

STATE ETHICS COMMISSION

Annual Report

Fiscal Year 1997

STATE
ETHICS
COMMISSION



MASSACHUSETTS

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STATE ETHICS COMMISSION

This report covers the activities of the Massachusetts State Ethics Commission during FY97. 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
1997**

The Legislature appropriated \$1,168,923 for the Ethics Commission in FY97. This translates to a cost of approximately \$4.00 for each state, county and municipal employee under the Ethics Commission's jurisdiction and a cost of \$0.19 for each citizen of the Commonwealth of Massachusetts.¹ The Commission does not retain revenue.

The Legal Division handled 4,201 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 four formal Commission Advisory Opinions. Due to staff shortages, the division carried a backlog of 102 unanswered requests for advice into FY98.

During FY97, 4,534 elected officials, candidates and designated policy-making public employees filed Statements of Financial Interest ("SFIs") with the Commission.

A total of 4,252 people attended the 115 educational seminars and workshops taught by the Public Education Division in FY97. The Division distributed more than 22,000 copies of various educational materials during the year.

The Commission's Enforcement Division investigated 755 complaints in FY97. It issued 272 educational letters and recommended 35 cases for formal review by the Commission. Adjudicatory hearings in five cases resulted in the issuance of Decisions and Orders. The Division also negotiated 23 Disposition Agreements, totalling \$20,140 in fines, and issued three public enforcement letters.

MEMBERSHIP

During FY97 the members of the Ethics Commission were:

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

Nonnie S. Burnes,
Vice Chair
Member
Hill & Barlow, P.C.
Boston, MA

Paul F. McDonough, Jr.
Partner
Goodwin, Procter & Hoar
Boston, MA

Lynne E. Larkin
Attorney
Arlington, MA

Edward D. Rapacki
Partner
Ellis & Rapacki
Boston, MA

¹These costs were calculated using information from the U.S. Census Bureau and the 1996 Statistical Abstract. The 1996 estimated population for Massachusetts is 6,016,425. The estimated number of state employees is 101,646 and of local employees (county and municipal employees) is 187,552. These figures do not include uncompensated state, county and municipal officials such as voluntary board members.

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 FY97, the Commission's Legal Division handled 559 requests for advice through informal letters, and 3,643 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 four formal advisory opinions in FY97. 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 FY97:

- **EC-COI-96-4** - An employee of a state agency who is assigned to work for the Department of Housing and Community Development will violate §7 of the conflict law by receiving, as landlord, Massachusetts Rental Voucher Program and Section 8 Program rent subsidies under contracts with a municipal housing authority and a regional non-profit corporation, respectively, each of which receives those funds under contract with the Department of Housing and Community Development.
- **EC-COI-97-1** - Section 23(b)(1) will not prohibit a part-time intermittent police officer from working privately as a security guard within the city in which he serves as such a police officer, as long as he does so when not on active police duty. Intermittent officers in the city are not "on duty" at all times and, when they are not on active duty, have neither the authority nor the obligation to act as police officers. Thus, the position of private security guard is not inherently incompatible under §23(b)(1). An intermittent officer's private work will, however, be subject to §§17, 19 and 23 of the conflict law.
- **EC-COI-97-2** - A state official who is an attorney in private practice may represent clients who are not state employees in workers' compensation proceedings before the Division of Industrial Accidents. The Commission ruled that the Commonwealth's interests in a benefits claim under G.L. c. 152, made by a private claimant against a private insurer or employer before the DIA, are not sufficiently direct and substantial to implicate §4 because the real parties in interest are the injured worker, the insurer and the employer and the Commonwealth does

not have a stake in its determination whether or not the claimant receives benefits.

- **EC-COI-97-3** - A charter school is a public rather than a private entity and a state rather than a municipal agency for purposes of the conflict of interest law. The Commission determined that a charter school trustee who serves as a trustee without election or appointment does not appear to have an appointing authority for purposes of the conflict of interest law and thus cannot obtain an exemption under §6. A charter school trustee may serve on an elected school committee subject to certain restrictions under §§4, 6, 17 and 23.

**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 FY97, the Commission reviewed 197 municipal opinions, concurring with 65% of them. The Commission staff provided clarification of 56 municipal opinions, and informed municipal lawyers in 12 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 FY97, 4,534 public employees and elected officials were required to file SFIs. About 203 filers missed the May filing deadlines. Of these, 47 people filed during a 10-day grace period. Formal notices of delinquency were mailed to 156 individuals. Nineteen delinquent filers were the subjects of preliminary inquiries. Civil penalties of \$1,640 were paid by 13 individuals.

Upon written request, any individual may inspect and obtain a copy of any SFI filed with the Commission. In FY97, the Commission honored 1,495 such requests from 150 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 4,252 people attended the Commission's 113 seminars during FY97, an increase of 66% more seminars than the previous year. In addition, two workshops for state agency counsel were provided. Seminar sponsors included:

Municipalities:	Concord	Nantucket
Acton	Dudley	North Reading
Amesbury	Duxbury	Pepperell
Amherst	Easthampton	Plymouth
Ashland	Hanover	Reading
Berkley	Harwich	Revere
Boston	Ludlow	Rockport
Brockton	Lynnfield	Wrentham
Cambridge	Mattapoisett	Yarmouth
Chelsea		

Professional Associations:

Alliance for Community Media
American Cancer Society
American Public Works Association
Collectors and Treasurers Association
Council on Governmental Ethics Lws
Essex County Assessors Association
Federation of Planning & Appeals Boards, Inc
Massachusetts Assessors Association
Massachusetts Association of Councils on Aging and Senior Centers
Massachusetts Association of Contributory Retirement Systems, Inc.
Massachusetts Association of Finance Committees
Massachusetts Councilors & Aldermen Association
Massachusetts Firefighters Association
Massachusetts City Solicitors & Town Counsels Association
Massachusetts Municipal Accountants & Auditors Association
Massachusetts Municipal Association
Massachusetts National Association of Housing and Redevelopment Officers
Massachusetts Public Retirement Board Association
Massachusetts Selectmen Association
Massachusetts Town Counsels & City Solicitors Association
Massachusetts Women Elected Municipal Officials
New England Building Officials Education Association
North Shore City & Town Clerks Association
Southeastern Massachusetts Executive Directors Association
Worcester Area Fire Chiefs Association

County Agencies:

Essex County Civil Process Division
Essex County Retirement Boards

State Agencies:

Appellate Tax Board
Architectural Access Board
Attorney General
Bureau of Special Investigations
Cape Cod Community College
Community College Human Resource Directors
Corporation for Business, Work and Learning
Criminal Justice Training Council
Dever Developmental Center
Division of Registration
Framingham State College Land Use and Development
Program
Freshman State Legislators
Health & Educational Facilities Authority
Inspector General Certified Public Purchasing Officials
Program
Massachusetts Development Finance Agency
Massachusetts Firefighting Academy
Massachusetts Maritime Academy
Massachusetts Port Authority
Massachusetts State Lottery Commission
Office of the Commissioner of Probation
Office of International Trade & Investment
Office of the State Treasurer
Public Employees Retirement Commission
Wrentham Developmental Center

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 4,100 subscribers. About 4,200 copies of publications were distributed in FY97 in response to phone, written or "walk-in" requests for information, and about 11,000 copies of publications were provided to seminar sponsors to be copied for seminar participants. The Commission distributed about 2,300 copies of publications to individuals as part of enforcement actions and legal opinions. About 430 copies of the Commission's *FY96 Annual Report* were distributed during the fiscal year, as were 125 copies of the annual compilation of the Commission's public actions, *State Ethics Commission Rulings*. The Commission also issued 17 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 FY97, the Enforcement Division received 755 complaints from the following sources: 70% from private citizens, 17% from anonymous sources, 1% from media reports, 3% from other law enforcement agencies, 2% from reviews of financial disclosure forms; 3% were generated by Commission staff, and an additional 4% were "self-reports" made by public employees regarding their own conduct. About 77% of the complaints alleged violations by municipal employees or officials, 17% implicated state employees or officials, 4% referenced county officials and 2% cited private individuals or corporations.

A total of 803 complaints were received or pending in FY97. About 51% 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 3% of the complaints opened were pending at the end of the fiscal year.

STAFF INVESTIGATIONS

About 35% of the complaints received or pending in FY97 were assigned to an attorney/investigator team in the Commission's Enforcement Division. The Commission closed 303 cases following informal staff investigations: 90% because the situation was one in which a private educational letter was appropriate; and 10% because staff determined there was little likelihood that the conflict laws had been violated. About 12% of the informal staff investigations led to formal inquiries. As of June 30, 1997, there were 120 ongoing informal staff investigations.

FORMAL INQUIRIES

The Commission authorized a total of 35 formal inquiries in FY97: 15 regarding alleged violations of the conflict of interest law and 20 involving alleged violations of the financial disclosure law. Twelve of the subjects of preliminary inquiries were municipal officials or employees, 21 were state officials or employees and two were county officials or employees.

During FY97, Enforcement Division staff completed 26 formal inquiries into alleged violations of the conflict of interest or financial disclosure laws by a total of 27 subjects. In 16 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 three confidential Compliance Letters regarding conflicts of interest, advising subjects of their violations and explaining the consequences of future misconduct. Five cases were terminated without a finding.

At the end of the fiscal year, the Commission had eight public hearings pending; in seven 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 FY97, the Commission entered into 23 Disposition Agreements: 13 with state officials, six with municipal officials, two with county officials and two 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 five Decisions and Orders during FY97. In three instances, the Decisions and Orders concluded adjudicatory hearings: once, the Commission found that the subject had violated the conflict law on certain charges, and had not violated the law on other charges; twice, the Commission found that the subject did not violate the conflict law. In the fourth case, the Decision and Order approved a Public Enforcement Letter. In the fifth case, the Decision and Order terminated the matter.

The Commission also issued three 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 \$20,140 in FY97. Penalties collected are deposited in the General Fund, as the Commission does not retain revenue.

FY 97 ENFORCEMENT ACTIONS

In the Matter of Richard Penn (August 9, 1996)

Revere City Councilor Richard Penn admitted he violated G.L. c. 268A, §19 in November 1993, when he submitted a letter to the Revere City Planner making recommendations about a special permit to be considered by the City Council; two of Penn's recommendations were eventually incorporated as conditions of the permit. Penn had been advised by the Commission's Legal Division in April 1993 that he could not participate in the special permit application process because Wonderland Greyhound Park, his employer, had a financial interest in the matter. According to the Agreement, the special permit would have allowed National Development Associates of New England permission to exceed a 10% retail use zoning restriction in order to build a 157,500 square foot retail shopping complex on land abutting Wonderland Greyhound Park. At the time, National Development's purchase and sale agreement for the property was conditioned on the city's issuance of the special permit, and Wonderland Greyhound Park had a financial interest in the prospective sale of the land. Section 19 of the conflict law generally prohibits a municipal official from participating as such an official in any particular matter in which his private employer has a financial interest.

Penn was separately cited for his December 13, 1993 vote to approve the special permit application. In a Public Enforcement Letter to Penn, the Commission noted that Revere City Solicitor Richard Villiotte had improperly advised the Council that it could invoke the Rule of Necessity to allow Penn and other councilors to participate in the vote. The Commission cited three mitigating factors in its decision to resolve this issue by means of a public enforcement letter rather than a fine: (i) Penn's "reliance on the faulty written advice of the city solicitor"; (ii) the fact that the vote had been annulled by a Superior Court judge; and (iii) "the lack of evidence that [Penn] intentionally manipulated the city council's invocation of the Rule of Necessity to enable [himself] to vote." Section 23(b)(3) generally prohibits a public official from acting in a manner that would cause a reasonable person to conclude that he can be improperly influenced, or that any person could unduly enjoy his favor in the performance of his official duties; however, officials may obtain an exemption from this section by making a full, public written disclosure of all the relevant facts which would lead to such a conclusion.

In the Matter of Armand Gagne (August 22, 1996)

Former Chairman of the Dighton Board of Selectmen Armand Gagne admitted that he violated G.L. c. 268A, §19 by acting in his official capacity, in matters in which he had a financial interest. According to a Disposition Agreement, Gagne completed his Suffolk University coursework in March 1993, earning a Master of Public Administration degree, at a total cost to the town of \$22,260. Gagne was fined \$5,000 for the violation. According to the Agreement, Gagne repeatedly participated, as a Selectman, in "decisions and determina-

tions by the Board of Selectmen to authorize payment of Gagne's tuition, and to transfer funds to the tuition reimbursement account" by approving the tuition invoices for payment as 'Department Head;' by signing the treasury warrants after personally ensuring that the tuition payments would be included therein; and by moving to have funds transferred or explaining such transfers at special Town Meetings. Fellow Selectmen Gene Nelson and Frank Costa approved the town's payment of Gagne's tuition for the Spring 1991 semester. Throughout fiscal years 1992 and 1993, however, Gagne continued to enroll in courses at Suffolk University for each of the subsequent semesters. According to Nelson and Costa, they were unaware that Gagne's program was continuing beyond the approved Spring 1991 semester. Between April 3, 1991 and December 30, 1992, Gagne and at least one of the other two selectmen approved nine treasury warrants authorizing a total of \$22,447 in tuition payments to Suffolk University for Gagne. For various reasons, neither Costa nor Nelson reviewed the nine warrants prior to signing them. Gagne also participated as a selectman in appropriating funds for the tuition reimbursement account. Section 19 of the conflict law prohibits a municipal employee from taking any official action which would affect his own financial interests.

In the Matter of James B. Triplett
(September 12, 1996)

In a Decision and Order concluding the adjudicatory hearing of Oxford Police Chief James B. Triplett, the Commission found that Triplett did not violate G.L. c. 268A, §23(b)(2) or §23(b)(3) by, as the Enforcement Division alleged, directing that Laurie Carlsen, the daughter of a former Oxford Police Officer Robert Carlsen, be released from police arrest without a bail hearing being held, and by allegedly delaying the initiation of a criminal complaint against her. Section 23(b)(2) prohibits a municipal official from using his official position to obtain an unwarranted privilege of substantial value for himself or anyone else. According to the Decision and Order, "the record is devoid of direct evidence that Triplett knew or had reason to know that Ms. Carlsen had not been bailed prior to her release during the early morning of September 9, 1991." In addition, in reaching its Decision and Order, the Commission declined to credit the testimony of Robert Carlsen concerning the alleged delay in initiating the criminal complaint against Laurie Carlsen. Section 23(b)(3) generally prohibits public employees from acting in a manner which would cause a reasonable person to conclude that anyone can improperly influence or unduly enjoy their favor in the performance of their official duties; however, a public employee may obtain an exemption from this restriction by making a written disclosure of all relevant facts to his appointing authority. The Commission found that Triplett and Robert Carlsen were not friendly as alleged and found "no other basis for concluding that Triplett acted in a manner that would cause a reasonable person to conclude that he could be improperly influenced."

In the Matter of Herbert Kuendig
(September 17, 1996)

The Commission authorized a Disposition Agreement resolving charges that former Scituate Planning Board Member Herbert Kuendig violated the conflict of interest law in 1992. In the Agreement, Kuendig admitted representing a private client for whom he designed a house by submitting the design work and appearing before the Planning Board on behalf of his client while Kuendig was a Planning Board member. The Commission fined Kuendig \$1,000. Kuendig admitted his actions violated G.L. c. 268A, §17(a), which generally prohibits a municipal official from accepting compensation from private parties in connection with matters under his official jurisdiction, and §17(c), which generally prohibits a municipal official from representing private parties in connection with matters under his official jurisdiction. According to the Agreement, Kuendig, who was doing business as Kuendig Design, was paid between \$1,000 and \$1,500 for design work for an accessory dwelling, which "he knew would go before the Planning Board in relation to the issuance of an accessory dwelling permit." Kuendig also personally appeared before the Planning Board regarding the accessory dwelling permit matter.

In the Matter of James Russo
(October 15, 1996)

The Commission terminated the Matter of James Russo. Mr. Russo died on June 1, 1996, nearly one year after the Commission's Enforcement Division issued an Order to Show Cause on May 4, 1995 alleging that Mr. Russo, as wiring inspector and building inspector for the Town of Wilmington, violated M.G.L. c. 268A, §§3, 17, 19, 20 and 23. This action by the Commission concludes all actions by the Enforcement Division in prosecuting the alleged violations.

In the Matter of Kevin B. Kinsella
(October 15, 1996)

In a Decision and Order concluding the adjudicatory hearing of Scituate Selectman Kevin B. Kinsella, the Commission found that Kinsella did not violate G.L. c. 268A, §23(b)(2) by, as the Enforcement Division alleged, attempting to use his official position as a Selectman to secure for his son the privilege or exemption from arrest, bail, and prosecution by contacting the Chief of Police to obtain his son's release from custody and to give Kinsella "professional courtesy" in relation to his son's arrest. Section 23(b)(2) prohibits a municipal official from using his official position to obtain an unwarranted privilege of substantial value for himself or anyone else. According to the Decision and Order, a majority of the Commission found that there was not a preponderance of the evidence that Kinsella violated the law in his conversations with the Chief. In the Decision and Order, the Commission stated, "Although we do not conclude that [the Enforcement Division] has proved its case, we do not condone [Kinsella's] conduct, which can best be described as extremely poor

judgment under the circumstances. [Kinsella's] conduct suggested an abuse of power which, at the time, warranted investigation by this Commission."

In the Matter of Fred L. Gilmetti
(November 1, 1996)

Former Whitman Planning Board Member Fred L. Gilmetti was fined \$1,000 for violating the conflict of interest law in 1994 by submitting a letter and appearing before the Planning Board on behalf of F.L.G. Builders, Inc., for which Gilmetti served as president, while Gilmetti was a Planning Board member. In a Disposition Agreement, Gilmetti 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, Gilmetti submitted a letter to the Planning Board on July 12, 1994 in which Gilmetti denied F.L.G.'s responsibility for a buried drain manhole cover on Pin Oak Way, a road F.L.G. was building. In addition, Gilmetti personally appeared before the Planning Board regarding the road on several occasions, including, on August 2, 1994, requesting that the Planning Board release an \$11,000 bond for the road, which had been completed. (After the Planning Board's engineer recommended waiting until it rained to insure that there was property drainage, the Board voted to release all but \$500 of the bond.)

In the Matter of Representative Angelo Scaccia
(November 19, 1996)

In a Decision and Order concluding the 11 day adjudicatory hearing of Representative Angelo Scaccia, the Commission found that Scaccia violated M.G.L. c. 268A, §3(b) by, on five occasions, accepting illegal gratuities from lobbyists and others with interest in legislative business. The Commission ordered Scaccia to pay a civil penalty of \$3000. The Commission found that Scaccia violated §3(b) of the conflict law, which prohibits public employees, including state legislators, from accepting anything of substantial value which is given to them "for or because of any official act ... performed or to be performed" by them and §23(b)(3) of the conflict law, which generally prohibits public employees from acting in a manner which would cause a reasonable person to conclude that anyone can improperly influence or unduly enjoy their favor in the performance of their official duties, by:

- in 1991, accepting from Philip Morris lobbyist Theodore Lattanzio dinner for himself, his wife and his son and golf fees for himself and his son while attending a Council of State Governments conference in Hauppauge, New York;
- in 1993, accepting from John Hancock Insurance Company lobbyist F. William Sawyer two rounds of golf for himself while attending a National Conference of Insurance Legislators conference in Amelia Island, Florida; and
- in 1993, accepting from Life Insurance Association of Massachusetts president William Carroll dinner for himself and his son at the Ritz Carlton Hotel while attending the NCOIL

conference in Amelia Island, Florida.

The Commission found each of these gratuities to be worth \$50 or more and thus "of substantial value" for purposes of the conflict law. The Commission also found that Scaccia did not violate M.G.L. c. 268A, §3(b), as alleged in the Order to Show Cause, by accepting from lobbyist Richard McDonough dinner for himself and his son at the Amelia Island Inn while attending a NCOIL conference in Amelia Island, Florida in 1993. The Commission credited the testimony of Representative Salvatore DiMasi from which Scaccia "reasonably could have concluded that he received [this] dinner from his personal friend, DiMasi, rather than from McDonough." In addition, the Commission found that Scaccia violated M.G.L. c. 268B, §6 by accepting from Lattanzio, Sawyer and Carroll gifts aggregating \$100 or more in a calendar year and §7 by, on two occasions, filing false Statements on Financial Interest for calendar years 1991 and 1993.

In the Matter of John E. Murphy
(December 17, 1996)

Legislative agent John E. Murphy was fined \$2,000 for providing entertainment gratuities to former Speaker Charles F. Flaherty, Jr. In a Disposition Agreement, Murphy admitted he violated G.L. c. 268B, §6 when he provided Flaherty the use of a vacation house in Cotuit, Massachusetts in August and September 1990. Flaherty used the Cotuit house a total of approximately 21-25 calendar days between August 1, 1990 and September 4, 1990. Flaherty's use of the house was worth no less than \$2,775. During 1990-1992, Murphy lobbied the Legislature on behalf of such clients as racetracks, solid waste facilities, hospitals, a billboard company, an electric utility and an entity seeking compensation for an eminent domain taking. Section 6 of the financial disclosure law prohibits a legislative agent from knowingly and willfully offering or giving to a public official gifts with an aggregate value of \$100 or more in a calendar year.

In the Matter of Julie DiPasquale
(December 18, 1996)

The Commission issued a Public Enforcement Letter to former Somerville School Committee member Julie DiPasquale regarding her participation in matters in which her sister and daughter had financial interests. According to the letter, in 1992 DiPasquale participated in several votes calling for the use of a 1988 civil service list in appointing a principal clerk-stenographer for the School Department and an investigation into School Department hiring practices. Her sister Eileen Bakey, who was a clerical employee of the School Department, was effectively ranked number one on the list. In August 1992, Bakey was appointed to the vacant position. The letter also states that in 1994 DiPasquale participated in revising the policy for calculating scores on the Teacher Eligibility List, which determines the ranking of applicants for teaching positions. DiPasquale's daughter Julie DiPasquale was ranked seventh on two elementary lists for the 1993-1994 school year. As a result of the revisions,

Julie's rank for the 1994-1995 school year changed to fifth. In September 1994, Julie was recommended for a position as a sixth grade teacher at the Healey School. Section 19 of the conflict law generally prohibits municipal officials from taking official actions affecting the financial interests of an immediate family member. The Commission found reasonable cause to believe that DiPasquale's participation in matters affecting the financial interests of her sister and daughter violated §19. Section 23(b)(3) of the conflict law prohibits public employees from acting in a manner which would cause a reasonable person to conclude that anyone can improperly influence or unduly enjoy their favor in the performance of their official duties. The Commission found reasonable cause to believe that DiPasquale's actions in participating in matters affecting the financial interests of her sister and daughter would cause a reasonable person to believe that she would be improperly influenced by her relationship with her sister and her daughter. The Commission cited as one of its major reasons for resolving this matter with a Public Enforcement Letter — rather than proceeding with a pending adjudicatory proceeding concerning DiPasquale — the fact that DiPasquale believed in good faith that she could participate in these decisions because they involved determinations of general policy. The Commission is using this letter to explain to municipal officials that although there is an exemption in §19 for general policy matters, the exemption does not apply unless the financial interest is shared with a substantial segment of the town's or city's population (10% or more under Commission precedent). Where DiPasquale's sister's and daughter's financial interests were shared with only a handful of other applicants, the exemption did not apply. Issuance of a Public Enforcement Letter does not require the subject to pay a fine or admit to violating the law, but the subject must waive her right to a hearing on the matter and consent to publication of the Enforcement Letter.

In the Matter of Roger W. Howlett
(January 22, 1997)

Raynham assessor Roger W. Howlett was fined \$500 for participating in the July 1995 hiring of his daughter, Lisa McDonald, as a full-time senior clerk in the assessor's office. In a Disposition Agreement, Howlett admitted that he violated G.L. c. 268A, §19 first by formulating questions to be asked of candidates and then by asking the candidates some of the questions. While Howlett sat in the interviews of all candidates including his daughter's, he did not ask his daughter any questions. In addition, Howlett abstained from the vote to appoint his daughter to the position. Section 19 of the conflict law generally prohibits municipal officials from taking official actions affecting the financial interests of an immediate family member. McDonald resigned the clerk position on November 29, 1996.

In the Matter of Mark P. Reed
(June 16, 1997)

Southampton Conservation Commissioner Mark Reed was fined \$1,500 for violating the conflict of interest law in 1994 and 1995. In a Disposition Agreement, Reed, a surveyor for Heritage Surveys, Inc., admitted appearing before the Conservation Commission on behalf of

four Heritage clients. The Commission fined Reed \$1,500. In the Agreement, Reed 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. As a result of discussions with selectmen and other Conservation Commission members, Reed incorrectly believed it was permissible to represent Heritage and its clients before the Conservation Commission as long as he did not participate in such matters. Reed did not participate as a Conservation Commissioner in any of these matters.

In the Matter of Goldman, Sachs & Co.
In the Matter of Steven Kaseta
In the Matter of Edward M. Murphy
(June 19, 1997)

Goldman, Sachs & Co. was fined \$3,500 for providing illegal gratuities to former deputy treasurer Steven Kaseta and former Massachusetts Health and Education Facilities Authority executive director Edward M. Murphy. Kaseta was fined \$1,500 and the Commission issued a Public Enforcement Letter to Murphy. In a Disposition Agreement, Goldman Sachs admitted that it violated G.L. c. 268A, §3(a) in March 1992 when Goldman Sachs Vice President Daniel J. McCarthy provided Kaseta with two theater tickets to "Man of La Mancha" and provided dinner for Kaseta and a guest at Locke-Ober Restaurant. In December 1992, McCarthy provided Kaseta with drinks and dinner in New York City. In addition, Goldman Sachs Vice President Larry Kohn provided Kaseta with theater tickets for shows in New York City on two occasions between December 1991 and June 1992. The total cost of the dinners and tickets was approximately \$500. Goldman Sachs also admitted to providing to Murphy, through Goldman Sachs Vice President Benjamin Wolfe, dinner at Cafe Budapest in Boston in 1990, dinner and theater tickets to "Phantom of the Opera" in New York City in 1992 and dinner in Phoenix, Arizona in 1993. The total cost of the dinners and tickets was approximately \$630. Section 3(a) of the conflict of interest law prohibits anyone from directly or indirectly giving to a public employee anything of substantial value which is given for or because of an official act performed or to be performed by the public employee. Gratuities worth \$50 or more are considered to be "of substantial value" for purposes of the conflict law.

Kaseta, who as deputy treasurer was a member of the selection committee which recommended awarding a contract managing state pension funds to Goldman Sachs and also monitored the contract once it was awarded, admitted in a separate Disposition Agreement, also released today, that he violated G.L. c. 268A, §3(b) by accepting the above free meals and tickets. Section 3(b) of the conflict law prohibits public employees from accepting anything of substantial value which is given to them "for or because of any official act ... performed or to be performed" by them.

Finally, a Public Enforcement Letter cited Murphy for accepting the above free meals and

tickets in violation of G.L. c. 268A, §§3(b) and 23(b)(3). Section 23(b)(3) generally prohibits public employees from acting in a manner which would cause a reasonable person to conclude that anyone can improperly influence or unduly enjoy their favor in the performance of their official duties. According to the letter, as executive director of HEFA, an independent state authority which provides capital financing to higher education institutions and health facilities through issuing tax exempt bonds, Murphy had official responsibility for all of HEFA's actions including assigning staff to work with borrowing institutions to develop proposals and to present such proposals to the HEFA board of directors, participating in pricing bonds and participating in decisions to choose which firm would be selected as HEFA's short-term investment and pool managers. Goldman Sachs was the lead underwriter for approximately 25 percent of the \$6.4 billion in bonds issued by HEFA between 1989 and 1995 and earned commissions of at least several million dollars on these bonds. The Commission cited as the major reasons for resolving Murphy's conduct with a Public Enforcement Letter the quasi-private business nature of HEFA's activities, the friendship which developed between Murphy and Wolfe, and Murphy's reciprocation for some of the gratuities received by paying for certain dinners and events. Issuance of a Public Enforcement Letter does not require the subject to pay a fine or admit to violating the law, but the subject must waive his right to a hearing on the matter and consent to publication of the Public Enforcement Letter.

In the Matter of Casper Charles Sanzone
(June 24, 1997)

The Commission fined former Monument Mountain Regional High School guidance counselor Casper Charles Sanzone \$2,000 for altering the grades of his daughter and another student. Sanzone raised some of his daughter's grades and lowered several grades of a transfer student. These changes resulted in Sanzone's daughter ranking first and the transfer student ranking third in the class of 1998. In a Disposition Agreement released today, Sanzone admitted to violating G.L. c. 268A, §23(b)(2) by changing the grades. Had Sanzone accurately entered the transfer student's grades and not raised his daughter's grades, the transfer student would have been ranked first in the class and his daughter would have ranked third. Section 23(b)(2) of the conflict law prohibits a municipal employee from using his position to obtain for himself or others an unwarranted privilege. According to the Disposition Agreement, Sanzone's daughter's class rank, which she had not earned, "enhanced his daughter's chances for scholarships, acceptance into certain colleges and universities, and position for valedictorian." The fine imposed, \$2,000, is the maximum allowed by law for a single violation of the conflict of interest law. "The size of the fine in this Disposition Agreement reflects the seriousness of the conduct and that the action was intentional and adversely affected innocent third parties," according to the Disposition Agreement. Sanzone resigned from his position on April 3, 1997.

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