewitson, a wetlands botanist who consults with engineering firms and individual property owners, for preparing approximately 38 wetland delineation reports. At the time Hewitson prepared the reports, he knew that most of them would be submitted to his board. In fact, more than half were submitted to the Conservation Commission. As the Public Enforcement Letter explained, public officials may not participate privately in matters such as wetlands delineations or reports about the delineation if the public employee knows that it is likely that the report would be submitted to the public official's board. In addition, the Public Enforcement Letter cited Hewitson for representing a client before the Conservation Commission in February 1995 at an on-site review to determine whether a wetlands boundary should be expanded which might exclude two buildable house lots on Four Leaf Circle for which Hewitson had previously delineated wetlands boundaries. At the site review, Hewitson made a presentation and defended his earlier wetlands delineation. The Letter noted that Hewitson received incorrect advice from the Commission chairman and agent which led him to understand that he could submit his reports to the Commission for its review but could not participate as a Conservation Commissioner in matters where he had done the wetlands delineations. Except in the issue of the boundaries for the house lots on Four Leaf Circle, Hewitson abstained as a Conservation Commissioner whenever a matter came before the Conservation Commission which involved a delineation he had done.

In the Matter of Brian Main

(November 10, 1997)

The Massachusetts State Ethics Commission fined Hopedale building commissioner Brian Main \$1,000 for participating as building commissioner in a subdivision permit application in which he had a financial interest. In a Disposition Agreement, Main admitted that he violated G.L. c. 268A, §19 in September 1994 by reviewing the drawings and site plans that accompanied an application by Joseph Gorby for a comprehensive permit to construct a 16-unit subdivision on Boyd Street under a so-called Local Initiative Program ("LIP"). Under the LIP, a developer is allowed to construct a multi-unit housing development under less stringent zoning guidelines than would otherwise apply, provided that a certain percentage of the homes are priced to sell to low-income home

buyers. Gorby hired Main's architectural firm, Bri-Con Associates, to draft preliminary plans for the subdivision in 1993 or 1994. Main also admitted that he violated §19 in October 1994 when he certified that the development was in a certain zoning district and that the site plans and application were accurate. Section 19 of the conflict law generally prohibit a municipal official from taking official actions affecting his financial interests. Main had a financial interest in the permit application because he knew that it was reasonably foreseeable that Gorby would hire him as the architect for the detailed home construction plans, because Main planned to bid to become the construction manager for the project and because any revisions to the preliminary drawings would be directed back to his company, BriCon.

In the Matter of Life Insurance Association of Massachusetts, Inc.
(December 16, 1997)

The Massachusetts State Ethics Commission issued a Decision and Order concluding the adjudicatory hearing of the Life Insurance Association of Massachusetts by finding that LIAM violated M.G.L. c. 268A, the state's conflict of interest law, by illegally providing free meals and/or golf to Massachusetts legislators and officials on eight occasions and by providing a former legislator with free dinner and a set of golf clubs on one occasion. The Commission ordered LIAM to pay a civil penalty of \$13,500. In the Decision and Order, the Commission found that LIAM violated §3(a) of the Massachusetts conflict of interest law, which prohibits anyone from providing anything of substantial value to state employees, including legislators, "for or because of any official act . . . performed or to be performed" by them. The Commission found, consistent with its precedent over the past 15 years, that the term "substantial value" applied to anything valued at \$50 or more. According to the Decision and Order, LIAM provided the following illegal gratuities each valued at \$50 or more:

- on July 21, 1989, dinner at the Marriott Hotel in Boston for former Rep. Francis Woodward and his spouse from LIAM Executive Director William Carroll;
- on December 20, 1989, dinner at Locke-Ober in Boston for former Rep. Francis Mara and Joint Committee on Insurance staffer Robert Smith from LIAM lobbyist Luke Dillon;
- on March 22 and 23, 1990, dinners at Fountains Restaurant in Tulsa, Oklahoma for Woodward and his spouse from Carroll;
- on November 24, 1990, dinner for former Rep. Francis Emilio and his spouse at Stouffers Restaurant in Orlando, Florida from Carroll;
- on January 8, 1991, golf clubs and dinner for former Rep. Emilio at Joe Tecce's Restaurant in Boston from Carroll;

- on October 16, 1991, dinner at the Avanti Restaurant, Scottsdale, Arizona for former Rep. Woodward, his spouse, Sen. Robert Havern, his spouse, Sen. Marc Pacheco, former Rep. Daniel Ranieri and his spouse from Carroll;
- on May 13, 1992, dinner at the Four Seasons Restaurant in Boston for former Massachusetts Insurance Commissioner Katherine Doughty from Carroll; and
- on March 12, 1993, dinner at the Grill Restaurant at the Ritz Carlton Hotel on Amelia Island, Florida for former Rep. Francis Mara, his spouse, former Rep. Thomas Walsh, his spouse, former Rep. William Cass, former Rep. Michael Walsh, his spouse, Rep. Kevin Honan, his guest, Rep. Angelo Scaccia, former Rep. John Cox, his spouse and Rep. Kevin Poirier from Carroll.

According to the Decision and Order, LIAM is a trade association of Massachusetts-based commercial life, health and disability insurers. Its primary purpose is to represent its members collectively on matters related to insurance legislation and regulatory matters. An average of over 100 bills filed in the Massachusetts legislature each year affect the insurance business; about six bills affecting the insurance business are enacted into law each year in the Commonwealth. The Decision and Order found that the gratuities were given at a time when the recipients "had already taken official acts and/or reasonably can be expected to take future official acts concerning matters of interest to [LIAM]" because, for example, numerous bills and other matters, such as the accreditation of Massachusetts insurance companies, were pending before the legislative committee or state agency in which the recipients of the gratuities served.

In the Matter of J. Martin Auty
(April 14, 1998)

The Massachusetts State Ethics Commission fined Mendon police officer J. Martin Auty \$500 for his participation in the hiring of his stepdaughter, Sheri Tagliaferri, as a part-time police dispatcher in 1994 and as a part-time reserve police officer in 1994 and 1995. In a Disposition Agreement, Auty admitted that he violated G.L. c. 268A, §19 by screening and interviewing, as a member of a review committee, candidates other than Tagliaferri, who was one of 41 applicants for 12 police dispatcher positions. After the interviews, Auty participated in narrowing the pool to 12 final candidates; Tagliaferri was one of the finalists. On April 25, 1994, the selectmen approved all 12 candidates, including Tagliaferri. Auty also admitted that he violated G.L. c. 268A, §19 by screening and interviewing, as a member of a review committee, candidates other than Tagliaferri, who was one of 38 applicants for four to six reserve police officer positions. After these interviews, Auty participated in narrowing the pool -- this time to five final candidates; Tagliaferri was again one of the finalists. In September, 1995, the selectmen appointed the

five finalists as reserve officers. 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. As Auty's wife's child, Tagliaferri is a member of Auty's "immediate family" for the purposes of the conflict law.

In the Matter of Martin Nieski
(April 14, 1997)

The Massachusetts State Ethics Commission authorized a Disposition Agreement resolving charges that former Dudley Selectman Martin Nieski violated the conflict of interest law in 1997. In the Agreement, Nieski admitted appearing before the selectmen on behalf of his wife's corporation while he served as a selectman. Nieski's wife owns Nieski Inc., a corporation doing business as Marty's, a Dudley liquor store. Nieski was seeking to have an annual liquor license fee of \$1,100 waived. The Commission fined Nieski \$250. In the Agreement, Nieski admitted his actions violated G.L. c. 268A, §17(c), which generally prohibits a municipal official from acting as an agent for anyone other than the town in connection with matters in which the town has a direct and substantial interest. According to the Agreement, Nieski acted as an agent for Nieski Inc. before selectmen at an April 7, 1997 hearing. At the hearing, Nieski "argued extensively" that the \$1,100 fee assessed to Marty's should be waived because the annual fee for 1997 had already been paid in January 1997 by Ideal Liquors, Inc., which then transferred its package store liquor license to Nieski Inc. in February 1997. Nieski did not participate as a selectman in this hearing.

In the Matter of James Ansart
(June 3, 1998)

The State Ethics Commission cited Hopedale Water and Sewer Commission Chairman James Ansart for having his engineering firm, J. M. Ansart, Inc., work as an unlisted subcontractor on the Hopedale Memorial Elementary School renovation contract. Section 20 of G.L. c. 268A, the state's conflict of interest law, in general prohibits a municipal official from having a direct or indirect financial interest in a contract with the municipality in which he serves. In a Public Enforcement Letter, the Ethics Commission cited Ansart for having a financial interest in a \$510,000 subcontract with Congress Construction Company to provide general site work, excavations, foundation construction and installation of water and sewer lines for the 1994 school renovation project. Approximately \$103,000 of the contract involved water, sewer and drain work which was inspected by employees of his own agency, the Water and Sewer Commission. Congress Construction served as the general contractor for the \$6.6 million renovation contract. J. M. Ansart Inc. was the low bidder for one of the subcontracts with Congress Construction. The Public

Enforcement Letter states that, although no facts prove Ansart used his municipal position to obtain this contract — Congress Construction asserts it did not even know Ansart was the Water and Sewer Commission chairman — the public perception is created that Ansart could have somehow used his municipal position to obtain this substantial contract, especially where a significant portion of the contract would involve inspections by his own agency. As explained in the Public Enforcement Letter, "This section of the law is intended to prevent municipal officials from using their position to obtain contracts from their own town and to avoid the public perception that municipal officials have an "inside track" on such opportunities." Ansart was eligible to obtain an exemption to §20 of the conflict law which would have allowed him to receive the subcontract provided he made a written disclosure to the town clerk of his interest in the subcontract. He did not file such a disclosure. The Public Enforcement Letter notes that filing such a disclosure would give town officials and the public an opportunity to scrutinize the subcontract to ensure that abuses did not occur.

In the Matter of Allin P. Thompson
(June 24, 1998)

The Massachusetts State Ethics Commission authorized a Disposition Agreement resolving charges that former Harwich Selectman Allin P. Thompson violated the conflict of interest law in 1995. In the Agreement, Thompson admitted acting as a real estate agent for his sister and brother-in law in their purchase of a property, a portion of which had been willed to the Town of Harwich. The Commission fined Thompson \$1,000. In the Agreement, Thompson admitted his actions violated G.L. c. 268A, §17(a), which prohibits a municipal employee from receiving compensation from anyone other than the town in relation to matters in which the town has a direct and substantial interest, and §17(c), which generally prohibits a municipal official from acting as an agent for anyone other than the town in connection with matters in which the town has a direct and substantial interest. According to the Agreement, in September 1992, Harwich resident Chester Ellis died. His will specified that the Town of Harwich was to receive property he owned in West Harwich for use as a recreational park. However, Ellis owned only 75 percent of the property; Ellis' cousin owned the other 25 percent and was unwilling to give his portion to the town. Ellis had also owned 75 percent of an adjacent parcel which he left to certain designated charities; his cousin owned the other 25 percent of this property. The executor of Ellis' estate decided to sell the two properties jointly and divide the proceeds from the sale proportionally among the town, the co-owner and the designated charities. Thompson represented his sister and brother-in-law in the purchase of the joint property by initially negotiating the sale price, by filling out the purchase and sale agreement and by delivering the deposit check. Thompson's relatives paid \$162,800 for the joint property, of which the town received \$62,912. Thompson received \$8,140 in broker's fees for representing his sister and brother-in-law.

STATE ETHICS COMMISSION

ROOM 619

ONE ASHBURTON PLACE

BOSTON, MA 02108

617-727-0060

