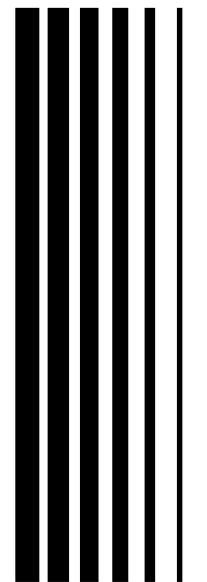


STATE ETHICS COMMISSION

Annual Report

Fiscal Year 2001

STATE
ETHICS
COMMISSION



MASSACHUSETTS

STATE ETHICS COMMISSION

Annual Report

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Commissioners

Augustus F. Wagner, Jr., Chairman
R. Michael Cassidy
Elizabeth J. Dolan
Christine M. Roach
Stephen E. Moore

Executive Director

Peter Sturges

Editor

Carol Carson

This report covers the activities of the Massachusetts State Ethics Commission during FY01. 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.

MESSAGE FROM THE CHAIRMAN

On behalf of the Massachusetts State Ethics Commission, I am pleased to submit the Fiscal Year 2001 Annual Report of the Commission's work. While the Board's activities during this past year are set out more fully in the body of the report, the following highlights deserve special mention and provide a glimpse of where we have been and where we are going. The Ethics Commission has the responsibility to interpret, educate, provide disclosure and enforce the conflict of interest law and the financial disclosure law, Massachusetts General Laws c. 268A and c. 268B. The Ethics Commission fulfills its responsibilities by:

- (1) achieving a nearly 100 percent response rate by those required to file statements of financial interests (SFI);
- (2) conducting a far-reaching educational program;
- (3) providing free, confidential, timely and binding advice and guidance; and
- (4) investigating and prosecuting public officials for serious violations of these laws.

Financial Disclosure - Over the course of the Commission's history, more than 100,000 SFIs have been filed. This year public officials were able to download a "pdf updateable document" and complete their SFIs on their computer. Next year, they will be able to do so online, if they choose, and file electronically using a streamlined form. The form will be easy to fill out, will eliminate thousands of paper files and will drastically decrease the number of errors requiring SFI filers to amend their statements.

Training and Education - Since 1995, the Commission has conducted over 1,000 educational seminars for state and county agencies, municipalities and private groups or associations. In Fiscal Year 1996, the Commission conducted 69 seminars. In FY 2001, three and a half times as many seminars, 247, were held. Focusing on the theme of "Ask Before You Act," the Commission co-sponsored a series of educational programs throughout the state with the Office of the Attorney General and state's District Attorneys. The Commission also redesigned its newsletter *The Bulletin* in order to reflect a more balanced emphasis on the Commission's four divisions.

Advice and Opinions - The Commission's Legal Division witnessed unusually large staff turnover in FY 01. Indeed, at one point during the year there were only two full time attorneys. Fortunately, by the end of the fiscal year, the Division was again up to its full complement of six attorneys. Even with the large staff turnover, the division responded to 3,594 telephone requests for advice, prepared five formal opinions and responded with informal staff opinions to 372 requests for written advice. In addition, the Division has revised its procedure for responding to requests for opinions, which is already resulting in even more prompt telephone advice and clearer, more concise informal opinions.

Enforcement - This year, the Commission received a record 935 complaints. Considering that there are more than 250,000 public officials in the Commonwealth, this number of complaints speaks well about them. Other records were also achieved. For example, approximately 350 matters alleging violations of the conflict or financial disclosure law were resolved with confidential educational letters. At the same time, a record number of Orders To Show Cause, the Commission's public charging document, were issued in FY 2001. Two of those matters have been resolved through Disposition Agreements, one by an order and four are scheduled for public hearings during FY 2002.

The Commission's enforcement record also reflects other trends. Over the past three years, for example, there has been a steady increase in public resolutions involving municipal officials. This past year has shown a focus on the code of conduct established by the conflict of interest law. In particular, six out of 14 matters resolved publicly through a disposition agreement concerned violations of G.L. c. 268A, s. 23(b)(2), the section of the code that prohibits public employees from using their position to improperly benefit themselves or others. Public resolutions included agreements with a legislator who solicited charitable contributions from banks with legislative matters pending before the banking committee, a deputy superintendent who used his position to get subordinates to write papers for his daughter's college courses and a maintenance director who accepted services to fix up his home from employees under his supervision.

Finally, the Commission identified recently reaffirmed guidelines for the Enforcement Division to consider in assessing the seriousness of a violation: the willfulness of the activity; the economic benefit to the subject or someone connected to him or her; the economic harm to an individual or the government; the use of undue influence; and the impact on the public's confidence in government. The Commission also endorsed an "average 12-month goal" for completing investigations -- a significant reduction from the present 20-month average. Although not binding on the Commission or the Enforcement Division, the guidelines and the 12-month goal reflect the Commission's concern for fairness and the maxim that justice delayed can be justice denied.

Conclusion - The Commission is committed to being a user-friendly, responsive agency whose **primary** goal is compliance with the law. The Commission will continue to provide timely public disclosure of SFIs and reports filed with the Commission, to educate and advise whenever possible and to enforce, vigorously and fairly, whenever necessary.

Augustus F. Wagner, Chairman

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 certain public officials, political candidates and designated public employees to file an annual 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, advises the Commission during adjudicatory proceedings and 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, 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.

MEMBERSHIP

Current Members

Augustus F. Wagner, Jr., Chair

Partner
Nutter, McClennen & Fish
Hyannis, MA

Stephen E. Moore

Partner
Lockhart & Kirkpatrick
Boston, MA

Christine M. Roach

Partner
Roach & Carpenter
Boston, MA

R. Michael Cassidy

Dean
Boston College School of Law
Chestnut Hill, MA

Elizabeth J. Dolan

Superior Court Judge (retired)
Harwich, MA

Former Members

Lynne E. Larkin

Attorney
Arlington, MA

Edward D. Rapacki

Partner
Ellis & Rapacki
Boston, MA

SUMMARY OF FISCAL YEAR 2001

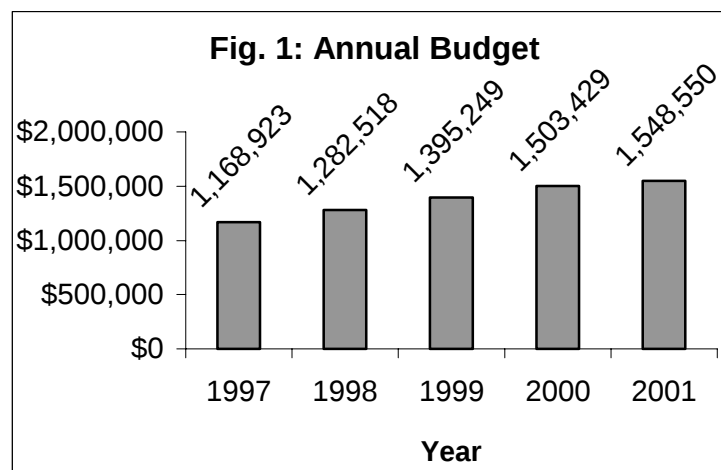
The Legislature appropriated \$1,548,550 for the Ethics Commission in FY01, an increase of almost \$380,000 or nearly 33% over the past five years (Fig. 1). The FY01 budget translates to a cost of approximately \$4.22 for each state, county and municipal employee under the Ethics Commission's jurisdiction and a cost of \$0.24 for each citizen of the Commonwealth of Massachusetts.¹ The Commission does not retain revenue.

The Legal Division handled 3,966 oral and written requests for confidential advice regarding the conflict of interest and financial disclosure laws, reviewed an additional 139 advisory opinions issued by municipal counsels, and prepared three formal Commission Advisory Opinions. There were 36 requests for advice pending at the end of FY01.

During FY01, 4,661 elected officials, candidates and designated major policy-making public employees filed Statements of Financial Interests with the Commission.

A total of 6,704 people attended the 247 educational seminars conducted by the Public Education Division in FY01.

The Commission's Enforcement Division reviewed 1,117 complaints in FY01, issued 314 educational letters, conducted 62 initial investigations and recommended 33 cases for formal review by the Commission. The Division issued seven orders to show cause initiating public hearings and negotiated 26 Disposition Agreements, totalling \$40,100 in fines, and issued one public enforcement letter.



¹These costs were calculated using information from the U.S. Census Bureau. The 2000 estimated population for Massachusetts is 6,349,097. The estimated number of state and local employees (county and municipal employees) is 367,000. These figures do not include uncompensated state, county and municipal officials such as voluntary board members who are also covered by the law.

FINANCIAL DISCLOSURE

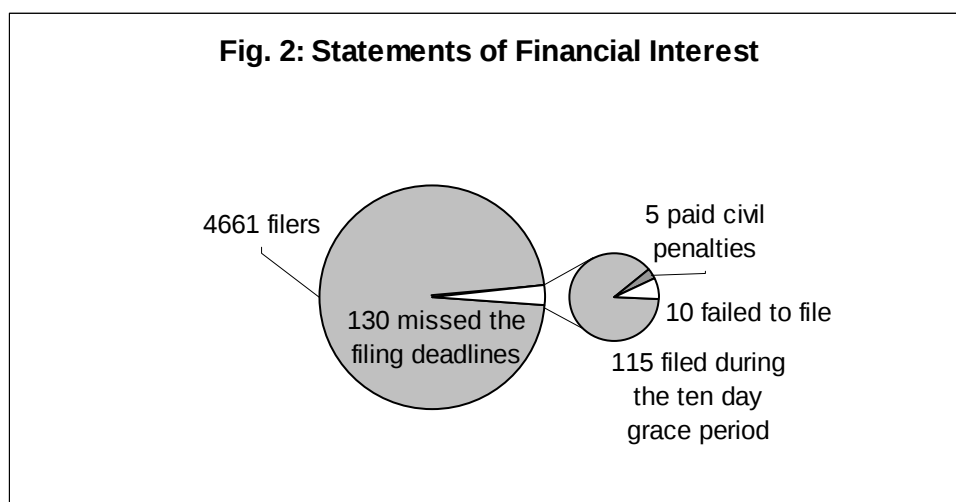
Massachusetts G.L. c. 268B requires the annual disclosure of financial interests and private business associations by all elected officials, candidates and “designated” public employees of state and county governments. “Designated” employees include individuals holding major policy-making positions within 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, a financial analyst and an administrative assistant. 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.

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 fines of up to \$2,000 for each violation. The Commission has adopted the following schedule of fines:

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

In the event a false statement is filed, the Commission may levy additional fines or seek criminal penalties. In addition, the law provides that employees who do not file may not be paid to perform a job.



In FY01, 4,661 public employees and elected officials were required to file SFIs (Fig. 2). A total of 130 filers missed the May filing deadlines and were sent formal late notices. Of these, 115 people filed during the 10-day grace period. Five other filers filed after the ten day grace period but signed disposition agreements and paid civil penalties. Ten filers failed to file within the 10-day grace period and became the subjects of preliminary inquiries.

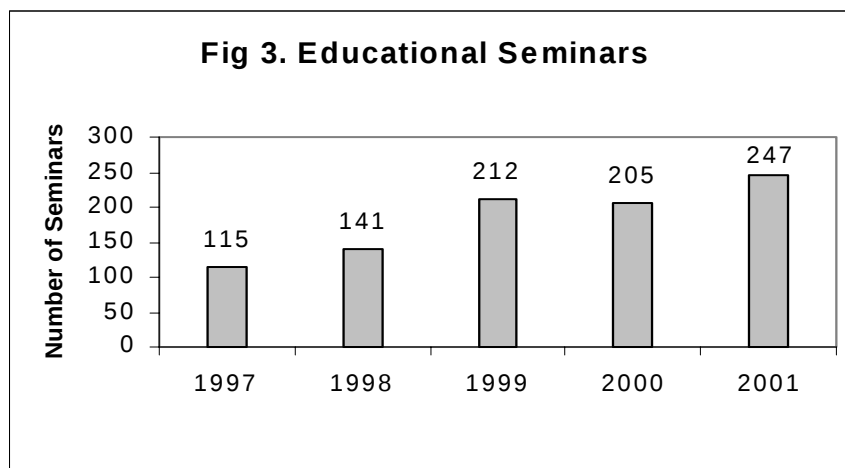
Upon written request, any individual may inspect and obtain a copy of any SFI filed with the Commission. During FY01, the Commission honored 918 such requests from 127 sources, including the media, private citizens and law enforcement agencies.

TRAINING AND EDUCATION

The Public Education Division consists of the director, an education specialist and an administrative assistant. The Division provided 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 6,704 people attended the Commission's 247 seminars during FY01. Seminar sponsors included 186 municipalities with a total of 5,078 attendees; one county agency with a total of 28 attendees; 51 state agencies with a total of 1,456 attendees; and nine professional associations with a total of 142 attendees.



PUBLICATIONS

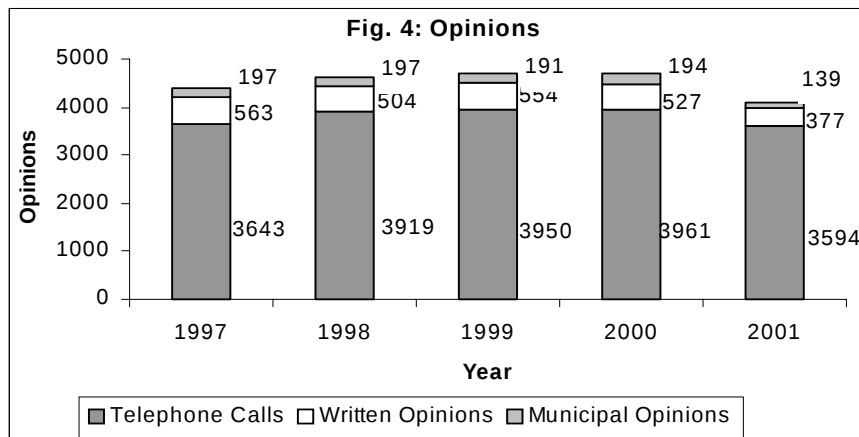
The Commission publishes a wide variety of educational materials explaining various provisions of the conflict law and keeps constituents informed of recent rulings. Most of this information is available on the Commission's website. The Commission's newsletter, *The Bulletin*, is distributed to an estimated 3,600 subscribers each spring and fall. In spring 2001, *The Bulletin* was revised to be more educational in nature and will be distributed three times annually beginning in fall 2001. About 325 copies of the Commission's *FY00 Annual Report* were distributed during the fiscal year, as were 50 copies of the annual compilation of the Commission's public actions, *State Ethics Commission Rulings*. The entire set of the Commission's *Rulings* are available at the Commission's office and are also available on the Social Law Library website, www.sociallaw.com. The Commission also issued 18 press releases describing its public enforcement actions.

WEB SITE

The Commission maintains a web site on the Internet at www.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; most of the Commission's educational materials and disclosure forms, which can be copied; searchable summaries of all advisory opinions and enforcement actions; and a list of Commission services.

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. Written requests for advisory opinions are answered within four weeks. Most requests for advice are handled over the telephone on the day of the call. In FY01, the Commission's Legal Division handled 372 requests for advice through informal letters, and 3,594 requests via telephone calls (Fig. 4).



The Legal Division consists of a chief, five 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. Formal opinions address new issues and may take longer than four weeks 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 precedent, issued by an attorney within four weeks and are not published. The Commission issued three formal advisory opinions in FY01. Copies of these opinions are available from the Ethics Commission.

MUNICIPAL OPINIONS

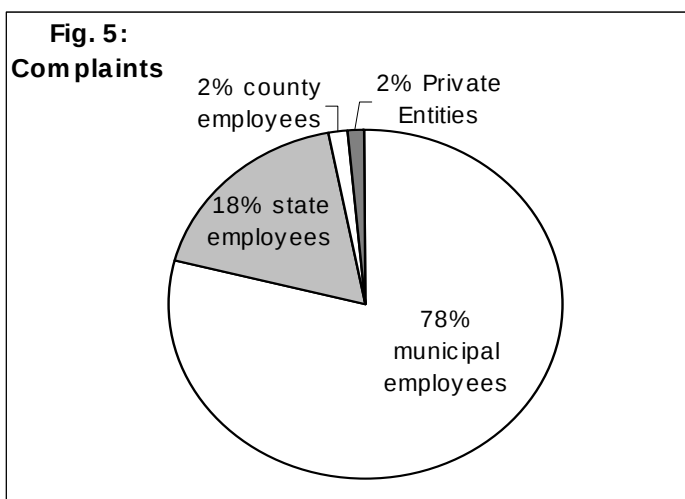
All conflict of interest opinions issued by city solicitors or town counsel must be filed with the Commission for review to ensure that these opinions are consistent with Commission precedent. The Commission has 30 days to notify the municipal counsel of any objections to an opinion; if there are no 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 FY01, the Commission reviewed 139 municipal opinions, concurring with 70 of them. The Commission staff provided clarification of 51 municipal opinions and informed municipal lawyers in 17 instances that their advice was inconsistent with Commission precedent and therefore would not be binding on the Commission.

ENFORCEMENT

The Enforcement Division consists of four attorneys, one part-time and four full-time investigators, a complaint intake coordinator 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 FY01, the Enforcement Division received 935 complaints from the following sources: 70% from private citizens, 19% from anonymous sources, 2% from media reports, 1% from other law enforcement agencies, 1% from reviews of financial disclosure forms, 2% were generated by Commission staff, and an additional 5% were “self-reports” made by public employees regarding their own conduct. About 79% of the complaints alleged violations by municipal employees, 18% implicated state employees, 1.5% referenced county employees and 1.5% cited private individuals or corporations (Fig. 5). A total of 1,117 complaints were received or pending in FY01. About 57% were closed because the allegations fell outside the Commission’s jurisdiction, were clearly frivolous or otherwise did not justify continued investigation. About 7% of the complaints were consolidated with existing cases. About 23% of the complaints were resolved with private educational letters without any investigating being done. About 7% of the complaints received were pending at the end of FY01.

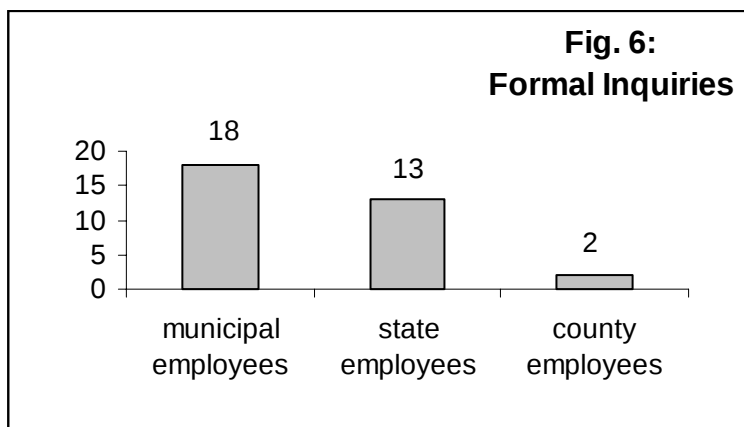


FORMAL INQUIRIES

About 5.5% of the complaints received or pending in FY01 were assigned to an attorney/investigator team in the Commission’s Enforcement Division. The Commission closed 26 cases following informal staff investigations: 11 because the situation was one in which a private educational letter was appropriate and 15 because staff determined there was little likelihood that the law had been violated. An additional 33 informal staff investigations led to formal inquiries. As of June 30, 2000, there were 40 ongoing informal staff investigations.

**STAFF
INVESTIG-
ATIONS**

The Commission authorized a total of 33 formal inquiries in FY01: 23 regarding alleged violations of the conflict of interest law and ten involving alleged violations of the financial disclosure law. Eighteen of the subjects of preliminary inquiries were municipal officials or employees, 13 were state officials or employees and two were county officials or employees. During FY01, Enforcement Division staff completed 58 formal inquiries into alleged violations of the conflict of interest or financial disclosure laws.



In 34 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 nine confidential Compliance Letters regarding conflicts of interest, advising subjects of their violations and explaining the consequences of future misconduct. Thirteen cases were terminated without a finding.

At the end of the fiscal year, the Commission had one public hearing pending; in 11 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 FY01, the Commission entered into 26 Disposition Agreements: 13 with state officials and 13 with municipal officials. 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 also issued one Public Enforcement 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 levied civil penalties totalling \$40,100 in FY01. Penalties collected are deposited in the General Fund, as the Commission does not retain revenue.

FY 2002 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. The conflict law helps to ensure that public servants at the state, municipal and county level put their duty to uphold the public's trust before their personal interests. Similarly the disclosure law promotes the public's confidence in government by requiring public disclosure of the private financial interests of state and county elected officials and certain major policy-making officials. The legislature's adoption of high ethical standards in the conflict of interest law, however, must promote the public's confidence while still attracting talented and capable public servants. It can achieve this objective only if the law is interpreted and implemented "realistically and with precision." The State Ethics Commission's FY 2002 Statement of Goals are derived from these fundamental principles codified by the Legislature in Chapters 268A and 268B.

Consistent with the fundamental values set forth above, the Commission has five major goals.

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.

STATE ETHICS COMMISSION

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