

MASSACHUSETTS STATE ETHICS COMMISSION

**STATE
ETHICS
COMMISSION**



MASSACHUSETTS

ANNUAL REPORT

for Fiscal Year 1995

STATE ETHICS COMMISSION ANNUAL REPORT FISCAL YEAR 1995

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STATE ETHICS COMMISSION

This report covers the activities of the Massachusetts State Ethics Commission during FY95. 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 1995

The Legislature appropriated \$1,102,781 for the Ethics Commission in FY95. During the year, 13% of the Commission's staff positions were vacant due to lack of funding. The Commission does not retain revenue.

The Legal Division handled 4,738 oral and written requests for confidential advice regarding the conflict of interest and financial disclosure laws, reviewed an additional 127 advisory opinions issued by municipal counsels, and prepared 13 formal Commission Advisory Opinions. Due to staff shortages, the division carried a backlog of 54 unanswered requests for advice into FY96.

During FY95, 4,520 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 3,625 people attended the 103 seminars taught by the Public Education Division in FY95. The Division distributed more than 27,275 copies of various educational materials during the year, authored

four new publications and revised two existing ones. The Division also assisted several organizations with public integrity initiatives.

The Commission's Enforcement Division investigated 818 complaints in FY95. It issued 93 educational letters and recommended 68 for formal review by the Commission. The Division also negotiated 21 Disposition Agreements, totalling \$42,310 in fines and forfeitures. 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 FY95 the members of the Ethics Commission were:¹

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

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

Constance J. Doty, Vice Chair
Administrator
Rent Equity Board
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

¹ Lynne E. Larkin was appointed by Governor William F. Weld on June 28, 1995 to replace Commissioner Constance J. Doty.

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 FY95, the Commission's Legal Division handled 655 requests for advice through informal letters, and 4,083 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 13 formal advisory opinions in FY95. Although advisory opinions issued by the Commission are confidential, the Commission publishes summaries of formal advisory opinions and also prepares public versions of such opinions with the identifying information deleted. Copies of these opinions are available from the Ethics Commission. Some of the Commission's formal advisory opinions during FY95 included:

- **EC-COI-94-08** -- Municipal police officers cannot be employed as private security guards in their own town, outside of the official municipal "paid detail" system, because the private security work might impair the officers' independence of judgment in the performance of their official duties, and therefore is "inherently incompatible" with the police officers' official duties for the purposes of G.L. c. 268A, §23(b)(1).

- **EC-COI-94-09** -- An elected member of a regional board who is also an attorney in private practice, may, under G.L. c. 268A, §17, represent private clients before municipal boards and commissions (other than the one he serves on) in the municipality where selectmen have voted to designate regional board members as "special municipal employees". He may *not* represent private parties before municipal boards in the municipality which has *not* granted the regional board members "special" status.
- **EC-COI-95-03** -- Using a four-factor test, the Commission finds that private-sector members of the City of Boston Mayor's Special Commission on Health Care are *not* municipal employees for purposes of the conflict law.
- **EC-COI-95-04** -- An elected municipal official, who also serves as a savings bank "corporator", is *not* required to abstain from official actions affecting the financial interests of the savings bank. G.L. c. 268A §19 generally prohibits a municipal employee from taking any official action affecting the financial interests of an organization for which the municipal employee serves as a director or officer. However, the duties and powers of a bank "corporator" are not analogous to those of an officer or director, and therefore the general prohibition is not triggered.
- **EC-COI-95-05** -- Under G.L. c. 268A, §3, municipal employees may receive "government rate" discounts on their private cellular phone service, because such discounts are given as a "common industry-wide practice" to employees of large employers rather than because of the employees' official positions. However, the employees may not use public resources to implement or receive bills for their private usage.
- **EC-COI-95-06** -- In the absence of specific statutory or regulatory authority, G.L. c. 268A, §4(a) prohibits state police from being paid for private detail work related to certain licensing matters.
- **EC-COI-95-07** -- If he is elected to the City Council, a municipal housing authority member may not receive compensation for his service on the housing authority, as the "Housing Authority" exemption to G.L. c. 268A, §20 applies only to housing authority employees, and not to board members.
- **EC-FD-94-2** -- A public employee designated to file a Statement of Financial Interest under G.L. c. 268B, §5 is not required to report information concerning the financial holdings of a spouse who does not reside in the public employee's household.

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 FY95, the Commission reviewed 127 municipal opinions, concurring with 60% of them. The Commission staff provided clarification of 37 municipal opinions, and informed municipal lawyers in 14 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 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 FY95, 4,520 public employees and elected officials were required to file SFIs. About 7% missed the May filing deadlines, and formal notices of delinquency were mailed to 160 individuals. Of these, 144 people filed during a 10-day grace period. Eighteen people filed shortly after the expiration of the grace period, and were fined a total of \$1,250. Nine delinquent filers are the subjects of pending preliminary inquiries.

Upon written request, any individual may inspect and obtain a copy of any SFI filed with the Commission. In FY95, the Commission honored 1,716 such requests from 209 sources, including the media, private citizens and law enforcement agencies.

The Commission audited 4,540 SFIs filed during FY95; 1,909 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 3,625 people attended the Commission's 103 seminars during FY95. Seminar sponsors included:

Municipalities:

Amesbury	Lowell	Seekonk
Ashland	Marion	Sheffield
Boston	Mattapoissett	Springfield
Boxford	Melrose	Swansea
Cambridge	Nantucket	Tyngsborough
Carver	Norfolk	Uxbridge
Chelsea	North Attleborough	Waltham
Hanson	Norwell	Wareham
Hopedale	Oak Bluffs	Wellesley
Falmouth	Rochester	Wellfleet
Kingston	Quincy	Westborough
Leominster	Sandisfield	

Professional Associations:

- American Corporate Counsels Association
- Associated Industries of Massachusetts
- Association of Professional Lobbyists
- Association of Public Purchasing Officials
- Barnstable County Selectmen's Association
- Bristol/Plymouth/Norfolk Counties Auditors & Accountants Association

City Solicitors and Town Counsel Association
Fire Prevention Association of Massachusetts
Hampshire County Regional Services Group
Massachusetts Bar Association
Massachusetts Collectors & Treasurers Association
Massachusetts Continuing Legal Education
Massachusetts Mayor's Association
Massachusetts Moderator's Association
Massachusetts Selectmen's Association Executive Committee
Plymouth County Fire Training Association
Small Town Administrators of Massachusetts
South Central Executive Director's Association
Superior Court Association of Clerks and Assistant Clerks

State Agencies:

Bureau of Human Resources Development	Industrial Services Program
Criminal Justice Training Council	Massachusetts Office of Travel & Tourism
Court Facilities Bureau	Massachusetts Rural Development Council
Department of Corrections	Metropolitan District Commission
Designer Selection Board	Pension Reserves Investment Management Board
Firefighting Academy	State Police Academy

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 biannual newsletter, *The Bulletin*, is distributed to an estimated 3,500 subscribers. About 5,268 copies of publications were distributed in FY95 in response to phone or "walk-in" requests for information, and about 9,000 copies of publications were provided to seminar sponsors to be copied for seminar participants. The Commission distributed 3,418 copies of publications to individuals as part of enforcement actions, legal opinions, or in response to written requests for information. An additional 2,100 copies of educational materials were distributed in a special state-wide mailing in October 1994. About 300 copies of the Commission's *FY94 Annual Report* were distributed during the fiscal year, as were 159 copies of the annual compilation of the Commission's public actions, *State Ethics Commission Rulings*. The Commission also issued 36 press releases describing its public enforcement actions.

The Commission issued the following new publications during FY95:

Introduction to the Conflict of Interest Law for the Private Sector
Summary of the Conflict of Interest Law for Municipal Finance Committee Members
Commission Advisory No. 13, Part B: State Employees Acting as Agent
Commission Advisory No. 13, Part C: County Employees Acting as Agent.

Two other publications were substantially revised:

Commission Advisory No. 13: Municipal Employees Acting as Agent
Fact Sheet No. 6: Don't Vote on Matters Affecting Abutting or Nearby Property.

PUBLIC INTEGRITY INITIATIVES

The Commission also provides information and technical assistance to municipalities, community groups and other organizations promoting integrity in government. FY95 integrity initiatives included:

- Division staff worked with the Attorney General's Public Integrity Advisory Group to implement a state-level "Public Integrity Awareness" program. An educational brochure describing the restrictions of the conflict of interest and campaign finance laws, *Integrity is Your Responsibility*,

was distributed to 70,000 state employees in September 1994. Newly-hired state employees are now required to sign a receipt acknowledging their obligation to follow the conflict of interest and campaign finance laws, and all newly-appointed cabinet secretaries and agency heads are required to attend an Ethics Commission educational seminar as part of their orientation.

- In cooperation with the state Treasurer's Office, state vendors were notified that the new publication *Introduction to the Conflict of Interest Law for the Private Sector* is available from the Commission; about 200 vendors called to request copies. Also, the Department of Procurement and General Services now includes copies of the brochure in its new-vendor orientation materials and training sessions.
- Under the sponsorship of the Massachusetts Municipal Association, all educational materials relating to municipal employees are "posted" on the electronic bulletin board of the wide-area computer network which links about 250 of the Commonwealth's cities and towns. This allows municipal employees in those communities to quickly access relevant information about the conflict of interest law.
- As part of Boston Mayor Thomas Menino's Ethics Initiative of 1994, the Public Education Division held a series of eight training seminars for city managers.
- Under the sponsorship of the Boston Center for International Visitors, Division staff met with representatives of the governments of Bolivia, France, India, Mexico, Panama and Venezuela to explain the State Ethics Commission's function and procedures, and to discuss the countries' efforts to fight government corruption.

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 FY95, the Enforcement Division received 774 complaints from the following sources: 68% from private citizens, 20% from anonymous sources, 2% from media reports, 2% from other law enforcement agencies, and 2% from reviews of financial disclosure forms; 3% were generated by Commission staff, and an additional 3% were "self-reports" made by public employees regarding their own conduct. About 76% of the complaints alleged violations by municipal employees or officials, 17% implicated state employees or officials, 2% referenced county officials and 4% cited private individuals or corporations.

A total of 818 complaints were received or pending in FY95. About 57% were closed within two weeks of being received, because the allegations fell outside the Commission's jurisdiction, were clearly frivolous or otherwise did not justify continued investigation. About 5% of the complaints were consolidated with existing cases. About 9% of the complaints opened were pending at the end of the fiscal year.

STAFF INVESTIGATIONS

About 28% of the complaints received or pending in FY95 were assigned to an attorney/investigator team in the Commission's Enforcement Division. The Commission closed 187 cases following informal staff investigations: 98% because the situation was one in which a private educational letter was appropriate; and 2% because staff determined there was little likelihood that the conflict laws had been violated. About 17% of the informal staff investigations led to formal inquiries. As of June 30, 1995, there were 45 ongoing informal staff investigations.

FORMAL INQUIRIES

The Commission authorized a total of 38 formal inquiries in FY95: 29 regarding alleged violations of the conflict of interest law and 9 involving alleged violations of the financial disclosure law. Several of these inquiries involved more than one subject. Twenty-two of the subjects of preliminary inquiries were municipal officials or employees, 16 were state officials or employees, one was a county official or employee, and six were private companies.

During FY 95, Enforcement Division staff completed formal inquiries into alleged violations of the conflict of interest or financial disclosure laws by a total of 59 subjects. In 37 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 issued three Public Enforcement Letters, stating that there was reasonable cause to believe that the conflict law had been violated, but resolving the matters by means of educational letters rather than fines. The Commission also issued seven 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 13 public hearings pending; in 13 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 FY95, the Commission entered into 39 Disposition Agreements: 30 with state officials, six with municipal officials, one with a county official and two with private companies. In these signed documents, subjects admit violating G.L. c. 268A or 268B, and agree to pay civil fines of up to \$2,000 per violation.

PENALTIES

The Ethics Commission levied civil penalties totalling \$42,310 in FY95. Fines 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.

On June 12, 1995, the Special Commission on Ethics (see below) recommended legislation which would allow the State Ethics Commission's Executive Director to issue summonses during preliminary inquiries;

recipients could then petition the Commission as a whole to quash such summonses. As of the end of the fiscal year, this bill had not been assigned to a legislative committee.

As of the end of FY95, it did not appear likely that the Legislature would act to resolve the uncertainty regarding summons authority during preliminary inquiries. During FY96, the Commission will seek a final judicial resolution of the issue. Currently, the Massachusetts State Ethics Commission is one of only four independent commissions in the country lacking summons authority during investigations.

FY 95 ENFORCEMENT ACTIONS

In the Matter of Kevin Santos (July 11, 1994)

The Ethics Commission settled a Superior Court suit filed in April 1993 against former Dartmouth Selectman Kevin Santos. In the suit, the Commission had alleged that Santos continued to hold a financial interest in a town contract for approximately two years after he was advised that holding such an interest was a violation of G.L. c. 268A, §20, and that Santos deliberately misled both the Commission and the public so as to be able to continue to hold the illegal financial interest. The suit was settled for a civil recovery, on behalf of the Town of Dartmouth, of \$10,995.66, the amount which had been paid to Santos in Selectman's salary and benefits while he had the prohibited financial interest in the town contract.

According to the Commission, Santos held a 100% interest in Stat Ambulance Services, Inc., which in July 1988 was awarded a three-year emergency ambulance services contract by the Town of Dartmouth. Santos continued to hold this interest after being elected Selectman in April 1989, and, despite a formal ruling by the Commission in November 1989 that he was violating §20 by continuing to hold the stock, he did not divest himself of the interest until August 1991. Section 20 of the Massachusetts conflict of interest law generally prohibits a municipal official from having a financial interest in a contract with the municipality for which they serve.

In the Matter of John Bartley (July 19, 1994)

Former Rep. John Bartley was fined \$250 for accepting gratuities worth \$665.64 from John Hancock Mutual Life Insurance Company lobbyist Ralph Scott, a personal friend. Rep. Bartley admitted in a Disposition Agreement that he violated G.L. c. 268A, §23(b)(3) by accepting the gratuities. Section 23(b)(3) of the conflict law prohibits public employees, including state legislators, 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.

In the Matter of Joan M. Menard (July 19, 1994)

Rep. Joan M. Menard was fined \$525 for accepting gratuities worth \$179.63 from John Hancock Mutual Life Insurance Company lobbyist F. William Sawyer. Rep. Menard admitted in a Disposition Agreement that she violated G.L. c. 268A §3(b) by accepting the gratuities. Section 3(b) prohibits public employees, including state legislators, from accepting anything worth more than \$50 which is given to them "for or because of any official act ... performed or to be performed" by them.

In the Matter of Argeo Paul Cellucci (July 19, 1994)

Former Sen. Argeo Paul Cellucci was fined \$275 for accepting meals from John Hancock Mutual Life Insurance Company lobbyist F. William Sawyer, a personal friend and campaign supporter. Lt.

Governor Cellucci admitted in a Disposition Agreement that he violated G.L. c. 268B §6 in 1989 by accepting meals worth a total of \$273.06 from Sawyer. Section 6 prohibits public officials from accepting gifts from legislative agents totalling more than \$100 in a calendar year.

Public Enforcement Letter 95 - 1 (In the Matter of W. Paul White)
(July 19, 1994)

Sen. W. Paul White was cited in a Public Enforcement Letter for accepting meals from Edward Baud, a John Hancock Mutual Life Insurance Company lobbyist whose responsibility was to deal with state legislation outside of Massachusetts. Sen. White served as a member of the Council of State Governments' ("Council") Eastern Regional Conference Executive Committee during the 1980's, as Chair of the national Council during 1991, and has since served on the national Council's Executive Committee and Governing Board. Hancock was a corporate sponsor of the Council, and Baud was Hancock's liaison to the Council. According to the Letter, Sen. White appeared to have violated G.L. c. 268A §23(b)(3) by accepting about \$3,000 in meals and beverages from Baud, mostly during Council meetings, while Hancock had an interest in legislation pending before the state legislature. The Letter states that, although Sen. White was never lobbied by Baud, and although there is no evidence that Sen. White's official actions were influenced in any way, the receipt of meals for which Baud was eventually reimbursed by Hancock created the type of "appearance problem" prohibited by §23(b)(3) of the conflict law. The Letter added, however, that the Commission chose to resolve the matter without a fine because the entertainment Sen. White received came from a non-Massachusetts lobbyist, and appeared to have been motivated by Sen. White's role with the Council, rather than his legislative duties. Section 23(b)(3) of the conflict law prohibits public employees, including state legislators, 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.

In the Matter of The New England Mutual Life Insurance Company
(September 22, 1994)

The New England Mutual Life Insurance Company ("The New England") was fined \$20,000 for illegally entertaining Massachusetts legislators between June 1988 and November 1989. The company admitted in a Disposition Agreement that it violated G.L. c. 268A, §3(a) by providing approximately \$6,500 in illegal gratuities to state legislators and legislative aides. Section 3(a) of the conflict of interest law prohibits the giving of gifts worth more than \$50 to a public employee "for or because of any official act performed or to be performed by such an employee."

According to the Disposition Agreement, on approximately 48 occasions, lobbyists in The New England's Government Relations Department illegally provided food, drinks, greens fees or other entertainment to various legislators in order to cultivate personal relationships with -- and thereby gain access to -- those legislators. "The New England's lobbyists believed that they used this access effectively" as part of their efforts to influence legislation of interest to the company, the Disposition Agreement said. Each year, in conjunction with the Life Insurance Association of Massachusetts, The New England tracks, monitors and lobbies on several hundred bills affecting the insurance industry; an average of ten bills of interest to the insurance industry are enacted into law each year.

In the Matters of Middlesex Paving Company, Stephen Berlucchi, Robert Calo, Ronald Iannaco, Edward O'Toole, Anthony Salamanca, Francis Sandomato and George Ward
(October 12, 1994)

Middlesex Paving Company ("Middlesex") was fined \$6,000 for illegally entertaining eight state employees at annual corporate Christmas parties between 1990 and 1992. The company admitted in a Disposition Agreement that it violated G.L. c. 268A, §3(a) through its entertainment of the employees, whose official responsibilities included overseeing the company's state contracts. The Agreement did not identify one of the recipients, a Massachusetts Turnpike employee, citing an ongoing Commission investigation.

Seven present and former Massachusetts Highway Department employees admitted in separate Disposition Agreements that they violated G.L. c. 268A, §3(b) by receiving the prohibited gratuities, and were fined a total of \$4,160. Stephen Berlucchi, a former highway maintenance engineer, was fined \$950 for accepting approximately \$340 worth of food, drinks, entertainment and overnight hotel accommodations from Middlesex in 1990, 1991 and 1992. Robert Calo, a civil engineer, was fined \$340 for accepting approximately \$170 worth of food, drinks, entertainment and overnight hotel accommodations from Middlesex in December 1992. Ronald Iannaco, a civil engineer, was fined \$340 for accepting approximately \$170 worth of food, drinks, entertainment and overnight hotel accommodations from Middlesex in December 1992. Edward O'Toole, a civil engineer, was fined \$1,000 for accepting approximately \$420 worth of food, drinks, entertainment and overnight hotel accommodations from Middlesex in 1991 and 1992. Anthony Salamanca, a district highway director, was fined \$850 for accepting approximately \$340 worth of food, drinks, entertainment and overnight hotel accommodations from Middlesex in 1991 and 1992. Francis Sandonato, a civil engineer, was fined \$340 for accepting approximately \$170 worth of food, drinks, entertainment and overnight hotel accommodations from Middlesex in December 1992. George Ward, a manager of operations, was fined \$340 for accepting approximately \$170 worth of food, drinks, entertainment and overnight hotel accommodations from Middlesex in December 1992.

G.L. c. 268A, §3(a) prohibits the giving of gifts worth more than \$50 to a public employee "for or because of any official act performed or to be performed by such an employee." G.L. c. 268A, §3(b) prohibits public employees from accepting anything worth more than \$50 which is given to them "for or because of any official act ... performed or to be performed" by them.

In the Matter of Benjamin Nutter
(October 24, 1994)

Topsfield Historic Commission member Benjamin Nutter was fined \$1,000 for representing a private client before his own board. Nutter admitted in a Disposition Agreement that he violated G.L. c. 268A, §17(c) by representing clients Tim and Susan Ward before the Historic Commission on two occasions during the fall of 1992. Nutter had served as the Wards' architect for an addition to their Main Street home, which required the approval of the Historic Commission. Section 17(c) generally prohibits municipal officials and employees from acting as agent for private parties in connection with any matter pending before the municipality.

In the Matter of Michael P. Walsh
(November 16, 1994)

Rep. Michael P. Walsh was fined \$2,100 for accepting gratuities totalling \$700 from John Hancock Mutual Life Insurance Company lobbyists F. William Sawyer and Ralph Scott, Massachusetts Medical Society lobbyist Andrew Hunt, and Life Insurance Association of Massachusetts lobbyist William Carroll. Rep. Walsh admitted in a Disposition Agreement that he violated G.L. c. 268A, §3(b) law by accepting the gratuities. Section 3(b) prohibits public employees, including state legislators, from accepting anything worth more than \$50 which is given to them "for or because of any official act ... performed or to be performed" by them.

In the Matter of Frank Green
(November 22, 1994)

Former part-time Richmond Building Inspector Frank Green, who was also a self-employed building contractor, was fined \$500 for violating G.L. c. 268A, §§ 19 and 23(b)(3). Green admitted in a Disposition Agreement that he violated the law by issuing nine building permits for projects where he had been hired to perform the construction work. Section 19 of the conflict law generally prohibits municipal officials from taking official actions affecting their own financial interests.

According to the Agreement, one of the permits Green issued was for the reconstruction of a burned lakeside cottage; the permit apparently allowed the owner to build a house approximately 80 square feet larger than the cottage it replaced. Green attributed the difference in size to a lack of care on his part

when, as Building Inspector, he checked the owner's measurements of the "footprint" of the burned cottage. At the time he issued the permit, Green had been hired by the owner, Harold Dupee, to build the replacement house. Section 23(b)(3) of the conflict law generally prohibits public officials from taking any action which would cause a reasonable person to conclude that any person could unduly enjoy his favor in the performance of his official duties. According to the Agreement, "A reasonable person could conclude that Green was, as building inspector, less strict with Dupee concerning conforming to the dimensions of Dupee's new house with the footprint of the burned cottage than Green would otherwise have been had Dupee not hired Green to build the new house."

In the Matter of Joanne Koval
(December 15, 1994)

Former Holbrook Selectman Joanne Koval was fined \$250 for demanding that a local bar take down political campaign signs promoting her opponent in the 1992 primary election for state Senate. Koval admitted in a Disposition Agreement that she violated G.L. c. 268A, §23(b)(3) by implicitly threatening the owner of the Union Street Pub, a business she regulated in her official capacity as a member of the Board of Selectmen, which also serves as the town's licensing authority. According to the Agreement, the bar owner "feared retaliation from Koval if he did not remove the signs." At the time of Koval's demand, the Pub held a liquor license, a pool table license, and an amusement license for video games; all three licenses are subject to annual renewal by the Board of Selectmen.

"By introducing herself as a selectwoman, and noting that she had been helpful to the bar in the past, and then demanding that the Union Street Pub remove campaign signs promoting her political opponent, Koval implicitly threatened a party she regulated in her official capacity as a selectwoman," the Agreement said. "This conduct would cause a reasonable person knowing these facts to conclude that Koval could base her future vote on Union Street Pub license renewals not on the Pub's record of complying with alcohol laws and regulations, but on its level of campaign support. Such votes would be based on improper influence and undue favor." Section 23(b)(3) of the conflict of interest 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.

In the Matter of John Ruffo
(January 4, 1995)

Former Worcester Senior Plumbing Inspector John Ruffo was fined \$2,500 for violating the state's conflict of interest law. Ruffo admitted in a Disposition Agreement that he violated G.L. c. 268A, §19 by issuing 16 plumbing permits for work performed by his son, Mark Ruffo, and by officially inspecting his son's work on nine occasions. Section 19 of the conflict law generally prohibits municipal officials from taking official actions affecting the financial interests of an immediate family member.

Public Enforcement Letter 95 - 2 (In the Matter of Clifford H. Marshall)
(January 9, 1995)

The State Ethics Commission issued a Public Enforcement Letter to Norfolk County Sheriff Clifford H. Marshall, stating that there was reasonable cause to believe that Marshall violated the state's conflict of interest law by, on three occasions, combining official swearing-in ceremonies for deputy sheriffs with political campaign fundraising events.

The Enforcement Letter quoted a letter from Marshall announcing the January 1992 swearing-in ceremony, which also invited deputy sheriffs to a \$50 per person breakfast immediately preceding the ceremony. Campaign finance filings indicate that, during the two month period surrounding this swearing-in ceremony, more than 85% of Marshall Committee contributors were Norfolk County deputy sheriffs. The Enforcement Letter also stated that Marshall had appointed almost 800 deputy sheriffs since 1986, but many "have never exercised any of their official powers or received any compensation for any official acts."

"The reasonable inference from these circumstances and the appearance created by your conduct is that your appointment of deputy sheriffs is unduly influenced by the fact that the appointees are contributors to your political campaign fund or are likely to be contributors following their appointment," the Enforcement Letter states. "Your solicitation of political contributions from current deputies in conjunction with the swearing-in of new deputies, especially given the extraordinarily large number of deputies appointed by you and the apparent lack of public utility of many of those deputies, would cause a reasonable person to conclude that you appoint political supporters as deputy sheriffs and expect those deputies to continue to contribute to your campaign fund after their appointment."

Evidence developed during the Commission's investigation also indicated that Marshall "made the ceremonial swearing-in of deputies the ostensible official purpose of three campaign fundraising events," according to the Enforcement Letter. "The combining of the swearing-in ceremony with the fundraiser imbued the fundraiser with a sense of credibility (as an official event) and fostered an obligation to attend on the part of solicitees that otherwise would have been lacking if it had been merely a bare bones political fundraiser. Accordingly, [Marshall's] use of the swearing-in ceremony as an attraction for [his] fundraisers was an unwarranted privilege of substantial value."

Section 23(b)(2) of G.L. c. 268A, the Massachusetts conflict of interest law, prohibits public officials from using their official positions to obtain unwarranted privileges of substantial value not properly available to similarly situated individuals. 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.

Public Enforcement Letter 95 - 3 (In the Matter of Linda Marinelli)
January 17, 1995

The Ethics Commission issued a Public Enforcement Letter to former Chair of the Oak Bluffs Board of Selectmen Linda Marinelli, stating that there was reasonable cause to believe that she violated the state's conflict of interest law by participating in her daughter's application for a taxi license.

According to the Enforcement Letter, Marinelli chaired the March 9, 1993 meeting of the Board of Selectmen, at which her daughter's license application was considered. Although she abstained from participating in the matter at the March 16, 1993 meeting, where her daughter's application was denied by a split vote of the two remaining Selectmen, one or two days later, Marinelli encountered Selectman Steven Kenney and objected to his vote to deny the license. On March 23, 1993, with Marinelli again abstaining, the Board reconsidered its action and granted the license. According to Kenney, his conversation with Marinelli did not influence his decision to change his vote.

Section 23(b)(2) of the Massachusetts conflict of interest law prohibits public officials from using their official positions to obtain unwarranted privileges of substantial value not properly available to similarly situated individuals. According to the Enforcement Letter, the Commission found reasonable cause to believe that Marinelli used her official position to obtain an unwarranted privilege, i.e., the opportunity to discuss the license application with the Selectman who had voted against it. 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. According to the Enforcement Letter, the Commission found reasonable cause to believe that Marinelli's actions in approaching Kenney would cause a reasonable person to believe that she would be improperly influenced by her relationship with her daughter.

In the Matter of Geoffrey Newton
(February 6, 1995)

Royalston Building Inspector Geoffrey Newton was fined \$500 for violating the state's conflict of interest law. Newton admitted in a Disposition Agreement that he violated the law by issuing nine building permits to his brother, Wayne Newton. 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 Katherine Doughty

(February 9, 1995)

Former Insurance Commissioner Katherine Doughty was fined \$2,000 for routinely accepting meals and entertainment from insurance company lobbyists and others who had an interest in matters under her jurisdiction.

According to a Disposition Agreement signed by Doughty and the Commission, Doughty violated the conflict law by "accepting benefits in meals and entertainment on a regular basis from individuals who had an interest in matters before the Division of Insurance, all while Doughty was in a position to take official action which could benefit the givers, and without notifying her appointing authority." Doughty accepted meals or other entertainment from insurance company representatives about three times a week while she was Insurance Commissioner, the Agreement said.

"A reasonable person would conclude that such interested parties can unduly enjoy the Insurance Commissioner's favor in the performance of her official duties when matters concerning the interested parties come before the Division of Insurance," the Agreement stated. Section 23(b)(3) of the conflict law generally prohibits public officials from acting in a manner which would cause a reasonable person to conclude that anyone can improperly influence or unduly enjoy her favor in the performance of her official duties.

According to the Disposition Agreement, virtually all of Doughty's expenses for the meals and entertainment were less than \$50, the amount the Commission has previously ruled to constitute an illegal gratuity under §3 of the conflict law. Nevertheless, according to the Agreement, the Commission has previously stated that gifts of less than \$50 will be aggregated under certain circumstances. The Agreement added that "the Commission has chosen to resolve this matter under §23(b)(3) in order to emphasize that a public official's practice of regularly accepting gratuities of less than \$50 from individuals who are subject to that official's regulatory authority violates §23(b)(3), even if such individuals have no common interest in any pending matter before that official."

In the Matter of Edward J. Kennedy, Jr.

(April 24, 1995)

Middlesex County Commissioner Edward J. Kennedy, Jr. was fined \$500 for borrowing a county copying machine for political campaign purposes. Kennedy admitted in a Disposition Agreement that he violated G.L. c. 268A, §23(b)(2) in July 1994 when he borrowed the copying machine to duplicate voter lists in the City of Lowell. According to the Agreement, Kennedy asked two county employees to move the copier from a county office in Cambridge to Lowell City Hall. When they got the machine to the Lowell Elections Office, the employees were not able to get the copier to work, and it was returned to the county office unused. Kennedy then paid \$115 to have the voter list copied at a commercial copier. Section 23(b)(2) of the Massachusetts conflict of interest law prohibits a public official from using his official position to obtain an unwarranted privilege of substantial value, such as the use of public resources for private or political purposes.

In the Matter of Joseph Duggan

(June 14, 1995)

Former Hull Lighting Department Acting Manager Joseph Duggan was fined \$500 for violating the state's conflict of interest law by acting, in his official capacity, in matters affecting his sons' and his brother's employment by the Department. Duggan admitted in a Disposition Agreement that he violated G.L. c. 268A, §19 by: recommending that his son Steven be promoted to the position of lead lineman at the Hull Lighting Plant; approving \$3,177 worth of overtime for his son Steven, and \$661.74 worth of overtime for his son Matthew; and hiring his brother Robert to act as lead lineman after a severe storm in March 1993. "Robert earned \$1,316.56 for 36 hours of work at that time. Duggan hired Robert for these duties even though two other linemen had recently been laid off for lack of work," the Agreement says. Section 19 generally prohibits municipal officials from participating in any matter affecting the financial interests of an immediate family member. According to the Agreement, Duggan was advised by

town counsel in January 1993 that he could not participate in any Department personnel matters involving his sons' employment.

SPECIAL COMMISSION ON ETHICS

The 13-member Special Commission Relative to the Conflict of Interest Laws and the Financial Disclosure of Certain Public Officials and Employees (also known as "The Special Commission on Ethics") was created as part of the Campaign Finance Reform Law, Chapter 43 of the Acts of 1994; George Brown served ex officio. Over a nine-month period, the Special Commission held a series of public hearings, solicited testimony from a broad range of experts, and held many public meetings before releasing its Final Report on June 12, 1995.

In that report, the Special Commission concluded that the "basic framework of the [conflict of interest] statute is sound;" however, the Special Commission felt that the statute, as currently written, creates "too many 'gray areas,' and fail[s] to provide clear and accessible answers to conscientious public employees striving in good faith to conform their conduct to the requirements of the law."

As directed by the Legislature, the Special Commission's Final Report proposed many amendments to the conflict of interest and financial disclosure laws, including: decriminalization of most gratuities under \$500; granting the Ethics Commission regulatory authority regarding the gratuities sections of G.L. c. 268A; increasing the penalty for bribery; strengthening the "revolving door" and other post-employment restrictions; allowing, with local approval, multiple office holding in towns with a population of less than 15,000; and adding income categories to those currently used on statements of financial interest. The legislation also proposed amendments to the Ethics Commission's enabling statute, including changes in the preliminary inquiry notification process and clarification of the Ethics Commission's authority to issue summonses during preliminary inquiries.

The Special Commission's bill had not been acted upon by the end of the fiscal year.

State Ethics Commission

Room 619

One Ashburton Place

Boston, MA 02108

(617) 727-0060