

A N N U A L R E P O R T
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S U M M A R Y O F
F I S C A L Y E A R 1 9 8 2 A C T I V I T I E S

In its FY81 Annual Report , the Commission announced three goals for FY82: a comprehensive review of Chapter 268A in order to propose amendments for consideration by the 1982 session of the legislature; maintenance of the capacity to investigate violations and to enforce the law with an expanded caseload; and development of a comprehensive program of voluntary compliance through education. During FY82 the Commission achieved each of these three objectives by initiating new projects and expanding existing programs.

1) To accomplish the first goal, the Commission conducted a thorough review of the conflict of interest law, G.L. c. 268A and invited comment at public hearings throughout the state. As a result, the Commission concluded that the law is basically sound, workable and fair. Certain revisions seemed necessary, however, to refine, clarify and update its provisions. In light of this review and of its experience with the law since 1978, the Commission submitted a comprehensive package of amendments to the 1982 session of the legislature. As House 1235, these proposals were engrossed by the House on July 1, 1982, and by the Senate on August 3, 1982 and need only formal enactment by both Houses and the Governor's signature to become law.

2) In FY82 over 400 matters were referred to the Commission for possible investigation, an increase of 56% over FY81. In addition, the Commission for the first time, collected funds under its civil recovery authority and took action to end an agency's longstanding conflict of interest violations.

In August, 1981, the Commission recovered \$105,000 in damages and interest from a California-based architectural firm. This marked the largest single monetary settlement resulting from a conflict of interest probe in Massachusetts and the first time that the Commission recovered damages from a private business under its authority to file economic recovery suits.

Fiscal Year 1982 also marked the Commission's first effort to develop an appropriate enforcement strategy for dealing with conflict of interest problems involving agency-wide procedures. In response to complaints about personnel practices in the Department of Mental Health which violate the conflict law, the

Commission staff worked with the Department to end those practices without causing undue disruption of DMH's services. In July, 1981, the Commission issued a Compliance Letter explaining the law and the Commission's findings and requiring DMH action to end all unlawful practices by September 30, 1982.

In other enforcement actions, the Commission fined a state official \$12,000 for violations including his receipt of discount and charge privileges from businesses regulated under his supervision; imposed a civil penalty of \$5,250 on a county official for violations including his receipt of a private loan from a bank because he deposited county funds in that bank; and censured a municipal official because he failed to take required steps to insure that city employees and others holding city contracts were not pressured to contribute to a party for his wife.

3) To achieve its third goal, the Commission focused its educational efforts on informing municipal employees and officials about the requirements of the conflict law. A pamphlet summarizing the law's municipal provisions was prepared and distributed at meetings held in cooperation with the offices of County Commissioners throughout the state.

At the same time, controversy arose over the Commission's 1980 "teacher-selectman" opinion which ruled that a selectman who also served as a teacher in the same community would have a financial interest in a municipal contract in violation of Section 20 of the conflict law. Pending legislative action on several amendments to allow them to so serve, the Commission announced that it would forestall enforcement actions against individuals holding these dual positions until May 30. In May, the legislature amended Section 20 to allow municipal employees to serve as selectmen under certain conditions.

The Commission's efforts to explain the law's requirements to municipal employees, together with statewide discussion provoked by the "teacher-selectman" controversy, resulted in an increase in the number and kinds of questions about the impact of the law at the local level. One such question was answered when the Commission issued an advisory opinion stating that the conflict law does not prohibit the holding of more than one elective municipal office. More than half of the Commission's Preliminary Inquiries during the year involved municipal employees. A majority of the over 600 calls for advice also concerned the application of the law at the local level. In short, it appears that employees of many communities are newly aware of the law and are taking steps to comply with it.

There is further evidence that public employees are attempting to comply with the law. The conflict law requires state and county employees to disclose their financial interests in certain matters under certain circumstances. Of the 141 such disclosures on file with the Commission, 76 were submitted during FY82.

While working to achieve its FY82 goals, the Commission maintained its record of compliance with the filing requirements of the financial disclosure law, issued a record 194 advisory opinions and imposed civil penalties totaling \$137,485 on individuals found to have violated the law.

* * * * *

The Commission's activities for FY82 will be guided by three new goals: 1) prompt implementation of the amendments to Chapter 268A contained in H. 1235, including publications and seminars explaining the changes and special assistance to those who have new or different responsibilities under the revised law (if H. 1235 fails to pass it will be resubmitted); 2) successful litigation of civil recovery suits (there are six such suits pending); and 3) continuing education of public employees about the conflict law focusing this year on preparation of a) new materials for use in the Division of Personnel Administration's training programs for state supervisors and managers; b) an Annotated Guide to the Conflict of Interest Law for Municipal Employees; and c) publications explaining the law's restrictions on private citizens and organizations doing business with the government.

I N T R O D U C T I O N

T O T H E C O M M I S S I O N

The Commission was created by Chapter 210 of the Acts and Resolves of 1978. That statute revised and strengthened the existing conflict law, provided for annual disclosure of business associations and interests by public officials and employees, and empowered the new, independent Ethics Commission to enforce the law with civil penalties and sanctions. Chapter 210 became law on June 5, 1978; the Commission's charge to administer and enforce the new financial disclosure law, Chapter 268B, took effect on November 1, 1978.

The fundamental purpose of this legislation is clear: the proper conduct of the government's business depends upon public officials who are independent and impartial. Public office should not be used for private gain and the public's confidence in that fact is essential to the effective operation of democratic government. Forty other states and the federal government have enacted legislation designed to achieve the same purpose.

MAJOR RESPONSIBILITIES

The State Ethics Commission is an independent, non-partisan agency established to:

- * Render written advisory opinions upon request to those covered by Chapters 268A and 268B;
- * Administer the financial disclosure law, Chapter 268B, covering approximately 4,000 candidates, elected officials, and employees holding major policy making positions in the legislative, executive and judicial branches of state and county government;
- * Provide advice and information to public officials and employees to help them avoid possible conflicts, and meet their responsibilities under the conflict of interest and financial disclosure laws;

- * Investigate alleged violations of the conflict of interest and financial disclosure laws; and
- * Serve as the primary civil enforcement agency for the conflict of interest and financial disclosure laws.

MEMBERSHIP AND ORGANIZATION

The State Ethics Commission consists of five members appointed to staggered terms of five years. They serve part-time, are paid on a per diem basis, and employ a full-time staff. Three members are selected by the Governor, one by the Secretary of State and one by the Attorney General. No more than three may be of the same political party. Commission members and staff are prohibited from certain political activities during their tenure and for one year after leaving the Commission.

The members of the Commission in FY82 were:

- * James Vorenberg, Dean of Harvard Law School, Chairman.
- * Marver Bernstein, President of Brandeis University.
- * David Brickman, Publisher and Editor-in-Chief of the Malden Evening News, Medford Daily Mercury, and Melrose Evening News.
- * Linda Kistler, Acting Dean, College of Management Science, University of Lowell, (term ended during FY82).
- * Reverend Bernard P. McLaughlin, former teacher of Philosophical Ethics at St. John's Seminary and present Chaplain at Logan International Airport, Vice-Chairman.
- * Joseph I. Mulligan, partner in Boston law firm, Reed and Mulligan (appointed by Governor King December, 1981).

LEGISLATION

During FY82 three amendments to the conflict of interest law (G.L. c. 268A) were passed into law. In addition, the Commission submitted a legislative package of amendments to the conflict law which was engrossed by both Houses and awaits further action at this time (August 5, 1982).

FY82 AMENDMENTS TO CHAPTER 268A

CHAPTER 430 of the Acts and Resolves of 1981 amends the definition of "Special municipal employee" in Section 1(n) by changing the population cut-off for towns where selectmen may be designated as special municipal employees from 1,000 to 5,000. A special municipal employee is designated as such by the city council, board of selectmen or board of aldermen applying standards set out in the law. For these individuals the conflict law applies in a less restrictive way.

CHAPTER 107 of the Acts and Resolves of 1982 amends Section 20 of Chapter 268A so that employees of a town may serve as selectmen in the same town as long as:

- a) in their capacity as selectmen they do not vote or act on any matter within the purview of any municipal agency by which they are employed or over which they have official responsibility in their other position;
- b) selectmen are not appointed to a municipal position while members of the board of selectmen or for six months after leaving the board; and
- c) compensation is not received for more than one office or position in a town. (Individuals may choose which compensation they wish to receive.)

CHAPTER 143 of the Acts and Resolves of 1982 amends Section 4 of Chapter 268A to allow state employees who do not work in the Department of Revenue to be paid by someone other than the Commonwealth for filing or amending state tax returns.

STATE ETHICS COMMISSION'S PROPOSED AMENDMENTS TO CHAPTER 268A

In FY82 the Commission conducted a systematic review of Chapter 268A including three public hearings and discussions with public officials and employees at more than 50 seminars and meetings around the state.

The Commission's review was initiated for several reasons. First, concerns about conflicts of interest have multiplied in response to allegations of political corruption at all levels of government. Second, since 1978, the Commission has rendered nearly 500 advisory opinions, reviewed over 800 matters referred to it for possible investigation, and conducted more than 200 Preliminary Inquiries. These actions have enabled the Commission to determine where the law may apply too harshly or too loosely in actual situations. Finally, its mandate commits the Commission to making the law's provisions as clear and relevant as possible to the realities of government in the 1980's.

As a result of its review, the Commission proposed a comprehensive legislative package to clarify, refine and update this 20 year old statute. The Commission's recommendations did not represent a reworking of the law. Rather, each element of the law was analyzed to ensure that it still reflected the fundamental purposes of the law.

Among the major recommendations included in the Commission's proposals are the following:

1. The procedures for designating "special employees," who are subject to fewer restrictions under Chapter 268A, should be tightened.
2. Public employees should be allowed to have financial interests in second contracts with the government which employs them under certain limited conditions.
3. Elected officials should be able to seek permission to participate in matters in which they have insignificant financial interests by following the same procedure now available only to non-elected employees.
4. Restrictions on improper disclosure of confidential information which now apply to current employees should be extended to former employees as well.
5. The maximum civil penalty for a violation should be raised from \$1,000 to \$2,000.

I N V E S T I G A T I O N

INTRODUCTION

Chapter 268B requires the State Ethics Commission to initiate a confidential Preliminary Inquiry into any alleged violation of Chapter 268A or 268B upon the receipt of either a sworn complaint or of other evidence which is "deemed sufficient by the Commission." Anyone may call, write or visit the Commission to make a complaint. Most complaints are unsworn and are initially reviewed by the staff in a screening process. After screening, those regarding suspected violations of either Chapter 268A or 268B which can be corroborated by some independent evidence are submitted to the Commission for authorization to begin a Preliminary Inquiry.

When a Preliminary Inquiry is authorized, the Commission staff investigates the matter and prepares a report of their findings for the Commission. If the Inquiry indicates that there is "no reasonable cause to believe" that either law has been violated, the Commission terminates the Inquiry and notifies the subject and the person who brought the complaint. All Commission records and proceedings of Preliminary Inquiries which are so terminated remain confidential. If "reasonable cause" is found, the Commission has a number of enforcement options which are discussed in the next section.

REVIEW OF FY82 ACTIVITIES

Increasing public understanding of the conflict of interest law and growing awareness of the Commission's authority to enforce it resulted in a 56% increase in the number of complaints made to the Ethics Commission in FY82 as compared to FY81. In FY82, 410 matters involving over 500 persons and businesses were brought to the Commission for investigation. Seventy percent of these complaints came from private citizens. The remaining 30 percent came from government agencies, information developed from other investigations and inquiries, the staff's routine inspection of the Statements of Financial Interests and reports in the media.

The following actions were taken on these 410 complaints received during FY82:

Closed because matter not within Commission's jurisdiction	172
Closed because no independent evidence of violation	64
Compliance Letter (see page 10)	6
Advisory opinions	7
Referral to other agencies	5
Preliminary Inquiry authorized	105
Remain in screening	<u>51</u>
	410

The Commission's authorization of 105 cases for Preliminary Inquiry resulted in 121 Preliminary Inquiries because several cases involved more than one individual or business. In addition, another 11 Preliminary Inquiries authorized during FY81 continued into FY82. Thus the Commission conducted a total of 132 Preliminary Inquiries during FY82.

Fifty seven of these Inquiries involved alleged violations of the financial disclosure law. The subjects of these Inquiries would necessarily be employees of either state or county government since the law does not cover municipal employees. The seventy-five conflict of interest-related Inquiries concerned:

Municipal officials or employees	38
State officials or employees	20
Private businesses and individuals	15
County officials or employees	<u>2</u>
Total	75

The Commission completed 50 Preliminary Inquiries during the year. Twenty were terminated with findings of "no reasonable cause to believe" that the law had been violated. The Commission found "reasonable cause to believe" that either Chapter 268A or 268B or both laws had been violated in 30 Inquiries.

E N F O R C E M E N T

INTRODUCTION

The State Ethics Commission is required by law to investigate alleged violations and enforce the provisions of the conflict of interest and financial disclosure laws.

If, after investigation, the Commission finds "reasonable cause to believe" that either law has been violated, it has several options. It may, upon majority vote, authorize issuance of an Order to Show Cause. The Order serves as a formal complaint and initiates adjudicatory proceedings to determine whether such a violation has occurred.

If the matter proceeds to adjudicatory hearing, that hearing is governed by Rules of Adjudicatory Procedures promulgated by the Commission (930 CMR 1.00). All Orders to Show Cause and materials filed in the Commission's adjudicatory proceedings are public records and available from the Commission on request.

To make the provisions of both statutes effective and enforceable, Chapter 268B empowers the Commission to impose a range of civil penalties, including fines of up to \$1,000 per violation of either law. (House 1235, if passed, will raise that total to \$2,000 per violation.) In addition, the Commission may refer any matter to the Attorney General for criminal investigation, and may bring suit in the Superior Court to rescind any government action influenced by a conflict of interest.

At any time after a finding of reasonable cause, the Commission may resolve a matter on terms it deems to be appropriate and in the public interest. Matters are settled when the Commission and the subject enter into a formal Disposition Agreement. All Agreements entered into by the Commission are matters of public record. They set forth the findings of fact and law, as well as the violations and sanctions agreed to by the Commission and the subject of the inquiry.

As a third option, the Commission may sue to recover for the Commonwealth any economic advantage gained by individuals or businesses in violation of the conflict law and may seek to recover up to three times that amount in additional damages.

In less serious matters, a confidential Compliance Letter may be issued to advise an individual of violations and explain the consequences if the prohibited conduct continues.

REVIEW OF FY82 ACTIVITIES

The recovery, in August 1981, of \$105,000 in damages and interest from a California- based architectural firm marked the Commission's first collection of damages from a private business under its authority to file economic recovery suits. It was also the largest single monetary settlement resulting from a conflict of interest probe in Massachusetts history.

In addition, the Commission imposed civil penalties and recouped economic benefits totaling another \$32,485 from nineteen individuals and businesses who were found to have violated the conflict of interest law, the financial disclosure law or both. In all, the Commission imposed fines and recovered damages totaling \$137,485 during the year.

The Commission resolved several major cases during FY82 with the following results:

- * A former state official was fined \$12,000. He was found to have violated the conflict law by receiving discounts and charge privileges from businesses regulated by his agency and to have participated in his official capacity in matters in which he knew his son had a financial interest.
- * A county treasurer was fined \$5,250 for violations of the conflict law involving his solicitation and acceptance from a bank of a private loan because of his decision to open county accounts in that bank and his repeated decisions to open and maintain county accounts in banks where he was seeking or receiving private loans.
- * A public Compliance Letter advised a mayor that he violated the Standards of Conduct in the conflict law by failing to take required steps to insure that neither his employees nor businesses contracting with his city were pressured to contribute to an event held to honor his wife.
- * As a result of referrals from the Ward Commission, the Commission sued a Worcester corporation and two of its officers for \$160,062 they allegedly gained in violation of the conflict law and for twice that amount in additional damages. The Commission's complaint contends that the defendants

gave cash, office equipment and furniture to an architect who was under contract with both municipal and county agencies because of his actions regarding the award of contracts to their firm.

FY82 Enforcement actions in the 30 cases where the Commission found reasonable cause and in 13 where reasonable cause had been found in FY81 are summarized below:

<u>Enforcement Action</u>	<u>Number</u>	<u>Civil Penalties Imposed</u>
Compliance Letter	3	-
Disposition Agreement	16	\$ 117,485.00
Adjudicatory Hearing/ Commission Decision and Order	4	\$ 20,000.00
Adjudicatory Proceedings Pending	14	-
Civil Action Pending - Recovery of Economic Advantage	6	-
Total	43	\$ 137,485.00

DEPARTMENT OF MENTAL HEALTH COMPLIANCE PLAN

In FY82, the Commission took action to end longstanding personnel practices in the Department of Mental Health which violate the state's conflict of interest law. The Commission sought to balance the Department's need to provide services and the Commission's responsibility to enforce the law without singling out any agency for particularly lenient or harsh treatment.

At issue in the Commission's action were two kinds of practices. The first involved DMH employees who work at partnership clinics and simultaneously receive payments from the private partner and the state. The Commission found that this practice violates the part of the conflict of interest law which precludes state

employees from being in positions where they "serve two masters" (Section 4 of G.L. c. 268A). The second involves DMH employees who also work part-time for DMH vendors and are paid by the vendors with state funds. The Commission ruled that this practice violates the law's prohibition against state employees using their positions to gain the "inside track" in winning contracts from the state. (Section 7 of G.L. c. 268A)

For many years, the Department had authorized these practices for hundreds of employees. However, the Commission as well as various Attorneys General had already ruled that dual compensation arrangements violate the conflict law. In response to inquiries, the Commission's staff conducted a systematic review of these practices with the Department. Pending this review, the Commission deferred enforcement actions against individual DMH employees.

In a July 1981 Compliance Letter, the Commission advised the Department that the conflict law prohibits DMH employees from receiving certain forms of dual compensation from public and private sources. The Letter required DMH to submit a Compliance Plan by September 30, 1981 and to set deadlines for ending "dual compensation" arrangements within the year.

The Department of Mental Health's Plan of Compliance indicated that 81 of the dual-payment situations had been terminated and asked that 585 others be permitted until September 30, 1982. Following further discussions with DMH, the Commission approved a schedule to end all dual-payment situations by the September 30, 1982 deadline.

FINANCIAL DISCLOSURE

INTRODUCTION

With the enactment of the financial disclosure law in 1978, Massachusetts joined forty other states and the federal government in requiring public officials and employees to disclose certain financial interests. The Massachusetts law, Chapter 268B, requires annual public disclosure of interests and associations which may create a potential for conflict between an individual's official responsibilities and private interests. The law covers all elected officials, candidates and certain designated employees in state and county government. Municipal officials and employees are not included in the disclosure requirements.

Every candidate for state or county office, every elected state or county official and certain designated state and county employees who hold "major policy making positions" must file an annual Statement of Financial Interests for the preceding calendar year with the State Ethics Commission.

Failure to file, or to amend a deficient or incomplete Statement within ten days of receiving a Formal Notice of Delinquency, is a violation of the law. The Commission may levy penalties, including fines of up to \$1,000, for each violation. The statute also provides criminal penalties of fine and imprisonment for filing a false Statement.

FILINGS OF STATEMENTS OF FINANCIAL INTERESTS - FY82

In FY82, the Commission continued its efforts to provide a full and clear explanation of the financial disclosure law and the Commission's interpretation of it, prompt assistance for all reporting persons in meeting their responsibilities under the law, and appropriate enforcement action whenever necessary to ensure full compliance with the law.

By January 1, 1982, the fifty-four heads of state and county agencies submitted lists of individuals holding major policy making positions within their jurisdictions. After these lists were reviewed and compared with prior year's submissions, the Commission mailed 4,210 Statements and Instructions to designated individuals by March 12, 1982.

As always, the Commission staff was available to provide clear and timely assistance to persons filing Statements with the Commission. In FY82, over 900 reporting persons requested and received such assistance. A major portion of these requests came from individuals filing Statements for the first time, many of whom were candidates for state and county office.

STATE ETHICS COMMISSION INSPECTION OF STATEMENTS
FILED IN FY82

Three hundred sixty-two candidates and 4,212 elected officials and top-ranking employees in state and county government filed Statements of Financial Interests by the May deadlines. The Commission staff is reviewing each Statement to ensure that, on its face, it complies with the requirements of the law. Those individuals who submitted incorrect or incomplete Statements will receive deficiency notices requiring them to correct their Statements.

This year, 637 persons missed the May 1st filing deadline for major policy making employees. Formal Notices of Delinquency were sent to these individuals informing them that failure to file within ten days would subject them to possible civil penalties of up to \$1,000. As a result, more than 90 percent filed within the ten-day limit. The Commission initiated fifty-seven Preliminary Inquiries into possible violations of Chapter 268B by those who received the Delinquency Notice but filed after the ten-day period. At this time (August 1982) the Commission has imposed civil penalties in nine of these cases totaling \$1,500. Twelve cases resulted in findings of "no reasonable cause" because the failure to file was due to extenuating circumstances. Thirty-six inquiries are still in progress. The unusually large number of late filers this year was due mainly to obsolete addresses supplied for employees who were designated by their agency heads in January but who have since changed jobs. In an effort to reduce this problem next year, home addresses will be requested for all individuals when they are designated by their agency heads as employees required to file Statements of Financial Interests.

Election-year compliance by elected state and county officials and candidates was nearly 100 percent. Only two individuals missed the May 25th filing deadline but filed within ten days of receiving a Formal Notice of Delinquency. This record for prompt filing was due primarily to the requirement that Statements of Financial Interests be filed prior to submission of nomination papers to the Secretary of State. In addition, candidates for state and county office were allowed to file their Statements with the Secretary of State's western office in Springfield.

Each completed Statement of Financial Interests is inspected by the Commission staff. Specific criteria are applied in the inspection process to identify potential conflicts of interest, apparent inconsistencies on an individual's form and the appearance of intent to withhold required information. As of August 1, 1982, approximately 200 Statements raised questions in at least one of these categories and are being held for further review. These filers will be contacted and alerted to the items in question. In cases where individuals do not have valid explanations for the apparent problems, their forms will be referred to the Commission's enforcement unit.

PUBLIC ACCESS TO STATEMENTS OF FINANCIAL INTERESTS

The law provides that any individual who submits a written request to the Commission can inspect and copy any Statement of Financial Interests.

In FY82, the Commission received and honored 833 such inspection requests. This represents a 32 percent increase in requests over the previous fiscal year. Much of this increase is attributable to interest in the forms generated during an election year.

Reporters from newspapers in Boston and throughout the state initiated more than 50 percent of the requests. Radio and television stations, private citizens, and representatives of universities made the remaining inspections of Statements filed with the Commission.

Statements of public officials are inspected much more frequently than those of public employees. Most often requested were Statements of legislators and members of the judiciary.

A D V I S O R Y O P I N I O N S

INTRODUCTION

Any individual covered by Chapters 268A or 268B is entitled to request an advisory opinion regarding his or her duties under the law in a given situation.

Chapter 210 transferred responsibility for issuing conflict of interest opinions from the Attorney General to the State Ethics Commission. Municipal employees, however, still should seek the opinion of town counsel. An opinion rendered by the Commission serves as a defense in a criminal action brought under Chapter 268A. It also binds the Commission in subsequent proceedings concerning an employee who requested an opinion and acted in good faith, unless the opinion request omitted or misstated material facts. Since the Commission assumed responsibility for conflict opinions in November, 1978, requests for opinions have been, by law, confidential. The law does permit the Commission to publish its opinions with names and identifying information deleted.

CONFLICT OF INTEREST - CHAPTER 268A

Chapter 268A of the General Laws--the state's conflict of interest law--has regulated the conduct of public officials and employees in Massachusetts since 1963.

The law limits:

- 1) what public employees may do "on the job";
- 2) what they may do "on the side"; and
- 3) what they may do after leaving public sector employment.

It also sets the standards of conduct required of all individuals serving state, county and municipal government. The law articulates a basic premise--public employees owe undivided loyalty to the government which employs them. Public officials and employees should not be in the position of acting for the government when their private interests are involved.

Summary of FY82 Opinions

During FY82 the Commission rendered 194 formal advisory opinions. Among the topics addressed in these opinions were:

- * standards to determine whether an individual is a "state employee" under G.L. c. 268A (EC-COI-81-117, 81-120, 81-183, 82-54, 82-81)
- * limitations on election campaign-related activities of state and county employees (EC-COI-81-152, 81-166, 82-16, 82-51, 82-61)
- * limitations on the private business activities of state employees (EC-COI-81-104, 81-105, 81-122, 81-123, 81-136, 81-140, 81-169, 82-7, 82-17, 82-27, 82-65, 82-72)
- * state employees who serve as directors of private organizations which have dealings with the state (EC-COI-81-118, 81-127, 81-145, 81-158, 81-176, 82-45, 82-69, 82-80, 82-90)
- * state and county employees serving in elected or appointed municipal positions (EC-COI-81-150, 81-170, 82-21, 82-39, 82-52, 82-89)
- * restrictions on accepting honoraria or awards from private parties (EC-COI-81-132, 81-165, 81-184, 82-22, 82-43, 82-65, 82-73, 82-77)
- * state employees who have a financial interest in a second contract made by their own or another state agency (EC-COI-81-97, 81-100, 81-125, 81-126, 81-128, 81-147, 81-157, 81-175, 81-189, 82-12, 82-29, 82-41, 82-60, 82-74, 82-85, 82-87)

Municipal Rulings

Of particular interest are the following opinions interpreting the municipal employee sections of G.L. c. 268A.

The "Rule of Necessity" and the Conflict of Interest Law -

In EC-COI-82-10, the Commission discussed the application of the "rule of necessity" when a potential violation of the conflict of interest law blocks a governmental group from exercising its authority. The opinion was sought when a three-member Board of Selectmen which was required to act annually on the reappointment of the Chief of Police found itself deadlocked as a result of a conflict of interest. Section 19 required that one selectman abstain on that vote because the Chief, who would have a financial interest in the reappointment vote, was a member of his immediate family (his wife's brother). That would leave only two Board members to act on the reappointment. The issue, brought to the Commission's attention by the town counsel, was whether a "rule of necessity" could be applied to allow the third member to participate in the reappointment decision if the remaining selectmen could not agree.

The Commission advisory opinion states that the "rule of necessity," long recognized in Massachusetts law, should be used only when so many members of a board are disqualified that an insufficient number remain to constitute a quorum. In this case, the two remaining selectmen were not unable to act because of insufficient numbers. Two of them constituted a quorum. They simply could not agree. To say that the third disqualified member could then vote because of that disagreement would mean that his conflict could be ignored at a time when his vote really meant something.

Dual municipal elective office holding - In EC-COI-82-26, the Commission concluded that holding two or more elected municipal offices in the same town and being paid for both did not violate Section 20 of the conflict of interest law. Section 20 prohibits a municipal employee from having a financial interest in any contract made by an agency of the town which employs him. However, in EC-COI-82-26, the Commission held with the common law

theory that election to public office does not create a contract between the town and the person elected. The Commission added that certain elected offices might be so incompatible as to "impair the person's independence of judgment in the performance of his official duty," in violation of Section 23(a) of Chapter 268A. But, in the absence of that inherent incompatibility, or a prohibiting provision of state law, local by-law or local charter, the conflict of interest law does not prohibit a person from holding and receiving compensation for two elected offices in the same town.

PUBLIC EDUCATION

INTRODUCTION

As a major priority, the Commission attempts to explain the conflict of interest and financial disclosure laws to those covered by them and report regularly on the Commission's activities. The goal of the Commission's educational efforts is to enable people who want to comply with the laws to do so. To that end, the Commission prepares and distributes a range of publications, sponsors conferences and seminars, and publishes public versions of all its Opinions and major enforcement documents. In order to reach the many thousands of public employees who need information about these two laws, especially the conflict of interest law, the Commission staff works in close cooperation with other agencies at all levels of government.

REVIEW OF FY82 ACTIVITIES

A primary goal of the Commission's educational program in FY82 was informing municipal employees and officials about the conflict of interest law. This effort began with the publication and distribution of a pamphlet explaining the law's municipal provisions, "Massachusetts Conflict of Interest Law for Municipal Employees." It continued through a series of seminars for municipal officials sponsored by the County Commissioners of six counties (Barnstable, Franklin, Berkshire, Worcester, Bristol and Essex), and in speaking engagements for seven professional organizations representing municipal employees. A new section of the Commission's BULLETIN -- "Municipal Matters" -- was also added to highlight Commission actions of interest to local government and the BULLETIN was regularly mailed to town counsel and city solicitors. Each of the six issues of the BULLETIN published in FY82 was mailed to 1700 government officials and employees.

In addition to programs for municipal officials and employees, the Commission staff continued to conduct seminars on the conflict law for, and distribute informational materials to, state employees. In FY82, twenty-four seminars were conducted for employees of six state agencies. Thirteen seminars were presented to employees of the MBTA at the request of that agency. Every MBTA department held a meeting on the conflict law in an agency-wide effort to ensure that all employees were aware of the law's requirements.

Annotated Guide to the Conflict of Interest Law

To supplement the existing Guide to the Conflict of Interest Law, published in 1980, the Commission has produced an annotated version of that widely-distributed publication. The new Annotated Guide provides the same explanation of the law's provisions but also includes references to advisory opinions rendered by the Attorneys General and the State Ethics Commission, case law and other relevant material. Annotated Guides are available free of charge to state agencies and employees and at a nominal fee for all others.

Speaking Engagements

The Commission also recognizes its responsibility to inform those in the private sector doing business with government and the public-at-large about the conflict law. In 17 speaking engagements before business and civic groups during FY82, Commission staff explained the law's requirements and the Commission's work in administering and enforcing it.

A P P E N D I X

The following publications, in addition to all documents filed in the Commission's adjudicatory proceedings, are available from the State Ethics Commission. To receive any of these publications, or to add your name to the mailing list for any of our publications, call or write the Commission at:

State Ethics Commission
One Ashburton Place
Room 1413
Boston, MA 02108
(617) 727-0060

1. General Laws Chapter 268A Conflict of Interest Opinions

A set of Opinions issued in 1979, with index and brief summaries included.

A set of Opinions issued in 1980, with index and brief summaries included.

A set of Opinions issued in 1981, with index and brief summaries included.

1982 Opinions as printed.

NOTE: Please include \$15 per set if this request is not for use by a state agency.

2. GUIDE TO THE CONFLICT OF INTEREST LAW

Please include \$1.50 to cover cost of Guide if it is not for use by a state, county or municipal official or employee.

3. ANNOTATED GUIDE TO THE CONFLICT OF INTEREST LAW

Please include \$2.00 to cover cost of Annotated Guide if it is not for use by a state employee or agency.

4. BULLETINS of the State Ethics Commission. The BULLETINS are a regular series that the State Ethics Commission distributes on its policies, decisions and practices. They are designed to inform and assist persons who are subject to the conflict of interest and financial disclosure laws.

Set of (4) 1979 BULLETINS

Set of (5) 1980 BULLETINS

Set of (5) FY81 BULLETINS

Set of (6) FY82 BULLETINS

FY83 BULLETINS as printed.

5. Regulations - 930 CMR 1:00: Rules of Adjudicatory Practice
and Procedures Before the Commission
930 CMR 2:00: Designation of Public Employees
6. Statements of Financial Interests: Forms and Instructions
7. Procedures Covering Initiation and Conduct of
Preliminary Inquiries
8. Procedures for Inspection and Review of Statements
of Financial Interests
9. Pamphlets (there will be a mailing charge for large orders):
"Introduction to the Massachusetts State Ethics Commission"
"Massachusetts Conflict of Interest Law for State Employees"
"Massachusetts Conflict of Interest Law for Municipal
Employee"

