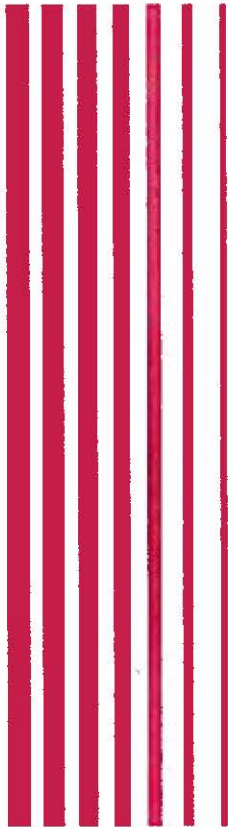


STATE  
ETHICS  
COMMISSION



MASSACHUSETTS

**ANNUAL REPORT**

for Fiscal Year 1996

**STATE ETHICS COMMISSION  
ANNUAL REPORT  
FISCAL YEAR 1996**



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## STATE ETHICS COMMISSION

This report covers the activities of the Massachusetts State Ethics Commission during FY96. 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 1996

The Legislature appropriated \$1,143,576 for the Ethics Commission in FY96. During the year, 12% of the Commission's staff positions were vacant due to lack of funding. The Commission does not retain revenue.

The Legal Division handled 4,474 oral and written requests for confidential advice regarding the conflict of interest and financial disclosure laws, reviewed an additional 161 advisory opinions issued by municipal counsels, and prepared seven formal Commission Advisory Opinions. Due to staff shortages, the division carried a backlog of 107 unanswered requests for advice into FY97.

During FY96, 4,738 elected officials, candidates and designated policy-making public employees filed Statements of Financial Interest ("SFIs") with the Commission. The SFI Division audited all filings for accuracy and completeness, and all statements that were found to be deficient were amended by their filers.

A total of 2,261 people attended the 69 seminars taught by the Public Education Division in FY96. The Division distributed more than 19,000 copies of various educational materials during the year, and revised two publications.

The Commission's Enforcement Division investigated 892 complaints in FY96. It issued 241 educational letters and recommended 36 cases for formal review by the Commission. The Division also negotiated 46 Disposition Agreements, totalling \$134,550 in fines and forfeitures, and issued two public education letters. The Commission's ability to conduct investigations remained diminished because of an April 1994 divided Supreme Judicial Court decision, which called into question the Commission's ability to issue summons during preliminary inquiries.

## MEMBERSHIP

During FY96 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

**Herbert P. Gleason**  
Partner  
Kearney and Gleason  
Boston, MA

**Lynne E. Larkin**  
Attorney  
Arlington, MA

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

**Edward Murphy**  
Tucker Anthony  
Boston, MA

**Edward D. Rapacki**  
Partner  
Ellis & Rapacki  
Boston, MA

## ADVISORY OPINIONS

### COMMISSION OPINIONS

Individuals covered by G.L. c. 268A and G.L. c. 268B are entitled to receive confidential advice about whether proposed activities are permissible under the laws. Most requests for advisory opinions are answered fully within two to four weeks. In FY96, the Commission's Legal Division handled 572 requests for advice through informal letters, and 3,902 requests via telephone calls.

Formal opinions of the Commission serve as a legal defense in subsequent proceedings concerning the requesting individual's conduct, unless the request omits or misstates material facts. The Commission issued seven formal advisory opinions in FY96. 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 advisory opinions during FY96:

- **EC-COI-95-09** - A member of the General Court, privately employed as a residential loan officer, is advised that, under G.L. c. 268A, §7, he may not accept commissions for initiating loans which involve state financial assistance programs. Also, his private work is subject to the restrictions of G.L. c. 268A, §§ 4 and 23, and his public work is subject to the restrictions of §§ 6 and 23.

- **EC-COI-95-10** - Using a four-factor jurisdictional test, the Commission finds that a Downtown Association, initially funded by an Executive Office of Communities and Development Downtown Partnership Program grant awarded to the city, is a private entity -- not a municipal agency -- for purposes of the conflict law. A member of the city's Historic Commission, who serves *ex officio* as a member of the Downtown Association's board, will be subject to the restrictions of G.L. c. 268A, §§ 19 and 23 in the performance of her official duties. Also, her actions as a Downtown Association board member will be subject to the restrictions of G.L. c. 268A, §17, unless and to the extent that the City Council determines that her municipal duties include representation of the Downtown Association.
- **EC-COI-95-11**- A former Chairman of a town Zoning By-Law Study Committee, who is a lawyer in private practice, may be hired by the town's Board of Selectmen to be counsel to the Committee. However, his private law practice will be subject to the restrictions of G.L. c. 268A, §§ 17, 18, and 23, and his official actions subject to the restrictions of G.L. c. 268A, §§19 and 23.
- **EC-COI-96-1** - In an appeal of an Energy Facilities Siting Board decision to the Supreme Judicial Court, the Board will be represented by a private attorney appointed a Special Assistant Attorney General ("SAAG") because the Attorney General will oppose the Board in the appeal. For the purposes of applying the limitations of G.L. c. 268A, §4 to the private activities of a "special state employee", the Commission finds that -- in these narrow circumstances -- the SAAG serves only the Board, and not the Attorney General's Office; therefore, the SAAG may continue to represent private clients in litigation which does not involve the Board, but in which the Attorney General is a party. However, under G.L. c. 268A, §23(e), the Attorney General may impose provisions more restrictive than those of G.L. c. 268A, §4.
- **EC-COI-96-2** - A member of a municipal board of assessors may conduct private appraisals of properties in town; however, he must follow the restrictions of G.L. c. 268A, §§ 17, 19 and 23.
- **EC-COI-96-3** - A full-time state employee is advised that the "critical need exemption" to G.L. c. 268A, §7 will allow her to continue her part-time job with a state vendor which provides domestic violence shelter services through a network of "safe houses".
- **EC-FD-95-1** - A public employee, designated to file a Statement of Financial Interest, is required to report securities held in three family trusts. The Commission finds that, under G.L. c. 268B, §5(g), the securities are "beneficially owned" by the public employee because he receives income from them, although he has no control over the trusts' investment decisions and has no rights to the trust res.

## 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 FY96, the Commission reviewed 161 municipal opinions, concurring with 66% of them. The Commission staff provided clarification of 46 municipal opinions, and informed municipal lawyers in nine 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 FY96, 4,738 public employees and elected officials were required to file SFIs. About 196 missed the May filing deadlines, and formal notices of delinquency were mailed to 140 individuals. Of these, 122 people filed during a 10-day grace period. Two people filed shortly after the expiration of the grace period, and were fined a total of \$100. Ten delinquent filers are the subjects of pending preliminary inquiries. At the end of the fiscal year, one filer was the subject of a pending adjudicatory hearing.

Upon written request, any individual may inspect and obtain a copy of any SFI filed with the Commission. In FY96, the Commission honored 1,417 such requests from 215 sources, including the media, private citizens and law enforcement agencies.

The Commission audited 4,695 SFIs filed during FY96; 1,285 filers were contacted and required to amend deficient SFIs.

## PUBLIC EDUCATION

### SEMINARS

The Commission provides free seminars on the conflict of interest and financial disclosure laws. A total of 2,261 people attended the Commission's 69 seminars during FY96. Seminar sponsors included:

#### Municipalities:

Athol	Fairhaven	Methuen
Attleborough	Hampden	Needham
Barnstable	Hingham	Somerville
Brewster	Longmeadow	Springfield
Cambridge	Lowell	Waltham
Chatham	Mansfield	Watertown
East Bridgewater	Marlborough	Wilbraham
East Longmeadow	Medway	

#### Professional Associations:

- Massachusetts City Solicitors & Town Counsels Association
- Massachusetts Justices of the Peace Association
- Massachusetts Municipal Accountants & Auditors Association
- Massachusetts Municipal Association
- Massachusetts Selectmen's Association
- New England Building Officials Education Association
- Southeastern Building Inspector's Association
- Tax Collectors & Treasurers Association

### State Agencies:

Criminal Justice Training Council  
Department of Mental Retardation, Region V  
Division of Insurance  
Division of Marine Fisheries  
Executive Office of Economic Affairs  
Executive Office of Public Safety  
Framingham State College

Government Land Bank  
Massachusetts Firefighting Academy  
Massachusetts Industrial Finance Agency  
Office of Campaign and Political Finance  
Office of the Commissioner of Probation  
Pension Reserve Investment Management Board  
State Racing Commission

## 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 3,500 subscribers. About 5,500 copies of publications were distributed in FY96 in response to phone, written or "walk-in" requests for information, and about 6,240 copies of publications were provided to seminar sponsors to be copied for seminar participants. The Commission distributed about 7,000 copies of publications to individuals as part of enforcement actions and legal opinions. About 360 copies of the Commission's *FY95 Annual Report* were distributed during the fiscal year, as were 100 copies of the annual compilation of the Commission's public actions, *State Ethics Commission Rulings*. The Commission also issued 22 press releases describing its public enforcement actions.

During FY96, the Commission substantially revised *Summary of the Conflict of Interest Law for Board of Health Members and Advisory No. 3: Municipal Officials Being Appointed to Positions Under Their Own Boards*.

## 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 FY96, the Enforcement Division received 892 complaints from the following sources: 61% from private citizens, 22% from anonymous sources, 1% from media reports, 2% from other law enforcement agencies, 3% from reviews of financial disclosure forms; 6% 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 or officials, 19% implicated state employees or officials, 3% referenced county officials and 4% cited private individuals or corporations.

A total of 892 complaints were received or pending in FY96. About 53% 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 7% of the complaints were consolidated with existing cases. About 5% of the complaints opened were pending at the end of the fiscal year.

### STAFF INVESTIGATIONS

About 35% of the complaints received or pending in FY96 were assigned to an attorney/investigator team in the Commission's Enforcement Division. The Commission closed 277 cases following informal staff investigations: 87% because the situation was one in which a private educational letter was appropriate; and 13% 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, 1996, there were 120 ongoing informal staff investigations.

## **FORMAL INQUIRIES**

The Commission authorized a total of 36 formal inquiries in FY96: 15 regarding alleged violations of the conflict of interest law and 21 involving alleged violations of the financial disclosure law. Several of these inquiries involved more than one subject. Fourteen of the subjects of preliminary inquiries were municipal officials or employees, 20 were state officials or employees and two were county officials or employees.

During FY96, Enforcement Division staff completed 51 formal inquiries into alleged violations of the conflict of interest or financial disclosure laws by a total of 54 subjects. In 25 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 11 confidential Compliance Letters regarding conflicts of interest, advising subjects of their violations and explaining the consequences of future misconduct. Twelve cases were terminated without a finding.

At the end of the fiscal year, the Commission had eight public hearings pending; in 7 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 FY96, the Commission entered into 46 Disposition Agreements: 23 with state officials, 15 with municipal officials, two with county officials and six 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 four Decision and Orders during FY96. In three instances, the Decision and Orders concluded adjudicatory hearings: twice, the Commission found that the subject had violated the conflict law on certain charges, and had not violated the law on other charges; and in the third, the Commission found that the subject did not violate the conflict law. In a fourth case, the Decision and Order approved a Disposition Agreement in which the subject admitted violating G.L. c. 268A; the Decision and Order also dismissed certain charges against the subject and continued the adjudicatory hearing regarding two remaining charges.

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 \$138,300 in FY96. Penalties collected are deposited in the General Fund, as the Commission does not retain revenue.

## **SUMMONS AUTHORITY**

In November 1993, the Commission's authority to issue summons during its formal investigations was called into question when a Superior Court justice refused to enforce a Commission summons issued during a preliminary inquiry, ruling that the summons authority provided by G.L. c. 268B, §4(d) was

available only during adjudicatory proceedings, not during preliminary inquiries. The Commission appealed the ruling to the Supreme Judicial Court, and in a 4 - 2 decision, with the Chief Justice recused, the SJC struck down the particular summons. Three justices held, with the lower court, that the Commission's summons authority was available only during adjudicatory proceedings. One justice held that the Commission had summons authority during preliminary inquiries, but that the particular summons was overbroad. Two justices held that the particular summons, as issued, was valid.

The Commission has continued to issue summons during preliminary inquiries, but notifies recipients of the SJC's split decision on the question of the summons' validity. While some recipients have voluntarily complied with the summons, others have declined to provide the Commission with requested material or testimony. The uncertainty over this issue has clearly diminished the Commission's ability to investigate cases.

The Massachusetts State Ethics Commission is currently one of only four independent commissions in the country lacking summons authority during investigations.

## **FY 96 ENFORCEMENT ACTIONS**

### **In the Matter of Elaine Bush (July 13, 1995)**

Millbury Athletic Director Elaine Bush admitted that she violated G.L. c. 268A, §19 in 1994, when she participated in the hiring process by which her daughter was selected as the Millbury High School girls' basketball coach. In a Disposition Agreement with the Ethics Commission, Bush was fined \$250 for the violation. According to the Agreement, prior to 1994, the annual posting of the coaching position was "usually *pro forma*, since most coaches are reappointed. The incumbent basketball coach had held the position for the previous 12 years." When the position was posted in 1994, Bush and the Millbury High School principal interviewed the four candidates who applied for the job. Bush was present for her daughter's interview but did not ask any questions. Bush and the principal then decided to forward the names of all four candidates to the Millbury school superintendent for consideration; they did not rank the candidates, and the superintendent selected Bush's daughter for the coaching job. Section 19 of the conflict law generally prohibits municipal officials from taking official actions affecting the financial interests of an immediate family member.

### **In the Matter of John Beukema (August 3, 1995)**

Former Douglas Zoning Board of Appeals member and self-employed architect John Beukema was fined \$1,000 for acting as the architect on a project that required Zoning Board approval. Beukema admitted in a Disposition Agreement that he violated G.L. c. 268A, §§ 17(a) and 17(c) in 1991 and 1992, when he was hired by Douglas Environmental Associates, Inc., through Browning-Ferris Industries, to design a recycling facility as part of a landfill the company proposed to build in the town of Douglas. According to the Agreement, Beukema mistakenly believed that the arrangement would not violate the conflict law because members of the Douglas Zoning Board were designated "special municipal employees", and he believed that the "special" status allowed him to act as an architect before the Zoning Board. However, §17(c) of the conflict law generally prohibits "special municipal employees" from representing private parties in connection with matters under their official jurisdiction. Section 17(a) of the conflict law generally prohibits "special municipal employees" from accepting compensation from private parties in connection with matters under their official jurisdiction.

**In the Matter of Vincent D. Barletta**  
(August 3, 1995)

The Ethics Commission issued a Public Enforcement Letter to Vincent D. Barletta, President of Douglas Environmental Associates, Inc., citing him for paying former Douglas Zoning Board of Appeals member John Beukema a total of about \$3,000 to design a recycling facility that required Zoning Board approval. Section 17(b) prohibits anyone from offering compensation to a "special municipal employee" in connection with matters under the municipal employee's official jurisdiction.

**In the Matter of James Gibney**  
(August 9, 1995)

Fall River Superintendent of Schools James Gibney was fined \$1,000 for violating the state's conflict of interest law between 1990 and 1994. Gibney admitted in a Disposition Agreement that he violated G.L. c. 268A, §19 when, as Assistant Superintendent of Schools, he participated in his daughter's hiring as a substitute teacher. Section 19 of the conflict law generally prohibits municipal officials from taking official actions affecting the financial interests of an immediate family member.

**In the Matter of William P. Pearson**  
(August 14, 1995)

Byfield Water Commission member William P. Pearson was fined \$2,000 and required to disgorge an additional \$1,700 worth of economic benefit he had received in violation of the conflict law. Pearson admitted in a Disposition Agreement that he repeatedly violated G.L. c. 268A, §19 by acting as Water Commissioner on matters affecting Pearson Landscaping, Pearson Hardware and Highfields Realty, while he owned 50% of each business. Section 19 generally prohibits a municipal official from acting in his official capacity on matters in which he has a financial interest. Pearson also admitted that he violated G.L. c. 268A, §§ 17(a) and 17(c) by representing Pearson Landscaping in discussions with the Water District Superintendent in connection with Byfield Water District contracts. Section 17(a) generally prohibits a municipal official from accepting compensation in connection with any matter pending before the municipality. Section 17(c) generally prohibits a municipal official from acting as agent for a private party in connection with any matter pending before the municipality.

**In the Matter of George Traylor**  
(October 23, 1995)

Lobbyist George Traylor was fined \$2,000 for illegally entertaining two Massachusetts legislators during a December 1992 trip to Puerto Rico. Traylor admitted in a Disposition Agreement that he violated §3(a) of the conflict law when he treated then-state representatives John Cox and Francis Mara and their spouses to a fishing excursion on December 13, 1992. According to the Agreement, Traylor and another lobbyist chartered a 40-foot fishing vessel for \$766, splitting the cost between them. Section 3(a) of the Massachusetts conflict of interest law, General Laws Chapter 268A, prohibits the giving of gifts worth \$50 or more to a public employee -- including state legislators -- "for or because of any official act performed or to be performed by such an employee."

**In the Matter of Ralph Parisella**  
(October 26, 1995)

Former Beverly Licensing Board member Ralph Parisella was fined \$1,000 for using his official position to further his own private business interests. Parisella admitted in a Disposition Agreement that he violated G.L. c. 268A, §§ 23(b)(2) and 23(b)(3) in 1992, when he used his position as a Licensing Board

member to retain customers of Ralph's Ice, a company owned by Parisella and his son. According to the Agreement, at the time of the violations, another member of the Licensing Board had a history of opposing the use of outside signs on liquor stores, which local retailers considered important to their business. Parisella approached the owners of four Beverly stores, who were customers of Ralph's Ice but had decided to change ice suppliers, and threatened to not intercede with his colleague on the sign issue if they did not remain clients of Ralph's Ice; the owners decided to remain customers of Ralph's Ice as a result of their conversations with Parisella, the Agreement said. Section 23(b)(2) of the conflict law prohibits municipal officials and employees from using their positions to obtain unwarranted privileges of substantial value for themselves or for others. According to the Agreement, "Parisella used his position as a Board member to retain the business ... for himself and his son as owners of Ralph's Ice. ... In so using his official position, Parisella violated §23(b)(2)." 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. By implying to his customers that "their failure to continue doing business with Ralph's Ice would affect his actions as a Board member," Parisella acted in a manner which would cause a reasonable person "to conclude that Parisella, as a Board member, would officially favor people doing business with Ralph's Ice," the Agreement said.

**In the Matter of Jerold Gnazzo**  
(November 14, 1995)

Registrar of Motor Vehicles Jerold Gnazzo was fined \$500 for asking a state law enforcement official to provide him with information about an Environmental Strike Force investigation involving a company headed by Gnazzo's wife. In a Disposition Agreement, Gnazzo admitted that he violated G.L. c. 268A, §4(c) by making "inquiries to the [Division of Environmental Law Enforcement] director in relation to the investigation on behalf of his wife and the Krisco Corporation." Section 4(c) of the Massachusetts conflict of interest law, G.L. c. 268A, prohibits a state employee from acting as agent for a private party in connection with a particular matter in which the Commonwealth has a direct and substantial interest. "Section 4 reflects the maxim that a person cannot serve two masters. Whenever a state employee acts on behalf of private interests in matters in which the state also has an interest, there is a potential for divided loyalties, the use of insider information and favoritism, all at the expense of the state," the Agreement states. "An inquiry into an ongoing sensitive criminal investigation raises such concerns, especially when made by a high ranking public official" like the Registrar.

**In the Matter of Lee Robinson**  
(November 17, 1995)

Former Provincetown Selectman Lee Robinson was cited for invoking the selectmen's "ex officio" status on municipal boards in order to participate in the consideration of his own application for a parking lot permit. Robinson admitted in a Disposition Agreement that his actions violated G.L. c. 268A, §23(b)(2), which prohibits a municipal official from using or attempting to use his position to obtain an unwarranted privilege of substantial value. "The ability to speak during ZBA and Licensing Board deliberations on his own application when others could not was a privilege of substantial value because it could enhance Robinson's chances of obtaining the potentially valuable permit and license he was seeking. The opportunity for further advocacy was not properly available to other permit/license applicants," according to the Agreement. The Agreement resolved charges brought against Robinson in May 1995 by the Commission's Enforcement Division. The Commission did not impose a fine in the case because "Robinson's comments were spontaneous and of limited duration. Furthermore, Robinson is no longer a selectman nor does he now have any financial interest in the parking lot," according to the Agreement.

**In the Matter of Massachusetts Medical Society**  
(December 14, 1995)

The Massachusetts Medical Society was fined \$45,000 for illegally entertaining Massachusetts legislators between July 1989 and April 1993. The corporation admitted, in a Disposition Agreement, that it

violated G.L. c. 268A, §3(a) by providing approximately \$15,000 in illegal gratuities to state legislators through its lobbyist, Andrew Hunt. Section 3(a) of the conflict of interest law prohibits the giving of gifts worth \$50 or more to a public employee "for or because of any official act performed or to be performed by such an employee."

**In the Matter of David R. Nelson**  
(December 21, 1995)

The Ethics Commission issued a Public Enforcement Letter to Bristol County Sheriff David R. Nelson, citing him for allowing several of his senior correction officers to solicit their subordinates for contributions to Nelson's political campaign committee. "Some of these solicitations took place during Sheriff Department work hours and in Sheriff Department workplaces," according to a Public Enforcement Letter issued by the Ethics Commission. "Some senior ranking officers selling the fundraiser tickets encouraged their subordinates' sense of obligation to buy the tickets and fostered their belief that you took notice of who purchased tickets and who did not. ...[Y]ou had reason to know how the fundraiser tickets were being sold and to whom. Your failure to take effective affirmative action to prevent these solicitations was in effect passive encouragement and approval of the solicitations. Sound public policy dictates that the elected official has an obligation to prevent such improper conduct once the official knows or has reason to know that his subordinates are engaging in such solicitations," the Letter said. According to the Ethics Commission, Nelson's inaction violated G.L. c. 268A, §§ 23(b)(2) and 23(b)(3). Section 23(b)(2) prohibits a public official from using his official position to obtain an unwarranted privilege of substantial value. It is "a violation of §23(b)(2) for an elected public official to allow appointed public employees in his agency to solicit subordinate agency employees to make political contributions (or otherwise provide assistance) to the elected public official's campaign committee," the Letter said. Section 23(b)(3) generally prohibits a public official from acting in a manner which would cause a reasonable person to conclude that anyone can improperly influence or unduly enjoy his favor in the performance of his official duties. Nelson's "failure to effectively prevent" the solicitations would cause a reasonable person to conclude that he "could be unduly influenced in the performance of [his] official duties as sheriff by whether or not correction officers purchased tickets" to political fundraisers, according to the Letter.

**In the Matter of James Flanagan**  
(January 18, 1996)

In a Decision and Order concluding its adjudicatory hearing on the matter, the State Ethics Commission fined Former Massachusetts Turnpike Authority employee James Flanagan \$750 after finding that he violated G.L. c. 268A, §3(b) by accepting approximately \$250 worth of entertainment and hotel accommodations from a Turnpike Authority contractor, Middlesex Paving Company, during and after the company's 1992 Christmas party. Section 3(b) of the Massachusetts conflict of interest law generally prohibits public employees from accepting anything of substantial value given to them for or because of any act performed or to be performed by them.

The Commission also found that Flanagan violated G.L. c. 268A, §23(b)(3) through his purchase of a used car from Petruzzi & Forrester, an East Brookfield construction company whose Turnpike Authority contracts were under Flanagan's supervision, when he failed to make a written disclosure of the relevant circumstances to his appointing authority. 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 Flanagan did *not* violate G.L. c. 268A, §3(b) by his purchase of the car from Petruzzi & Forrester.

**In the Matter of Petruzzi & Forrester**  
(January 18, 1996)

In a Decision and Order concluding its adjudicatory hearing on the matter, the State Ethics Commission found that Petruzzi & Forrester did *not* violate G.L. c. 268A, §3(a) by selling a used car to Flanagan. Section 3(a) generally prohibits anyone from giving a gift of substantial value to a public employee for or because of any act performed or to be performed by that employee.

**In the Matter of Wolfgang Bauer**  
**In the Matter of Patrick Marguerite**  
**In the Matter of Francis Molla**  
(January 24, 1996)

Franklin Town Administrator Wolfgang Bauer was fined \$10,000 for paying below-market rent on an apartment he leased for 31 months from two local developers with whom he had official dealings as Town Administrator. Developers Patrick Marguerite and Francis Molla were each fined \$5,000 for giving Bauer the reduced rate while they had construction projects pending in the town.

According to separate Disposition Agreements, Bauer and Molla testified that Bauer paid \$200 rent each month for the two-bedroom Union Square apartment; the other two-bedroom apartments in the building were rented for at least \$500 per month. During the time Bauer was renting the apartment from Marguerite and Molla, who were each independently involved in various construction projects in Franklin, "Marguerite and Molla had completed projects, had pending projects and expected to have additional projects in Franklin. In furtherance of these projects, both Marguerite and Molla have had dealings with various town officials including Bauer as town administrator," the Agreements say.

Section 3(b) of the conflict of interest law, G.L. c. 268A, prohibits public employees from receiving gifts worth \$50 or more which are given to them for or because of their official duties. Section 3(a) prohibits anyone from giving such a gift.

**In the Matter of Harley Keeler**  
(January 30, 1996)

Uxbridge Fire Chief Harley Keeler was fined \$1,000 for his participation in the January 1995 hiring of his stepdaughter, Melissa Blodgette, as a full-time firefighter. Keeler admitted in a Disposition Agreement that he violated G.L. c. 268A, §19 first by assigning his deputy chief to interview the two candidates for the position, and then by appointing Blodgette 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. As his wife's child, Blodgette is a member of Keeler's "immediate family" for the purposes of the conflict law.

**In the Matter of Ross Smith**  
(February 22, 1996)

Uxbridge Selectman Ross W. Smith was fined \$2,000 for his participation as a Selectman in the July 1994 awarding of a contract to purchase a used school bus, and for having a concealed financial interest in that contract. Smith admitted in a Disposition Agreement that he violated G.L. c. 268A, §19 by participating in the contract awarding process. According to the Agreement, after publicly advertising the sale of the surplus 1985 school bus, the town received two bids for the contract. At the July 18, 1994 Selectmen's meeting, Smith both made a motion and then voted on the motion to award the contract to Stratton Electric; Smith had earlier asked Stratton to submit the bid on behalf of Smith, according to the Agreement. Section 19 of the conflict law generally prohibits a municipal official from participating as such in a particular matter which affects his own financial interest.

In the Agreement, Smith also admitted to violating G.L. c. 268A, §20 through the bus purchase. Section 20 of the conflict law generally prohibits a municipal official from having a financial interest in a contract with his municipality. Smith subsequently sold the bus again, and earned a \$72 profit on the transaction, according to the Agreement.

**In the Matter of Paul Enis**  
(March 11, 1996)

Dracut Water Commissioner Paul Enis was fined \$1,000 for participating in the hiring and supervision of his son, Tom Enis, as a Water District Employee between 1989 and January 1995. Enis admitted in a Disposition Agreement that he violated G.L. c. 268A, §19 by acting as Water Commissioner in matters in which his son had a financial interest. Tom Enis earned a total of about \$30,000 working for the District part-time during the school year and occasionally full-time during summer and school breaks, according to the Agreement. "His responsibilities included reading water meters, physical labor and general office help," the Agreement said. "There was no employment application or job posting for the position." Section 19 -- the so-called "nepotism section" of the conflict of interest law -- generally prohibits municipal officials from taking any official action which will affect the financial interests of an immediate family member. Among other actions, the section generally prohibits a municipal official from participating in the decision to hire an immediate family member, and also from participating in the day-to-day supervision of the family member.

**In the Matter of Marilyn Mondeau**  
(March 11, 1996)

East Bridgewater Wage and Personnel Board member Marilyn Mondeau was fined \$500 for participating in the Board's decisions to recommend to Town Meeting a 3% cost-of-living adjustment and retaining an existing wage "pay grid" for non-union administrative positions. In a Disposition Agreement, Mondeau admitted she violated G.L. c. 268A, §19 by participating in the decisions, which she knew would affect the salary of her daughter, Jeanne Bennett, a Police Department administrative assistant. When Town Meeting approved the Board's recommendations in June 1995, Bennett's annual salary was increased by \$1,929. Section 19 of the conflict of interest law generally prohibits municipal officials from taking any official action which will affect the financial interests of an immediate family member. Among other actions, the section generally prohibits a municipal official from participating in discussions and recommendations regarding matters affecting the salaries of an immediate family member.

**In the Matter of Louis Zwingelstein**  
(March 11, 1996)

Former Sheffield Conservation Commission member Louis Zwingelstein was fined \$2,000 for preparing, on behalf of a private client, a design plan for a fire pond which required Conservation Commission approval; for accepting payment for the design work; and for acting as a Commission member on his client's proposal by participating in a site visit, public hearings and Commission discussions, and by signing a determination of applicability. Zwingelstein admitted in a Disposition Agreement that he violated G.L. c. 268A, §§ 17(a), 17(c) and 19 through his actions. Section 17(a) of the conflict of interest law generally prohibits municipal officials from accepting private compensation in connection with matters of direct and substantial interest to their municipality, including matters pending before a municipal agency. Section 17(c) generally prohibits municipal officials from acting as "agent" for private clients in connection with such matters; among other actions, this section prohibits municipal officials from preparing architectural, engineering or other design plans which will be submitted for municipal review. Section 19 generally prohibits municipal officials from participating in matters affecting the financial interests of their private employers; among other actions, this section prohibits participation as a public official in discussions, public hearings or deliberations regarding matters affecting private clients.

**In the Matter of Charles F. Flaherty, Jr.**  
(March 27, 1996)

House Speaker Charles F. Flaherty, Jr. was fined \$26,000 for violating the state's conflict of interest law on 13 occasions, when he accepted illegal gratuities from lobbyists and others with interests in legislative business. In a Disposition Agreement with the Commission, Flaherty admitted he violated G.L. c. 268A, §3(b) by accepting the following gratuities:

- On five occasions between April 1991 and July 1992, Flaherty used a Newport, Rhode Island condominium owned by Abraham Gosman, and loaned to Flaherty by Gosman's associate Robert Cataldo, while Gosman had an interest in various legislative matters. Flaherty did not pay for the condominium's use, worth a total of approximately \$7,000.
- Between August and September 1990, Flaherty stayed at a Cotuit, Massachusetts vacation home rented by his close friend, registered lobbyist John E. Murphy, and Richard Goldberg, while Goldberg was seeking legislative action to resist an eminent domain land taking. Flaherty did not pay for his use of the vacation home, worth at least \$2,775.
- In 1990, 1991 and 1992, Flaherty attended July 4th holiday weekend events in Kennebunkport, Maine. Approximately 18 to 25 people, including Massachusetts legislators and lobbyists, attended each event. Lobbyist Mark Doran, Associated Industries of Massachusetts ("AIM") and the Choate Group paid a substantial portion of the expenses of each event, which included boat rentals, clambakes and other meals, entertainment and hotel rooms for some of the guests. During this time, Doran was employed as a lobbyist for AIM, and both AIM and the Choate Group lobbied the Legislature regarding various matters. Flaherty accepted gratuities totalling about \$2,000 during the three events.
- In 1991, Flaherty spent two weekends at a vacation home in Mashpee, Massachusetts, owned by a friend of Doran. Flaherty did not pay for the use of the home, worth a total of approximately \$700.
- In 1991, Flaherty used a Martha's Vineyard townhouse, owned by a limited partnership controlled by Jay Cashman and members of Cashman's family. The townhouse was loaned to Flaherty by Cashman's friend, Edward Carroll. At the time, Cashman had interests in state construction contracts; Cashman had also, on behalf of the Construction Industries of Massachusetts, lobbied Flaherty regarding bond authorizations to fund state construction projects. Flaherty did not pay for the use of the townhouse, worth a total of approximately \$700.

Section 3(b) of the conflict law 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. In each of the above instances, Flaherty "knew that the givers were in considerable part seeking his official goodwill on behalf of themselves or others who had or would have business interests before the House of Representatives," according to the Agreement.

**In the Matter of Associated Industries of Massachusetts**  
(March 28, 1996)

Associated Industries of Massachusetts ("AIM") was fined \$2,000 for providing, through its lobbyist Mark Doran, entertainment gratuities to House Speaker Charles F. Flaherty, Jr., on July 4th holiday weekends in 1990 and 1991. AIM admitted in a Disposition Agreement that it violated G.L. c. 268A, §3(a) when Doran provided Flaherty with the gratuities. AIM is an association of over 3,000 Massachusetts businesses; one of its purposes is to lobby the Legislature on behalf of the interests of its members, the business community at large, and for economic growth and jobs. Section 3(a) of the conflict of interest law prohibits anyone from directly or indirectly giving to a public employee, including a state legislator, anything worth \$50 or more which is given for or because of an official act performed or to be performed by the public employee.

**In the Matter of The Choate Group**  
(March 28, 1996)

The Choate Group was fined \$3,000 for providing, through its lobbyist Edward E. O'Sullivan, entertainment gratuities to House Speaker Charles F. Flaherty, Jr., on July 4th holiday weekends in 1990,

1991 and 1992. The Choate Group admitted in a Disposition Agreement that it violated G.L. c. 268A, §3(a) when O'Sullivan provided Flaherty with the gratuities. The Choate Group is a private business which lobbies the Legislature on behalf of various clients. Section 3(a) of the conflict of interest law prohibits anyone from directly or indirectly giving to a public employee, including a state legislator, anything worth \$50 or more which is given for or because of an official act performed or to be performed by the public employee.

**In the Matter of Robert Cataldo**  
(March 28, 1996)

In a Disposition Agreement, Robert Cataldo admitted that he violated G.L. c. 268A, §3(a) and was fined \$7,500 for providing House Speaker Charles F. Flaherty, Jr. with the use of a Newport condominium, owned by Abraham Gosman, on five occasions between April 1991 and July 1992, while Gosman and Cataldo had an interest in various legislative matters. Section 3(a) of the conflict of interest law prohibits anyone from directly or indirectly giving to a public employee, including a state legislator, anything worth \$50 or more which is given for or because of an official act performed or to be performed by the public employee.

**In the Matter of James B. Triplett**  
(April 3, 1996)

Oxford Police Chief James B. Triplett, who is also a lawyer in private practice, was fined \$2,000 for participating as Police Chief in matters affecting his private law clients, without disclosing the private relationship to his appointing authority, the Oxford Board of Selectmen. In a Disposition Agreement, Triplett admitted he violated G.L. c. 268A, §23(b)(3), by:

- participating in a 1992 arson investigation into a fire which destroyed a house owned by Barbara Kiley. Triplett had acted as Kiley's lawyer both in her efforts to sell the house and in a contempt action for failure to make mortgage payments on the house. According to the Agreement, Triplett: assigned various officers to conduct the investigation; participated in the interview of Kiley's son, Christopher Kiley, who at the time was both a suspect in the arson and a client of Triplett's law firm; and participated in the interview of a purported alibi witness for Christopher Kiley.
- as Police Chief, directing police department actions regarding the enforcement of liquor and other laws regarding "Manny's", an Oxford bar owned by one of Triplett's private law clients.
- testifying, as Police Chief, at a Planning Board hearing on a proposal to expand the Lullman Paradis Funeral Home parking lot, when Triplett had previously provided legal services both to Lullman Paradis, Inc. and to one of the company's owners, Diane Paradis.

G.L. c. 268A, §23(b)(3) generally prohibits a public official from acting in a manner which would cause a reasonable person, with knowledge of the relevant circumstances, to conclude that anyone can improperly influence him or unduly enjoy his favor in the performance of his official duties; however, a public employee may avoid violating §23(b)(3) by making a written disclosure of all relevant facts to his appointing authority. In 1989, Triplett was advised by the State Ethics Commission that, to avoid violating the conflict law, he should disclose to the Oxford Board of Selectmen his legal representation of any town business people who held licenses subject to his jurisdiction; Triplett did not disclose his attorney-client relationships in any of the above instances, according to the Agreement.

The Commission also issued a Decision and Order approving a Joint Motion to dismiss five of the ten charges issued by the Commission's Enforcement Division against Triplett in January 1995. Two charges remained pending at the end of FY96.

**In the Matter of Francis Beaudry**  
(April 3, 1996)

Warren Selectman Francis Beaudry was fined \$500 for participating in a Selectmen's discussion of Cemetery Department employee wages, and for joining in the board's consensus to submit a revised wage

list to Town Meeting for approval. Beaudry admitted in a Disposition Agreement that he violated G.L. c. 268A, §19 by participating in the matter, which he knew would affect the wages of his wife's brother, a Cemetery Department employee. Section 19 of the conflict of interest law generally prohibits municipal officials from taking any official action which will affect the financial interests of an immediate family member. Among other actions, the section generally prohibits a municipal official from participating in discussions and recommendations regarding the salary of an immediate family member.

**In the Matter of Raymond Hebert**  
(April 29, 1996)

Former Norton Building Inspector Raymond Hebert was fined \$3,000 for violating G.L. c. 268A, §§ 3(b) and 23(b)(3). In a Decision and Order concluding its adjudicatory proceeding in the matter, the Commission:

- found that Hebert violated §3(b) by accepting at least \$320 worth of construction services and a coil of waterline worth \$100-\$200 from builder James Chabot;
- found that the value of construction plans Hebert accepted from Chabot was not proven to be "of substantial value";
- found that Hebert did *not* violate §3(b) when he accepted use of a "builder's discount" on major appliances from his friend, builder Thomas Grossi; and
- found that Hebert violated §23(b)(3) by acting – without appropriate public disclosures – as Building Inspector in matters involving Chabot, Grossi, and developer Arthur Amaral, a friend of Hebert who was at the time building a house for Hebert.

Section 3(b) of the conflict law prohibits a public employee from accepting anything of substantial value which is given to him for or because of official acts performed or to be performed by him. Section 23(b)(3) generally prohibits a public official from acting in a manner which would cause a reasonable person, with knowledge of the relevant circumstances, to conclude that anyone can improperly influence him or unduly enjoy his favor in the performance of his official duties; however, a public employee may avoid violating §23(b)(3) by making a written disclosure of all relevant facts to his appointing authority.

**In the Matter of Frank Mazzilli**  
(May 2, 1996)

Former Chairman of the Carver, Marion, Wareham Regional Landfill Committee Frank Mazzilli was fined \$7,500 for violating the conflict of interest law between May and July 1993 by representing his private tenant, Phillip LaMarca, in matters involving the operators of the regional landfill. In a Disposition Agreement, Mazzilli admitted that he violated G.L. c. 268A, §§ 17(c) and 23(b)(2) when, on LaMarca's behalf, he:

- asked Energy Answers Corporations Operators to accept shredded tires LaMarca had accumulated on Mazzilli's property, for which the landfill operators initially charged a reduced per-ton dumping fee;
- assured the landfill operators, on several occasions, that the agreed-upon dumping fees would be paid; and
- called the company's site supervisor and asked that the landfill operators continue to accept the tires at the lower disposal rate, after being told that the company no longer wanted to do so.

Section 17(c) of the conflict law prohibits a municipal official from acting as the agent for anyone other than the municipality in connection with matters of direct and substantial interest to the municipality. 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; among other actions, it prohibits a municipal official from soliciting someone he regulates for a private commercial transaction. According to the Agreement, through his actions on behalf of LaMarca, Mazzilli put the landfill operators "in an implicitly pressured situation" such that they "would be strongly compelled to grant ... accommodations to LaMarca. Such requests under such circumstances involve the use of public position for an unwarranted privilege."

**In the Matter of Harold Partamian**  
(June 27, 1996)

Former Executive Secretary to the State Board of Registration in Pharmacy Harold Partamian was fined \$3,250 for acting in his official capacity on matters affecting his private "after-hours" employer, Insta-Care Pharmacy Service Corporation. Partamian admitted in a Disposition Agreement that he repeatedly violated G.L. c. 268A, §6 between July 1993 and February 1994, by participating as Board Executive Secretary on matters involving Insta-Care. According to the Agreement, Partamian:

- issued notices of informal Board conferences concerning pending allegations against Insta-Care, which warned that failure to attend the hearings could result in disciplinary action by the Board, and also rescheduled such conferences;
- took part in a Board meeting concerning alleged illegal distribution of controlled substances at an Insta-Care wholesale pharmacy;
- took part in imminent danger hearings concerning the same Insta-Care wholesale pharmacy;
- handled a telephone complaint alleging safety problems involving an Insta-Care pharmacy, and advised the complainant how to resolve the matter informally with Insta-Care or, alternatively, how to send a written complaint to the Board; and
- received a written complaint, with supporting documentation, from the same complainant and failed to turn the documents over to the Investigative Unit of the Division of Registration, to the Division Director, or to the Board. The documents remained in Partamian's desk until after he left his position as Board Executive Secretary in February 1994.

Section 6 of the conflict law generally prohibits a state employee from participating in any particular matter which affects the financial interests of his private employer. The section also requires that a state employee file with his appointing authority a written disclosure of his private employer's financial interests in any matter in which the employee would ordinarily be required to participate.

The Commission advised Partamian of the requirements of G.L. c. 268A, §6 in a 1982 advisory opinion. Partamian was also advised of the conflict law's restrictions in a 1987 Commission staff letter. In 1992, the Commission fined Partamian \$1,000 for participating in three matters involving Insta-Care. In the Agreement, "Partamian's failure to reform his conduct following his 1992 disposition agreement with the Commission" is cited as an exacerbating factor weighed by the Commission in its determination of the fine. "That a higher fine has not been imposed is due in part to the fact that Partamian resigned from his position as Board executive secretary in lieu of facing the prospect of a formal discharge based on essentially the same reasons as those enumerated in this Agreement."

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**State Ethics Commission**

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