

STATE ETHICS COMMISSION

Annual Report

Fiscal Year 2000

STATE
ETHICS
COMMISSION



MASSACHUSETTS

STATE ETHICS COMMISSION

ANNUAL REPORT

FISCAL YEAR 2000

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STATE ETHICS COMMISSION

This report covers the activities of the Massachusetts State Ethics Commission during FY00. 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
2000**

The Legislature appropriated \$1,503,429 for the Ethics Commission in FY00. This translates to a cost of approximately \$5.63 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 4,488 oral and written requests for confidential advice regarding the conflict of interest and financial disclosure laws, reviewed an additional 194 advisory opinions issued by municipal counsels, and prepared five formal Commission Advisory Opinions. There were 36 requests for advice pending at the end of FY00. The Division also represented the Commission before the Massachusetts Supreme Judicial Court on two matters, *Angelo M. Scaccia v. State Ethics Commission* and *Life Insurance Association of Massachusetts v. State Ethics Commission*.

During FY00, 4,774 elected officials, candidates and designated major policy-making public employees filed Statements of Financial Interests with the Commission.

A total of 6,695 people attended the 205 educational seminars conducted by the Public Education Division in FY00.

The Commission's Enforcement Division reviewed 803 complaints in FY00, issued 144 educational letters, conducted 92 initial investigations and recommended 52 cases for formal review by the Commission. The Division negotiated 32 Disposition Agreements, totalling \$53,150 in fines, and issued two public enforcement letters. There was also one adjudicatory hearing, which resulted in a decision.

¹These costs were calculated using information from the U.S. Census Bureau and the State Division of Employment and Trainings. The 1999 estimated population for Massachusetts is 6,175,169. The estimated number of state and local employees (county and municipal employees) is 266,700. 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 FY00 the members of the Ethics Commission were:

Augustus F. Wagner, Jr., Chair
Partner
Nutter, McClennen & Fish
Hyannis, MA

Lynne E. Larkin
Attorney
Arlington, MA

Edward D. Rapacki
Partner
Ellis & Rapacki
Boston, MA

Stephen E. Moore
Partner
Warner & Stackpole
Boston, MA

R. Michael Cassidy
Dean
Boston College School of Law
Chestnut Hill, 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 two to four weeks. In FY00, the Commission's Legal Division handled 522 requests for advice through informal letters, and 3,961 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 five formal advisory opinions in FY00. 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 FY00:

- **EC-COI-99-5** - The Hampshire Council of Governments, which consists of twenty municipalities from the former Hampshire County, is a municipal agency for purposes of the conflict of interest law and, as a result, Councilors are municipal employees of each of the Council's member municipalities.
- **EC-COI-99-6** - Where town bylaws require a board to evaluate landscape plans, § 17(a) prohibits a review board member who is a special municipal employee: (a) from implementing landscape plans he reviewed, even if he had no expectation of doing the work at the time of the review; and (b) from implementing landscape plans he did not review, because review board members have official responsibility for reviewing the plans, approving the issuance of a building permit, and inspecting the completed work.
- **EC-COI-99-7** - The principals of a Massachusetts general partnership, which is a member of a company which entered into a five-year contract with a state agency for the provision of certain professional services, are state employees under G.L. c. 268A, § 1(q) and qualify for special state employee status pursuant to § 1(o)(2)(a). Section 4 does not prohibit the partners from receiving compensation from or acting as the agent for a private corporation with respect to a development project because the partners did not participate in the project as state employees; it is not the subject of their official responsibility; and they served as state employees on less than 60 days in the relevant period of 365 days.

- **EC-COI-00-01** - M.G.L. c. 166, §32A, a local option statute that permits a wiring inspector to perform electrical work in his municipality does not expressly or impliedly repeal G.L. c. 268A, §20 as applied to wiring inspectors. Therefore, a wiring inspector is prohibited from being compensated for electrical work he performs for his own municipality, unless he satisfies one of the §20 exemptions.
- **EC-COI-00-02** - A town retirement board is a municipal agency within the meaning of the conflict of interest law and, as such, individuals who perform services for or hold offices, positions, employment or membership in or on the board are municipal employees within the meaning of that law.

LITIGATION

In *Angelo M. Scaccia v. State Ethics Commission*, 431 Mass. 351 (2000), the Massachusetts Supreme Judicial Court ("SJC") affirmed decisions by the Superior Court and the Commission concluding that, by accepting free meals and rounds of golf from tobacco and insurance industry lobbyists without filing a prior written public disclosure and without disclosing the free meals and golf on his statement of financial interests, State Representative Angelo Scaccia violated the "appearances" section of the public officials' code of conduct, G.L. c. 268A, §23(b)(3); the statute governing gifts from lobbyists, G.L. c. 268A, §6; and the financial disclosure law, G.L. c. 268B, §7. The Court vacated that portion of the Superior Court decision finding a violation of the gratuity statute, G.L. c. 268A, §3, citing *U.S. v Sun-Diamond Growers of Cal.*, 526 U.S. 398 (1999), and concluded that the record did not establish a sufficient link between each gratuity and a particular official act performed or to be performed by Rep. Scaccia. The Court remanded the case to the Commission for reassessment of the original \$3,000 civil penalty.

In *Life Insurance Association of Massachusetts, Inc. ("LIAM") v. State Ethics Commission*, 431 Mass. 1002 (2000), LIAM (a trade association representing insurance companies in Massachusetts) appealed the Superior Court's decision upholding the Commission's finding that LIAM violated the gratuity statute, G.L. c. 268A, §3(a), on eight occasions by paying for meals for fifteen public officials who had participated or would participate in official acts involving insurance matters and on one occasion by contributing money to a retirement gift for a former state representative who had taken official acts relating to the insurance industry. The Commission assessed a \$13,500 civil fine. The Court affirmed the Commission's finding that meals valued at \$50 or more per person were of "substantial value" within the meaning of the statute; that the Commission's methods of calculating the cost of the meals was within its discretion and competence; and that the action was not time-barred because the statute of limitations would be tolled until the Commission had some reason to know that a potential violation of the gratuity statute had occurred. In light of its holding in *Scaccia*, the Court remanded the case for further findings and a determination whether LIAM provided the gratuities in order to influence specific legislative acts.

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 FY00, the Commission reviewed 194 municipal opinions, concurring with 115 of them. The Commission staff provided clarification of 49 municipal opinions and informed municipal lawyers in 30 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. 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 FY00, 4,774 public employees and elected officials were required to file SFIs. A total of 140 filers missed the May filing deadlines and were sent formal notices of delinquency. Of these, 114 people filed during the 10-day grace period. Twenty-six delinquent filers failed to file within the 10-day grace period and became the subjects of preliminary inquiries. An additional four delinquent filers could not be located.

Upon written request, any individual may inspect and obtain a copy of any SFI filed with the Commission. During FY00, the Commission honored 1,716 such requests from 96 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 6,695 people attended the Commission's 205 seminars during FY00. Seminar sponsors included 143 municipalities with a total of 4,680 attendees; 54 state agencies with a total of 1,916 attendees; and eight professional associations with a total of 99 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 home page. The Commission's newsletter, *The Bulletin*, is distributed to an estimated 3,600 subscribers each spring and fall. About 325 copies of the Commission's *FY99 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.socialaw.com. The Commission also issued 18 press releases describing its public enforcement actions.

INTERNET HOME PAGE

The Commission maintains a home page on the Internet at www.state.ma.us/ethics. In FY00, summaries of all advisory opinions and enforcement actions were added to the site to increase public access to the Commission's precedent. The home page also 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; and a list of Commission services.

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 FY00, the Enforcement Division received 754 complaints from the following sources: 60 % from private citizens, 24% from anonymous sources, 1% from media reports, 1% from other law enforcement agencies, 4% from reviews of financial disclosure forms, 5% were generated by Commission staff, and an additional 5% were "self-reports" made by public employees regarding their own conduct. About 75% of the complaints alleged violations by municipal employees, 22% implicated state employees, less than 1% referenced county employees and 2% cited private individuals or corporations.

A total of 803 complaints were received or pending in FY00. About 47% 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 3% of the complaints were consolidated with existing cases. About 18% of the complaints were resolved with private educational letters without any investigating being done. About 24% of the complaints received were pending at the end of FY00.

STAFF INVESTIGATIONS

About 8% of the complaints received or pending in FY00 were assigned to an attorney/investigator team in the Commission's Enforcement Division. The Commission closed 47 cases following informal staff investigations: 20 because the situation was one in which a private educational letter was appropriate and 27 because staff determined there was little likelihood that the conflict laws had been violated. An additional 20 informal staff investigations led to formal inquiries. As of June 30, 2000, there were 43 ongoing informal staff investigations.

FORMAL INQUIRIES

The Commission authorized a total of 52 formal inquiries in FY00: 27 regarding alleged violations of the conflict of interest law and 25 involving alleged violations of the financial disclosure law. Twenty of the subjects of preliminary inquiries were municipal officials or employees, 28 were state officials or employees and four were county officials or employees.

During FY00, Enforcement Division staff completed 54 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 eight confidential Compliance Letters regarding conflicts of interest, advising subjects of their violations and explaining the consequences of future misconduct. Seventeen cases were terminated without a finding.

At the end of the fiscal year, the Commission had two public hearings 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 FY00, the Commission entered into 32 Disposition Agreements: 18 with state officials, 12 with municipal officials, and two with county officials. In these signed documents, subjects admit violating G.L. c. 268A or 268B, and agree to pay civil fines of up to \$2,000 per violation. The Commission issued one Decision and Order during FY00.

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 \$53,150 in FY00. Penalties collected are deposited in the General Fund, as the Commission does not retain revenue.

FY 00 ENFORCEMENT ACTIONS

**In the Matter of Sylvia Killion
In the Matter of John P. Sullivan
(August 16, 1999)**

The Commission issued two Disposition Agreements in which former Department of Mental Health Southeastern Area Management Information System director Sylvia Killion and her supervisor, DMH Southeastern Area director John P. Sullivan, admitted violating the conflict law. Killion paid a civil penalty of \$2,000 and Sullivan paid a civil penalty of \$500. According to the Disposition Agreements, Sullivan, who had a close personal relationship with Killion, authorized 678 hours of overtime for her in 1996 and 1997. All other MIS staff employees combined received a total of 60.5 hours during this same period of time. Sullivan also authorized Killion to work a flex time schedule which included one evening shift and one day at home each week. Killion failed to work a significant number of the overtime and flextime hours for which she received compensation. Killion admitted that she violated G.L. c. 268A, §23(b)(2) by receiving compensation for overtime and flextime hours she did not work. Section 23(b)(2) of the conflict law prohibits a state employee from using her position to obtain for herself or others an unwarranted privilege. By receiving compensation for overtime and flextime hours that she did not work, Killion knowingly used her MIS director position to obtain an unwarranted privilege of substantial value which was not properly available to other similarly situated individuals. Killion resigned from her position in April, 1998. Sullivan admitted that he violated G.L. c. 268A, §23(b)(2) by using his position to authorize Killion to receive compensation for overtime and flextime hours even though he had reason to know Killion did not work all the hours for which she received compensation. Sullivan also admitted violating G.L. c. 268A, §23(b)(3) by authorizing Killion to receive compensation for overtime and flextime hours in disproportion to other MIS staff and by not requiring documentation of such work. Section 23(b)(3) prohibits a state employee from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy the state employee's favor in the performance of his official duties. The Disposition Agreement states that a reasonable person with knowledge of all the relevant circumstances could conclude that Sullivan's relationship with Killion improperly influenced him in the performance of his official duties.

**In the Matter of Lucien Rainville
In the Matter of Michael Sweeney
(September 21, 1999)**

The Commission fined Blackstone Fire Chief Michael Sweeney and part-time call firefighter Lucien Rainville for violating the conflict of interest law. Sweeney was fined \$1,000 for participating in the award of and subsequent changes to a \$58,000 contract to refurbish a town ambulance between the town and Bert's Body Works, Inc., a corporation specializing in refurbishing ambulances. Bert's is owned by Rainville and his wife, who is Sweeney's sister. Rainville was fined \$500 for representing Bert's in all its dealings with the town regarding the contract. In a Disposition Agreement, Sweeney admitted that he violated G.L. c. 268A, §23(b)(3) by participating in awarding the contract to Bert's by helping the town administrator to write the bid package and by reviewing the bids. In addition, after Sweeney realized that the bid specifications had not included automatic snow chains for the ambulance, Rainville proposed waiving the required performance bond to cover the cost of the chains. Sweeney discussed the matter with the town administrator who agreed to waive the performance bond by substituting a bank check.

Sweeney then allowed Rainville to submit a regular company check to guarantee the work, instead of the required bank check. By awarding a contract to his brother-in-law's company and by making changes to that contract, Sweeney acted in a manner which would cause a reasonable person to conclude that Bert's and/or Rainville could unduly enjoy Sweeney's favor in the performance of his official duties. Section 23(b)(3) prohibits a municipal employee from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy the state employee's favor in the performance of his official duties. In a separate Disposition Agreement, Rainville admitted he violated G.L. c. 268A, § 17(c) by acting as an agent for Bert's by submitting the bid for the contract, requesting written confirmation of the contract award, negotiating changes regarding the waiving of the performance bond to pay for automatic snow chains, issuing an invoice to the town and signing the contract. Section 17(c) prohibits a municipal employee from acting as agent for anyone other than the city in connection with any matter in which the city has a direct and substantial interest.

In the Matter of Cathie Thomas
(September 23, 1999)

The Commission fined Hampden Probate Court Clerk Cathie Thomas \$2,000 for exploiting her official position to gain access to the criminal offender record information (CORI) record of Abraham Kasparian, Jr., an opponent of Thomas' uncle, Richard Thomas, in the 1996 race for a seat on the Hampden County Commission. In a Disposition Agreement, Thomas admitted to violating G.L. c. 268A, § 23(b)(2) by using her official position as a court employee to request and receive a printout of Kasparian's CORI record from a Hampden Superior Court probation officer who was authorized to access such records. Section 23(b)(2) of the conflict law prohibits a state official from using her position to obtain for an unwarranted privilege of substantial value. According to the Disposition Agreement, the probation officer believed that Thomas was authorized to have access to CORI records as a court employee; she was not. After Thomas received the printout, she gave it to her uncle who turned it over to a reporter who subsequently published it. Richard Thomas pleaded guilty to unlawful possession of CORI information and paid a \$5,000 fine and the probation officer who provided the record was suspended without pay for 20 days by the Commissioner of Probation.

In the Matter of William R. Shemeth, III
(September 28, 1999)

The Commission authorized a Disposition Agreement resolving charges that Spencer Selectman William R. Shemeth, III violated the conflict of interest law by acting as attorney for a private client in connection with a matter in which the town had an interest. Shemeth's client faced, among other counts, two counts of damaging a Spencer police cruiser stemming from an incident that occurred in 1994. While the client ultimately was found guilty on these two counts (and all of the other counts) and ordered to serve two years in the house of correction, no restitution was made to the town for the damage done to the police cruiser. The Commission fined Shemeth \$500; Shemeth also agreed to pay the Town of Spencer \$485.60 for the damage done to the police cruiser by his client. In the Agreement, Shemeth admitted that he violated G.L. c. 268A, §§ 17(a) and 17(c) by representing the defendant in *Commonwealth v. Andrews*, who was charged with assault and battery on his girlfriend, being a disorderly person, two counts of assault and battery on a police officer and two counts of malicious damage of property. Shemeth was paid under a contract with the Worcester Bar Advocates to provide legal services for indigent

defendants. Section 17(a) prohibits a municipal employee from receiving compensation from anyone other than the town in connection with any matter in which the town has a direct and substantial interest. Section 17(c) 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, by acting as attorney for and by receiving compensation from someone other than the town in relation to a particular matter in which the town had a direct and substantial interest, i.e., charges involving damage to a police cruiser and assault and battery on a police officer, Shemeth violated the conflict of interest law.

In the Matter of Brian J. Martin
(November 18, 1999)

The Commission issued a Disposition Agreement in which Lowell City Manager Brian J. Martin admitted violating the conflict law by awarding a contract to National Security Protective Services, a company owned by two of his friends. Martin paid a civil penalty of \$1,750. According to the Disposition Agreement, Martin admitted violating G.L. c. 268A, §23(b)(3) by awarding a contract to National Security Protective Services, a company owned by two of his friends with whom he had made trips to Foxwoods and Atlantic City. The Disposition Agreement notes that National's price was, by a substantial margin, not the lowest one submitted. In addition, the expressed basis for rejecting the lowest price proposal was questionable. Section 23(b)(3) prohibits a municipal employee from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy the municipal employee's favor in the performance of his official duties. Martin could have avoided violating §23(b)(3) by disclosing the relevant facts in writing to his appointing authority, the City Council, prior to his taking any official action concerning the award of the security contract to National. Martin, however, made no such disclosure.

In the Matter of Joseph F. Donovan
(November 23, 1999)

The Massachusetts State Ethics Commission cited Brockton Building Commissioner Joseph F. Donovan (Donovan) for violating the state's conflict of interest law by performing inspections of work done by his son. Donovan paid a civil penalty of \$3,000. In a Disposition Agreement, Donovan admitted that he violated G.L. c. 268A, §19 by determining that work done by his son, Joseph E. Donovan (Joseph), owner of Donovan Plumbing, complied with the state code. Donovan also signed the building permit cards indicating his inspection of the work. According to the Disposition Agreement, between January 1994 and July 1998, Donovan, who did not issue permits or collect fees related to Joseph's work, inspected Joseph's plumbing and gas fitting work on thirty occasions. 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.

In the Matter of Kevin Hayes
(December 2, 1999)

The Commission issued a Disposition Agreement in which Spencer Selectman Kevin Hayes admitted violating the conflict law by invoking his selectman position in order to avoid arrest and/or the issuance of a traffic citation against him. Hayes also paid a fine of \$1,000. On July 13, 1999, the Commission's Enforcement Division issued an order to

show cause alleging Hayes violated the conflict law. This Disposition Agreement concludes the matter involving Hayes. According to the Disposition Agreement, when Spencer Police Officer David Bera pulled Hayes over for speeding on August 25, 1998, Hayes told Bera, "I guess you don't know who I am. I am a selectman in this town. My name is Kevin Hayes." Hayes refused to provide his license and registration and insisted that Bera call Spencer Police Chief David Darrin to the scene. When Darrin arrived, Hayes told him that his officers were harassing citizens. Hayes also told Darrin that he was a selectman. Darrin told Bera to write Hayes a warning for speeding and for failure to have his license and registration in his possession. If Darrin had not intervened, Bera would have arrested Hayes for refusing to provide his driver's license and issued Hayes a citation for speeding. By citing his position as a selectman during his conversations with Chief Darrin and Officer Bera in order to secure for himself the unwarranted privilege of avoiding arrest and/or the issuance of a traffic citation, Hayes violated G.L. c. 268A, §23(b)(2). Section 23(b)(2) of the conflict law prohibits a municipal employee from using his position to obtain for himself an unwarranted privilege of substantial value not available to similarly situated individuals.

**In the Matter of Paul R. Gaudette
(December 16, 1999)**

The Commission fined former Dracut Building Inspector Paul Gaudette \$2,000 for violating the conflict law by issuing permits for his own property and by acting as building inspector on matters of interest to the company that provided him with a loan to purchase the property. In a Disposition Agreement, Gaudette admitted that he violated G.L. c. 268A, §§19 and 23(b)(3). In July 1996, Gaudette and his wife purchased a lot on Diamond Drive in Dracut for \$65,000 from Charles Kleczkowski of K&K Equipment, Inc. K&K Equipment, whose principals are Kleczkowski and his wife, develops properties in Dracut. The Gaudettes made a \$1,000 deposit on the property and borrowed \$64,000 from K&K Equipment secured by a 9.5% mortgage due in full in September 1996. On the due date, the Gaudettes and K&K Equipment amended the mortgage, making it due in full on or before the date of occupancy. At the same time, the Gaudettes paid K&K Equipment \$50,000 toward the principal, leaving a balance due of \$14,000. According to the Disposition Agreement, in August 1996, Gaudette submitted an application for a building permit for a new house at 42 Diamond Drive. In his capacity as building inspector, Gaudette reviewed and approved the application. Gaudette incorrectly set the permit fee, based on the square footage of the proposed building, at \$425 (it should have been \$495); he signed the excavation and foundation permit; and he issued the building permit. Section 19 of the conflict law generally prohibits a municipal employee from officially participating in matters, such as issuing permits or establishing fees, in which he has a financial interest. In April 1997, K&K Equipment discharged the mortgage on the Diamond Drive property. The Gaudettes issued two personal checks to Kleczkowski in June 1997 for \$9,000 and \$5,000. They paid no interest on the loan. During the time Gaudette had his mortgage arrangement with K&K Equipment and after repaying the loan without interest, he acted as building inspector on at least 20 matters that were of significant interest to K&K. These included issuing building permits and approving final inspections for houses owned or developed by K&K Equipment or the Kleczkowskis. Section 23(b)(3) of the conflict law prohibits a municipal employee from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy the municipal employee's favor in the performance of his official duties. The Disposition Agreement did not address any gratuity issues regarding whether Gaudette paid fair market value for his property or should have paid interest on the \$64,000 loan. Those matters were currently under review by other government offices.

In the Matter of Norman T. Melanson
(December 29, 1999)

The Commission issued a Disposition Agreement in which Leominster Assessor Norman Melanson admitted violating the conflict law by accepting a loan of a \$1,000 computer for use at his home from Vision Appraisal Technology, a company providing property assessment software and technical support to Leominster. Melanson paid a civil penalty of \$500. According to the Disposition Agreement, Melanson admitted violating G.L. c. 268A, §23(b)(3) by accepting the computer for personal and assessor-related purposes, by failing to disclose the arrangement to anyone in his department, by keeping the computer for much longer than necessary to familiarize himself with the valuation software and by failing to return the computer until city officials made an issue of it. At the time he had the computer, Melanson, as an assessor, had participated and would be participating in several large contracts between the city and Vision Appraisal Technology. Section 23(b)(3) prohibits a municipal employee from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy the municipal employee's favor in the performance of his official duties. Martin could have avoided violating §23(b)(3) by disclosing the relevant facts in writing to his appointing authority, the Mayor, prior to his taking any official action concerning Vision Appraisal Technology. Melanson, however, made no such disclosure.

In the Matter of Alan Alves
(February 15, 2000)

The Commission cited Freetown Police Lieutenant Alan Alves after finding reasonable cause to believe Alves violated G.L. c. 268A, §23, the standards of conduct section of the state's conflict of interest law, by intermixing his public and private dealings concerning the purchase of a boat that was the subject of a police investigation. Section 23(b)(3) of G.L. c. 268A, the state's conflict of interest law, prohibits a municipal employee from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy the municipal employee's favor in the performance of his official duties. According to a Public Enforcement Letter, Alves purchased a 24 foot Bayline boat from Dennis Oliveira in 1996. The previous year, Oliveira had sold the boat to a buyer for \$6,000, half due at the time of sale and the balance within 30 days. After the buyer failed to pay the balance, Oliveira filed a police report alleging that the boat was stolen. Alves recovered the boat, which was returned to Oliveira. Oliveira subsequently sold the boat to Alves for \$3,000. Alves then filed a police report on the incident that stated that Oliveira "wished not to pursue charges against [the] buyer, if possible, and . . . the boat has now been sold." Alves did not disclose to his appointing authority that he had purchased the boat prior to submitting the report. He could have avoided violating §23(b)(3) by disclosing the relevant facts in writing to his appointing authority prior to his taking any official action concerning the boat. "By acting officially in a matter involving the boat transaction/theft while negotiating a deal to purchase and/or just having purchased the boat [which was the subject of your investigation], you created an appearance of a conflict," the Letter states. 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 Enforcement Letter.

In the Matter of Robert S. McKinnon
(February 29, 2000)

The Commission issued a Disposition Agreement in which Robert S. McKinnon, a current member of and former advisor to the Board of State Examiners of Plumbers and Gasfitters, admitted violating the conflict law. The nine member Board reviews and approves plumbing products for use in the Commonwealth, promulgates the state Plumbing and Gasfitting Code and grants variances to the Code. McKinnon paid a civil penalty of \$3,000. According to the Disposition Agreement, since 1992, McKinnon has worked privately for Stop & Shop Supermarket Company inspecting plumbing in new Stop & Shop stores under construction. He earned between \$500 and \$1,000 per month. In 1997, Stop & Shop requested Board approval for a test installation of a vacuum drainage system in Braintree. McKinnon acted as Stop & Shop's agent by presenting Stop & Shop's proposal to install the system in a letter dated April 28, 1997 to the Board. The conflict law, G.L. c. 268A, § 4, prohibits a state employee from acting as agent for anyone other than the Commonwealth in connection with any particular matter in which the Commonwealth is a party or has a direct and substantial interest. On six occasions, as a Board member or Board advisor, McKinnon participated in discussions, motions, votes and other matters in which Stop & Shop had a financial interest, including the proposed vacuum drainage system in Stop & Shop's Braintree and Norwood stores and plumbing requirements for a mezzanine in Stop & Shop's Pittsfield store. G.L. c. 268A, § 6 prohibits a state employee from participating in a particular matter in which, to his knowledge, a business organization in which he is serving as an employee has a financial interest.

In the Matter of Ronald J. D'Arcangelo
In the Matter of J. Nicholas Sullivan
February 29, 2000)

The Commission issued two Disposition Agreements in which Newburyport District Court Chief of Probation Ronald J. D'Arcangelo and District Court Clerk Magistrate J. Nicholas Sullivan admitted violating the conflict law. D'Arcangelo admitted using his position to seek "consideration" on traffic tickets from Sullivan for D'Arcangelo's family and friends on nine occasions. Sullivan admitted creating the appearance of a conflict by accepting D'Arcangelo's requests and subsequently issuing findings that resulted in acquittal in each instance where "consideration" was sought. D'Arcangelo and Sullivan each paid a civil penalty of \$3,000. According to the Disposition Agreements, D'Arcangelo used post-it notes to Sullivan requesting "consideration" on motor vehicle citation documents involving D'Arcangelo's family and friends. By asking for "consideration," D'Arcangelo was seeking that the cases receive preferential treatment rather than be judged on their merits. On each occasion, Sullivan issued findings of "not responsible," the statutory terminology for acquittal in such cases. D'Arcangelo admitted that he violated G.L. c. 268A, §23(b)(2) by using his position to request "consideration" from fellow court employee Sullivan. Section 23(b)(2) of the conflict law prohibits a state employee from using his position to obtain for himself or others an unwarranted privilege. Sullivan admitted that he violated G.L. c. 268A, §23(b)(3) by accepting D'Arcangelo's requests for "consideration" and subsequently issuing findings of "not responsible." Section 23(b)(3) prohibits a state employee from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy the state employee's favor in the performance of his official duties. The Disposition Agreement states that a reasonable person with knowledge of all the relevant circumstances could conclude that D'Arcangelo could improperly influence Sullivan or that the drivers involved could unduly enjoy Sullivan's favor in the performance of his official duties as clerk magistrate.

In the Matter of Robert Churchill
(March 13, 2000)

The Commission issued a Disposition Agreement in which Randolph Police Lieutenant Robert Churchill admitted violating M.G.L. c. 268A, §23(b)(3) by acting as a police prosecutor in resolving a criminal charge against fellow police officer William Batson's son. Churchill paid a civil penalty of \$500. According to the Disposition Agreement, both Churchill and Batson have been Randolph police officers since 1977. Since 1992 when Batson became a detective, Churchill supervised Batson. In April 1996, following a police investigation, Batson's seventeen-year-old son and two-fifteen-year old juveniles admitted spray-painting graffiti on several buildings in Randolph including racist graffiti in letters large enough to be readable from an adjoining playground on a Randolph Highway Department garage as well as at two other locations. Churchill, acting as police prosecutor, agreed to resolve Batson's criminal case in District Court with diversion and dismissal under G.L. c. 276A, and court costs in the amount of ten days of community service. "The diversion and dismissal resolution was a lenient and desirable resolution of the case for Batson's son because it would leave him without a criminal record and would not require him to admit to having done the graffiti or to pay restitution," the agreement states. In June 1996, having received a referral of the matter from the Norfolk County District Attorney, the Attorney General moved to vacate the diversion and dismissal and a new summons issued against Batson's son. In October 1996, Batson's son admitted in District court to sufficient facts for a finding of guilty and the matter was continued without a finding for one year, with ten days of community service (deemed served), \$50 in court costs, letters of apology to the victims and \$1,633 in restitution. Churchill admitted that he violated G.L. c. 268A, §23(b)(3) by acting in a manner which would cause a reasonable person to conclude that Batson and Batson's son could unduly enjoy Churchill's favor in the performance of his official duties. Section 23(b)(3) prohibits a municipal employee from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy the municipal employee's favor in the performance of his official duties. According to the Agreement, Churchill could have avoided the violation by making a written disclosure of the relevant facts to selectmen, who would then have had the opportunity to decide whether they wanted Churchill to handle the case or to refer the matter to the District Attorney or the Attorney General. This Disposition Agreement resolved an adjudicatory proceeding that had been commenced by the Enforcement Division against Churchill.

In the Matter of Richard J. Goodhue
(March 4, 2000)

Randolph Planning Board member Richard Goodhue was fined \$750 by the Commission for violating G.L. c. 268A, §19 of the conflict law by participating in matters in which he had a financial interest. This Disposition agreement resolved an adjudicatory proceeding that had been commenced by the Enforcement Division against Goodhue in September 1999. According to a Disposition Agreement, Goodhue violated G.L. c. 268A, §19 by participating in Planning Board matters concerning Autumn Woods, a 42-lot residential subdivision being developed by West Point Development Co., Inc., at a time when Goodhue had a financial interest in performing masonry work for West Point elsewhere in Randolph and had reason to foresee that he would perform such work at Autumn Woods. West Point is a real estate development company operated by Michael Kmito and his father Louis J. Kmito. Between March 1996 and July 1996, Goodhue participated in a Planning Board public hearing

and other matters regarding West Point's proposed Autumn Woods subdivision through board discussions and actions including voting to accept and signing the approval of the subdivision plan. From the mid-1980s until late 1996, Goodhue, a self-employed mason, performed masonry work for Louis and Michael Kmito as well as for West Point. From 1993 to late 1996, West Point's practice was to hire Goodhue whenever it needed a mason. Between September 1993 and January 1997, West Point paid Goodhue a total of \$32,330.25. During and soon after the time Goodhue participated in the Planning Board's review and approval of the Autumn Woods subdivision, West Point paid Goodhue \$4,320 for projects other than Autumn Woods and \$15,935 for masonry work at Autumn Woods. According to the Disposition Agreement, "Goodhue had reason to foresee, at the time he participated in the Planning Board's review and approval of the Autumn Woods subdivision, that the construction of the subdivision would require masonry work and that West Point would continue its well-established practice of hiring him to do its masonry work." Section 19 prohibits a municipal official from officially participating in matters in which he has a financial interest.

In the Matter of Janis Montalbano
(April 11, 2000)

The Commission cited Narragansett Regional School Committee member Janis Montalbano for approving payment warrants in which her husband and son had financial interests. According to a Public Enforcement Letter, between July 1996 and May 1998, Montalbano signed ten payment warrants, that authorized a total of four payments to Montalbano Electric, a company owned by Montalbano's husband, Charles, and eight payments to MESD, Inc., a dealership that sells and services computers, which is owned by her son, William. The payments totaled \$1,549 to Montalbano Electric and \$7,044 to MESD, Inc. Section 19 of G.L. c. 268A, the state's conflict of interest law, in general prohibits a municipal official from officially participating in matters in which to her knowledge an "immediate family" member has a financial interest. According to the Enforcement Letter, Montalbano stated that she never looked at the bills or warrants she signed and was only approving the total amount of the warrant. Nevertheless, the Commission emphasized in the Enforcement Letter that it will enforce the law where a public official is willfully blind to whether the action in which she participates will affect the financial interests of family members. Thus, although Montalbano "closed [her] eyes" to the facts that would have informed her of the conflicts, she was charged with the knowledge she would have had if she had read the names listed in the warrants.

In the Matter of Michael A. Tetreault
(April 26, 2000)

The Commission authorized a Disposition Agreement resolving charges that Mendon Board of Health member Michael A. Tetreault violated the conflict of interest law by serving on the Board of Health and performing private septic system work pursuant to permits issued by his own board. The Commission fined Tetreault \$15,000. In the Agreement, Tetreault admitted that he had received a letter from the Ethics Commission in 1993 stating that installing septic systems while serving on the Board of Health appeared to violate the conflict law. Nevertheless, between 1996 and 1999, Tetreault's company installed or repaired at least forty septic systems for private parties in Mendon. Tetreault's company received a profit of \$2,000 to \$3,000 per job, and Tetreault was compensated for his work by his company. Section 17(a) prohibits a municipal employee from receiving compensation from anyone other than the town in

relation to any matter in which the town has a direct and substantial interest. Section 17(c) 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. Tetreault could have performed such work if Mendon had voted to accept G.L. c. 111, §26G, which permits a board of health member to perform private septic work within his own town without violating G.L. c. 268A, §17. In 1994, however, Mendon town meeting voted not to accept the provisions of this statute. Tetreault's fine is the largest fine paid by a municipal official during the Commission's 21 year history. The Commission imposed such a large fine because: (1) Tetreault and his company received a significant amount of financial gain from his violations; (2) Tetreault received his compensation in connection with particular matters handled by his own board; (3) the Commission warned Tetreault in writing in 1993 not to do this work, but Tetreault continued to do so anyway; and (4) the town also expressed its view that BOH members should not perform septic work in town.

STATE ETHICS COMMISSION

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