ADVICE ◇ EDUCATION ◇ DISCLOSURE ◇ ENFORCEMENT

2007
Advisory Opinions
Enforcement Actions

MASSACHUSETTS STATE ETHICS COMMISSION
One Ashburton Place, Room 619
Boston, MA 02108
617-371-9500
www.mass.gov/ethics

Included in this publication are:

State Ethics Commission Formal Advisory Opinions issued in 2007
Cite Conflict of Interest Formal Advisory Opinions as follows: EC-COI-07-(number).

State Ethics Commission Decisions and Orders, Disposition Agreements and Public Enforcement Letters issued in 2007
Cite Enforcement Actions by name of respondent, year, and page, as follows:
In the Matter of John Doe, 2007 SEC (page number).

Typographical errors in the original texts of Commission documents have been corrected.

State Ethics Commission

Advisory Opinions

2007

Summaries of Advisory Opinions
Calendar Year 2007

EC-COI-07-1 - The lease of a slip or berth in a public marina operated by the Town of Barnstable is a contract for purposes of G. L. c. 268A. A municipal employee must qualify for an exemption under section 20 in order to lease a slip or berth. A mooring permit is not a contract for the purposes of G.L. c. 268A and does not require a municipal employee to qualify for an exemption under section 20.

EC-COI-07-2 – The Commission reconsidered the meaning of the term business organization in G. L. c. 268A, sections 6, 13 and 19. Neither the common and ordinary meaning of the term "business organization," nor the legislative history and intent of the statute require or support the inclusion of charitable, non-profit organizations that do not substantially engage in business activities within the scope of the term. Therefore, the Commission determined that it will not treat charitable, non-profit organizations that do not substantially engage in business activities as business organizations for conflict of interest law purposes.

CONFLICT OF INTEREST OPINION
EC-COI-07-1

INTRODUCTION

The Town of Barnstable (Town) operates four public marinas where it leases boat slips or berths to the public. To obtain a slip or berth at the Town-owned marinas, a boat owner must complete an Application for Berth and comply with various terms and conditions. The Town also regulates waterway areas in which are located numerous moorings. To obtain permission to place a mooring in one of those areas, a boat owner must complete an Application for Mooring and comply with Town regulations.

The Town Manager had intended to apply for a Town boat slip, but has since decided to withdraw his application. Meanwhile, members of the Town's Waterways Committee might apply for boat slips or moorings. It is also likely that, according to the Town's municipal counsel, other Town employees may apply for Town boat slips or moorings.

QUESTIONS

1. Does the lease of a berth involve a contract for purposes of G. L. c. 268A, § 20?

2. Does a mooring permit involve a contract for purposes of G. L. c. 268A, § 20?

ANSWERS

1. Yes. A municipal employee who leases a berth from the Town must qualify for an exemption under § 20.

2. No.

FACTS

The Town owns and operates four public marinas with a total of 183 boat slips or berths.[1] In addition, there are 2,397 permitted moorings in Town waters.[2] Because demand far exceeds supply, there is a waiting list of 114 for Town boat slips and another waiting list of 1,315 for moorings in Town waters. According to its municipal counsel, the Town has some of the most exclusive (and expensive) private marinas in the Commonwealth. Public facilities, therefore, offer more affordable options for Town residents.

Under Town law,[3] the Town Manager is responsible for the rental, use, maintenance, and repair of all Town facilities. The Marine and Environmental Affairs Division (Division), within which the Harbormaster operates, is responsible for enforcement and promulgation of mooring regulations, marina rules and regulations.

The Harbormaster approves moorings, slip contracts, and supervises the four Town marinas. Further, he supervises the collection of fees and charges at the various marinas, ramps, and the fees for mooring permits. Under G. L. c. 91, § 10A, the Harbormaster has jurisdiction over the permitting and placement of floats held by bottom anchors, which, by extension, gives the Harbormaster jurisdiction over the permitting of recreational moorings.[4]

The Town has also established a Waterways Committee, among whose assigned authorities and responsibilities is to recommend, to the Town Manager, the promulgation of rules, regulations, and fees to be charged for the use of Town-owned waterfront piers, bulkheads, slips, and marinas. In addition, the Waterways Committee studies, plans, and makes recommendations regarding the development, protection, maintenance, and improvements of wharves, bulkheads, docks, piers, slips, marinas, Town landings, launching ramps, and other marine improvements of interest to the Town. As described further below, the Waterways Committee can hear appeals concerning mooring permits.

The Waterways Committee consists of the Town Manager or his designee, the Harbormaster, and three resident taxpayers appointed by the Town Council for three-year terms.

Berth

As part of the Town's management of its marinas, the Town has issued the "Town of Barnstable Marina Rules and Regulations" (Marina Regulations) and "Application for Berth Town of Barnstable" form (Application for Berth). A boat owner must complete the Application for Berth, under the pains and penalties of perjury, and comply with the Marina Regulations in order have his boat tied up at a Town slip. The Application for Berth states, among other things,

> Any interpretation of these regulations by the Town, or agents of the Town, shall be made with the basic premise that a slip is to be used for the personal and sole use of

> the slipholder and that the rental value of the slips themselves is an asset of the Town that must not be diverted to private parties. Therefore, the slipholder hereby agrees that any deviation from this premise by the slipholder shall result in the termination of any slip rental agreement and further, the Town may recover any amounts received by the slipholder from other parties which are essentially in the nature of payment for the use of the slip.[5]

The Marina Regulations contain a schedule that specifies the rental rates at the various marinas. If a slipholder does not comply with the Marina Regulations, the Town may require the slipholder to "prove to the satisfaction of the Town" that he is not in violation. If the slipholder does not respond within two weeks of such a request, the slipholder "shall relinquish the rights to the slip and all fees be forfeited to the Town." Further, if there are violations, the Town may remove "the vessel to a place away from the slip, such as a mooring, other anchorage, or dry storage" and the slipholder is required to "indemnify and hold the Town, and its agents, harmless for any damage to his vessel or for the cost of towage or storage."

Finally, the Application for Berth contains a seal, which states, "Approval of This Application By the Town Shall Constitute Creation of a Contract, Under Seal."

Mooring Permit

There are seventeen areas subject to the Town's jurisdiction where moorings may be placed. To obtain permission to moor one's boat in any of those areas, one must first complete the Town's "Application for Mooring Permit" (Application for Mooring).

An applicant must pay a fee of $70, by check or money order, made payable to the Town. The Application for Mooring states:

> THE TOWN OF BARNSTABLE ASSUMES NO RESPONSIBILITY FOR THE SAFETY OF THE VESSEL MOORED ON THE MOORING AND WILL NOT BE LIABLE FOR FIRE, THEFT, OR DAMAGE TO SAID VESSEL AND/OR MOORING, ITS EQUIPMENT OR ANY PROPERTY IN OR ON SAID VESSEL. THE MOORING OWNER AGREES THAT THE MOORING OF ANY VESSEL SHALL BE AT HIS/HER OWN RISK, HAS READ AND WILL COMPLY WITH ALL MOORING REGULATIONS OF THE TOWN OF BARNSTABLE.
>
> IT IS THE RESPONSIBILITY OF THE INDIVIDUAL TO PERIODICALLY INSPECT ALL CHAFING GEAR ON THE MOORING PENNANTS TO ENSURE PROTECTION THROUGHOUT THE SEASON. THE TOWN OF BARNSTABLE WILL NOT BE RESPONSIBLE FOR THE VESSEL GOING ADRIFT, AGROUND, OR DAMAGING ANOTHER VESSEL OR PROPERTY.[6]

"Mooring Permit Holder[s]," are obligated to ensure that their moorings obtain full inspections. Failure to do so can result in the termination of the mooring permit. The Application states, "If all information is correct and complete, the permit will be issued."

The Town has also issued "Mooring Regulations" (Mooring Regulations) which were promulgated under the authority of G. L. c. 91. The Mooring Regulations specify, in detail, the requirements for the mooring anchor and chain (or tackle).

The Mooring Regulations specify that inspections must be done by either the Harbormasters Office or a mooring servicer. Each existing mooring must be inspected, out of the water, every three years. The expense of this inspection is borne by the owner.[7]

The Mooring Regulations state that moorings "shall not be placed, altered, shifted or interfered with except under the direction of the Harbormasters Office." Placements within the areas are based on the size of the boat and its proximity to other moorings in the area. The Harbormaster may require a mooring to be relocated, but the relocation expense is the owner's responsibility. The Harbormaster may limit the size and lengths of boats moored in Town waters if, in his opinion, there are issues of public safety, congestion, or navigation. Further, the Harbormaster may suspend or revoke a permit if the boat and/or mooring unduly threaten the mooring area or the reasonable use of that area by other boats. Moorings placed in a location other than

as permitted by the Harbormaster "shall be grounds for revocation of the mooring permit."[8]

Finally, "a harbor master may, at the expense of [the owner], cause the removal of any vessel which lies in his harbor and is not moved when directed by him, and upon the neglect or refusal of [the owner] on demand to pay such expense, he may recover the same from [the owner] in contract, to the use of the town where the harbor is situated."[9]

The Mooring Regulations provide an appeals process. "Any person aggrieved by a refusal to permit a mooring, or any condition or restriction imposed relative thereto, may appeal without prejudice, waiver or stay of any other appeals in writing" to the Town's Waterways Committee, within fifteen days after receiving notice.[10] In addition, there is a further appeals process under G. L. c. 91, § 10A to the Division of Waterways of the Department of Environmental Protection.

DISCUSSION

Section 20 of G. L. c. 268A prohibits a municipal employee[11] from having, in addition to his municipal employee position, a direct or indirect financial interest in "a contract made by a municipal agency" of his municipality, unless he qualifies for an exemption specified in the statute. The issues are: (1) whether the Application for Berth and the Town's approval to use a berth constitutes a municipal contract for the purposes of § 20 and (2) whether the Application for Mooring and the ensuing permit constitutes a municipal contract.

Berth

The Application for Berth and the Town's acceptance of the Application constitute a contract. The elements of a contract, as we recently reiterated,[12] exist in this transaction. The Application for Berth involves the lease of a specific Town-controlled space, along with rights to use Town property and services at the piers or wharves. Most notably, the Application for Berth states that approval of the Application "shall constitute creation of a contract, under seal." It is clear that the Town has decided to treat the transaction as a contract.

Accordingly, if a municipal employee of the Town wishes to make an Application for Berth and his Application is approved, he will also need to comply with § 20.[13] Generally, a municipal employee may comply with § 20 by qualifying for one of the exemptions in the statute.

For members of the Waterways Committee, the easiest way to comply would be to have the Town Council designate the positions on the Waterways Committee as "special municipal employees." Next, if a member of the Waterways Committee wished also to rent a Town boat slip, he must qualify for the § 20(d) exemption. This exemption requires the special municipal employee to obtain the approval of the Town Council and to file a disclosure with the Town Clerk, fully describing his financial interest in the contract.[14]

For municipal employees whose positions cannot qualify for special municipal employee status, then the only exemption available to them to lease a Town berth is § 20(b).[15] However, given the public process for the contract, municipal employees who do not work for the Harbormaster, or a Town agency that regulates the activities of the Harbormaster, and who, through their Town jobs, neither participate[16] in nor have official responsibility[17] for any activities of the Harbormaster, will be able to qualify for the § 20(b) exemption by filing the required disclosure of financial interest.[18]

Mooring Permit

The next issue is whether the Application for Mooring Permit and the issuance of a permit by the Town constitute a contract for purposes of § 20. For the following reasons, we conclude that it does not.

First, we acknowledge that the term "permit" has a common meaning that is generally different from "contract." It is commonly defined as "a written warrant or license granted by one having authority"[19] or "a certificate evidencing permission; a license."[20] The term "permit" does not have a singular definition in the General Laws.[21] It, however, has been applied in numerous contexts involving the regulation of resources.[22]

Further, there are differences between the rights and obligations afforded to parties to a contract and the rights and obligations imposed on parties to a permit. Generally, licenses or permits are privileges or permissions rather than contracts or property rights.[23] The Town has created contractual rights for the berth user and the Town while, under the Town's regulatory process created pursuant to G. L. c. 91, the mooring permit holder is afforded appeal rights, as an aggrieved party, that do not create claims based on contract.[24]

Unlike the Application for Berth discussed above, the Application for Mooring does not involve allocating a specific Town-controlled space in the waterways but, rather, involves a more general area in which one has permission to "park" one's boat. The Town incurs several obligations to the benefit of the boat owner under the Application for Berth while, under the Application for Mooring, the Town has allocated to the boat owner nearly all the obligations and risks associated with anchoring a boat in Town waters. When the Town gives permission to moor under the Application for Mooring, the Town does not incur further obligations on behalf of the Town for the benefit of the boat owner.

For all the foregoing reasons, we conclude that § 20 does not apply to a municipal employee who completes an Application for Mooring Permit and obtains a Mooring Permit.

DATE AUTHORIZED: March 14, 2007

[1] A slip or a berth is a space, in tidal waters, next to wharves or floating piers owned by the Town where a boat can tie up. Among other conveniences, such as having direct access to electricity or fresh water, a slip or berth in a marina allows boat owners to walk to their boats.

[2] Moorings anchor a boat in a harbor area offshore.

[3] Section 4-3(g) of the Town's Charter.

[4] Chapter 91: Section 10A. Temporary moorings of floats or rafts; permits, issuance or refusal; review; public nuisances. Section 10A. Notwithstanding any contrary provision of law, the harbormaster of a city or town or whomsoever is so empowered by said city or town may authorize by permit the mooring on a temporary basis of floats or rafts held by anchors or bottom moorings within the territorial jurisdiction of such city or town upon such terms, conditions and restrictions as he shall deem necessary. He shall act on applications for such permits within a period of fifteen days from receipt thereof.

A reasonable fee for such mooring, proportionate to the city or town's cost of overseeing mooring permit, may be imposed by the city or town or whoever is so authorized by the city or town, provided, however, that no such mooring fees may discriminate on the basis of residence; and provided further, that any mooring fee collected shall be deposited into and used in accordance with the purposes of the Municipal Waterways Improvement and Maintenance Fund, pursuant section 5G of chapter 40.

Any person aggrieved by a refusal to permit such temporary mooring, or by any condition or restriction imposed relative to such mooring, may appeal to the division of waterways of the department within thirty days after receiving notice of such refusal or of the imposition of such condition or restriction.

Said division shall review the circumstances resulting in such appeal and shall render a ruling either confirming the action of a harbormaster, setting such action aside, or amending such action and imposing its own conditions and restrictions as deemed necessary.

Nothing in this section shall be construed as authorizing the placement of floats or rafts and appurtenant anchors or bottom moorings on private flats of other than the applicant if objected to by the owner or owners thereof.

Actions by a harbormaster and/or the division under this section shall be subject to applicable laws administered by the division of motor boats, the division of marine fisheries, the United States Coast Guard and the United States Corps of Engineers.

Floats or rafts held by anchors or bottom moorings installed without permission from a harbormaster and/or said division shall be considered a public nuisance and may be removed by the harbormaster at the expense of the owner in the event he fails to remove same after notice in writing from the harbormaster.

For the purpose of this section, temporary shall mean for no longer than to the end of any given calendar year.

[5] The Marina Regulations also echo these points, "[T]he slipholder hereby agrees that any deviation from this premise by the slipholder shall result in the termination of any slip rental agreement and further, the Town may recover any amounts received by the slipholder from other parties which are essentially in the nature of payment for the use of the slip."

[6] Emphasis in original.

[7] According to the Town's municipal counsel, the Town does not sell or lease any of the equipment needed to moor a boat under the Mooring Regulations. Nearly all inspections of the moorings are done privately. In some cases, however, an applicant who has a small boat may bring the anchor and mooring chain/tackle to the Harbormaster, and he inspects the gear.

[8] Mooring Regulations, § 406-7.

[9] G. L. c. 102, § 24.

[10] Mooring Regulations, § 406-22.

[11] "Municipal employee, a person performing services for or holding an office, position, employment or membership in a municipal agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis . . . ." G. L. c. 268A, § 1(g).

[12] *EC-COI-06-1*.

[13] Municipal employees also have the option of resigning from their municipal positions in order to retain their financial interest in the relevant contract. In addition, although issues under §§ 17, 19, and 23 were not presented in this request, we acknowledge that the circumstances in which marina or mooring opportunities may become available can raise issues under these sections as well. Municipal employees must, of course, also comply with other applicable sections of G. L. c. 268A if they want to obtain a slip or mooring.

Municipal counsel has suggested that we also consider that the types of contracts for boat slips are not the types of "contracts" § 20 is intended to cover because these contracts do not implicate "secret dealings, influence peddling and other activities where the employee is confronted with a conflict of interest." *Quinn v. State Ethics Commission,* 401 Mass. 210, 220 (1987). He has stated that the processes for both boat slips and moorings are open and fair, regardless of applicant.

However, the Legislature has expressly included, rather than excluded, in § 20 contracts subject to public processes. For example, to be eligible for a § 20(b) exemption, "the contract is made after public notice or where applicable, through competitive bidding." Further, whether the municipal official actually did an improper act, or acted "above board," in order to enter into the relevant contract, are **not** elements of a § 20 violation. We presume that a contract "made after public notice or . . . through competitive bidding" is open and fair. If a municipal official has a financial interest in contract, in addition to his municipal employee position, he is in violation of § 20, unless he qualifies for a statutory exemption.

In general, the exemptions in § 20 address the potential for secret dealings and influence peddling by making it difficult for those municipal officials who have some type of official role over the "contracting agency" also to have financial interests in contracts with the "contracting agency."

Moreover, given the reported demand/waiting lists for Town slips, which, as counsel has stated, are much more affordable than private marina spaces, it is difficult to consider the financial interests in the Town marina contracts as *de minimus*.

[14] If a special municipal employee either participates in, or has official responsibility for, any of the activities of the "contracting agency," he must obtain an exemption under § 20(d). Other special municipal employees, who neither participate in or have official responsibilities for the contracting agency could comply with § 20 by filing a disclosure under § 20(c).

[15] We note that § 20 would not prohibit the Town from, for example, including the use of a boat slip as part of a municipal employee's contractual benefits.

[16] "Participate, participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise." G. L. c. 268A, § 1(j).

[17] "Official responsibility, the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and whether personal or through subordinates, to approve, disapprove or otherwise direct agency action." G. L. c. 268A, § 1(i).

[18] Section 20(b), in these circumstances, is available "to a municipal employee who is not employed by the contracting agency or an agency which regulates the activities of the contracting agency and who does not participate in or have official responsibility for any of the activities of the contracting agency, if the contract is made after public notice or where applicable, through competitive bidding, and if the municipal employee files with the clerk of the city or town a statement making full disclosure of his interest and the interest of his immediate family." G. L. c. 268A, § 20(b).

[19] Webster's Third New International Dictionary (1993).

[20] Black's Law Dictionary, 7th Ed.

[21] G. L. c. 4, § 7.

[22] *See e.g.,* G. L. c. 130, § 75; G. L. c. 111, § 31A; G. L. c. 114, § 46; G. L. c. 40A, § 11.

[23] *Young v. Blaisdell*, 138 Mass. 344, 345 (1885) ("It has been held, too often to be now open to question, that our statutes regulating the manufacture and sale of intoxicating liquors are laws, in the nature of police regulations, necessary for the general benefit; and that, although they impose restrictions upon the use of property . . . they are constitutional. . . . A license granted under this statute is in no sense a contract or property. It is a mere permission or authority to the licensee to sell according to law."); *Morley v. Police Comm'r of Boston*, 261 Mass 269, 277 (1927) (licenses issued by the City of Boston that required taxis to use designated taxi stands are privileges or permissions "and in no sense a contract or property"); *Higgins v. Board of License Comm'rs of City of Quincy*, 308 Mass. 142, 144 (1941) (license authorizing use of building to sell gasoline and other similar products is not a contract but is the means adopted to carry out police power for public safety).

[24] We note that G. L. c. 102, § 24, described above, expressly gives contractual rights to a harbormaster, in certain circumstances. But that statute does not provide contractual rights to a boat owner. In addition to powers granted by the Legislature under G. L. c. 91, § 10A, there may also be common-law support for a municipality having some authority over waterways based on municipal police powers. For example, a municipality's grant of "liberty to wharf . . . might be in the nature of a mere police regulation" and such a "grant from a subordinate

[municipal] authority, which is not shown to have the title . . . amounts to . . . mere permission." *Boston v. Richardson*, 105 Mass. 351, 363 (1870) (property dispute as to who had title to an area between the high water mark and low water mark); *Fafard v. Conservation Commission of Barnstable*, 432 Mass. 194, 207, n. 19 (2000).

CONFLICT OF INTEREST OPINION
EC-COI-07-2

QUESTION

Is the Vineyard Conservation Society, Inc. ("VCS"), a non-profit, tax exempt, charitable environmental advocacy organization, a "business organization" within the meaning of the conflict of interest law, G. L. c. 268A?[1]

ANSWER

No. VCS, as a charitable, non-profit organization which does not substantially engage in business activities, is not a "business organization" within the meaning of G. L. c. 268A.

FACTS

VCS is a local member-supported, non-profit, charitable corporation formed and organized under G. L. c. 180 and recognized as a tax-exempt entity under section 501(c)(3) of the Internal Revenue Code.[2] VCS is a registered public charity in Massachusetts.[3] VCS is governed by a thirty-person board of directors and employs two full-time and one part-time employee. VCS's core mission is to protect Martha's Vineyard's natural environment through education, advocacy and land preservation.

VCS achieves its land preservation goals by assisting landowners in placing voluntary restrictions against development on their land or deeding the land or interests in the land to other entities, by contributing funds so that others may acquire such lands and, on rare occasions, by holding temporary fee interests in land and permanent conservation restrictions on land. VCS offers free legal assistance to private landowners and municipalities by drafting conservation restrictions and other legal instruments to preserve undeveloped land, directs landowners to entities that can receive gifts of land or conservation restrictions, contacts potential funding sources, contributes to acquisition costs, and temporarily holds ownership or easements in land and conveys such interests to suitable entities. VCS has never sold any land or interest in land for a profit. VCS rarely holds a permanent fee interest in property. VCS does not own the building or land where its headquarters is located. VCS does, however, hold permanent conservation restriction interests in land in which other conservation groups are not interested. VCS has the right to enforce restrictions on the development of such land. VCS does not actively manage any of the properties it owns or in which it holds an interest.

VCS pursues its advocacy objectives by monitoring and reviewing development proposals, participating in local land use permitting proceedings, offering testimony and expertise at public hearings, taking positions on public land planning issues, engaging in administrative and judicial proceedings and employing legal strategies to save land, including litigation against development VCS considers inappropriate.

VCS achieves its educational goals through the publication of its free on-line Conservation Almanac, the sponsorship of free lectures and walks, and the sale of books on trails and edible plants. VCS does not sell goods, except for a trail guide, a book on edible plants and hats and T-shirts with the VCS logo, all of which sales cumulatively raise about $3,000, slightly more than one percent of its annual operating expenses.

VCS has an annual budget of about $260,000, which it raises almost exclusively through membership donations, an annual appeal letter and an annual fundraiser. VCS does not employ a professional fundraiser or director of development. VCS occasionally applies for grants and has, for example, received a grant from a private foundation to research strategies to protect rural road and conduct title research on potential conservation land and won a grant from the state Department of Environmental Management to implement a public walking trail project on private lands. VCS does not charge for the services it provides. When VCS conveys land to third parties, it does not make a profit but rather conveys land to entities that intend to hold the land for open space preservation purposes.

DISCUSSION

A wide variety of non-profit organizations have been treated as business organizations for the purposes of G. L. c. 268A in numerous prior conflict of interest law opinions, first by the Attorney General,[4] whose opinions the General Court made provisionally binding on the Commission,[5] and

subsequently by the Commission.[6] Commission opinions have construed the term "business organization" broadly to include non-profit organizations in general[7] and, more narrowly, to include non-profit organizations that "conduct business," such as "the buying and selling of commodities or services." [8] The Commission has also stated that "the plain meaning of the term 'business organization' is an organization whose purpose is to engage in 'commercial activity for gain, benefit, advantage, or livelihood.'"[9] Commission opinions have not, however, limited the term's application to profit-making entities.[10]

In responding to this opinion request, we reconsider the term "business organization" in the context of G. L. c. 268A and, as explained below, conclude that charitable non-profit organizations which, like VCS, do not substantially conduct business activities, are not business organizations for purposes of the conflict of interest law.

"Business Organization" Reconsidered

Sections 6, 13 and 19, in relevant part, respectively prohibit a state, county and municipal employee from participating as such in any particular matter in which "a business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest." These sections appear to be designed to ensure that governmental decision-makers are not influenced by their own financial interests, or those of their immediate family members or those of certain other persons or entities with whom they are closely associated; helping to ensure that governmental decisions are made impartially and in the public interest.

The terms "business," "organization" and "business organization" are not defined in G. L. c. 268A.[11] Accordingly, they must be construed following established principles of statutory interpretation. [12]

Ordinary Meaning

The word "organization" has a readily understood common meaning.[13] A non-profit corporation, like VCS,[14] would unquestionably be included scope of the term "organization" as the word is commonly used and understood.[15]

The common and approved usage of the word "business" is less clear. Because the word has so many meanings, the intended meaning of "business" in a given usage may be uncertain and indefinite.[16] The word may mean broadly any "serious work or endeavor;" [17] occupation, pursuit, work or trade; profession; an activity of some continuity, regularity and permanency; a means of material being and livelihood or occupation or employment; gainful activity; and "that which habitually busies or occupies or engages the time, attention, labor, and effort of men as a principal serious concern or interest or for livelihood or profit."[18] The term may also mean, in its most narrow sense, a commercial enterprise carried on for profit.[19]

Accordingly, the phrase "business organization" is susceptible to more than one construction. Construing the term most broadly, most non-profit organizations, particularly non-profit corporations, are "business organizations." That is, most non-profit entities, including non-profit corporations and associations, are "organizations" and, in a broad sense, conduct "business." In this broadest, generic sense of an entity formed for a serious purpose or activity, many, if not most, non-profit organizations would appear to be business organizations.[20]

It is not evident, however, that the broadest and most inclusive reading of the term "business organization" is its ordinary meaning in common daily usage. Thus, we think it likely that the phrase would generally be understood to refer to something more specific than an entity formed for a serious purpose. For example, a club formed to collect and distribute food to the needy or a neighborhood group formed to pool finances and oppose a local development, while both entities formed for serious purposes, would not commonly be thought of as business organizations.

Conversely, a narrow reading of "business organization" which would exclude all non-profit organizations from the term's scope would construe the term to have a meaning more narrow and technical than its common usage indicates.[21] Thus, for example, common usage would likely include a chain of hospitals within the meaning of the term business organization even if the chain were operated by a non-profit organization.

Legislative Intent

The meaning of the term business organization in G. L. c. 268A cannot be positively determined from the statute's legislative history. There is no official record of what the Legislature intended by enacting the statute with the term business organization rather than the more inclusive term organization, used in the federal conflict of interest statute. While some statutory history[22] and contemporaneous scholarship is supportive of a narrow reading of business organization to exclude non-profit entities,[23] such a reading is not required.[24] It is noteworthy that the General Court's subsequent legislation concerning ethics and the Commission has not been inconsistent with a broad reading of business organization.[25]

A Workable Meaning

The Commission must give the conflict of interest statute a workable meaning;[26] that is, a reading that will accomplish the statute's essential purpose. At the same time, we are bound by the limits imposed by the statutory language enacted by the Legislature. While the Legislature enacted §§ 6, 13 and 19 in order to help ensure that governmental decisions are made impartially and in the public interest by prohibiting public employees from participating as such in particular matters involving the financial interests of certain persons and entities with whom they are closely associated, the Legislature also chose to limit those prohibitions by using the term "business organization" instead of the more general term "organization."[27]

A reading of business organization to exclude all non-profit organizations would ignore the reality that many non-profit organizations are essentially businesses, and would not support the purpose of the sections.[28] Conversely, a reading of business organization to include all non-profit organizations, while arguably furthering the sections' broader purpose, would ignore that there are some non-profit organizations that are not businesses in any commonly understood meaning of that term and would render the word business in the sections virtually superfluous and meaningless.[29]

Many non-profit corporations regularly provide services in exchange for fees or goods in exchange for payment. Many such non-profit organizations regularly compete for private and government contracts (including grants) and are vendors to private clients and public agencies. In short, they regularly participate in the marketplace and do business with private parties and the government. Such transactional activities of non-profit organizations are often the source of livelihood for the organization's officers and employees. Such non-profit organizations are reasonably included within the scope of the term business organization.

Some non-profit organizations do not provide services in exchange for fees and do not transact business with private parties or the government. They do not participate in the marketplace; except for, perhaps, the marketplace of ideas. Instead, such organizations provide their services freely and derive their subsistence from membership fees and donations. Such non-profit organizations, which do not engage in any activities that are commonly considered business, are not reasonably included within the scope of the term business organization.

Accordingly, in order to best effectuate the purpose of the §§ 6, 13 and 19, while respecting the limits of the statutory language, we reject both extremely narrow and extremely broad readings of the term business organization. Instead, we conclude that some non-profit organizations are business organizations and some are not, based on their actual activities. In short, consistent with our advice in EC-COI-88-4, non-profit organizations that substantially engage in business activities, such as selling goods or providing services in exchange for fees, are business organizations for G. L. c. 268A purposes. Conversely, making explicit what we implied but did not state in EC-COI-88-4, charitable, non-profit organizations that do not substantially engage in any business activities are not business organizations for G. L. c. 268A purposes.

In determining whether a non-profit organization is substantially engaged in business activities, such that it will be a business organization for the purposes of G. L. c. 268A, we will consider the following factors: (1) whether the organization's activities involve commerce, trade, the sale of goods or the provision of services in exchange for fees (or other compensation) or any other activities, including professional activities, that are commonly understood to be business activities; (2) whether the organization's business activities are engaged in for its support or profit;[30] (3) whether the organization's business activities are continuously or regularly engaged in;[31] and (4) whether the organization's business activities constitute a significant rather than de minimis portion of the total activities of the organization.[32] Thus, for example, a non-profit organization which primarily supports itself by regularly providing services in exchange for fees or other compensation will be a business organization

for purposes of G. L. c. 268A, even though it also receives charitable donations. By contrast, a non-profit organization which is primarily supported by charitable donations and provides all of its services without charge will not be a business organization for G. L. c. 268A purposes, even if it derives a small percentage of its support from its incidental sale of goods.

VCS

VCS's sale of books, trail guides and hats and T-shirts, while traditional business activity, is not substantial and is a very small part of the organization's total activities. (VCS derives less than two percent of its annual operating budget from its sale of goods.) By contrast, VCS's educational, advocacy and land preservation activities, as described above, do not fall within the common and ordinary meaning and usage of the term "business." VCS is neither organized for the purpose of engaging in commerce or trade for gain, benefit, advantage or livelihood, nor is it substantially engaged in the provision of goods or services for payment or fees.[33]

We find that VCS's incidental, limited business activity through its sale of merchandise, on which VCS relies for less than two percent of its annual operating budget, is de minimis[34] and does not render VCS a business organization for G. L. c. 268A purposes. We further find that VCS does not otherwise substantially engage in business activities. We therefore conclude that VCS is not a business organization within the meaning and for the purposes of G. L. c. 268A.[35]

The Effect of VCS Not Being a Business Organization

Given that VCS is not a business organization within the meaning of § 19, the section would not prohibit a VCS director who is also a local elected municipal employee from participating as a municipal employee in particular matters simply because of VCS's financial interest in the matters. That does not mean, however, that his ability to participate as a municipal employee in matters affecting VCS would be unrestricted by the conflict of interest law. To the contrary, he would be subject to the following restrictions.

First, such a VCS director should keep in mind that particular matters affecting VCS may also affect his own financial interests and those of persons and business entities with whom he may be closely connected. He would, as a municipal employee, remain subject to § 19 prohibitions as to matters in which he, his immediate family members, partner(s), or any "business organization" in which he is serving as an officer, director, trustee, partner or employee, or any person or "organization" (including governmental and non-profit organizations) with whom he is negotiating or has any arrangement concerning prospective employment, have/has a financial interest.[36]

Second, such a VCS director would, as a municipal employee, be required to publicly disclose the fact of his service as a VCS director and the relevant circumstances of his participation as a municipal employee in matters affecting the financial or other significant interests of VCS prior to his participation in such matters,[37] and to act fairly and impartially in all such matters.[38]

Third, as a municipal employee, the VCS director would be generally prohibited from acting as VCS's agent[39] in any particular matter in which the municipality is a party or has a direct and substantial interest.[40]

CONCLUSION

Based on our reconsideration of the meaning of the term business organization in G. L. c. 268A, §§ 6, 13 and 19, we conclude that neither the common and ordinary meaning of business organization nor the legislative history and intent of the statute require or support the inclusion of charitable, non-profit organizations that do not substantially engage in business activities within the scope of the term. Accordingly, the Commission will not treat charitable, non-profit organizations that, like VCS, do not substantially engage in business activities as business organizations for conflict of interest law purposes.

DATE AUTHORIZED: June 13, 2007

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[1] VCS has asked this question because a former VCS director who is also an elected municipal official on Martha's Vineyard resigned from the VCS board of directors when he was advised by the Commission that he was prohibited by G. L. c. 268A, § 19 from participating as a municipal official in any matter in which VCS, a business organization in which he was serving as a director, had a financial interest.

[2] As a § 501(c)(3) corporation, VCS had to demonstrate that its exclusive purpose is charitable, rather than commercial, and it is subject to a number of restrictions: none of its net earnings may inure, directly or indirectly, to the benefit of organization insiders; it may not engage in legislative lobbying as more than an incidental part of its activities; it may not participate in any campaign for public office; its activities must primarily benefit either the public at large or a sufficiently large and distinct class of

persons to be broadly characterized as charitable and it may not benefit private persons who are not members of a charitable class more than incidentally; and it may not engage in activities that violate law or fundamental public policy.

[3] All public charities engaging in charitable work or fund-raising in the Commonwealth must register and file annual financial statements with the Division of Public Charities of the Office of the Attorney General. G. L. c. 12, §§ 8E and 8F.

[4] Although the Attorney General initially construed "business organization" to exclude non-profit organizations, *see, e.g.,* A.G. Conflict Opinion Nos. 176 and 586, from 1974 until 1978 when the Commission was created and the Attorney General ceased giving conflict of interest law opinions, the Attorney General, without explaining the change of position, construed the term to include non-profit organizations. *See, e.g.,* A.G. Conflict Opinion No. 643 (non-profit self-help agency seeking DMH funding); No. 648 (charitable trust contracting with state agency to further develop and market simulation games developed by the state agency); No. 683 (a non-profit historic restoration and preservation corporation with no current or pending state contracts or funding, deriving its support from gifts, grants, contributions, the sale of craft products, admission fees and rental payments from space in a historic mill); No. 777 (non-profit foundation receiving partial funding from DMH for mental health training and research). Most of these opinions do not directly state that all non-profit organizations are business organizations or that the non-profit organizations in question were business organizations, but rather simply apply the law as though they were.

[5] The General Court directed in creating the Commission that all conflict of interest law opinions issued by the Attorney General before November 1, 1978, "shall remain valid and shall be binding on the state ethics commission until and unless reversed or modified by the state ethics commission." St.1978, c. 210, § 24.

[6] *See, e.g.,* EC-COI-79-114 (private, non-profit corporation serving as local anti-poverty agency); 80-1 (community non-profit corporation financing low-to-moderate housing acquisition and renovation); 80-40 (education assistance corporation); 80-56 (non-profit corporation, funded through dues, grants and donations, providing consulting and management services to community arts councils, arts organizations, schools and individual artists, coordinating art activities and encouraging the development of art programs); 80-81 (private non-profit organization, partially funded by state grants, serving developmentally disabled citizens through citizen advocacy and direct counseling is a business organization); 81-22 (private non-profit corporation encouraging citizen participation in public affairs and government, funded by private corporate gifts and foundation grants, and receiving no state funds and providing no direct program services to any state agency); 92-1 (non-profit community action corporation working to reduce poverty and funded by governmental grants and private sources); EC-COI-94-7 (non-profit home care corporation providing community services under contract with state agency); EC-COI-95-10 (non-profit corporation acting to eliminate urban slums and blight and receiving public funding); EC-COI-98-5 (non-profit corporation providing various services to municipal public schools as paid vendor); EC-COI-00-3 (non-profit community development corporation receiving loans, grants and financing from state agencies). As with the Attorney General's opinions, most of these opinions do not directly state that non-profit organizations are business organizations or that the non-profit organization in question is a business organization, but rather simply apply the law as though they were.

[7] In EC-COI-92-26, concerning a § 501(c)(3) corporation devoted exclusively to educational purposes, the Commission advised in a footnote "Non-profit entities and municipalities are considered to be 'business organizations' for purposes of § 19." (The Commission has since determined that municipalities are not business organizations in EC-COI-06-03.)

[8] EC-COI-88-4.

[9] EC-COI-92-11.

[10] *See, e.g.*, EC-COI-92-1; 94-7; 95-10; 98-5; 00-3.

[11] By contrast, G. L. c. 268B, the financial disclosure law enacted in 1978, expressly defines "business" as "any corporation, partnership, sole proprietorship, firm, franchise, association, organization, holding company, joint stock company, receivership, business or real estate trust, or any other legal entity organized for profit or charitable purposes."

[12] Thus, for example, in proceeding we are guided by the canon that "[t]he intent of the Legislature is to be determined primarily from the words of the statute, given their natural import in common and approved usage, and with reference to the conditions existing at the time of enactment. This intent is discerned from the ordinary meaning of the words in a statute considered in the context of the objectives which the law seeks to fulfill. Whenever possible, we give meaning to each word in legislation; no word in a statute should be considered superfluous." EC-COI-92-11 (*quoting*, with citations omitted, *Int'l Organization of Masters, etc. v. Woods Hole, Martha's Vineyard & Nantucket Steamship Authority*, 392 Mass. 811, 813 (1984); *See* G. L. c. 4, § 6, "Words and phrases shall be construed according to the common and approved usage of language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning."

[13] "Organization" means "something that has been organized or made into an ordered whole" or "a number of persons or groups having specific responsibilities and united for a particular purpose." *The American Heritage Dictionary* (2nd College Ed. 1985) at 876. *See Commission Advisory No. 90-01*: *Negotiating for_Prospective Employment* ("The term 'organization' includes corporations, business trusts, estates, partnerships, associations, two or more persons having a joint or common interest, and any other legal or commercial entity, as well as federal, state or local governmental agencies and subdivisions.")

[14] The fact that VCS is a corporation establishes that it is an organization, but not that it is a business organization. A corporation is simply a legally recognized combination of persons acting as a separate entity for a purpose, which may or may not be a business purpose.

[15] "Person" also has a meaning in law which includes corporations, along with societies, associations and partnerships. G. L. c. 4, § 7.

[16] "The term 'business' has no definite or legal meaning." *Black's Law Dictionary* (4th ed., 1968) at 248. The Supreme Judicial Court has, however, stated, in construing the term "business" in an insurance policy exclusion, that "'Business,' as commonly understood, is. . .an activity engaged in for the purpose of gain or profit." *Newell-Blais Post #443 v. Shelby Mut. Ins.Co.,* 396 Mass. 633, 636 (1985) (charitable non-profit organization not engaged in "business" of selling or serving alcoholic beverages).

[17] *The American Heritage Dictionary* (2nd College Ed. 1985) at 220.

[18] *Black's Law Dictionary* (4th ed., 1968) at 248-249.

[19] *Black's Law Dictionary* (7th ed. 1999) at 192. The term is further defined as "a particular occupation or employment habitually engaged in for livelihood or gain."

[20] Some non-profit organizations may be formed for non-serious purposes.

[21] The term "business organization" is to be distinguished from the term "business corporation," which has a definite common usage and legal meaning. A "business corporation" is commonly defined as a "corporation formed to engage in commercial activity for profit." *Black's Law Dictionary* (7th ed. 1999) at 341. Thus, for example, the regulations of the Secretary of State relative to the Massachusetts Business Corporation Act, G. L. c. 156D, generally define corporation to mean a corporation established "for the purpose of carrying on business for profit." 950 CMR 113.02

[22] The draft bill which ultimately became G. L. c. 268A was drafted by the Special Commission Established to Make an Investigation of an Act Establishing a Code of Ethics to Guide Employees and Officials of the Commonwealth in Their Performance of Their Duties ("the Special Committee"). *See* Mass. House No. 3650 of 1962. The Special Committee based their draft on a House bill then pending in the United States Congress, which included the same "business organization" language. Massachusetts enacted its conflict of interest law first. Subsequently, the Senate Judiciary Committee modified the federal bill by striking "business," stating "[the bill] at one point speaks in terms of an employee's disqualifying connection with a 'business organization,' thus leaving open the implication that he would remain eligible to act for the Government in a matter involving a nonprofit organization with which he is connected. A great number of universities, foundations, nonprofit research entities, and other similar organizations today are engaged in work for the Government. Conflicts of interest may arise in relation to them just as in the case of the ordinary business for profit. The committee therefore has deleted the word "business" form the subsection to make it clear that improper dealing by a Government employee in connection with nonprofit organizations is also prescribed [sic]." S. Rep. No. 2213, 87th Cong., 2d Sess. 14 (1962).

[23] Some leading legal scholarship from the period of the statute's enactment supports a narrow reading of business organization. According to a commentator who was a member of the Special Committee, "Under Section 19 an officer or employee of a 'business organization' must abstain as a municipal employee if the organization has a financial interest in the particular matter; an officer or employee of a charitable or other non-profit organization need not." Robert Braucher, Conflict of Interest in Massachusetts, in Perspectives of Law: Essays for Austin Wakeman Scott (Pound, Griswold & Sutherland 1964) at 24. Another commentator noted, "Apparently 'business organization' refers to a commercial or profit-making organization to the exclusion of educational, charitable and other non-profit institutions." William G. Buss, *The Massachusetts Conflict-of-Interest Statute: An Analysis*, 45 B.U.L. Rev. 299 (1965).

[24] Thus, while Braucher appears certain that business organization categorically excludes non-profit organizations, Buss, by contrast, states that this is "apparently" the case, indicating some level of doubt. Significantly, the Senate Judiciary Committee comments do not state that the inclusion of the word business means or even necessarily implies the exclusion of non-profit organizations, but rather only that its inclusion "leav[es] open th[at] implication" and that the deletion of the word "mak[es] it clear that improper dealing by a Government employee in connection with nonprofit organizations is also prescribed." S. Rep. No. 2213, 87th Cong., 2d Sess. 14 (1962). Finally, the fact that the Senate Judiciary Committee comments contrast non-profit organizations with "the ordinary business for profit," arguably reflects that even in 1962 a non-profit organization may have been in some contexts considered a type of business organization, albeit not an ordinary one.

[25] Although it cannot be said to have endorsed the Attorney General's construction of business organization to include non-profit organizations, the following actions by the General Court in 1978 were consistent with the Attorney General's position. The General Court, in creating the Commission, directed that all conflict of interest law opinions issued by the Attorney General before November 1, 1978, "shall remain valid and shall be binding on the state ethics commission until and unless reversed or modified by the state ethics commission." St.1978, c. 210, § 24. In addition, at the same time, the General Court enacted in G. L. c. 268B, the financial disclosure law, a broad definition of "business" which includes "any corporation, partnership, sole proprietorship, firm, franchise, association, organization, holding company, joint stock company, receivership, business or real estate trust, or any other legal entity organized for profit or charitable purposes."

[26] *Graham v. McGrail*, 370 Mass. 133,140 (1976).

[27] These sections balance protection against restriction: thus, the broader the prohibition, the greater the protection against the influence of private interests, but also the greater the restrictions on the public employee's ability to act. By qualifying "organization" with "business," the Legislature apparently chose to reduce the degree of protection afforded by the sections and increase the public employee's freedom to act. Why the Legislature made this apparent choice is not known. The Legislature may have done so because it judged that the impartiality of a public employee associated with a non-business organization would be less compromised in particular matter involving the financial interests of that organization than that of one associated with a business organization or, alternatively, because it considered the influence of associations with non-business organizations to be an insufficient danger to public integrity to warrant criminal prohibitions and sanctions (instead relying on the code of conduct provisions of § 23, discussed below).

[28] Nor would it serve the purpose of the sections to, more narrowly, exclude all public charities. While the activities of privately-created charitable non-profit organizations like VCS must primarily benefit the public at large or a sufficiently large charitable class, such organizations are nonetheless non-governmental corporate entities with their own financial interests which are separate from, and capable of conflicting with, those of the government and the general public. *See* EC-COI-02-02 (upheld on appeal to the Superior Court).

[29] In our view, a public employee's judgment in an official matter may be just as conflicted by his loyalty to a non-profit organization in which he is serving as an officer, director, employee or trustee as by his loyalty to a commercial for-profit corporation by which he is privately employed. In either case, the public employee's conflicting loyalties deprive the public of the impartial and unbiased decision-making that §§ 6, 13 and 19 were created to help ensure. We are constrained, however, to apply the statute as the Legislature drafted it.

[30] Non-profit organizations may conduct some of their activities for profit provided that such income is used for its corporate purposes and not distributed to its members.

[31] "Business," as indicated above, generally refers to an activity of some continuity, regularity and permanency.

[32] The business activity must be sufficiently significant to the organization to be a reasonable basis for characterizing the organization as a business organization for G. L. c. 268A purposes.

[33] *See* EC-COI-92-11.

[34] In other contexts, the Commission has found ten percent to be the threshold for substantiality. *See* EC-COI-92-34 (more than ten percent of the town's population is a "substantial segment" of that population for § 19(b)(3)). *Compare* EC-COI-83-34 (that services to a client accounted for ten percent of an attorney's time and income was not sufficiently substantial to make him an employee of the client within the meaning of § 6).

[35] We recognize that there may be non-profit organizations whose principal activities are clearly non-business, such that they could not reasonably be called businesses, which however receive substantial income from unrelated business activities. Because VCS is not such an organization, we do not here need to and do not decide whether § 19 (or § 6 or § 13) issues would be raised for the officers, directors or employees of such non-profit organizations with respect to their participation as public employees in matters affecting the unrelated business activities based on the non-profit organizations' financial interests in the income from the activities.

[36] *Commission Advisory No. 90-01: Negotiating for Prospective Employment*.

[37] G. L. c. 268A, § 23(b)(3). Section 23(b)(3) prohibits a public employee from, knowingly or with reason to know, engaging in conduct which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person or entity can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, or position of any person. To dispel the "appearance of a conflict," § 23(b)(3) requires that, prior to participation, an elected public employee make a full public disclosure of all of the relevant facts.

[38] G. L. c. 268A, § 23(b)(2). Section 23(b)(2) provides, in relevant part, that no public employee may, knowingly or with reason to know, use his official position to secure unwarranted privileges or exemptions of substantial value for himself or others.

[39] "[T]he distinguishing factor of acting as agent within the meaning of the conflict law is 'acting on behalf of' some person or entity, a factor present in acting as spokesperson, negotiating, signing documents and submitting applications." *In Re Sullivan*, 1987 SEC 312, 314-15. *See In Re Reynolds*, 1989 SEC 423, 427; *Commonwealth v. Newman*, 32 Mass. App. Ct. 148, 150 (1992). By contrast, merely discussing or voting as a Board member on a matter is not an act of agency.

[40] G. L. c. 268A, § 17. Under § 17(a) and (c), a municipal employee generally may not, directly or indirectly, receive compensation from or act as agent or attorney (even if unpaid) for anyone other than the municipality in connection with any particular matter in which the municipality is a party or has a direct and substantial interest.

TABLE OF CASES

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In the Matter of Michael Ross - The Commission fined Boston City Councilor Michael P. Ross $2,000 for violating the state's conflict of interest law, M.G.L. c. 268A, by using his right to have parking tickets "administratively dismissed" if the violations occurred when the councilor was performing official city business, to have approximately 35 tickets he received while he was conducting personal business dismissed. According to the Disposition Agreement, between January 2002 and February 2006, Ross had approximately 105 tickets dismissed. Most of the tickets involved parking violations resulting from a failure to pay parking meter fees ($25 per ticket) and/or parking without a permit in resident-only parking spots ($40 per ticket). Although Ross is a resident of Boston and eligible for a resident parking permit, he did not obtain such a permit. Approximately 35 of the tickets, with an estimated value of $1,000, were issued while he was engaged in personal rather than City business. After the Commission initiated its investigation, Ross reimbursed the City $1,000 for these tickets. Section 23(b)(2) of the conflict law prohibits a public employee from using or attempting to use his position to secure for himself or others an unwarranted privilege of substantial value not properly available to similarly situated individuals. By using his City Council position to obtain dismissal of approximately $1,000 worth of personal parking tickets, Ross violated § 23.

In the Matter of James Manning
In the Matter of Joseph Rebello - The Commission approved two Disposition Agreements in which former Monson selectman James Manning and former Monson police chief Joseph Rebello each admitted to violating the state's conflict of interest law and agreed to pay fines of $2,000 and $1,000, respectively. According to the Disposition Agreements, in 2001 Manning asked Rebello to issue him a $415 police pistol because Manning felt threatened by a suspended police sergeant. Rather than require Manning to buy his own gun, Rebello gave Manning the police pistol after Manning, who already had a gun permit, completed a firearm training course, as required by Rebello. Manning had the pistol for six months before turning it in when he left for military duty. When Manning returned from military duty, he again sought a police pistol but his request was denied after the new police chief brought his request to the other selectmen. Manning felt he was entitled to a police pistol because he was a police commissioner, even though he had no enforcement responsibilities requiring him to carry a pistol. According to the Agreement, "There is nothing in the Monson town ordinances or the Massachusetts General Laws that authorizes a police commissioner to be issued a police department pistol." Section 23(b)(2) of the conflict law prohibits a public employee from using or attempting to use his position to secure for himself or another an unwarranted privilege of substantial value not properly available to similarly situated individuals. By using his position to receive a police pistol to which he was not entitled, Manning violated § 23(b)(2); by giving him the pistol, Rebello also violated this section of the law.

In the Matter of Matthew Straight - Former Fitchburg City Councilor Matthew Straight admitted violating the state's conflict of interest law and agreed to pay a fine of $2,000. According to the Disposition Agreement, Straight worked for and owned 2 percent of Johnsonia Associates, a limited partnership created to own and manage a 52-unit apartment building on Main Street in Fitchburg. Straight's father owned a majority share of the partnership, and a third person owned the remaining share. In 2002, Straight received oral advice from the Ethics Commission that he could not participate as a city councilor in a discussion that would affect his or his father's financial interests. In 2004 and 2005, the Straights began the process to convert the Johnsonia rental units into condominiums. In January 2005, Straight wrote a letter to the License Commission as a city councilor raising concerns about the Third Base Bar & Grill, a bar near the Johnsonia building that was facing suspension of its liquor license. Straight recommended that the bar's closing hours be changed from 2 a.m. to 12 midnight and that the bar receive a warning letter. In March 2005, Straight spoke at a License Commission hearing regarding the House of Brews, another bar near the Johnsonia building. The decisions concerning the neighboring bars would affect the plan to redevelop the Johnsonia building as a condominium building. As the manager of the Johnsonia and a part-owner of the building, Straight had a private financial interest in keeping the neighborhood safe and free from crime. Section 19 prohibits a municipal employee from officially participating in matters in which to his knowledge he, his immediate family or a business in which he is serving as an employee has a financial interest. By participating as a City Councilor in matters before the License Commission involving bars nearby the Johnsonia building, Straight participated in matters affecting his, his father's and his employer's financial interests.

In the Matter of David Guertin - The Commission fined Provincetown Department of Public Works (DPW) Director David Guertin $2,000, consisting of a $1,000 civil penalty and a $1,000 forfeiture, for violating the conflict of interest law by improperly receiving free dockage for his sailboat

from Provincetown-MacMillan Realty Trust (PMRT). According to the Disposition Agreement, Guertin was the project manager for the renovation of MacMillan Wharf, owned by PMRT, and was involved in overseeing the Town water system and in determining betterment assessments, all of which financially impact PMRT. In late spring 2001, Guertin, who kept his 30-foot sailboat at a mooring in the Provincetown marina, accepted the offer of a PMRT principal to tie up his boat at the PMRT slip on the wharf to make repairs. Guertin docked his boat at PMRT's slip for approximately 10 days. The value of the docking was approximately $1,000. Guertin did not pay for the use of the slip. Section 23(b)(2) of the conflict of interest law prohibits a public employee from knowingly, or with reason to know, using or attempting to use his position to secure for himself or others an unwarranted privilege of substantial value not properly available to similarly situated individuals. By using his position as DPW director to secure for himself $1,000 in free dockage, Guertin violated this section of the law.

In the Matter of Richard Bretschneider – The Commission fined Nantucket County Sheriff Richard Bretschneider $1,500 for violating the state's conflict of interest law, M.G.L. c. 268A, by offering to purchase an interest in property from a person on whom he was serving an eviction notice. According to the Disposition Agreement, in May 2005, Bretschneider in his official sheriff's uniform drove his Sheriff's Department vehicle to the residence of a woman he had approached on numerous previous occasions seeking to purchase her interest in a residential property she owned with nine other cousins. Bretschneider served her with a 14-day Notice to Quit the residence she was renting. Bretschneider suggested she sell her interest in the property to him, saying, "This might be a good time to sell." The woman refused. Section 23(b)(2) of the conflict law prohibits a public employee from using or attempting to use his position to secure for himself or others an unwarranted privilege of substantial value not properly available to similarly situated individuals. Section 23(b)(3) prohibits a public official from knowingly or with reason to know acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy the public employee's favor in the performance of his official duties. By using his position to attempt to purchase property from someone with whom he was conducting official business as a sheriff, Bretschneider violated these sections of the law.

In the Matter of Thomas Crean
In the Matter of Christopher Bradley - The Commission concluded public proceedings against former Beverly Mayor Thomas Crean and former Purchasing Director Christopher Bradley by approving Disposition Agreements in which Crean and Bradley each admitted to violating the state's conflict of interest law, G.L. c. 268A, by arranging for Crean's laptop computer to be declared surplus, then selling it to Crean for $100 days before he left office. Crean paid a civil penalty of $1,000 and reimbursed the City of Beverly $500 for the computer; Bradley paid a civil penalty of $500. According to the Disposition Agreements, in 2002 when Crean took office, the city paid $1,785 to purchase a Compaq Presario laptop computer for his use. In fall 2003, Crean decided he wanted to buy his laptop from the city when he left office. Both Bradley and the city solicitor told Crean that he would have to follow legal procedures for disposing of items no longer of use to the city. Crean did not follow the proper procedure when he directed Bradley to treat the laptop as surplus. Bradley proceeded to treat the laptop as surplus and put it up for auction. Crean's bid of $100 was the only bid. Crean paid for and took possession of the laptop shortly before he left office in early January 2004. Section 19 of the conflict of interest law prohibits a municipal employee from officially participating in matters in which to his knowledge he has a financial interest. By directing his subordinate, Bradley, to declare the laptop surplus and by guiding the procedure for doing so, Crean violated § 19. Section 20 prohibits a municipal employee from having a financial interest in a contract made by the municipality. By bidding on and purchasing the laptop from the city, Crean violated § 20. Section 23(b)(3) of the conflict law prohibits a public official from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy the public official's favor in the performance of his official duties. From Bradley's failure to require Crean to comply with the usual procedures for disposal of surplus property, it appeared that Crean could improperly influence Bradley or unduly enjoy Bradley's favor in the performance of his official duties. Thus, Bradley violated § 23(b)(3). Bradley could have avoided violating §23(b)(3) by making an advance written disclosure to dispel the appearance of impropriety. He did not make such a disclosure.

In the Matter of Sharon Pollard – The Commission fined former Methuen Mayor Sharon Pollard $4,000 for violating the state's conflict of interest law, M.G.L. c. 268A, by directing $200,000 in mitigation funds from Brooks Pharmacy to the Methuen Festival of Trees. The Festival of Trees is a non-profit founded by Pollard to benefit historic preservation in Methuen by restoring stone walls in the historic district. According to the Disposition Agreement, in 2004, Brooks Pharmacy agreed to give Methuen $650,000 to mitigate traffic problems created by a new store on Howe Street. Pollard instructed Brooks Pharmacy to pay $450,000 to the city and $200,000 to the Festival of Trees. When the City Council formally accepted the $450,000

payment from Brooks Pharmacy in September 2004, Pollard did not disclose the $200,000 payment she arranged for the Festival of Trees. In spring 2005, Pollard appeared before the City Council to answer questions that had arisen about the $200,000 payment. In June 2005, the Festival of Trees returned the $200,000 it had received to the City. Pollard testified that she believed that the City had already addressed traffic issues in the area and that the funds should go to a variety of civic projects, including wall restoration. Section 23(b)(2) of the conflict law prohibits a public employee from using or attempting to use her position to secure for herself or others an unwarranted privilege of substantial value not properly available to similarly situated individuals. By instructing Brooks Pharmacy to give $200,000 to the Festival of Trees, Pollard used her position to secure for the Festival of Trees an unwarranted privilege. Section 23(b)(3) prohibits a public official from knowingly or with reason to know acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy the public employee's favor in the performance of her official duties. By acting as mayor on a matter in which a private organization she co-founded had a substantial financial interest, Pollard violated this section of the law. The Disposition Agreement notes that "the appearance of impropriety was exacerbated by Pollard not notifying the City Council of the $200,000 payment or obtaining the City Council's consent of the payment" to the Festival of Trees.

In the Matter of Amy J. Fripp - The Commission concluded public proceedings against former Department of Housing and Community Development (DHCD) Paralegal Amy J. Fripp by concluding that the Commission's Enforcement Division did not prove its case and ordering the matter dismissed. In July 2003, Fripp, who was employed at the time as a paralegal at DHCD, purchased an affordable housing condominium unit in Lincoln pursuant to the Homeownership Opportunity Program (HOP). HOP is a DHCD program that assists low and moderate income households in buying affordable homes at a discounted price. As part of the purchase, Fripp signed a deed rider restricting the resale of the condominium, as required by HOP. The Commission's Enforcement Division alleged in June 2005 that Fripp violated G.L. c. 268A, § 7 when she purchased the condominium pursuant to HOP while she was a DHCD employee. Section 7 generally prohibits a state employee from having a financial interest in a contract made by the state. The Commission's Decision and Order concluded that the Enforcement Division did not prove that the deed rider was "a contract made by a state agency in which the commonwealth or a state agency is an interested party."

In the Matter of David Aragona - The Commission found reasonable cause to believe that Massachusetts Convention Center Authority (MCCA) sound technician David Aragona violated the code of conduct section of M.G.L. c. 268A, the conflict of interest law, by attending meetings of the Board of State Examiners of Electricians while he was on MCCA time and receiving MCCA compensation. The Commission concluded its review of this matter with the issuance of a Public Education Letter. According to the letter, beginning in 2002, Aragona, who is scheduled to work from 6:00 a.m. to 2:00 p.m., attended meetings of the Electricians Board during those hours. The Electricians Board meets once a month from approximately 10:00 a.m. to 3:30 p.m. Aragona did not receive written approval from his appointing authority to attend the Electrician Board meetings on MCCA time. Section 23(b)(2) of G.L. c. 268A prohibits a municipal employee from using his position to secure an unwarranted privilege of substantial value for himself or others. In 1998, the Commission ruled that a public official would not violate § 23(b)(2) by using state time and resources to perform duties for a private non-profit association provided that the public official's appointing authority approved the arrangement in writing and specified that the following three conditions were met: (1) the duties were in furtherance of the public interest; (2) the duties were interconnected with the public official's duties and (3) the duties were not used toward partisan political ends. The Public Education Letter notes that the same three conditions must be met when a public official is using state time and resources for another public position and emphasizes the importance of written approval.

In the Matter of Robert Baylis
In the Matter of Shawn S. Winsor - The Commission approved two Disposition Agreement in which Lancaster Board of Health (BOH) chairman Shawn S. Winsor and member Robert Baylis admitted to violating the state's conflict of interest law, G.L. c. 268A, by authorizing payment to themselves for mowing the town's landfill. Winsor agreed to pay a $5,000 civil penalty and $2,700 civil forfeiture for the money he improperly received and Baylis paid a $2,000 civil penalty and $1,800 civil forfeiture for the money he improperly received. According to the Disposition Agreement, in spring 2004 the Lancaster BOH was unsuccessful in finding a vendor to mow the town's landfill. Failure to mow it could result in fines by the Department of Environmental Protection. Baylis and Winsor decided to mow the landfill themselves. On June 3, Winsor and another BOH member signed a blank voucher authorizing payment for mowing the landfill. Neither the vendor's name nor the amount of the payment was included in the voucher. On June 25, Winsor submitted an invoice from Bowen Landscaping, a company he owned, in the amount of $4,890. A vendor would usually submit an invoice for work that had already been performed; the

landfill was not yet mowed on June 25. The BOH assistant entered 'Bowen Landscaping' and the amount on the blank voucher. The town issued a check on July 15. Winsor had the BOH hold the check until August 14, when Baylis, using his own tractor, and Winsor, using a tractor rented by Baylis, mowed the landfill. Winsor then cashed the check from the town for $4,890, paid the $388 cost of the rental tractor, gave approximately $1,800 to Baylis and kept approximately $2,700. Section 19 of the conflict of interest law prohibits a municipal employee from officially participating in matters in which to his knowledge he has a financial interest. By awarding a contract from which they were to be paid, Winsor and Baylis violated § 19. Winsor also violated § 19 by approving a blank voucher authorizing payment to his company. Section 20 prohibits a municipal employee from having a financial interest in a contract made by the municipality. By receiving pay for mowing the landfill, Winsor and Baylis had a financial interest in a contract with the town and violated § 20. Section 23(b)(2) of the conflict law prohibits a public employee from using or attempting to use his position to secure for himself or others an unwarranted privilege of substantial value not properly available to similarly situated individuals. By using his position to improperly secure a $4,890 contract, Winsor violated § 23(b)(2).

In the Matter of Paul Hoey - Civil Engineer Paul Hoey was fined $2,000 for violating the state's conflict of interest law, G.L. c. 268A, by participating in the promotion process where his son was one of the applicants. According to a Disposition Agreement, in February 2006, a Civil Engineer II position was posted. Hoey's son was one of 14 applicants that met the minimum requirements of the position. Hoey did not disclose to his appointing authority that his son, who was currently working as a Civil Engineer I, was a candidate for the position. Hoey chaired the job search committee, selected two subordinates to serve on the committee with him, determined which questions to include in a written civil service test and proctored the exam. He and the other two committee members individually scored the tests; scores were combined to arrive at an overall score for each candidate. Hoey's son scored second highest on the test. Hoey forwarded the scores of the top 12 candidates to the appointing authority. The candidate who scored first accepted the position. MassHighway had been prepared to promote three people from the posting but after learning of Hoey's participation in the matter decided not to use the results for subsequent hirings. In addition, MassHighway removed Hoey from the acting DME position and returned him to the civil engineer position he had previously held. Section 6 of the conflict law prohibits a state employee from officially participating in matters in which to his knowledge an immediate family member has a financial interest. By participating in the promotion process where his son was an applicant, Hoey violated § 6.

In the Matter of Paul Cokinos - The Commission approved a Disposition Agreement in which developer Paul Cokinos admitted violating the state's conflict of interest law and agreed to pay a civil penalty of $2,000. According to the Disposition Agreement, Cokinos, a resident of Dedham, violated G.L. c. 268A, § 17(b) by, in spring 2005, paying Rockland Conservation Commissioner Kenneth Karlson $10,000 to perform excavation work on a construction project at the Massachusetts Sports Club. In summer 2004, Karlson participated as a Conservation Commission member in the issuance of an order of conditions for the project that included the grading that he later performed. Karlson served as a Conservation Commissioner until May 2005. Section 17(b) of the conflict law prohibits anyone from compensating a municipal employee in relation to particular matters in which the town has an interest. The Conservation Commission's decision concerning the grading requirements on the project was a particular matter in which the town of Rockland had a direct and substantial interest.

In the Matter of Robert Galewski – The Commission fined Braintree Building Inspector Robert Galewski $4,000 and required him to pay a civil forfeiture of $1,500, representing the unjust enrichment he received, for violating the state's conflict of interest law, M.G.L. c. 268A, by using his subordinates and a vendor to perform private work for him without pay. According to the Disposition Agreement, in March 2001, Galewski asked local general contractor Brian McGourty to replace the mailbox at Galewski's personal residence. The total cost for labor and materials was approximately $285. Galewski did not compensate McGourty for the labor or materials. In addition, on numerous occasions between 2001 and 2006, McGourty or one of his employees plowed snow from Galewski's driveway. The usual rate for driveway snowplowing is $35-50 per job. Galewski did not compensate McGourty for the snowplowing. Between 2002 and 2006, Galewski issued building permits and conducted inspections on projects of McGourty, including a 2004 plan for a $1 million building project in which Galewski requested deferral of Planning Board approval until certain outstanding Building Department concerns were resolved. The Disposition Agreement also discusses Galewski's solicitation of subordinate inspector Michael McGourty (the brother of Brian McGourty) to help transport a dishwasher from a department store to Galewski's personal residence in 2005 and subordinate inspector Eric Erskine to plow Galewski's driveway on numerous occasions between 2001 and 2006. Galewski did not compensate Michael McGourty; he gave Erskine a bottle of liquor and two $50 gift certificates in appreciation of his services. According to the Disposition Agreement, Galewski "was in a position to exercise discretion over supervisory matters involving Michael McGourty and Erskine as his Building Department

employees." Section 23(b)(2) of the conflict law prohibits a public employee from using or attempting to use his position to secure for himself or others an unwarranted privilege of substantial value not properly available to similarly situated individuals. By using his Building Inspector position to get free services from subordinates and a vendor, Galewski violated § 23.

In the Matter of Edward Cataldo - The Massachusetts State Ethics Commission approved a Disposition Agreement in which Leominster Building Department Director of Inspections Edward Cataldo admitted violating the state's conflict of interest law and agreed to pay a fine of $3,300, made up of a $3,000 civil penalty and a $300 civil forfeiture. According to the Disposition Agreement, Cataldo has a private business, Energy Plus. In 2001 and 2002, he advertised his private business through a flier taped to the Building Department front counter. The flier was also distributed to permit applicants. On six occasions, Cataldo produced energy code audit reports for private clients of his business. Cataldo's clients submitted the reports produced by Cataldo to the building department along with building permit applications. Such reports are required as part of the local building permit process and were reviewed by a building inspector prior to issuing a building permit. Cataldo earned $50 for each report. In one instance, Cataldo, as Director of Inspections, reviewed an energy code audit report that he had been paid privately to produce. Section 17(a) of the conflict law prohibits a municipal employee from receiving compensation from anyone other than the town in relation to particular matters in which the city has an interest. By receiving compensation from his clients for energy code audit reports that were then submitted with building permits, Cataldo violated this section of the law. Section 19 of the conflict of interest law prohibits a municipal employee from officially participating in matters in which to his knowledge, he or a business organization in which he is serving as an officer, director, trustee, partner or employee has a financial interest. By reviewing the energy code audit report that he had been paid privately to produce, Cataldo violated § 19. Section 23(b)(2) of the conflict law prohibits a public employee from using or attempting to use his position to secure for himself or others an unwarranted privilege of substantial value not properly available to similarly situated individuals. By using his position to advertise his private business, Cataldo violated § 23(b)(2).

In the Matter of William Lynch - Massport Business Analysis Manager William Lynch, a Charlestown resident, was fined $7,000 for violating the state's conflict of interest law by using his office and office equipment to operate a tax preparation business. According to a Disposition Agreement, during the 2005 and 2006 tax seasons, Lynch prepared the majority of his approximately 200 clients' tax returns using his Massport office computer and office facilities. Between February and April each year, he spent approximately 12 hours each week after his state work hours on this private tax work. Section 23(b)(2) of the conflict law prohibits a public employee from using or attempting to use his position to secure for himself or others an unwarranted privilege of substantial value not properly available to similarly situated individuals. By extensively using state resources for his private tax preparation business, Lynch violated § 23(b)(2). After an investigation, Massport suspended Lynch one week for his inappropriate computer usage.

In the Matter of Paul Donlan - The Commission approved a joint motion to dismiss charges that Abington Treasurer/Collector Paul Donlan violated the state's conflict of interest law, G.L. c. 268A, by completing forms that allowed Thomas Connolly, a former friend and Donlan's predecessor as Treasurer/Collector, to collect unemployment benefits. The Commission had charged that Donlan had violated G.L. c. 268A, § 23(b)(2) and 23(b)(3). Section 23(b)(2) of the conflict law prohibits a public employee from using or attempting to use his position to secure for himself or others an unwarranted privilege of substantial value not properly available to similarly situated individuals. Section 23(b)(3) of the conflict law prohibits a public official from knowingly or with reason to know acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy the public employee's favor in the performance of his official duties. The parties recently discovered evidence indicating that the Division of Unemployment Assistance (DUA) mistakenly permitted Connolly to file a claim despite the fact that, under state law, elected employees are ineligible to receive unemployment compensation. In view of this newly discovered evidence, the parties filed a joint motion to dismiss the charges that Donlan violated G.L. c. 268A § 23(b)(2). The motion to dismiss concluded that the facts support the conclusion that Donlan created the appearance of a conflict of interest in violation of G.L. c. 268A § 23(b)(3) by participating in approving Connolly's unemployment claim, given their previous relationship, but that this appearance of a conflict of interest alone was not sufficient to warrant a fine. The Commission allowed the joint motion, dismissing the charges against Donlan.

In the Matter of Edmund F. Tarmey - The Commission approved a settlement in which former Lowell Regional Water Utility Executive Director Edmund F. Tarmey paid a penalty of $2,500 for violating the state's conflict of interest law, G.L. c. 268A, by acting on two contracts to purchase furniture from Allied Office Products (Allied), a company

that employed his brother Leonard as a commissioned sales person. This resolution concludes the public hearing in this matter. According to a Disposition Agreement, in 2001 and 2002 Allied sold office furniture to the Water Utility on two occasions. The total value of the furniture was approximately $26,000. Tarmey participated in the purchases by certifying Allied's performance of each contract. The certification was necessary for Allied to receive payment. Leonard earned commissions on both contracts. Section 19 of the conflict of interest law prohibits a municipal employee from officially participating in matters in which to his knowledge an immediate family member has a financial interest. By certifying Allied's performance when he knew that his brother was Allied's commissioned sales representative for the contracts, Tarmey violated § 19.

In the Matter of Thomas Campbell - Hingham Recreation Commissioner Thomas Campbell admitted violating the state's conflict of interest law by repeatedly requesting that his daughter, a part-time seasonal employee of the Recreation Commission, be given additional hours. Campbell paid a civil penalty of $2,000. According to the Disposition Agreement, between April 2004 and early 2005, Campbell asked Hingham Recreation Program Coordinator Ted Carroll on a number of occasions if he had any additional hours to give Campbell's daughter. Carroll gave Campbell's daughter an additional weekly shift as a result of Campbell's requests. Carroll would not have given her additional work had Campbell not used his official position to ask him to do so. Campbell's daughter was paid $7.85 per hour and earned a total of approximately $1,715 while employed by the Recreation Commission. Section 19 prohibits a municipal employee from officially participating in matters in which to his knowledge his immediate family has a financial interest. Section 23(b)(2) of the conflict law prohibits a public employee from using or attempting to use his position to secure for himself or others an unwarranted privilege of substantial value not properly available to similarly situated individuals. By asking Carroll if he had additional hours to give to his daughter, Campbell violated G.L. c. 268A, §§ 19 and 23(b)(2).

In the Matter of Albert Inostroza - The Commission fined Lawrence police patrolman Albert Inostroza $2,000 for violating the state's conflict of interest law by failing to promptly report that a friend's daughter had a gun. According to a Disposition Agreement, on July 29, 2006, a friend asked Inostroza, who was off duty, to come to his home because the friend and his wife discovered a .22-caliber revolver in the bedroom of their 17-year-old daughter. Inostroza took possession of the gun. The friend asked him to delay reporting the gun until the friend and his wife had a chance to talk further with their daughter. Possession of a firearm without an identification card has penalties of up to two years in jail and/or a $1,000 fine. Police officers are required to promptly report all important happenings which come to their attention, whether on or off-duty. On August 7, 2006, hours after the police department's internal affairs division learned about the gun through a confidential informant and began an investigation, Inostroza filed a police report concerning the gun and submitted the gun to the evidence officer. Section 23(b)(2) of the conflict law, G.L. c. 268A, prohibits a public employee from using or attempting to use his position to secure for himself or others an unwarranted privilege of substantial value not properly available to similarly situated individuals. By failing to promptly report the gun, Inostroza violated § 23(b)(2). Inostroza was suspended for 10 days by the police department.

In the Matter of Paul LaFratta - The Commission issued a Disposition Agreement in which North Attleborough Electrical Inspector Paul LaFratta admitted violating the state's conflict of interest law and agreed to pay a fine of $3,000 for approving six permit applications sought by LaFratta Electric, Inc., a company owned by LaFratta and his son Michael. According to the Disposition Agreement, LaFratta and Michael applied for electrical permits to do private electrical work on six occasions in 2005 and 2006. LaFratta approved the applications. The Disposition Agreement states that the Commission is not aware of any evidence that Michael or LaFratta Electric would not have otherwise been entitled to have the applications approved, that LaFratta inspected or approved any of the electrical work performed by Michael or LaFratta Electric or that the electrical work performed by Michael or LaFratta Electric did not comply with applicable codes. Section 19 of G.L. c. 268A prohibits a municipal employee from officially participating in matters in which to his knowledge he, his immediate family or a business in which he is serving as an owner or employee has a financial interest. By participating as an electrical inspector in approving the applications of his company, LaFratta Electric, Inc., and/or his son Michael, LaFratta participated in matters affecting their financial interests.

In the Matter of Francis Marchand - The Commission fined Westborough State Hospital Director of Maintenance of Facilities and Engineering Francis Marchand $1,000 for violating the state's conflict of interest law, G.L. c. 268A, by participating in hiring his brother-in-law as a carpenter earning $33,000 per year. According to the Disposition Agreement, in October 2006, the hospital posted an opening for a carpenter. Marchand's brother-in-law (his wife's sister's husband) was an applicant. Marchand reviewed applicants' resumes and, serving on a five member panel, participated in interviewing and grading each candidate.

Based on this process, Marchand's supervisor, who also sat on the panel, recommended that the brother-in-law be hired. Section 23(b)(3) prohibits a public official from knowingly or with reason to know acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy the public employee's favor in the performance of his official duties. By participating in the hiring process where his brother-in-law was a candidate, Marchand violated G.L. c. 268A, § 23(b)(3). Marchand could have avoided violating §23(b)(3) by making an advance written disclosure that one of the candidates was his brother-in-law. He did not make such a disclosure.

In the Matter of Kevin Cahoon
In the Matter of Mark Vincent - The Commission issued two Disposition Agreements in which Wellfleet Department of Public Works (DPW) Director Mark Vincent and Assistant Director Kevin Cahoon were each fined $500 for Cahoon's personal use of town equipment. According to the Disposition Agreement, Vincent allowed Cahoon to take a DPW wood chipper to his home and use it for tree-clearing work. Cahoon had the chipper at his home from October 2006 until he returned it following questions by the Wellfleet police in April 2007. Cahoon has since resigned his position with the Wellfleet DPW. Section 23(b)(2) of the conflict law prohibits a public employee from using or attempting to use his position to secure for himself an unwarranted privilege of substantial value not properly available to similarly situated individuals. By allowing Cahoon to take possession of and use the chipper without following the required disposal procedures, Vincent violated this section of the law. By taking possession of the chipper and using it for personal purposes, Cahoon also violated this section of the law.

In the Matter of Carl G. Christianson, Jr. The Commission approved a Disposition Agreement in which Rutland Department of Public Works (DPW) supervisor Carl G. Christianson, Jr. paid a penalty of $5,000 for violating the state's conflict of interest law, G.L. c. 268A, by participating in the hiring of his son without following standard hiring procedures and then attempting to cover up his actions. According to a Disposition Agreement, in September 2006, an opening for a full-time operator/laborer occurred in the DPW sewer department. The standard hiring process, which includes publicly advertising the open position and interviewing candidates, was not followed. Instead, Christianson recommended to selectmen that his son be appointed to the position. Selectmen were aware that Christianson was recommending his son but were not aware that the standard hiring process had not occurred. They voted to approve Christianson's recommendation to hire his son on October 10, 2006. In January 2007, after the Commission's Enforcement Division staff made inquiries to Christianson about the hiring and requested relevant documents, Christianson used a DPW computer to create a posting for the position. The Disposition Agreement states, "In an attempt to thwart the Commission's investigation, Christianson had a copy of the fraudulent posting forwarded to the Commission." He later admitted that he created the posting after the hiring in order to cover up the fact that proper procedures had not been followed. Section 19 of the conflict of interest law prohibits a municipal employee from officially participating in matters in which to his knowledge an immediate family member has a financial interest. By recommending that his son be hired for the operator/laborer position, Christianson violated § 19. Section 23(b)(2) of the conflict law prohibits a public employee from using or attempting to use his position to secure for himself or another an unwarranted privilege of substantial value that is not properly available to similarly situated individuals. By failing to follow standard hiring procedures and by attempting to cover up his failure to follow such procedures, Christianson violated § 23.

In the Matter of Walter Tortorici - The Commission issued a Disposition Agreement in which part-time Medfield Building Inspector Walter Tortorici admitted violating the state's conflict of interest law, G.L. c. 268A, by applying for building permits and doing work in connection with those permits for private customers. Tortorici paid a civil penalty of $2,000. According to the Disposition Agreement, on 13 occasions between February 2005 and December 2006, Tortorici 'pulled' building permits on behalf of private customers of Design Builders of Medfield and G.T. Builders, Tortorici's residential remodeling and addition companies. The private customers compensated him for the work performed in connection with the permits. Tortorici did not participate as building inspector in matters involving permits he pulled. Section 17(a) of G.L. c. 268A prohibits municipal employees from otherwise than as provided by law for proper discharge of official duties directly or indirectly receiving or requesting compensation from anyone other than their city, town or municipal agency in relation to a particular matter in which the same city or town is a party or has a direct and substantial interest. By receiving compensation from private customers in connection with the permits, which are matters in which the town has a direct and substantial interest, Tortorici violated § 17(a). Section 17(c) of the conflict of interest law prohibits a public employee from acting as an agent or attorney for anyone other than the town in connection with a particular matter in which the town is a party or has a direct and substantial interest. By applying on behalf of his private customers for permits, Tortorici violated § 17(c). A local option law enabling part-time building inspectors to do private construction work in their jurisdiction under certain conditions was not in effect in

Medfield in 2005 and 2006. The town adopted this law in April 2007.

In the Matter of James Murray

In the Matter of Diego Nicolo – The Commission fined former North Reading Highway Department employee James Murray $750 for violating the state's conflict of interest law, G.L. c. 268A, by receiving compensation for private work installing and testing water lines and former Water Department employee Diego Nicolo $1,000 for violating the law by also receiving compensation for the same private work as well as using his official position to obtain private work. According to two Disposition Agreements, Murray and Nicolo started a business called "D. Nicolo J. Murray Water Pipe Testing." On three occasions, Nicolo and Murray were paid by North Reading residents or businesses to perform water pressure tests that either one or both of them performed. In addition, on one occasion, Nicolo and Murray installed a water line and a hydrant. Nicolo's supervisor inspected all of the work performed by Nicolo and Murray. Section 17(a) of the conflict of interest law prohibits a public employee from receiving compensation from anyone other than the town in relation to a particular matter in which the town is a party or has a direct and substantial interest. By receiving private compensation for testing and installing water lines in North Reading, work in which the town through its inspections had an interest, Murray and Nicolo violated § 17(a). In addition, Nicolo also violated § 23(b)(2) by, on town time and in his official uniform, telling a contractor that he could perform a water pressure test, but not on town time. Section 23(b)(2) prohibits a public employee from using or attempting to use his official position to secure for himself or others an unwarranted privilege of substantial value not properly available to similarly situated individuals. The Disposition Agreements state that Nicolo sought and received permission to perform private water tests in North Reading from his supervisor, but that neither Nicolo nor Murray sought advice about how performing and being paid to perform this work might violate the conflict of interest law.

In the Matter of Raymond Payson - The Commission approved a settlement in which North Attleborough Planning Board Chairman Raymond Payson paid a penalty of $5,000 for violating the state's conflict of interest law, G.L. c. 268A, by participating in several decisions involving property abutting property owned by Payson and his brother. According to a Disposition Agreement, Payson and his brother own a 7.6 acre vacant lot on Landry Avenue that abuts an 11.1 acre lot on John Dietsch Boulevard owned by Corliss Development Group, L.L.C. (Corliss). In early spring 2006, when Corliss submitted plans for the development of its property, Payson stated he was not going to participate in the Corliss property development matters because of his abutter status. Notwithstanding this statement, Payson participated by: approving a site plan application; attending and participating in discussions during a site walk; approving site plan modifications; inspecting the property with the Planning Board engineer; and writing a letter to Corliss on Planning Board letterhead stating that utility work was "at risk of not receiving planning board approval." Section 19 of the conflict of interest law prohibits a municipal employee from officially participating in matters in which to his knowledge he or an immediate family member has a financial interest. By participating in approvals, decisions and inspections regarding the Corliss property which would have a reasonably foreseeable financial impact on his abutting property's value, Payson violated § 19.

In the Matter of Anthony Giannino

In the Matter of Randy Adamson - The Commission fined Revere Department of Public Works (DPW) Sewer Foreman Randy Adamson and Drain Department Foreman Anthony Giannino $8,000 each for violating the state's conflict of interest law, G.L. c. 268A, by paying bribes to DPW Water and Sewer Enterprise Fund General Foreman Joseph Maglione for private water and/or sewer projects in Revere and for receiving compensation for the private work. According to two Disposition Agreements, as DPW employees, Adamson and Giannino were responsible for installing and repairing the city's sewer and storm main lines. The DPW does not install or maintain private connections between the city's main lines and residential or business properties; work on such service lines is handled by private drain layers who are licensed and bonded to do such work. Neither Adamson nor Giannino was a licensed drain layer. Such work generally requires a street opening permit costing $200 and must be inspected by the DPW. Maglione was responsible for such inspections. Between 2002 and March 2006, Adamson and Giannino were privately compensated for approximately 25 water and/or sewer projects in Revere. Most of these projects required permits: on a few occasions the permit was obtained through a licensed drain layer; on other occasions no permit was sought. Adamson and Giannino testified that Maglione approached them in 2002 and asked for $200-250 for every new water and/or sewer service installation they performed. Between 2002 and summer 2005, they gave Maglione a total of $3,000-$4,000 regarding these installations. Section 2(a) of the conflict of interest law prohibits anyone from corruptly giving anything of value to a municipal employee with intent to influence any official act or act within his official responsibility. By repeatedly giving Maglione payments of $200-250 for each new water and/or sewer installation, Adamson and Giannino violated this section.
Section 17(a) prohibits a public employee from receiving compensation from anyone other than the town in relation to a particular matter in which the town is a party or has a

direct and substantial interest. By receiving private compensation for performing drain-laying projects, Adamson and Giannino violated § 17(a).

In the Matter of Diana Brensilber Chidsey - The Commission fined former Executive Office of Public Safety (EOPS) employee Diana Brensilber Chidsey, $5,000 for violating the state's conflict of interest law, M.G.L. c. 268A, by repeatedly participating as an EOPS employee in EOPS grants that directly or indirectly impacted clients of Crest Associates (Crest), and thus Crest, while she and her husband were working as consultants for Crest. Crest was a Boston based firm that provided grant application and program management services to Massachusetts municipal law enforcement agencies that were seeking these grants. According to the Disposition Agreement, Chidsey served as Director of Research and Evaluation at EOPS from 1997 until August 2003. In 2002, she also held the title of Chief of Staff and, for two months in 2003, she served as Programs Division Acting Executive Director. Chidsey and her husband provided consultant services to Crest beginning in 2002. Chidsey disclosed in writing to the then EOPS secretary that she was providing consulting services to police departments outside of Massachusetts; she did not disclose in writing that she was working as a consultant for Crest. She also did not respond to a form request in 2003, when a new EOPS administration took over, to disclose any outside employment. As an EOPS employee, Chidsey contributed to the planning of a federally funded state homeland security grant program. Crest subsequently applied for grants on behalf of its police department clients. Chidsey served on one of seven EOPS teams which rated applications. While none of the applications rated by Chidsey's team were on behalf of Crest's clients, the applications were in competition with those submitted by Crest on behalf of its clients. In August 2003, Chidsey left EOPS and accepted a full-time consulting position with Crest. Section 23(b)(3) prohibits a public official from knowingly or with reason to know acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy the public employee's favor in the performance of his official duties. By repeatedly participating as an EOPS employee in EOPS grants that impacted Crest clients while she was consulting for Crest and its clients, Chidsey violated this section of the law.

In the Matter of Louis DiNatale - The Commission found reasonable cause to believe that University of Massachusetts-Lowell (UMass-Lowell) Executive Director of Public Affairs and Director of the Center for Economic and Civic Opinion (CECO) Louis DiNatale violated the code of conduct section of M.G.L. c. 268A, by consulting for private clients on matters related to and/or overlapping with UMass-Lowell polls. The Commission concluded its review of this matter with the issuance of a Public Education Letter. According to the letter, DiNatale conducted polls for UMass-Lowell, some of which involved political issues and campaigns. In his private capacity, DiNatale also conducted polls as a paid political consultant. In 2005, DiNatale, as a private political pollster, conducted a political poll for Christy Mihos, who was contemplating running for governor, on September 25-29, 2005. Around the same time, DiNatale conducted a poll for the University on September 19-27, 2005 that included four questions concerning Mihos. DiNatale did not disclose to his appointing authority regarding the private polling work he performed for Mihos, although his appointing authority was generally aware that DiNatale engaged in private polling work. Section 23(b)(3) of the conflict law prohibits a public official from knowingly or with reason to know acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy the public employee's favor in the performance of his official duties. Section 23 addresses situations "where an appearance arises that the integrity of a public official's action might be undermined by a private relationship or interest," according to the letter issued by Acting Executive Director David A. Wilson. "It is essential that public employees' objectivity, both in fact and in appearance, be maintained so that public confidence in their official actions can be assured."

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY
DOCKET NO. 07-0002

IN THE MATTER OF
MICHAEL ROSS

DISPOSITION AGREEMENT

The State Ethics Commission and Michael Ross enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On June 8, 2006, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Ross. The Commission concluded its inquiry and, on July 25, 2006, found reasonable cause to believe that Ross violated G.L. c. 268A.

The Commission and Ross now agree to the following findings of fact and conclusions of law.

Findings of Fact

Michael P. Ross is a Boston city councilor. He assumed that office in January 2001.

In August 2000, the Boston Transportation Department instituted an administrative policy enabling city councilors to have parking violations "administratively dismissed" under certain circumstances. According to the policy, exercising this privilege requires that the councilor be "performing official city business" when the violation occurs.

From January 2002 through February 2006, Ross had parking violations dismissed under the policy. Most of these tickets involved parking violations resulting from a failure to pay parking meter fees ($25 per ticket) and/or parking without a permit in residents-only parking spots ($40 per ticket). Although Ross was a resident of Boston and therefore eligible for a resident parking permit, he did not obtain such a permit.

While a majority of the tickets dismissed during this four year period were issued while Ross was on City business, approximately 35 (out of a total of 105) were issued while he was engaged in personal rather than City business. The estimated value of the dismissed tickets involving personal business was approximately $1,000.[1] Ross has since reimbursed the City $1,000 regarding these tickets.

Conclusions of Law

General laws, c. 268A, § 23(b)(2) prohibits a municipal employee from knowingly, or with reason to know, using his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and not properly available to similarly situated individuals.

As a Boston city councilor, Ross was a municipal employee within the meaning of G.L. c. 268A.

The dismissal of approximately $1,000 in personal business parking tickets was a privilege or exemption of substantial value.

Ross used his Boston city councilor position to obtain the dismissals.

Ross's having these parking tickets dismissed was unwarranted because the ticket violations occurred while Ross was engaged in personal rather than official city business and because so dismissing these tickets was in violation of the written Boston Transportation Department policy.

This unwarranted privilege was not otherwise properly available to similarly situated municipal employees.

Therefore, by knowingly using his position as a Boston city councilor to secure for himself unwarranted privileges or exemptions of substantial value not properly available to similarly situated individuals, Ross repeatedly violated §23(b)(2).

Resolution

In view of the foregoing violations of G.L. c. 268A by Ross, the Commission has determined that the public interest would be served by the disposition of this matter without further

enforcement proceedings, on the basis of the following terms and conditions agreed to by Ross:

> that Ross pay to the Commission the sum of $2,000 as a civil penalty for violating G.L. c. 268A as noted above; parking tickets; and
>
> that Ross waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: January 30, 2007

[1] The exact number and value of the tickets improperly dismissed cannot be determined because of the passage of time and the absence of recordkeeping.

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY DOCKET NO. 07-0003

IN THE MATTER OF
JAMES MANNING

DISPOSITION AGREEMENT

The State Ethics Commission and James Manning enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On June 22, 2005, the Commission initiated a preliminary inquiry, pursuant to G.L. c. 268B, § 4(a), into possible violations of the conflict-of-interest law, G.L. c. 268A, by Manning. The Commission amended the inquiry on March 16, 2006. The Commission has concluded its inquiry and, on July 25, 2006, found reasonable cause to believe that Manning violated G.L. c. 268A.

The Commission and Manning now agree to the following findings of fact and conclusions of law.

Findings of Fact

Manning was a Monson selectman during the time relevant.

The selectmen also served as the police commissioners.

In 2001, Manning asked Police Chief Joseph Rebello if there were any extra police pistols and, if so, to issue one to him for protection.

Manning wanted the pistol because he felt threatened by a suspended Monson police sergeant. Manning's primary concern was to protect himself from the suspended sergeant.

Manning also felt that he was entitled to a police pistol because he was a police commissioner, even though the selectmen/police commissioners had never been issued police pistols and had no enforcement responsibilities requiring them to carry pistols.

Manning could have bought his own pistol.

The value of the police pistol was about $415.

Rebello agreed to give Manning a police pistol on the condition that Manning go through the firearm qualification training course that the Monson police officers attended.

Manning, who already had a gun permit, completed the course successfully.

Subsequently, Rebello issued the weapon to Manning.

Manning returned the weapon to the department later in 2001 when he left for military duty. Manning was in possession of the pistol for a period of approximately six months.

In 2003, when Manning had returned from military duty, he asked then Police Chief Curtis McKenzie to issue him a police pistol. Manning explained that he had completed the Firearm Safety Course and that the prior chief had issued him a pistol. Manning further explained that he wanted the pistol because he felt threatened by the above-motioned police sergeant. McKenzie found this request very irregular and was noncommittal.

On a second occasion, Manning came into the chief's office with a gun holster and said that

he wanted to see if the police pistol would fit his holster. McKenzie told him that it would not fit, and Manning left.

McKenzie felt pressured by Manning—who was not only a selectman and police commissioner but also a member of McKenzie's appointing authority—but he decided not to give in to Manning's request.

In late 2003, McKenzie brought the issue to the attention of the other two selectmen, asking them to advise him on whether he should issue a pistol to Manning. The other two selectmen decided that Manning should not get a police pistol.

There is nothing in the Monson town ordinances or the Massachusetts General Laws that authorizes a police commissioner to be issued a police department pistol.

Conclusions of Law

As a Monson selectman, Manning was a municipal employee as that term is defined in G.L. c. 268A, § 1(g), and therefore subject to the conflict-of-interest law.

Section 23(b)(2) prohibits a municipal employee from, knowingly or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions of substantial value not properly available to similarly situated individuals.

Manning's receipt of the police department pistol in 2001 was an unwarranted privilege not properly available to similarly situated individuals.

But for his position as a selectman/police commissioner and his authority over Rebello, Manning would not have received the pistol. Thus, Manning knew or had reason to know that he was using his official position in receiving the police pistol from the police chief.

The pistol that Manning obtained was an item of substantial value, valued at over $50.

Manning's requests in 2003 to obtain a police department pistol similarly involved his using his official position in attempts to secure an unwarranted privilege of substantial value not properly available to similarly situated individuals.

Accordingly, Manning violated § 23(b)(2) in both 2001 and 2003 by knowingly or with reason to know using or attempting to use his official position to secure for himself unwarranted privileges of substantial value that were not properly available to similarly situated individuals.

Resolution

In view of the foregoing violations of G.L. c. 268A by Manning, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Manning:

(1) that Manning pay to the Commission the sum of $2,000 as a civil penalty for violating G.L. c. 268A; and

(2) that Manning waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: January 31, 2007

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY DOCKET NO. 07-0004

IN THE MATTER OF
JOSEPH REBELLO, JR

DISPOSITION AGREEMENT

The State Ethics Commission and Joseph Rebello enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On March 16, 2006, the Commission initiated a preliminary inquiry, pursuant to G.L. c. 268B, § 4(a), into possible violations of the

conflict-of-interest law, G.L. c. 268A, by Rebello. The Commission has concluded its inquiry and, on July 25, 2006, found reasonable cause to believe that Rebello violated G.L. c. 268A.

The Commission and Rebello now agree to the following findings of fact and conclusions of law.

Findings of Fact

1. Rebello served as the Monson police chief from February 1992 until July 2001.

2. During the time relevant, the Monson board of selectmen served as the police commissioners, with the responsibility of overseeing the police department.

3. In late 2000 or early 2001, Monson Selectman James Manning asked Chief Rebello if there were any extra police pistols and, if so, to issue him one for protection.

4. Ordinarily, the selectmen were not issued police pistols, regardless of their status as police commissioners.

5. Manning wanted the pistol because he was fearful of a suspended Monson police sergeant.

6. Rebello knew that Manning's primary concern was to protect himself from the suspended police sergeant.

7. Rather than require Manning to buy his own gun, Rebello agreed to give Manning a police pistol on the condition that Manning go through the firearm qualification training course that the Monson police officers attended.

8. One factor in Rebello's decision was Manning's position as a selectman.

9. Manning, who already had a gun permit, completed the course successfully.

10. Subsequently, Rebello issued the weapon to Manning.

11. Rebello never disclosed in writing to anyone that he had issued a police pistol to a selectman, one of his superiors.

12. There is nothing in the Monson town ordinances or the Massachusetts General Laws that explicitly authorizes a police chief to issue a police department pistol to a police commissioner.

Conclusions of Law

13. As the Monson police chief, Rebello was a municipal employee as that term is defined in G.L. c. 268A, § 1(g), and therefore subject to the conflict-of-interest law.

14. Section 23(b)(2) prohibits a municipal employee from, knowingly or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions of substantial value not properly available to similarly situated individuals.

15. Rebello used his official position as the police chief in issuing a police pistol to Manning.

16. The police pistol was a public resource and an item of substantial value, valued at over $50.

17. As a public resource, the police pistol should have been issued only for public purposes.

18. Rebello's giving Manning a pistol for Manning's personal use and purposes was an unwarranted privilege not properly available to similarly situated individuals.

19. Accordingly, Rebello violated § 23(b)(2) by knowingly or with reason to know using his official position to secure for Manning an unwarranted privilege of substantial value that was not properly available to similarly situated individuals.

Resolution

In view of the foregoing violations of G.L. c. 268A by Rebello, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Rebello:

(1) that Rebello pay to the Commission the sum of $1,000 as a civil penalty for violating G.L. c. 268A; and

(2) that Rebello waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: January 31, 2007

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY DOCKET NO. 07-0005

IN THE MATTER OF
MATTHEW STRAIGHT

DISPOSITION AGREEMENT

The State Ethics Commission and Matthew Straight enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On May 11, 2006, the Commission initiated a preliminary inquiry, pursuant to G.L. c. 268B, § 4(a), into possible violations of the conflict-of-interest law, G.L. c. 268A, by Straight. The Commission has concluded its inquiry and, on September 13, 2006, found reasonable cause to believe that Straight violated G.L. c. 268A.

The Commission and Straight now agree to the following findings of fact and conclusions of law.

Findings of Fact

Straight served as a Fitchburg city councilor from 2000 until January 2006, representing Ward 4.

Straight worked for and owned 2% of Johnsonia Associates, a limited partnership created to own and manage a 52-unit apartment building, the Johnsonia, on Main Street in Fitchburg. Straight's father owned a majority share of the partnership, and a third person owned the remaining share.

Straight was in charge of managing the Johnsonia building and its tenants.

In January 2002, Straight telephoned the State Ethics Commission's Legal Division, asking for advice on whether he could participate as a city councilor in a matter involving his and his father's real estate business. Straight was advised to write in for advice, but Straight never did so.

In October 2002, Straight received oral advice from the Legal Division on whether he could participate as a city councilor in a discussion regarding whether to keep Main Street, where the Johnsonia was located, as a one-way street. Straight was advised that he could not participate under the conflict-of-interest law if the matter would affect his or his father's financial interests.

Beginning in 2004 and through 2005, the Straights began the process to convert the Johnsonia rental units into condominiums.

Nearby the Johnsonia were two bars: the Third Base Bar & Grill, and the House of Brews.

The Johnsonia and its neighboring bars were within Ward 4.

In December 2004, a fight broke out in front of the Third Base Bar after closing time. A number of Fitchburg police officers and state troopers were involved, and four men were arrested. Subsequently, the Fitchburg police chief submitted a request to the Fitchburg License Commission to suspend the bar's liquor license.

On January 19, 2005, the Fitchburg License Commission held a hearing on the incident. Straight did not appear at the hearing, but he wrote a letter to the License Commission as the Ward 4 city councilor, using city council letterhead. Straight's letter, which was read into the record at the hearing, raised concerns that the Third Base Bar's operation presented public safety issues and was a deterrent to further real estate development in the area. The letter also stated, "As a City Councilor who represents the Downtown Area, I have received a considerable amount of complaints from residents who live on or near Main St. regarding the noise" from Third Base and the other area bars. Based on these concerns, the letter advocated that the bar's closing hours be changed from 2 A.M. to 12 P.M. and that the bar

be warned that "if there is another incident that their license will be in jeopardy."

At the end of the hearing, the License Commission voted 2-1 to maintain the Third Base Bar's operating hours and send it a strong letter of warning.

On March 7, 2005, Straight spoke as the Ward 4 city councilor at a License Commission hearing regarding the House of Brews, at which someone had been recently arrested. Straight noted that the disturbances at that bar were tied in with its poor management, and he was very concerned with the environment at the bar and the reports of intoxicated staff.

As the manager of the Johnsonia and a part-owner of the building, Straight had a private financial interest in keeping the neighborhood safe and free from crime.

Conclusions of Law

As a Fitchburg city councilor, Straight was a municipal employee as that term is defined in G.L. c. 268A, § 1(g), and therefore subject to the conflict-of-interest law.

Section 19 prohibits a municipal employee from participating as such an employee in a particular matter in which, to his knowledge, he, his immediate family or a business organization in which he serves as a partner or employee has a financial interest.

Straight's father was a member of his immediate family.

Straight was employed by and owned a share in the Johnsonia Associates limited partnership, the business organization that owned and managed the Johnsonia building.

The License Commission's decisions regarding the Third Base Bar and the House of Brews were particular matters.

Straight participated in those particular matters as a city councilor by sending his January 2005 letter to the License Commission regarding the Third Base Bar matter, and by speaking before the License Commission on March 7, 2005 regarding the House of Brews matter.

When he so participated, Straight knew that he, his father and/or the Johnsonia Associates limited partnership had financial interests in the particular matters because these decisions concerning the neighboring bars would affect the plan to redevelop the Johnsonia as a condominium building.

Accordingly, Straight violated § 19 by participating as a city councilor in particular matters in which he, his immediate family and/or a business organization in which he served as a partner and/or employee, to his knowledge, had financial interests.

Resolution

In view of the foregoing violations of G.L. c. 268A by Straight, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Straight:

that Straight pay to the Commission the sum of $2,000 as a civil penalty for violating G.L. c. 268A; and

that Straight waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: February 1, 2007

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY
DOCKET NO. 07-0006

IN THE MATTER OF
DAVID GUERTIN

DISPOSITION AGREEMENT

The State Ethics Commission and David Guertin enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable

in the Superior Court, pursuant to G.L. c. 268B, s. 4(j).

On July 25, 2006, the Commission initiated, pursuant to G.L. c. 268B, s. 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Guertin. The Commission concluded its inquiry and, on October 11, 2006, found reasonable cause to believe that Guertin violated G.L. c. 268A.

The Commission and Guertin now agree to the following findings of fact and conclusions of law.

Findings of Fact

1. David Guertin is the Provincetown Department of Public Works (DPW) director.

2. Provincetown-MacMillan Realty Trust (PMRT) owns 16 MacMillan Wharf in Provincetown.

3. As DPW director, Guertin was the project manager for the renovation of MacMillan Wharf, was involved in overseeing the Town water system and in determining betterment assessments, all of which financially impact PMRT.

4. Guertin owned a 30-foot sailboat that he kept at a mooring he leased in the Provincetown marina. In order to reach shore, Guertin would have to either use a dinghy or receive a ride from another boat.

5. In late spring 2001, Guertin while he was project manager for the Wharf renovation, began making repairs to his sailboat while it was docked at his mooring in the harbor. A PMRT principal seeing that Guertin was having some difficulties invited Guertin to tie up his boat at the PMRT slip on the wharf to make the repairs. The parties did not discuss a docking fee for Guertin's use of the slip.

6. Guertin docked his boat at PMRT's slip for approximately 10 days. The approximate value of the docking was $1,000. Guertin did not pay PMRT anything for using its slip.

7. Guertin had reason to know that the reason he received the free dockage was because he was the DPW director.

Conclusions of Law

8. General laws, c. 268A, s. 23(b)(2) prohibits a municipal employee from knowingly, or with reason to know, using his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and not properly available to similarly situated individuals.

9. As the Provincetown DPW director, Guertin was a municipal employee within the meaning of G.L. c. 268A.

10. Guertin's free use of PMRT's slip for approximately ten days was a privilege of substantial value.

11. The privilege was unwarranted and not otherwise properly available to similarly situated individuals because Guertin received a benefit that other members of the boating public were not entitled to and had reason to know it was given to him to foster goodwill in his dealings with PMRT.

12. This unwarranted privilege was not otherwise properly available to similarly situated individuals.

13. Guertin had reason to know that in effect he used his DPW director position to obtain the free dockage.

14. Therefore, by having reason to know he was using his position as DPW director to secure for himself $1,000 in free dockage, an unwarranted privilege of substantial value not properly available to similarly situated individuals, Guertin violated s. 23(b)(2).

Resolution

In view of the foregoing violations of G.L. c. 268A by Guertin, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Guertin:

(1) that Guertin pay to the Commission the sum of $1,000 as a civil penalty for violating G.L. c. 268A as noted above;

(2) that Guertin pay $1,000 for the use of the PMRT slip; and

(3) that Guertin waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: February 5, 2007

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY
DOCKET NO. 07-0009

IN THE MATTER OF
RICHARD BRETSCHNEIDER

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Richard Bretschneider pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On May 11, 2006, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Bretschneider. The Commission concluded its inquiry and, on October 11, 2006, found reasonable cause to believe that Bretschneider violated G.L. c. 268A, §§23(b)(2) and 23(b)(3).

The Commission and Bretschneider now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Bretschneider has been the Nantucket County Sheriff since his initial election in 1999 and re-election in 2004. Among his official duties, Bretschneider is responsible for serving eviction notices and other forms of civil process on residents of Nantucket County. By statute, the Nantucket County sheriff is allowed to keep the process service fees as a part of his compensation.

2. From 1994 to 2004, a small parcel of residential property (the "Property") within Bretschneider's jurisdiction was jointly owned by 10 cousins. One of these cousins ("the Cousin") occupied the house on the Property, with her five children and grandchildren, from 1998 to 2004.

3. Beginning in or about 2003, on numerous occasions not involving any official business, Bretschneider approached the Cousin who occupied the house and asked if she would be willing to sell her interest in the Property to him. She refused each of Bretschneider's requests.

4. In 2004, the Cousin relocated to another residence, but maintained ownership of her share of the Property. Soon thereafter, she fell several months behind in her rent at her new residence and began to receive overdue rent warnings from her landlord.

5. On May 13, 2005, Bretschneider in his official sheriff's uniform drove his Sheriff's Department vehicle to the Cousin's residence and personally served her with a 14-day Notice to Quit the premises. While serving the notice, Bretschneider suggested, as he had in the past, that she sell her interest in the property to him, saying, "This might be a good time to sell." She refused.

6. The duties of a sheriff in an eviction include in addition to serving the notice to quit, the following: If the tenant fails to leave the premises within the 14 days set described in the notice to quit, the landlord may bring a summary process action. If the court finds in favor of the landlord, the landlord will obtain an execution for possession, which may be served by the sheriff. The sheriff then posts a 48-hour notice on the tenant's door and if the tenant still fails to move, the sheriff physically removes the tenant. As part of that process, after the 48-hour notice elapses, the sheriff will place any property remaining on the premises at a public warehouse selected in a manner calculated to ensure that the personal property will be stored within a reasonable distance of the premises. See generally, G.L. c. 239, § 3.

7. Over the following several months, the Cousin continued to experience financial distress and became concerned with paying her past due rent obligations. On November 1, 2005, she sold her interest in the property to Bretschneider.

8. Bretschneider did not make a disclosure of his negotiations for the purchase of the Property before serving the Notice to Quit.

Conclusions of Law

9. As the Nantucket County Sheriff, Bretschneider is a county employee as that term is defined in G.L. c. 268A § 1(d), and is subject to the conflict of interest law.

Section 23(b)(2)

10. Section 23(b)(2) of G.L. c. 268A prohibits a public employee from, knowingly or with reason to know, using or attempting to use his official position to obtain for himself or others unwarranted privileges or exemptions of substantial value not properly available to similarly situated individuals.

11. The Commission has consistently held that §23(b)(2) prohibits public employees, in both their public and private capacities, from soliciting anything of substantial value from persons within their regulatory jurisdiction for a non-governmental purpose, unless the solicitation is specifically authorized by law. The Commission views such solicitations to be "inherently exploitative" or "inherently coercive". See generally EC-COI-93-6.

12. The opportunity to purchase private property is a privilege.

13. Bretschneider attempted to obtain the opportunity to purchase the Property in the course of his official duties.

14. The privilege was unwarranted as Bretschneider attempted to facilitate his private purchase of the Property by pursuing the sale in the course of his official business with the Cousin. This was particularly the case where the official business dealings involved Bretschneider arriving in an official vehicle in uniform and serving papers that began the eviction process. This was an inherently exploitable situation, especially where Bretschneider as sheriff might likely subsequently be in a position of having to decide how and when to physically remove the Cousin, and where to store any personal belongings the Cousin might leave behind.

15. Bretschneider knew or had reason to know that he was attempting to use his official position to facilitate his purchase of the Property. This was so even though he had previously privately expressed such an interest to the Cousin on numerous occasions. He knew that the Cousin would be particularly vulnerable because she was in financially difficult circumstances facing eviction.

16. Under the circumstances Bretschneider's solicitation constituted an attempt to use his official position to secure an unwarranted privilege of substantial value because the Cousin was more likely to sell based on the inherently exploitable nature of the circumstances [or based on the request having taken place in conjunction with Bretschneider's serving the eviction notice].

17. Accordingly, Bretschneider violated § 23(b)(2) by, knowingly or with reason to know, attempting to use his official position to secure for himself an unwarranted privilege of substantial value not properly available to similarly situated individuals.

Section 23(b)(3)

18. Section 23(b)(3) of G.L. c. 268A prohibits a public employee from, knowingly or with reason to know, acting in a manner which would cause a reasonable person, knowing all of the facts, to conclude that a person may improperly influence or unduly enjoy the public employee's favor in the performance of his official duties. This provision of the conflict of interest law allows public employees to act on matters, even if doing so would create the appearance of a conflict, if they properly disclose the facts and circumstances surrounding the apparent conflict prior to taking action.

19. By serving the notice to quit on the Cousin, Bretschneider acted officially as sheriff.

20. When he so acted, Bretschneider knew that he had a past and present private significant relationship with the recipient of that notice: he had on several occasions asked her to sell him the Property, and he in fact again asked her to sell the property in the course of serving her with the notice to quit.

21. By suggesting while serving the notice to quit that the Cousin sell her interest in the Property, Bretschneider acted in a manner which would cause a reasonable person, knowing all the facts, to conclude that the financially distressed Cousin could improperly influence Bretschneider's actions related to the pending eviction by agreeing to his proposal to sell her interest in the Property.

22. Therefore, Bretschneider knew or had reason to know that he was acting in a manner which would cause a reasonable person, knowing all the relevant facts, to conclude that the financially distressed cousin could improperly influence him in the performance of his official duties.

23. This appearance of conflict was exacerbated by Bretschneider's suggesting in the course of his serving the notice, that this would be a good time for the Cousin to sell the Property to him.

Resolution

In view of the foregoing violations of G.L. c. 268A by Bretschneider, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Bretschneider:

(1) that Bretschneider pay to the Commission the sum of $1,500.00 as a civil penalty for violating G.L. c. 268A, §§23(b)(2) & §23(b)(3);

(2) that Bretschneider waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: March 27, 2007

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY
DOCKET NO. 06-0015

IN THE MATTER OF
THOMAS CREAN

DISPOSITION AGREEMENT

The State Ethics Commission and Thomas Crean enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j). On September 29, 2004, the Commission initiated a preliminary inquiry, pursuant to G.L. c. 268B, § 4(a), into possible violations of the conflict-of-interest law, G.L. c. 268A, by Crean. The Commission has concluded its inquiry and, on April 13, 2006, found reasonable cause to believe that Crean violated G.L. c. 268A. On August 24, 2006, the Enforcement Division filed an Order to Show Cause concerning this matter.

The Commission and Crean now agree to the following findings of fact and conclusions of law.

Findings of Fact

1. In January 2002, Crean became the City of Beverly mayor.

2. When Crean took office, the city purchased for $1,785 a new Compaq Presario laptop computer for him to use.

3. Ordinarily, the mayor is the city's chief procurement officer, but Crean had delegated his chief procurement officer duties to Beverly Purchasing Director Christopher Bradley.

4. In or about fall 2003, Crean decided that he wanted to buy his laptop from the city when he left office at the end of the year.

5. Both Bradley and the city solicitor told Crean that he would have to buy the laptop from the city pursuant to G.L. c. 30B procedures.

6. General Laws c. 30B, the Uniform Procurement Act, establishes uniform procedures for governmental bodies in procuring supplies,

services or real property, and in disposing of supplies or real property. Section 15 of the Act specifies how a governmental body shall dispose of an item that is no longer useful to the governmental body but with resale or salvage value. Section 15(f) specifies that for such an item with an estimated net value of less than $5,000, the procurement officer shall dispose of it using written procedures approved by the governmental body.

7. Beverly City Ordinance Section 2-7 controls the city's disposal of items that are no longer of use to the city. This section states in pertinent part that, pursuant to G.L. c. 30B, § 15(f), the chief procurement officer (i.e., the mayor) or his designee (i.e., the purchasing director):

> may dispose of surplus property (other than real property) which has been determined by the Department Head, in whose care and custody such surplus property is, to have a value of less than [$500] by the following procedure:
>
> (1) Department Head desiring to dispose of said surplus property shall write a letter to the Chief Procurement Officer, or his designee, stating forth in detail a complete description of the surplus property and a statement as to how a value of less than $500 was determined.

8. Crean then informed Bradley, his subordinate, that he wanted to have his laptop declared as surplus so that he could bid on it and buy it from the city. Crean did not provide Bradley with the letter required by City Ordinance Section 2-7, which would have described the surplus property and stated how a value of less than $500 was determined.

9. Bradley proceeded to treat the laptop as surplus and put it up for auction.

10. The city received only one bid for the laptop: a bid of $100 from Crean. On December 29, 2003, Bradley informed Crean that he was the highest bidder.

11. Shortly thereafter, Crean paid for his laptop and took possession.

12. Crean left office as mayor in early January 2004.

Conclusions of Law

13. As the Beverly mayor, Crean was a municipal employee as that term is defined in G.L. c. 268A, § 1(g), and therefore was subject to the conflict-of-interest law, G. L. c. 268A.

14. Section 19 of G. L. c. 268A prohibits a municipal employee from participating as such in any particular matter in which he, to his knowledge, has a financial interest.

15. The decisions regarding the surplus declaration and sale of the laptop were particular matters.

16. Crean participated as mayor in these particular matters by directing his subordinate to declare the computer as surplus and by guiding the procedure.

17. When he so participated, Crean knew he had a financial interest in these particular matters because at all times relevant, he intended to bid on his computer and buy it from the city at a low price.

18. Accordingly, Crean violated § 19 by participating as mayor in a particular matter in which, to his knowledge, he had a financial interest.

19. Section 20 prohibits a municipal employee from having a financial interest, directly or indirectly, in a contract made by his municipality, in which the municipality is an interested party, and of which financial interest he knows or has reason to know.

20. Crean bid on the computer and, as the only bidder, had his bid accepted, thereby creating a contract with the city to buy the computer.

21. This contract took effect on December 29, 2003, upon Bradley's informing Crean that he was the highest bidder for the laptop. At the time, Crean was still the mayor.

22. The city made the contract and was an interested party in it.

23. Crean had a direct financial interest in this contract because it required him to pay the city for the computer, and it required the city to sell the

computer to Crean for the amount of his winning bid.

24. Crean knew of this financial interest because he knew that if his bid was the winning bid, he would have to pay that amount to the city.

25. Accordingly, Crean violated § 20 by having a financial interest in a contract made by his municipality, in which the municipality was an interested party, and of which financial interest he knew or had reason to know.

Resolution

In view of the foregoing violations of G.L. c. 268A by Crean, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Crean:

(1) that Crean pay to the Commission the sum of $1,000 as a civil penalty for violating G.L. c. 268A;

(2) that Crean pay the city of Beverly $500 reflecting the difference between what he paid for the computer and its fair market value when he purchased it;[1] and

(3) that Crean waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: April 4, 2007

[1] The Commission and Mr. Crean have stipulated for purposes of settlement that the approximate value of the laptop computer at the time of purchase was $600.

DATE: April 4, 2007

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY
DOCKET NO. 06-0014

IN THE MATTER OF
CHRISTOPHER BRADLEY

DISPOSITION AGREEMENT

The State Ethics Commission and Christopher Bradley enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On March 3, 2005, the Commission initiated a preliminary inquiry, pursuant to G.L. c. 268B, § 4(a), into possible violations of the conflict-of-interest law, G.L. c. 268A, by Bradley. The Commission has concluded its inquiry and, on April 13, 2006, found reasonable cause to believe that Bradley violated G.L. c. 268A. On August 24, 2006, the Enforcement Division filed an Order to Show Cause concerning this matter.

The Commission and Bradley now agree to the following findings of fact and conclusions of law.

Findings of Fact

1. In 2003, Bradley was the Beverly purchasing director, serving under Beverly Mayor Thomas Crean.

2. Ordinarily, the mayor is the city's chief procurement officer, but Crean's predecessor had delegated chief procurement officer duties to Bradley. Thus, Bradley was responsible for overseeing all of the purchasing/procurement matters for the city.

3. When Crean took office in January 2002 the city purchased for $1,785 a new Compaq Presario laptop computer for him to use.

4. In or about fall 2003, Crean decided that he wanted to buy his laptop from the city when he left office at the end of the year.

5. General Laws c. 30B, the Uniform Procurement Act, establishes uniform procedures for governmental bodies in procuring supplies, services or real property, and in disposing of supplies or real property. Section 15 of the Act specifies how a governmental body shall dispose of an item that is no longer useful to the governmental body but with resale or salvage value. Section 15(f) specifies that for such an item with an estimated net value of less than $5,000, the procurement officer shall dispose of it using written procedures approved by the governmental body.

6. Beverly City Ordinance Section 2-7, "Surplus Property with a Value Less than $500" controls the city's disposal of items that are no longer of use to the city. This section states in pertinent part that, pursuant to G.L. c. 30B, § 15(f), the chief procurement officer (i.e., the mayor), or his designee (i.e., the purchasing director):

> may dispose of surplus property (other than real property) which has been determined by the Department Head, in whose care and custody such surplus property is, to have a value of less than [$500] by the following procedure:
>
> (1) Department Head desiring to dispose of said surplus property shall write a letter to the Chief Procurement Officer, or his designee, stating forth in detail a complete description of the surplus property and a statement as to how a value of less than $500 was determined.

7. As department head of the Mayor's Office, Crean told Bradley, his subordinate, that Crean had determined that his laptop was surplus, and that Crean wanted to bid on and purchase it from the city.

8. Crean did not provide Bradley with the letter required by City Ordinance Section 2-7, in which he was required to describe the surplus property and to state how he had determined that its value was less than $500. Bradley did not require Crean to provide the letter, even though it was required and he usually received it from other department heads prior to putting surplus property out to bid.

9. Without the required written statement explaining how the computer had a value of less than $500, Bradley proceeded to treat the laptop as surplus and put it up for auction.

10. The city received only one bid for the laptop: a bid of $100 from Crean. On December 29, 2003, Bradley informed Crean that he was the highest bidder.

11. Shortly thereafter, Crean paid for his laptop and took possession.[1]

Conclusions of Law

12. As the Beverly purchasing director, Bradley was a municipal employee as that term is defined in G.L. c. 268A, § 1(g), and therefore subject to the conflict-of-interest law.

13. Section 23(b)(3) prohibits a municipal employee from, knowingly or with reason to know, acting in a manner which would cause a reasonable person, knowing all of the facts, to conclude that anyone can improperly influence or unduly enjoy that person's favor in the performance of his official duties. This subsection goes on to provide that the appearance of impropriety can be avoided if the public employee discloses in writing to his appointing authority all of the relevant circumstances which would otherwise create the appearance of conflict.

14. Bradley as purchasing director and acting chief procurement officer managed the process by which the mayor's laptop computer was declared as surplus, posted for auction and sold. In doing so, Bradley violated City Ordinance Section 2-7, by failing to obtain the required written documentation, "stating forth in detail a complete description of the surplus property and a statement as to how a value of less than $500 was determined."

15. When he so participated in these matters, Bradley knew or had reason to know that he was creating an appearance of impropriety by failing to require the mayor to follow the usual and proper surplus procedures concerning the laptop when the mayor had declared that he was going to be a bidder on the computer and subsequently was in fact the only bidder for the computer.

16. Thus, Bradley knew or had reason to know that he was acting in a manner which would cause a reasonable person, knowing all of the relevant facts, to conclude that Crean could improperly influence or unduly enjoy Bradley's favor in the performance of Bradley's official duties relating to the surplusing of the computer. Thus, Bradley violated § 23(b)(3).

17. Bradley did not file any written disclosure to dispel this appearance of impropriety.

Resolution

In view of the foregoing violations of G.L. c. 268A by Bradley, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Bradley:

(1) that Bradley pay to the Commission the sum of $500 as a civil penalty for violating G.L. c. 268A; and

(2) that Bradley waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: April 4, 2007

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[1] Crean's purchase of the laptop computer is addressed in a companion disposition agreement, *In re Crean*, 2007 SEC 2083.

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY DOCKET NO. 07-0010

IN THE MATTER OF
SHARON POLLARD

DISPOSITION AGREEMENT

The State Ethics Commission and Sharon Pollard enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On May 11, 2006, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Pollard. The Commission concluded its inquiry and on January 24, 2007, found reasonable cause to believe that Pollard violated G.L. c. 268A.

The Commission and Pollard now agree to the following findings of fact and conclusions of law.

Findings of Fact

Pollard was the mayor of the City of Methuen ("the City") from January 2000 until January 2006.

Pollard is a founder and one of fifteen corporate directors of the non-profit Methuen Festival of Trees, Inc. ("the Festival"). The Festival is a private, non-profit 501(c)(3) corporation. The Festival's purpose, as stated in its December 31, 2002 articles of organization, is to "raise awareness and funds to benefit historic preservation in the city of Methuen, MA." The Festival engages in fundraising and has spent most of these funds on restoring stone walls located in the city's central historic district.

In the spring of 1999, before Pollard was mayor, Osco Drug approached the City with a proposal to build a retail store on property owned by Osco Drug on Howe Street. As part of its proposal, Osco Drug offered to pay the city $650,000 to mitigate any traffic problems created by the store. The City turned down the proposal.

In early 2004, Brooks Pharmacy, which had recently acquired Osco Drug, approached the City again about the proposed Howe Street project. Brooks Pharmacy renewed the offer to make a $650,000 traffic mitigation payment.

At its June 23, 2004 meeting, the Methuen Community Development Board voted to approve the Brooks Pharmacy site plan application with a condition that Brooks Pharmacy pay the $650,000 mitigation fee to the City.

A few weeks later, Pollard as mayor, acting through her staff, instructed Brooks Pharmacy to write two separate checks; one $450,000 check payable to the City and another $200,000 check payable to the Festival.

At the Festival's July 20, 2004 board of directors meeting, Pollard announced to the board that Brooks Pharmacy would be giving a check to the Festival for $200,000 for "wall restoration."

On August 27, 2004, Brooks Pharmacy provided two checks; one for $450,000 to the City and another for $200,000 to the Festival.

At its September 20, 2004 meeting, the Methuen City Council formally accepted the $450,000 payment from Brooks Pharmacy, which Pollard described as "a gift to the city." When asked by a councilor to clarify, Pollard stated that the money could be "expended for any purpose at the city's discretion." Pollard suggested various improvements to parks, playing fields, and other property owned by the City. Pollard made no mention of the $200,000 payment she had arranged for the Festival.

In spring 2005, questions arose in the Methuen City Council about the $200,000 in Brooks Pharmacy mitigation funds given to the Festival. On May 2, 2005, Pollard appeared before the Council and answered those questions.

On June 24, 2005, the Festival gave the City a check for $200,000, thereby redirecting the Brooks Pharmacy mitigation funds it had received.

Pollard testified that her decision to provide the Festival with $200,000 of the Brooks Pharmacy mitigation funds was with the City's best interest in mind. Pollard believed that the City had already addressed traffic issues in the area and therefore the funds should go to a variety of civic projects, including wall restoration.

Notwithstanding Pollard's testimony, until June 24, 2005, Pollard's unilateral decision prevented the City from deciding how best to use the mitigation funds and making her the only City official involved in deciding how the $200,000 should be spent. Thereafter, other City officials participated in the decision.

Conclusions of Law

As the City mayor, Pollard was a municipal employee as that term is defined in G.L. c. 268A, § 1(g), and therefore subject to the conflict-of-interest law.

Section 23(b)(2) of G.L. c. 268A prohibits a public employee from knowingly or with reason to know, using or attempting to use her official position to secure for herself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.

Receipt of the $200,000 in Brooks Pharmacy mitigation funds was a privilege.

Since the Methuen Community Development Board vote concerning Brooks Pharmacy's application was conditioned on payment of $650,000 to the City, the $200,000 payment to the Festival (a private entity), was an unwarranted privilege.

The Festival's receipt of $200,000 in Brooks Pharmacy mitigation funds was an unwarranted privilege of substantial value.

By instructing Brooks Pharmacy to give $200,000 in mitigation funds to the Festival, Pollard knew that she was using her mayoral position to provide the Festival with an unwarranted privilege.

The unwarranted privilege was not otherwise properly available to similarly situated individuals.

Therefore, as mayor by instructing Brooks Pharmacy to give $200,000 in mitigation funds to the Festival, Pollard knowingly used her official position to secure for the Festival an unwarranted privilege of substantial value that was not properly available to similarly situated individuals, violating § 23(b)(2).

Section 23(b)(3)

Section 23(b)(3) prohibits a municipal employee from, knowingly or with reason to know, acting in a manner which would cause a reasonable person, knowing all of the facts, to conclude that anyone can improperly influence or unduly enjoy that person's favor in the performance of his official duties. This subsection further provides that the appearance of impropriety can be avoided if an elected public employee publicly discloses all of the relevant circumstances which would otherwise create the appearance of conflict of interest.

Pollard acted as mayor in the matter of the distribution of the Brooks Pharmacy mitigation funds by instructing Brooks Pharmacy to pay $200,000 in the mitigation funds to the Festival and $450,000 to the City.

When she so acted in this matter, Pollard was a Festival founder and corporate director. Consequently, by acting as mayor on a matter in which a private organization (with which she had a significant private relationship) had a substantial financial interest, Pollard knew that she was acting in a manner which would cause a reasonable person, knowing all of the relevant facts, to conclude that the Festival could improperly influence or unduly enjoy Pollard's favor in the performance of Pollard's official duties as mayor relating to the Brooks Pharmacy mitigation funds. Thus, Pollard violated § 23(b)(3). This apperance of impropriety was exacerbated by Pollard not notifying the City Council of the $200,000 payment or obtaining the City Council's consent of the payment to the Festival.

Pollard did not make any public disclosure of the relevant facts to dispel this appearance of impropriety.

Resolution

In view of the foregoing violations of G.L. c. 268A by Pollard, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Pollard:

(1) that Pollard pay to the Commission the sum of $2,000 as a civil penalty for violating G.L. c. 268A, § 23(b)(2) as noted above;

(2) that Pollard pay to the Commission the sum of $2,000 as a civil penalty for violating G.L. c. 268A, § 23(b)(3) as noted above;

(3) that Pollard waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: April 26, 2007

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY DOCKET NO. 724

IN THE MATTER OF AMY J. FRIPP

Appearances: Stephen P. Fauteux, Esq.
Counsel for Petitioner

Virginia W. Connelly, Esq.
Counsel for Respondent

Commissioners: Daher, Ch., Maclin, Kempthorne and Veator[1]

Presiding Officer: Commissioner M. Tracey Maclin

DECISION AND ORDER

I. Background & Procedural History

Between 1999 and November 11, 2005, Respondent Amy J. Fripp (Fripp) was a state employee employed as a paralegal at the Department of Housing and Community Development (DHCD). On July 18, 2003, Fripp purchased from a private seller an affordable housing condominium unit (Unit) in the Town of Lincoln (Town) pursuant to the Homeownership Opportunity Program (HOP). HOP is a DHCD program that assists low and moderate income households in buying affordable homes at a discounted price. As part of her purchase and as required by HOP, Fripp signed a deed rider restricting the resale of the Unit.

On June 28, 2005, Petitioner initiated these proceedings by issuing an Order to Show Cause (OTSC) under the Commission's Rules of Practice and Procedure.[2] The OTSC alleged that Fripp violated G.L. c. 268A, § 7 when she purchased the Unit pursuant to HOP while she was a DHCD employee. The OTSC further alleged that the relevant contract, the quitclaim deed, of which the deed rider was specifically made a part, was made by DHCD and was one in which the Commonwealth and/or DHCD was an interested party. The OTSC alleged that when Fripp closed on the Unit, she had knowledge or reason to know

of her financial interest in a contract made by a state agency in violation of § 7.

On July 20, 2005, Fripp filed an Answer to the OTSC. In her Answer, she admitted a number of the factual allegations in the OTSC, but otherwise denied that she violated G.L. c. 268A, § 7.

Subsequent to a pre-hearing conference on September 14, 2005, the parties submitted motions for summary decision, both of which were denied. After a final pre-hearing conference on September 26, 2006, the parties submitted Stipulations as to facts and documents.

An evidentiary hearing was held on November 1, 2006.[3] At the hearing, the parties made opening statements and introduced evidence through witnesses and exhibits.

The parties submitted briefs on March 9, 2007.[4] Both parties presented closing arguments to the Commission on April 11, 2007.[5] The Commission began its deliberations in executive session on this matter on April 11, 2007.[6] In rendering this Decision and Order, each undersigned member of the Commission has considered the testimony, the evidence in the public record, including the hearing transcript and the arguments of the parties.

II. The Law

Section 7 of G.L. c. 268A, prohibits a state employee from having "a financial interest, directly or indirectly, in a contract made by a state agency, in which the commonwealth or a state agency is an interested party, of which interest he has knowledge or reason to know." In adjudicatory proceedings before the Commission, the burden of proof is on Petitioner, which must prove its case by a preponderance of the evidence. 930 CMR 1.01(9)(m)(2). The weight to be attached to any evidence in the record rests within the sound discretion of the Commission. 930 CMR 1.01(9)(1)(3).

III. Decision

Based on its weighing of the evidence in the record in this matter, the Commission concludes that the Petitioner did not prove its case against Fripp by a preponderance of the evidence. Petitioner did not prove that the deed rider is a contract made by DHCD (or another state agency), in which DHCD or the Commonwealth is an interested party. More specifically, to the extent that Petitioner argued that DHCD made the contract, i.e., the deed rider, because it was signed by its agent, the Lincoln Foundation, Petitioner failed to prove by a preponderance of the evidence, the agency relationship it alleged to exist among DHCD, the Town and the Lincoln Foundation. Given that the relationship among those entities remains unclear, Petitioner has failed to prove by a preponderance of the evidence that there was a contract made by a state agency in which the commonwealth or a state agency is an interested party in violation of G.L. c. 268A, § 7, as alleged in the OTSC.

IV. Order

Because Petitioner did not meet its burden of proving its case by a preponderance of the evidence, the Commission hereby ORDERS that this matter is DISMISSED.

DATE AUTHORIZED: April 25, 2007

DATE ISSUED: April 30, 2007

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[1] Commissioner Kane was not present for the deliberations and did not vote on this matter.

[2] 930 CMR 1.00 *et seq.*

[3] *Id.* at 1.01(9)(b).

[4] *Id.* at 1.01(9)(k).

[5] *Id.* at 1.01(9)(e)(5).

[6] G.L. c. 268B, § 4(i); 930 CMR 1.01(9)(m)(1).

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

IN THE MATTER OF
DAVID ARAGONA

PUBLIC ENFORCEMENT LETTER

Dear Mr. Aragona:

As you know, the State Ethics Commission conducted a preliminary inquiry into allegations that you, as a Massachusetts Convention Center Authority (MCCA) employee, violated § 23(b)(2) of the state conflict of interest law, G.L. c. 268A, by

attending Board of State Examiners of Electricians ("Electricians Board") meetings while on state time and while receiving state compensation. Based on the staff's inquiry (discussed below), the Commission voted on March 14, 2007, that there is reasonable cause to believe that you violated G.L. c. 268A, § 23(b)(2).

For the reasons discussed below, the Commission does not believe that further proceedings in your case are warranted. Instead, the Commission has determined that the public interest would be better served by bringing to your attention, and to the public's attention, the facts revealed by the preliminary inquiry, and by explaining the application of the law to the facts, with the expectation that this advice will ensure your understanding of and future compliance with these provisions of the conflict-of-interest law. By agreeing to this public letter as a final resolution of this matter, you do not admit to the facts and law discussed below. The Commission and you have agreed that there will be no formal action against you in this matter and that you have chosen not to exercise your right to a hearing before the Commission.

I. Facts

You have been employed by the MCCA since 1988. You are currently a sound technician based at the Boston Convention & Exhibition Center (BCEC) in south Boston. In that role, you install sound systems and Internet connections for shows that come to the BCEC. You are scheduled to work a "straight eight" schedule from 6:00 a.m. to 2:00 p.m.

You were appointed to the Electricians Board in October 2002 as a "system technician member." The Electricians Board meets once each month in Boston from approximately 10 a.m. until around 3:30 p.m. Electricians Board members are not compensated. Electricians Board meetings consist of hearings in which customers of electricians or electrical inspectors present complaints or problems.

You attended Electricians Board meetings during your regular MCCA working hours while receiving MCCA compensation. You did not receive written approval from your appointing authority (as discussed in detail below) prior to attending such meetings. You believed that your experience as an Electricians Board member was beneficial to your work as an MCCA sound technician.

II. Discussion

As an MCCA sound technician, you are a state employee as that term is defined in G.L. c. 268A, § 1(q). As such, you were subject to the conflict of interest law G.L. c. 268A generally and, in particular for the purposes of this discussion, to § 23 of that statute. Section 23(b)(2) prohibits any state employee from knowingly, or with reason to know, using or attempting to use his official position to secure for anyone an unwarranted privilege of substantial value which is not properly available to similarly situated individuals.

There is reasonable cause to believe that you violated § 23(b)(2) by using your MCCA position to attend Electricians Board meetings while on MCCA time and while receiving MCCA compensation without prior written approval from your appointing authority.[1]

You should be aware that under certain circumstances, a public employee may receive compensation when not performing his usual job responsibilities. In *EC-COI-98-2,* the Commission found that § 23(b)(2) permitted the chief of the Administrative Law Division of the Office of the Attorney General to use state time and state resources, to the extent necessary, to perform duties as chair of the public law section of the Massachusetts Bar Association if she met three conditions: (i) are the duties in furtherance of the public interest?; (ii) are the duties interconnected with her duties as division chief?; and (iii) are the duties not used toward partisan political ends? Furthermore, the Commission emphasized the importance of the appointing authority's written approval of her proposed use of state time and resources, with such written approval specifying that her use of state time and resources satisfies these three conditions. These three conditions must be satisfied regardless of how the public time and resources are utilized (for example, *EC-COI-98-2* involved non-profit activities while your situation involved a second public position).

In the future, should you want to attend Electricians Board meetings during your regular working hours, you would need to comply with the above requirements and receive specific

written authorization from your appointing authority.

III. Disposition

The Commission is authorized to resolve violations of G.L. c. 268A with civil penalties of up to $2,000 for each violation. The Commission chose to resolve this case with an education letter rather than imposing a fine because it believes the public interest would best be served by doing so. Public employees may not receive compensation when not performing their usual job responsibilities unless they receive prior written approval consistent with *EC-COI-98-2.* The purpose of this public education letter is to emphasize that point.

Based upon its review of this matter, the Commission has determined that your receipt of this public education letter should be sufficient to ensure your understanding of and future compliance with the conflict of interest law.

This matter is now closed.

Very truly yours,

Peter Sturges
Executive Director

DATE: May 1, 2007

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[1] Your being an MCCA employee and serving as an Electricians Board member raises concerns under G.L. c. 268A, § 7. Section 7 prohibits a state employee from having a financial interest, directly or indirectly, in a contract made by a state agency, in which the commonwealth or a state agency is an interested party. You are, however, a special state employee as an Electrician Boards member. As such, there would be an exemption available to you under § 7(d) which provides that the section does not apply, "to a special state employee who does not participate in or have official responsibility for any of the activities of the contracting agency and who files with the state ethics commission a statement making full disclosure of his interest and the interest of his immediate family in the contract." We call your attention to the Commission's website [*www.mass.gov/ethics*] for your future guidance, and particularly to *Disclosure of Financial Interest by Special State Employee as required by G.L.c.268A § 7(d)*, which may be found under Commission Disclosure Forms. You should file your disclosure form as soon as possible if you would like an exemption to hold both public positions.

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY DOCKET NO. 07-0014

IN THE MATTER OF
ROBERT BAYLIS

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Robert Baylis, pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On October 11, 2006, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Baylis. The Commission concluded its inquiry and, on December 13, 2006, found reasonable cause to believe that Baylis violated G.L. c. 268A, §§19, 20, and 23(b)(3).

The Commission and Baylis now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. At all relevant times, Baylis was a member of the Lancaster Board of Health ("BOH").

2. As a BOH member, Baylis was a municipal employee as defined in G.L. c 268A, §1(g).

3. In spring 2004, Baylis, along with BOH chair Shawn Winsor and a BOH administrative assistant, attempted to find a vendor to mow the town's capped landfill. The landfill needed to be mowed soon or the BOH faced potential fines from the Department of Environmental Protection ("DEP"). They were not successful in finding a vendor.

4. In or about June 2004, when they could not find another vendor, Winsor and Baylis decided to mow the landfill themselves.

5. Although they did not discuss specific amounts, Baylis knew that he would be paid from town funds to mow the landfill.

6. At its June 3, 2004 meeting, Winsor and another BOH member signed a blank voucher authorizing payment for mowing the landfill to a yet-to-be-determined vendor. Baylis did not sign the voucher.

7. The voucher did not reflect the amount of payment, but was instead blank.

8. The BOH would usually not approve a voucher prior to awarding a contract and prior to the vendor performing the work. According to Baylis, the BOH did so here out of concerns about paying the vendor out of the current fiscal year's funds and concerns about the DEP levying fines.

9. At all relevant times, Winsor owned a landscaping company called Bowen Landscaping.

10. On June 25, 2004, Winsor submitted an invoice from Bowen Landscaping to the BOH in the amount of $4,890. The invoice was for Bowen Landscaping mowing the landfill.[1]

11. A vendor would usually submit an invoice for work that has already been performed. As of June 25, 2004, no one had yet mowed the landfill.

12. On or about June 25, 2004, upon receiving the invoice, the BOH administrative assistant filled in the name "Bowen Landscaping" and the amount of $4,890 on the blank voucher approved at the June 3, 2004 BOH meeting. There is no evidence that the administrative assistant was aware that Winsor was the owner of Bowen Landscaping.

13. On July 15, 2004, the town issued a check for $4,890 to Bowen Landscaping.[2] The mowing had still not taken place.

14. On or about July 15, 2004, Winsor had the BOH hold the check until the mowing could be performed.

15. On August 14, 2004, Baylis rented a tractor. He and Winsor mowed the landfill that same day. Winsor used the rented tractor while Baylis used his own tractor.

16. On August 16, 2004, the check made out to Bowen Landscaping was cashed and Winsor received the money.

17. Thereafter, Winsor subtracted the cost of the rental tractor used to mow the landfill ($388), gave Baylis approximately $1,800 for Baylis's part in mowing the landfill, and kept the remainder of the money, approximately $2,700.

18. Baylis knew that he was being paid from town funds.

Conclusions of Law

Section 19

19. Section 19 of G.L. c. 268A prohibits a municipal employee from participating[3] as such an employee in a particular matter[4] in which, to his knowledge, he has a financial interest.[5]

20. As BOH member, Baylis was a municipal employee.

21. As a BOH member, Baylis was involved in trying to locate a vendor to mow the town's capped landfill. Baylis and Winsor tried to find a vendor to do the job, but were unsuccessful.

22. When Baylis and Winsor decided to mow the landfill themselves and seek payment from the town, they effectively decided to award the contract to mow the town's landfill to themselves. By so doing, they acted as BOH members.

23. Therefore, by awarding a contract from which he was to be paid, Baylis participated as a BOH member in a particular matter in which to his knowledge he had a financial interest, thereby violating §19.

Section 20

24. Section 20 prohibits a municipal employee from having a financial interest in a contract with his municipality unless an exemption applies.

25. The above described arrangement between the town and Winsor and Baylis, by which they mowed the landfill, was a contract.

26. Baylis knew he had a financial interest in that contract.

27. No exemption to §20 applied to permit Baylis to have such a financial interest.

28. Therefore, as a Lancaster municipal employee, by knowingly having a financial interest in a contract with the town, Baylis violated §20.

Resolution

In view of the foregoing violation of G.L. c. 268A by Baylis, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Baylis:

(1) that Baylis pay to the Commission the sum of $2,000.00 as a civil penalty for violating G.L. c. 268A, §§19 and 20;

(2) that Baylis pay to the Commission the sum of $1,800.00 as a civil forfeiture for the money he improperly received for mowing the town landfill; and

(3) that Baylis waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: May 10, 2007

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[1] According to Baylis, he was unaware that Winsor owned a company called Bowen Landscaping, nor that Winsor submitted an invoice from Bowen Landscaping in the amount of $4,890.

[2] According to Baylis, he was not aware of this.

[3] "Participate" means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, § 1(j).

[4] "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, § 1(k).

[5] "Financial interest" means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. *See Graham v. McGrail*, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. *See EC-COI-84-98.* The interest can be affected in either a positive or negative way. *EC-COI-84-96.*

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY DOCKET NO. 07-0015

IN THE MATTER OF
SHAWN S. WINSOR

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Shawn Winsor, pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On April 13, 2006, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Winsor. The Commission concluded its inquiry and, on December 13, 2006, found reasonable cause to believe that Winsor violated G.L. c. 268A, §§19, 20, 23(b)(2) and 23(b)(3).

The Commission and Winsor now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. At all relevant times, Winsor was chair of the Lancaster Board of Health ("BOH").

Winsor stepped down from the BOH in approximately September 2006.

2. As a BOH member, Winsor was a municipal employee as defined in G.L. c 268A, §1(g).

3. In spring 2004, Winsor, along with BOH member Robert Baylis and a BOH administrative assistant, attempted to find a vendor to mow the town's capped landfill. The landfill needed to be mowed soon or the BOH faced potential fines from the Department of Environmental Protection ("DEP"). They were not successful in finding a vendor.

4. In or about early June 2004, when they could not find another vendor, Winsor and Baylis decided to mow the landfill themselves.

5. At its June 3, 2004 meeting, Winsor and another BOH member signed a blank voucher authorizing payment for mowing the landfill to a yet-to-be-determined vendor. By this meeting, Winsor knew that he and Baylis would be doing the mowing and would get paid for that mowing through this voucher.

6. The voucher did not reflect the amount of payment, but was instead blank.

7. The BOH would usually not approve a voucher prior to awarding a contract and prior to the vendor performing the work. According to Winsor, the BOH did so here out of concerns about paying the vendor out of the current fiscal year's funds and concerns about the DEP levying fines.

8. At all relevant times, Winsor owned a landscaping company called Bowen Landscaping.

9. On June 25, 2004, Winsor submitted an invoice from Bowen Landscaping to the BOH in the amount of $4,890. The invoice was for Bowen Landscaping mowing the landfill.

10. A vendor would usually submit an invoice for work that has already been performed. As of June 25, 2004, no one had yet mowed the landfill.

11. On or about June 25, 2004, upon receiving the invoice, the BOH administrative assistant filled in the name "Bowen Landscaping" and the amount of $4,890 on the blank voucher approved at the June 3, 2004 BOH meeting. There is no evidence that the administrative assistant was aware that Winsor was the owner of Bowen Landscaping.

12. On July 15, 2004, the town issued a check for $4,890 to Bowen Landscaping. The mowing had still not taken place.

13. On or about July 15, 2004, Winsor had the BOH hold the check until the mowing could be performed.

14. On August 14, 2004, Baylis rented a tractor. Winsor and Baylis mowed the landfill that same day. Winsor used the rented tractor while Baylis used his own tractor.

15. On August 16, 2004, the check made out to Bowen Landscaping was cashed and Winsor received the money.

16. Thereafter, Winsor subtracted the cost of the rental tractor used to mow the landfill ($388), gave Baylis approximately $1,800 for Baylis's part in mowing the landfill, and kept the remainder of the money, approximately $2,700.

17. In August 2005, Winsor self-reported his actions to the State Ethics Commission. He falsely reported that he hired an uninsured contractor to do the mowing and simply used his own company to process the payment. He also falsely claimed he did not profit from the arrangement.

Conclusions of Law

Section 19

18. Section 19 of G.L. c. 268A prohibits a municipal employee from participating[1] as such an employee in a particular matter[2] in which, to his knowledge, he has a financial interest.[3]

19. As BOH chair, Winsor was a municipal employee.

20. The decision to award the landfill mowing contract was a particular matter.

21. Winsor and Baylis tried to find a vendor to do the job, but were unsuccessful. When Winsor and Baylis decided to mow the landfill themselves and seek payment from the town, they

effectively decided as BOH members to award the contract to mow the town's landfill to themselves. By so doing, they participated in that particular matter.

22. Therefore, by awarding a contract from which he was to be paid, Winsor participated as a BOH member in a particular matter in which to his knowledge he had a financial interest, thereby violating §19.

23. Additionally, the decision whether to approve a voucher authorizing payment to a vendor is a particular matter.

24. On June 3, 2004, by approving a blank voucher authorizing payment to an unnamed vendor, Winsor participated in that particular matter.

25. Where Winsor approved the voucher authorizing payment knowing that he would be paid from such authorization, he participated as a BOH member in a particular matter in which to his knowledge he had a financial interest, thereby violating §19.

Section 20

26. Section 20 prohibits a municipal employee from knowingly having a financial interest in a contract with his municipality unless an exemption applies.

27. The above described arrangement between the town and Winsor and Baylis, by which they mowed the landfill, was a contract.

28. Winsor knew he had a financial interest in that contract.

29. No exemption to §20 applied to permit Winsor to have such a financial interest.

30. Therefore, as a Lancaster municipal employee, by knowingly having a financial interest in a contract with the town, Winsor violated §20.

Section 23(b)(2)

31. Section 23(b)(2) prohibits a municipal employee from knowingly or with reason to know using his official position to secure for others an unwarranted privilege of substantial value which are not properly available to similarly situated individuals.

32. As a BOH member, Winsor used his position to secure a $4,890 contract and payment for his own company. The contract and payment were privileges.

33. The contract was unwarranted because it was not properly awarded.

34. The payment was unwarranted because it was authorized through an improperly approved voucher and payment was issued prior to the work having been performed.

35. Where the contract was worth $4,890 and the payment was for $4,890, both were unwarranted privileges of substantial value.

36. Therefore, by using his position to improperly secure a $4,890 contract and payment for himself and Baylis, Winsor violated §23(b)(2).

Resolution

In view of the foregoing violation of G.L. c. 268A by Winsor, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Winsor:

(1) that Winsor pay to the Commission the sum of $5,000.00[4] as a civil penalty for violating G.L. c. 268A, §§19, 20, and 23(b)(2);

(2) that Winsor pay to the Commission the sum of $2,700.00 as a civil forfeiture for the money he improperly received for mowing the town landfill; and

(3) that Winsor waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: May 10, 2007

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[1] "Participate" means to participate in agency action or in a particular matter personally and substantially as

a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, § 1(j).

[2] "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, § 1(k).

[3] "Financial interest" means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. *See Graham v. McGrail*, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. *See EC-COI-84-98.* The interest can be affected in either a positive or negative way. *EC-COI-84-96.*

[4] The civil penalty reflects both the number of allegations and that Winsor falsely represented his actions to the Ethics Commission.

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY DOCKET NO. 07-0016

IN THE MATTER OF
PAUL HOEY

DISPOSITION AGREEMENT

The State Ethics Commission and Paul Hoey enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On January 24, 2007, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict-of-interest law, G.L. c. 268A, by Hoey. The Commission has concluded its inquiry and, on March 14, 2007, found reasonable cause to believe that Hoey violated G.L. c. 268A.

The Commission and Hoey now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Hoey is a Civil Engineer IV for the Massachusetts Highway Department (MassHighway). From November 2005 until August 2006, Hoey served as the acting District Maintenance Engineer (DME).

2. On February 10, 2006, MassHighway posted a Notice of Promotional Opportunity for a Civil Engineer II position. The job posting stated that applicants must currently hold a civil engineer position at MassHighway with the "next lower" job title. Applicants were instructed to send their resume and cover letter to MassHighway's human resources office in Boston.

3. MassHighway received 14 applications that met the minimum requirements.

4. One of the applicants for the position was Hoey's son.

5. Hoey did not disclose to his appointing authority that his son was a candidate for the position.

6. As the acting DME, Hoey was responsible for chairing job searches. Hoey selected and chaired a three-person committee to handle the Civil Engineering II promotion; the other two committee members were Hoey's subordinates.

7. The committee reviewed the 14 applicants, including Hoey's son.

8. As the acting DME, Hoey decided to base the promotion on a written test of civil service questions. Hoey received input from the other committee members but decided himself what questions to include.

9. The test was taken by all candidates for the position including Hoey's son.

10. Hoey alone proctored the test, which was administered to his son and the other candidates at the same time.

11. Afterwards, Hoey and the other committee members individually scored each test and combined their scores to arrive at an overall score for each candidate.

12. Hoey's son scored second highest on the test.

13. On April 14, 2006, Hoey forwarded the scores of the top 12 candidates to the appointing authority for the Civil Engineer II position.

14. The first candidate accepted the position.

15. MassHighway had been prepared to promote three people from the posting but after learning of Hoey's participation in the matter decided not to use the results for subsequent hirings. In addition, MassHighway removed Hoey from the acting DME position and returned him to his civil engineer position and compensation.

Conclusions of Law

16. As a MassHighway employee, Hoey is a state employee.[1]

17. Except as the section otherwise permits, G.L. c. 268A, §6[2] prohibits a state employee from participating as such in a particular matter in which to his knowledge, an immediate family member[3] has a financial interest.

18. The determination as to whom to promote to the Civil Engineer II position was a particular matter.[4]

19. Hoey participated[5] as the acting DME in the Civil Engineer II promotion determination by reviewing applications, deciding to base the promotion on a written test, determining which questions to include on the test, administering the test to his son and the other candidates, scoring the tests and forwarding the scores of the top 12 candidates on to the appointing authoirty.

20. Hoey's son, as an applicant for the Civil Engineer II promotion, had a financial interest in the matter. Hoey knew of his son's financial interests at the time he participated in the promotion process.

21. Accordingly, by participating in the promotion process for the Civil Engineer II position, as set forth above, Hoey participated in his official capacity in particular matters in which he knew an immediate family member had a financial interest, thereby violating G.L. c. 268A, § 6.

22. Hoey cooperated with the Commission's investigation.

Resolution

In view of the foregoing violations of G.L. c. 268A by Hoey, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Hoey:

(1) that Hoey pay to the Commission the sum of two thousand dollars, ($2,000.00) as a civil penalty for violating G. L. c. 268A § 6; and

(2) that Hoey waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: May 14, 2007

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[1] "State employee" means, in relevant part, "a person performing services for or holding an office, position, employment, or membership in a state agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation on a full, regular, part-time, intermittent or consultant basis." *G.L. c. 268A, §1(g).*

[2] None of the § 6 exemptions applies in this case.

[3] "Immediate family" means the employee and his spouse, and their parents, children, brothers and sisters.

[4] "Particular matter," any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

[5] "Participate," participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY
DOCKET NO. 06-0021

IN THE MATTER OF
PAUL COKINOS

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Paul Cokinos pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, § 4(j).

On June 8, 2006, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Cokinos. The Commission has concluded its inquiry and, on March 14, 2007, found reasonable cause to believe that Cokinos violated G.L. c. 268A.

The Commission and Cokinos now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Cokinos is a property developer.

2. During the relevant time, Kenneth Karlson was a self-employed mechanic and excavator.

3. From 2003 until May 2005, Karlson served as a Rockland Conservation Commission member.

4. In spring 2004, Cokinos began a construction project (the "Project") at the Massachusetts Sports Club ("the MSC") in Rockland.

5. The Project involved building a new ice skating rink next to the existing rink, removing the dome over the existing rink, constructing a building to enclose the two rinks, and adding a new parking area. It was anticipated that elevation problems on the lot would lead to water drainage into the adjacent wetlands and add to flooding possibilities. As the Project potentially impacted adjacent wetlands, the matter was under the jurisdiction of the Conservation Commission.

6. In June 2004, the Conservation Commission, with Karlson as its chair, began addressing MSC's application to perform construction on the Project. Cokinos spoke at the Conservation Commission hearing as the engineer on the Project.

7. In August 2004, the Conservation Commission closed the public hearing on the application and issued an Order of Conditions for the Project which included grading.

8. In spring 2005, Cokinos hired Karlson to perform excavation work on the Project which involved these grading requirements.

9. Karlson performed this excavation work on the Project for approximately four weeks during April 2005, for which work Cokinos paid him a total of $10,000.

10. Karlson did not participate as a Conservation Commission member in the Project after agreeing to perform the excavation work.

11. In May 2005, Karlson left the Conservation Commission.

Conclusions of Law

12. Section 17(b) of G.L. c. 268A, prohibits anyone from knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly offering, promising or giving compensation to a municipal employer in relation to any particular matter in which the same municipality is a party or has a direct and substantial interest.

13. As a Conservation Commission member, Karlson was a Rockland municipal employee. At all relevant times, Cokinos knew that Karlson was a Rockland municipal employee.

14. The Conservation Commission's decision concerning the grading requirements on the Project was a particular matter in which the town had a direct and substantial interest.

15. Thus, as described above, by paying Karlson $10,000 for excavation work he did on the Project concerning the grading requirements, Cokinos knowingly gave compensation to a Rockland municipal employee in relation to a particular matter in which the Town of Rockland had a direct and substantial interest.

16. The compensation that Cokinos gave to Karlson was not as provided by law for the proper discharge of Karlson's official duties as a Conservation Commission member.

17. Therefore, by giving compensation to Karlson for excavation work concerning the grading requirements on the Project, Cokinos violated §17(b).

Resolution

In view of the foregoing violation of G.L. c. 268A by Cokinos, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Cokinos:

(1) that Cokinos pay to the Commission the sum of $2,000.00 as a civil penalty for violating G.L. c. 268A, §17(b);

(2) that he waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: June 17, 2007

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY DOCKET NO. 07-0019

IN THE MATTER OF
ROBERT GALEWSKI

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Robert Galewski pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On May 11, 2006, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Galewski. The Commission concluded its inquiry and, on October 11, 2006, found reasonable cause to believe that Galewski violated G.L. c. 268A. The Commission and Galewski now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. During the time relevant, Galewski was the Braintree Inspector of Buildings, with authority over the Building Department, including conducting performance evaluations for the local inspectors within the department. As part of his duties, Galewski, along with the local inspectors, was also responsible for issuing building permits in Braintree.

Free Services from Local General Contractor Brian McGourty

2. In 2000 Galewski as a Braintree building inspector performed three inspections on construction work done by local general contractor Brian McGourty.

3. In or about March 2001, Galewski asked McGourty to replace the mailbox at Galewski's personal residence. McGourty estimated he used approximately $85 worth of materials to replace the mailbox and performed three or four hours of labor installing it. The value of the labor was approximately $200. McGourty did not bill Galewski for the work and Galewski

did not compensate McGourty for the labor or materials.

4. In 2002 Galewski as building inspector issued building permits to McGourty for two construction projects.

5. In or about 2004, McGourty submitted plans for a $1,000,000 building project to the Braintree Building Department. In or about August 2004, Galewski as building inspector sent a letter to the Town of Braintree Planning Department, requesting deferral of the approval of certain as-built engineering plans submitted by McGourty for the project, pending resolution of certain outstanding Building Department concerns. On or about September 21, 2004, Galewski as building inspector informed the Planning Department that these concerns had been addressed.

6. In late 2005 and into 2006, Galewski issued building permits to McGourty for two construction projects. Galewski as building inspector did the final inspection on one of those projects in April 2006.

7. On approximately 10 to 12 occasions between 2001 and 2006, McGourty estimates he or one of his employees plowed snow from the driveway of Galewski's personal residence. Galewski did not compensate McGourty for any of the snowplowing.

8. The usual rate for a similar residential driveway snowplowing in Braintree is $35-$50 per job.

Free Services from Subordinates

9. On or about March 22, 2005, Galewski asked his subordinate building inspector, Michael McGourty ("Michael") (Brian McGourty's brother), to help transport a dishwasher from a department store to Galewski's personal residence.

10. Michael used his own truck to deliver the dishwasher to Galewski's home. This delivery took approximately two hours. It occurred during Michael's regular town work hours. Galewski did not compensate Michael for the delivery assistance.

11. Eric Erskine is another subordinate building inspector at the Braintree Building Department. In addition to his job at the Building Department, Erskine plows residential driveways for extra money.

12. Between 2000 and 2006, Galewski asked Erskine to plow snow from the driveway of Galewski's personal residence. Between 2001 and 2006, Erskine estimates he plowed snow from the driveway of Galewski's personal residence approximately 10 to 15 times during non-Building Department work hours. Galewski gave Erskine a bottle of liquor and two $50 gift certificates in appreciation for these services.

13. At all times when Galewski solicited the above-described services from his subordinate building inspectors, he was in a position to exercise discretion over supervisory matters involving them as his Building Department employees. Among these matters were the discretion to determine work schedules, grant time off, award overtime, assign tasks, supervise work, and conduct performance evaluations.

Conclusions of Law

14. As the Braintree Inspector of Buildings, Galewski was a municipal employee as that term is defined in G.L. c. 268A § 1(g), and is therefore subject to G. L. c. 268A.

15. Section 23(b)(2) of G.L. c. 268A prohibits a municipal employee from, knowingly or with reason to know, using or attempting to use his position to obtain for himself or others unwarranted privileges or exemptions of substantial value not properly available to similarly situated individuals.

Violations Involving Local General Contractorr

16. Galewski did not pay McGourty for the labor or materials used for Galewski's mailbox or snowplowing. Free services for which money is ordinarily exchanged are privileges. Accordingly, Galewski's receipt of those free services was, in each case, a privilege.

17. These free services were unwarranted privileges because there was no justification for Galewski receiving them from McGourty.

18. The mailbox materials and labor were of substantial value because they were worth approximately $285. The snowplowing was also of substantial value because in the aggregate its value was somewhere between $350 and $600.

19. Galewski used his position as building inspector to obtain these privileges by requesting them from a contractor who was and would be subject to his regulatory authority as an inspector. But for his position as building inspector he would not have received these services for free.

20. The privileges Galewski received from McGourty were not properly available to similarly situated individuals.

21. Therefore, Galewski violated § 23(b)(2) by knowingly using his position as the Braintree Building Inspector to secure for himself free labor and materials from McGourty, which were unwarranted privileges of substantial value not properly available to similarly situated individuals.

Violations Involving Building Department Subordinates

22. Galewski did not pay Michael or Erskine for providing him the various free services described above. Free services for which money is ordinarily exchanged are privileges. Accordingly, Galewski's receipt of these free services was, in each case, a privilege.

23. These free services were unwarranted privileges because there was no justification for Galewski receiving them from Michael or Erskine.

24. The dishwasher delivery was of substantial value because the cost of Michael's time on the town payroll and the use of the truck was more than $50. The snowplowing was also of substantial value because in the aggregate its value was somewhere between $350 and $750.

25. Galewski used his position as building inspector to obtain these privileges by requesting them from his subordinates. But for his position as building inspector Galewski would not have received these services for free from Michael or Erskine.

26. The privileges Galewski received from Michael and Erskine were not properly available to similarly situated individuals.

27. Therefore, Galewski violated § 23(b)(2) by knowingly using his position as the Braintree Building Inspector to secure for himself free services from Michael and Erskine, which were unwarranted privileges of substantial value not properly available to similarly situated individuals.

Resolution

In view of the foregoing violations of G.L. c. 268A by Galewski, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Galewski:

(1) that Galewski pay to the Commission the sum of $4,000 as a civil penalty for repeatedly violating G.L. c. 268A, §23(b)(2);

(2) that Galewski disgorge to the Commonwealth the amount of $1500 representing the unjust enrichment he received as described above; and

(3) that Galewski waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: June 19, 2007

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY DOCKET NO. 07-0020

IN THE MATTER OF
EDWARD CATALDO

This Disposition Agreement is entered into between the State Ethics Commission and Edward Cataldo, pursuant to Section 5 of the Commission's Enforcement Procedures. This

Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On July 25, 2006, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Cataldo. The Commission concluded its inquiry and, on May 9, 2007, found reasonable cause to believe that Cataldo violated G.L. c. 268A, §§17(a), 19 and 23(b)(2).

The Commission and Cataldo now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. At all relevant times, Cataldo was the Leominster Building Department Director of Inspections.

2. Between July 2001 and 2002, Cataldo advertised his private business, Energy Plus, through a flier taped to the Building Department front counter. This flier was also distributed to permit applicants.

3. In his private business, Cataldo completed energy code audit reports. These energy code audits were required under the state energy code as part of the local building permit application process. Energy code audit reports are submitted along with building permit applications for new home construction or home additions and are reviewed by a building inspector prior to issuing a building permit.

4. Cataldo completed a number of energy code audit reports for properties located in Leominster as well as other locations. The energy code audit reports bear his company's name, Energy Plus. He was paid $50 per report. When he completed the audit reports, he gave the reports back to the applicants.

5. In six instances applicants submitted the energy code audit reports completed by Cataldo to the Leominster building department along with building permit applications.

6. Those energy code audit reports were then reviewed by a building inspector for accuracy and completion along with the applicant's building permit application.

7. In one instance, Cataldo, as Director of Inspections, reviewed one of the energy code audit reports that he had been paid privately to produce.

Conclusions of Law

Section 17(a)

8. As Leominster Director of Inspections, Cataldo was a municipal employee as defined in G.L. c. 268A, §1(g).

9. Section 17(a) prohibits a municipal employee from otherwise than as provided by law receiving compensation directly or indirectly related to a particular matter in which the town has a direct and substantial interest.

10. A building permit application is a particular matter.

11. Where the energy code audit reports had to be submitted to the Building Department and reviewed by a building inspector for completeness and accuracy before a building permit application was issued, the audits were in relation to a particular matter of direct and substantial interest to the town.

12. Cataldo was privately paid $300 (6 audits at $50 each) to perform the energy code audit reports later submitted with building permit applications to the Leominster Building Department.

13. Being compensated for these audits was not authorized by law.

14. Therefore, by being paid to produce energy code audit reports that were submitted and reviewed along with applicants' building permit applications, Cataldo received compensation in relation to a matter of direct and substantial interest to the town, contrary to §17(a).

Section 19

15. Section 19 prohibits a municipal employee from participating as such in a particular matter in which to his knowledge he or a business organization by which he is employed has a financial interest.

16. Where Cataldo, as Director of Inspections, reviewed as part of the building permit application an energy code audit report that he had privately prepared for a property, he participated in that particular matter.

17. Cataldo had a financial interest in that matter where he was paid $50 to complete the energy code audit report and then, as Director of Inspections, he reviewed the energy code audit report for completion and accuracy.

18. Therefore, by reviewing the energy code audit report that he had been paid privately to produce, he participated in a particular matter in which to his knowledge he had a financial interest, contrary to §19.

Section 23(b)(2)

19. Section 23(b)(2) prohibits a municipal employee from knowingly or with reason to know using his official position to secure for others an unwarranted privilege of substantial value which are not properly available to similarly situated individuals.

20. Advertising his private company at his Building Department office and distributing that advertisement to permit applicants were unwarranted privileges.

21. These privileges were of substantial value because they allowed Cataldo to generate private business which, in total, exceeded $50.

22. These privileges are not otherwise properly available to similarly situated individuals.

23. Cataldo was only able to advertise his private business at the Building Department and distribute the above flier because he was Director of Inspections. Therefore, Cataldo used his official position to secure these unwarranted privileges.

24. Consequently, by using his official position to use public resources for private purpose, Cataldo knowingly used his official position to secure for himself unwarranted privileges of substantial value that were not properly available to similarly situated individuals, violating § 23(b)(2).

Resolution

In view of the foregoing violation of G.L. c. 268A by Cataldo, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Cataldo:

(1) that Cataldo pay to the Commission the sum of $3,000.00 as a civil penalty for violating G.L. c. 268A, §§17(a), 19 and 23(b)(2);

(2) that Cataldo pay to the Commission the sum of $300.00 as a civil forfeiture for the money he improperly received for being paid to perform private energy code audit reports submitted to the Leominster Building Department; and

(3) that Cataldo waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: June 21, 2007

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY DOCKET NO. 07-0022

IN THE MATTER OF
WILLIAM LYNCH

DISPOSITION AGREEMENT

The State Ethics Commission and William Lynch enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On January 24, 2007, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict-of-interest law, G.L. c. 268A, by Lynch. The Commission has concluded its inquiry and, on

March 14, 2007, found reasonable cause to believe that Lynch violated G.L. c. 268A.

The Commission and Lynch now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Lynch is a Business Analysis Manager for the Massachusetts Port Authority (Massport).

2. Lynch also operates a private business as an income tax preparer.

3. Lynch's gross revenue from his tax business for work performed in the 2005 and 2006 tax seasons was approximately $7,000 annually for each year.

4. Lynch performs almost all of the private work during the peak tax season, which runs from February through April.

5. During the 2005 and 2006 tax seasons, Lynch prepared the majority of his clients' tax returns using his Massport office computer and office facilities.

6. Lynch had files representing approximately 200 tax clients stored on his Massport computer.

7. Lynch performed this private tax work after his state work hours. Lynch spent approximately 12 hours each week on tax returns during tax season.

8. After an investigation, Massport suspended Lynch one week for his inappropriate computer usage.

Conclusions of Law

9. As a Massport Business Analysis Manager, Lynch is a state employee.[1]

10. Section 23(b)(2) of G.L. c. 268A prohibits a public employee from knowingly or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.

11. Use of state resources for private purposes is an unwarranted privilege.

12. The extensive use of public resources by Lynch during the three month tax period in each of two successive years was an unwarranted privilege of substantial value not otherwise properly available to similarly situated individuals.

13. Lynch used his Massport position to avail himself of these public resources.

14. Therefore, by repeatedly using his Massport position to use public resources for private use, Lynch knowingly used his official position to secure for himself an unwarranted privilege of substantial value that was not properly available to similarly situated individuals, violating § 23(b) (2).

Resolution

In view of the foregoing violations of G.L. c. 268A by Lynch, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Lynch:

(1) that Lynch pay to the Commission the sum of seven thousand dollars, ($7,000.00) as a civil penalty for repeatedly violating G. L. c. 268A § 23 (b)(2); and

(2) that Lynch waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: July 10, 2007

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[1] "State employee" means, in relevant part, "a person performing services for or holding an office, position, employment, or membership in a state agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation on a full, regular, part-time, intermittent or consultant basis." *G.L. c. 268A, §1(g).*

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY
DOCKET NO. 07-0007

IN THE MATTER OF
PAUL DONLAN

DECISION AND ORDER

On May 18, 2007, the parties filed a Joint Motion to Stay Adjudicatory Proceedings, which the Presiding Officer allowed, and a Joint Motion to Dismiss. Pursuant to 930 CMR 1.01(6)(d), the Commission considered the Joint Motion to Dismiss at its meeting on June 13, 2007. After review and discussion of the Joint Motion to Dismiss, which the Presiding Officer recommended that the Commission allow, the Commission voted to allow the Joint Motion to Dismiss.

Accordingly, the Commission ALLOWS the Joint Motion to Dismiss and the adjudicatory proceedings in Commission Docket No. 07-0007 are concluded.

DATE APPROVED: June 13, 2007
DATE ISSUED: July 11, 2007

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY
DOCKET NO. 07-0012

IN THE MATTER OF
EDMUND F. TARMEY

DISPOSITION AGREEMENT

The State Ethics Commission and Edmund Tarmey enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On March 16, 2007, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Tarmey. The Commission concluded its inquiry and, on April 25, 2007, found reasonable cause to believe that Tarmey violated G.L. c. 268A.

The Commission and Tarmey now agree to the following findings of fact and conclusions of law.

Findings of Fact

1. At all times relevant, Tarmey was the Lowell Regional Water Utility ("the Water Department") executive director.

2. For several years ending in or about 2004, Tarmey's brother Leonard worked as a commissioned salesman for Allied Office Products, a furniture company in Chelmsford.

3. On two occasions in 2001, the City of Lowell contracted with Allied to provide and deliver office furniture to the Water Department office.

First Contract

4. The City of Lowell contracted with Allied to buy office furniture on May 2, 2001. Thereafter, Allied delivered office furniture to the Water Department and submitted an invoice for payment to the Lowell Purchasing Department.

5. On June 30, 2001, Tarmey completed a report certifying Allied's performance of the May 2, 2001 contract. At this time, Tarmey knew this document was necessary for Allied to receive payment for its performance of the contract. Also at this time, Tarmey knew his brother was Allied's commissioned sales representative for the contract.

6. Following Tarmey's June 30, 2001 certification, Allied received payment for its performance of the May 2, 2001 contract. Leonard Tarmey received sales commissions based on the May 2, 2001 contract between the city and Allied.

Second Contract

7. The City of Lowell contracted with Allied to buy office furniture on October 30, 2001. Thereafter, Allied delivered office furniture to the Water Department and submitted an invoice for payment to the Lowell Purchasing Department.

8. On July 2, 2002, Tarmey completed a report certifying Allied's performance of the October 30, 2001 contract. At this time, Tarmey knew this document was necessary for Allied to receive payment for its performance of the contract. Also at this time, Tarmey knew his brother was Allied's commissioned sales representative for the contract.

9. Following Tarmey's July 2, 2002 certification, Allied received payment for its performance of the October 30, 2001 contract. Leonard Tarmey received sales commissions based on the October 30, 2001 contract between the city and Allied.

Law

10. As the Lowell Regional Water Utility Executive Director, Tarmey was a municipal employee as defined by G.L. c. 268A, § 1.

Section 19

11. Section 19 prohibits a municipal employee from participating as such in any particular matter in which, to his knowledge, an immediate family member has a financial interest.

12. Tarmey's brother Leonard is Tarmey's immediate family member as defined by G.L. c. 268A, § 1.

13. Tarmey participated as the Water Utility executive irector in the following particular matters:

(a) the decision on or about June 30, 2001, to certify Allied's performance under the May 2, 2001 contract between Allied and the City of Lowell; and

(b) the decision on or about July 2, 2002, to certify Allied's performance under the October 30, 2001 contract between Allied and the City of Lowell.

14. Tarmey's brother Leonard had a financial interest in each of these particular matters because he stood to receive a sales commission as a result of Allied's contracts with the City of Lowell.

15. When Tarmey so participated, he knew that his brother Leonard had this financial interest.

16. Accordingly, Tarmey violated § 19 by participating as the Water Utility executive director in the above particular matters in which, to his knowledge, an immediate family member had financial interests.

Resolution

In view of the foregoing violations of G.L. c. 268A by Tarmey, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Tarmey:

(1) that Tarmey pay to the Commission the sum of $2,500 as a civil penalty for repeatedly violating G.L. c. 268A §§ 19;

(2) Tarmey waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: July 25, 2007

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY
DOCKET NO. 07-0023

IN THE MATTER OF
THOMAS CAMPBELL

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Thomas Campbell, pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On May 11, 2006, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Campbell. The Commission concluded its inquiry and, on March 14, 2007, found reasonable cause to believe

that Campbell violated G.L. c. 268A, §§19 and 23(b)(2).

The Commission and Campbell now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. At all relevant times, Campbell was an elected member of the Hingham Recreation Commission.

2. As a Recreation Commissioner, Campbell was a municipal employee as defined in G.L. c 268A, §1(g).

3. Between approximately April 2004 and early 2005, Campbell's daughter worked part-time at the Hingham Recreation Commission as a seasonal employee.

4. During the time in which his daughter worked at the Hingham Recreation Commission, Campbell asked Hingham Recreation Program Coordinator Ted Carroll on a number of occasions if he had any additional hours to give to Campbell's daughter.

5. In response, Carroll gave Campbell's daughter an additional weekly shift at the Recreation Commission. Had Campbell not asked him to give his daughter more hours, Carroll would not have done so.

6. While working at the Recreation Commission, Campbell's daughter earned, on average, approximately $7.85 per hour. She earned a total of approximately $1,715 while employed with the Recreation Commission.[1]

Conclusions of Law

Section 19

7. Section 19 of G.L. c. 268A prohibits a municipal employee from participating[2] as such an employee in a particular matter[3] in which, to his knowledge, an immediate family member[4] has a financial interest.[5]

11. As a Recreation Commissioner, Campbell was a municipal employee.

12. The decision to give an employee work hours is a particular matter.

13. By asking Carroll if he had additional hours to give Campbell's daughter, Campbell participated as a Recreation Commissioner in those particular matters.

14. Where his daughter was paid for those hours, she had a financial interest in them.

15. Campbell knew that his daughter had a financial interest in being given additional hours of work.

16. Therefore, by asking Carroll on a number of occasions if he had additional hours to give Campbell's daughter, Campbell participated as a Recreation Commissioner in particular matters in which to his knowledge his immediate family member had a financial interest, thereby repeatedly violating §19.

Section 23(b)(2)

17. Section 23(b)(2) prohibits a municipal employee from knowingly or with reason to know using his official position to secure for others an unwarranted privilege of substantial value which are not properly available to similarly situated individuals.

18. Where Campbell's daughter was given extra hours of work, those hours were a privilege.

19. As a Recreation Commissioner, by asking a subordinate if that subordinate had extra hours of work to give his daughter, Campbell used his position to secure this privilege for his daughter.

20. Where Carroll would not have given Campbell's daughter additional work had Campbell not used his official position to ask him to do so, the privilege of additional hours was unwarranted.

21. The privilege of being given additional hours was of substantial value because Campbell's daughter earned over $50 for the additional shift.

22. The unwarranted privilege was not otherwise properly available to similarly situated individuals.

23. Therefore, by using his Recreation Commission position to secure additional hours of work for his daughter, Campbell repeatedly violated §23(b)(2).

Resolution

In view of the foregoing violations of G.L. c. 268A by Campbell, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Campbell:

(1) that Campbell pay to the Commission the sum of $2,000.00 as a civil penalty for repeatedly violating G.L. c. 268A, §§19 and 23(b)(2);

(2) that Campbell waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: August 2, 2007

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[1] Pay records do not clearly indicate what portion of the $1,715 was earned from the extra weekly shift.

[2] "Participate" means to participate in agency action or in a particular matter personally and substantially as a state,
county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, § 1(j).

[3] "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, § 1(k).

[4] "Immediate family" means a spouse and any dependent children residing in the reporting person's household. G.L. c. 268A, §1(i).

[5] "Financial interest" means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. *See Graham v. McGrail*, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. *See EC-COI-84-98.* The interest can be affected in either a positive or negative way. *EC-COI-84-96.*

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY
DOCKET NO. 07-0024

IN THE MATTER OF
ALBERT INOSTROZA

DISPOSITION AGREEMENT

The State Ethics Commission and Albert Inostroza enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On January 24, 2007, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Inostroza. The Commission concluded its inquiry and, on April 25, 2007, found reasonable cause to believe that Inostroza violated G.L. c. 268A.

The Commission and Inostroza now agree to the following findings of fact and conclusions of law.

Findings of Fact

1. Albert Inostroza is a Lawrence Police Department patrolman.

2. On the evening of July 29, 2006, a friend telephoned Inostroza at his home; Inostroza was off-duty at the time. The friend asked Inostroza to come to his home because he and his wife had discovered a .22-caliber revolver in the bedroom of their 17-year-old daughter.

3. Inostroza went to the friend's home and took possession of the gun. Inostroza spoke with the daughter about the matter. The daughter stated she the found the gun on the ground near a convenience store. The friend asked Inostroza to delay reporting the gun until they (the parents) had a chance to talk further with their daughter. Inostroza left with the gun.

4. Possession of a firearm without an identification card has penalties of up to two years in jail and/or a $1,000 fine.[1]

5. The City of Lawrence Police Department Manual requires police officers to communicate promptly all important happenings which come to their attention, whether on or off-duty.

6. On August 7, 2006, nine days after Inostroza took the gun, the Lawrence Police Department first became aware of the gun matter through a confidential informant. On that same day, the department's internal affairs division (IAD) opened an investigation. The IAD found no record that Inostroza had filed a police report regarding his visit to the friend's home on July 29, 2006, or that he had submitted the gun to the evidence officer.

7. Later on August 7, 2006, Inostroza filed a police report concerning the gun.

8. Inostroza stated that he did not file a police report about the gun because he believed that the true owner of the gun, who was out the country, was returning soon.

9. The IAD recommended that Inostroza be given a 20-day suspension for his misconduct. After an appeal, Inostroza was suspended for 10 days.

Conclusions of Law

10. General laws, c. 268A, § 23(b)(2) prohibits a municipal employee from knowingly, or with reason to know, using his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and not properly available to similarly situated individuals.

11. As a Lawrence Police Department Patrolman, Inostroza is a municipal employee within the meaning of G.L. c. 268A.

12. The failure to promptly report the friend's daughter's possession of a gun was an unwarranted privilege of substantial value for the daughter as she would be facing charges of possession of a firearm without an identification card, which has potential penalties of prison time and fines and the costs incurred with defending that charge.

13. This unwarranted privilege was not otherwise properly available to similarly situated individuals.

14. Inostroza used his police officer position to secure or attempt to secure this privilege by failing to report the friend's daughter's possession of a gun.

15. Therefore, Inostroza violated § 23(b)(2) as he knowingly used his position to secure or attempt to secure an unwarranted privilege of substantial value to his friend's daughter that was not properly available to similarly situated individuals.

Resolution

In view of the foregoing violations of G.L. c. 268A by Inostroza, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Inostroza:

(1) that Inostroza pay to the Commission the sum of $2,000 as a civil penalty for violating G.L. c. 268A as noted above; and

(2) that Inostroza waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: August 6, 2007

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[1] G.L. c. 269, § 10.

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY
DOCKET NO. 07-0025

IN THE MATTER OF
PAUL LAFRATTA

DISPOSITION AGREEMENT

The State Ethics Commission and Paul LaFratta enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On May 9, 2007, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict-of-interest law, G.L. c. 268A, by LaFratta. The Commission has concluded its inquiry and, on June 13, 2007, found reasonable cause to believe that LaFratta violated G.L. c. 268A.

The Commission and LaFratta now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. LaFratta is the North Attleborough Electrical Inspector.

2. LaFratta and his son Michael LaFratta ("Michael") also do private electrical work for their company LaFratta Electric, Inc.[1]

3. In 2005-2006, LaFratta and Michael applied for six permits to do electrical work in town. LaFratta approved these applications.

4. LaFratta's function in approving the applications was to determine whether the applicant was a duly licensed electrician and whether the estimated value of the electrical work listed on the application was consistent with the work described.

5. The Commission is not aware of any evidence indicating that:

(a) Michael or LaFratta Electric, Inc. would not have otherwise been entitled to have the applications approved;

(b) LaFratta inspected or approved any of the electrical work performed by Michael or LaFratta Electric, Inc.; and

(c) the electrical work performed by Michael or LaFratta Electric, Inc. did not comply with applicable codes.

Conclusions of Law

6. As the North Attleborough electrical inspector, LaFratta is a municipal employee within the meaning of G.L. c. 268A.

7. In relevant part, §19 of G.L. c. 268A prohibits a municipal employee from participating as such an employee in a particular matter in which, to his knowledge, he or an immediate family member has a financial interest.

8. The applications for electrical permits were particular matters.[2]

9. LaFratta participated[3] as the electrical inspector in those particular matters by approving the applications.

10. When he participated in the particular matters, LaFratta knew that he and/or his son had financial interests in the particular matters.

11. Therefore, by acting as described above, LaFratta violated § 19.

Resolution

In view of the foregoing violations of G.L. c. 268A by LaFratta, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by LaFratta:

(1) that LaFratta pay to the Commission the sum of $3,000.00 as a civil penalty for repeatedly violating G. L. c. 268A § 19; and

(2) that LaFratta waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this

Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: August 7, 2007

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[1] North Attleborough adopted G.L. c. 166 § 32A in 1982, which enables LaFratta to hold his public inspector position while performing private electric work in town under certain conditions.

[2] "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, § 1(k).

[3] "Participate," participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, § 1(j).

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY
DOCKET NO. 07-0026

IN THE MATTER OF
FRANCIS MARCHAND

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Francis Marchand pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On May 9, 2007, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Marchand. The Commission concluded its inquiry and, on June 13, 2007, found reasonable cause to believe that Marchand violated G.L. c. 268A.

The Commission and Marchand now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Marchand is the Westborough State Hospital ("Hospital") Director of Maintenance of Facilities and Engineering. As such, Marchand was, at all relevant times, a state employee as that term is defined in G.L. c. 268A, §1(g).

2. In October 2006, the Hospital posted an opening for a carpenter position. The position pays approximately $33,000 per year.

3. There were several applicants for the position, including Marchand's brother-in-law (Marchand's wife's sister's husband).

4. Marchand participated in the hiring process by reviewing the resumes and serving on a five member panel that interviewed the candidates. Marchand participated in the panel's interviewing and grading of each candidate. Based on this process, Marchand's supervisor, who sat on the panel, recommended that the brother-in-law be hired. The brother-in-law was ultimately hired for the position.

5. Marchand did not disclose that one of the candidates was his brother-in-law.

Conclusions of Law

Section 23(b)(3)

6. Section 23(b)(3)of G.L. c. 268A in relevant part prohibits a municipal official from, knowingly or with reason to know, acting in a manner which would cause a reasonable person, knowing all of the relevant facts, to conclude that anyone can improperly influence or unduly enjoy that person's favor in the performance of his official duties. This section further provides that it shall be unreasonable to so conclude if the municipal official has disclosed in writing to his appointing authority the facts which would otherwise lead to such a conclusion.

7. By participating in the hiring process where his brother-in-law was a candidate, Marchand knowingly or with reason to know acted in a manner which would cause a reasonable person with knowledge of the relevant facts to

conclude that his brother-in-law could unduly enjoy Marchand's favor in the performance of his official duties.

Resolution

In view of the foregoing violation of G.L. c. 268A by Marchand, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Marchand:

(1) that Marchand pay to the Commission the sum of $1,000 as a civil penalty for violating G.L. c. 268A, §23(b)(3)[1];

(2) that Marchand waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: August 8, 2007

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[1] In relevant part, §19 of G.L. c. 268A prohibits a municipal employee from participating as such an employee in a particular matter in which, to his knowledge, an immediate family member has a financial interest. "Immediate family" is defined as the employee and his spouse, and their parents, children, brothers and sisters. Where the brother-in-law in the instant case is Marchand's wife's sister's husband, § 19 is not applicable.

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY DOCKET NO. 07-0028

IN THE MATTER OF
KEVIN CAHOON

DISPOSITION AGREEMENT

The State Ethics Commission and Kevin Cahoon enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On July 25, 2007, the Commission initiated a preliminary inquiry, pursuant to G.L. c. 268B, § 4(a), into possible violations of the conflict-of-interest law, G.L. c. 268A, by Cahoon . The Commission has concluded its inquiry and, on September 21, 2007, found reasonable cause to believe that Cahoon violated G.L. c. 268A.

The Commission and Cahoon now agree to the following findings of fact and conclusions of law.

Findings of Fact

1. During the relevant period, Cahoon was the Wellfleet Department of Public Works (DPW) assistant director.

2. In 2005, a used chipper was donated to the town. If new, the chipper would have had a value of approximately $1,000. The chipper, however, was in need of repair. The DPW performed minor maintenance in the form of painting, sharpening the blades, and purchasing a new gas tank for the chipper. The total cost for these services and parts was approximately $200. Once repaired, the chipper was operable.

3. In 2006, the DPW purchased a new, larger chipper.

4. In October 2006, Cahoon took the used chipper to his home after obtaining permission from his superior.

5. Cahoon used the used chipper at his home for tree-clearing work.

6. In April 2007, the Wellfleet police asked Cahoon about the used chipper. Cahoon acknowledged that he had the used chipper at home and had only intended to borrow it.

7. Cahoon returned the used chipper to the town in late April 2007, and the machine is now stored in a town shed.

8. Cahoon has since resigned from his DPW position.

Conclusions of Law

9. As the Wellfleet DPW assistant director, Cahoon was a municipal employee as that term is defined in G.L. c. 268A, § 1(g).

10. Section 23(b)(2) of G.L. c. 268A prohibits a municipal employee from, knowingly or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions of substantial value not properly available to similarly situated individuals.

11. The private possession and use of the town's used chipper was an unwarranted privilege.

12. This unwarranted privilege was of substantial value because it provided Cahoon with the free use of town equipment for six months which was a benefit with a value of more than $50.

13. This unwarranted privilege was not available to similarly situated individuals.

14. Cahoon used his position as DPW assistant director to take possession of and make free use of the chipper.

15. Accordingly, Cahoon violated § 23(b)(2) by knowingly or with reason to know using his official position to obtain private possession and free personal use of a town chipper, thereby securing for himself an unwarranted privilege of substantial value that was not properly available to similarly situated individuals.

Resolution

In view of the foregoing violations of G.L. c. 268A by Cahoon, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Cahoon:

(1) that Cahoon pay to the Commission the sum of $500 as a civil penalty for violating G.L. c. 268A; and

(2) that Cahoon waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: October 24, 2007

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY DOCKET NO. 07-0029

IN THE MATTER OF
MARK VINCENT

DISPOSITION AGREEMENT

The State Ethics Commission and Mark Vincent enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On July 25, 2007, the Commission initiated a preliminary inquiry, pursuant to G.L. c. 268B, § 4(a), into possible violations of the conflict-of-interest law, G.L. c. 268A, by Vincent. The Commission has concluded its inquiry and, on September 21, 2007, found reasonable cause to believe that Vincent violated G.L. c. 268A.

The Commission and Vincent now agree to the following findings of fact and conclusions of law.

Findings of Fact

1. Vincent is the Wellfleet Department of Public Works (DPW) director.

2. During the relevant period, Kevin Cahoon was the Wellfleet DPW assistant director.

3. In 2005, a used chipper was donated to the town. If new, the chipper would have had a value of approximately $1,000. The chipper, however, was in need of repair. The DPW performed minor maintenance in the form of painting, sharpening the blades, and purchasing a new gas tank for the chipper. The total cost for these services and parts was approximately $200. Once repaired, the chipper was operable.

4. In 2006, the DPW purchased a new, larger chipper. The used chipper remained idle in the DPW yard.

5. Wellfleet By-Laws, Article III, Town Affairs, § 7 requires that town personal property valued by the town administrator at less than five hundred dollars ($500) be disposed of by the town administrator only by sale or exchange. All town personal property valued at $500 or more is disposed of only by sale or exchange as authorized by town meeting.

6. In October 2006, Vincent as DPW director, without following the required disposal procedures, allowed Cahoon to take the used chipper home.

7. Cahoon used the chipper at his home for tree-clearing work.

8. In April 2007, the Wellfleet police asked Cahoon about the chipper. Cahoon acknowledged that he had the chipper at home and had only intended to borrow it.

9. Cahoon returned the chipper to the town in late April 2007, and the machine is now stored in a town shed.

10. Cahoon has since resigned from his DPW position.

Conclusions of Law

11. As the Wellfleet DPW director, Vincent was a municipal employee as that term is defined in G.L. c. 268A, § 1(g).

12. Section 23(b)(2) of G.L. c. 268A prohibits a municipal employee from, knowingly or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions of substantial value not properly available to similarly situated individuals.

13. Cahoon's private possession and use of the town's chipper was an unwarranted privilege.

14. This unwarranted privilege was of substantial value because it provided Cahoon with the free use for six months of town equipment which was a benefit worth more than $50.

15. This unwarranted privilege was not available to similarly situated individuals.

16. Vincent used his position as DPW Director to allow Cahoon to take possession and free personal use of the chipper without following the required disposal procedures.

17. Accordingly, Vincent violated § 23(b)(2) by knowingly or with reason to know using his official position to allow Cahoon to take private possession of and have free personal use of a town chipper without following the required disposal procedures, thereby securing for Cahoon an unwarranted privilege of substantial value that was not properly available to similarly situated individuals.

Resolution

In view of the foregoing violations of G.L. c. 268A by Vincent, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Vincent:

(1) that Vincent pay to the Commission the sum of $500 as a civil penalty for violating G.L. c. 268A; and

(2) that Vincent waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: October 24, 2007

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY DOCKET NO. 07-0030

IN THE MATTER OF CARL G. CHRISTIANSON, JR.

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Carl G. Christianson, Jr., pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, § 4(j).

On May 9, 2007, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Christianson. The Commission concluded its inquiry and, on September 21, 2007, found reasonable cause to believe that Christianson violated G.L. c. 268A.

The Commission and Christianson now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Christianson is the Rutland Department of Public Works (DPW) supervisor. As the DPW Supervisor, Christianson oversees the town's highway, parks, cemetery, and water and sewer departments. His appointing authority is the Board of Selectmen (BOS), which also serves as the Board of Public Works. The BOS has sole authority to hire and fire DPW employees and also sets their compensation.

2. In September 2006, an opening for a full-time operator/laborer position occurred in the DPW sewer department. Without following the standard hiring process, which includes publicly advertising the open position and interviewing candidates, Christianson recommended that his son be appointed to the position.

3. At the October 10, 2006 BOS meeting, the BOS voted to approve Christianson's recommendation to hire his son. The BOS was aware that Christianson was recommending his son but was not aware that the standard hiring process had not occurred.

4. In January 2007, the State Ethics Commission Enforcement Division staff made inquires to Christianson about the hiring and requested relevant documents.

5. Shortly thereafter, Christianson used a DPW computer to access DPW department computer files, and he created a posting for the operator/laborer position. In an attempt to thwart the Commission's investigation, Christianson had a copy of the fraudulent posting forwarded to the Commission.

6. In early summer of 2007, Christianson admitted to the Commission that he created the posting after the hiring in order to cover-up the fact that proper procedures had not been followed.

Law

7. As the Rutland DPW supervisor, Christianson was a municipal employee as that term is defined in G.L. c. 268A, § 1(g).

Section 19

8. Section 19 of G.L. c. 268A prohibits a municipal employee from participating as such an employee in a particular matter in which, to his knowledge, he or an immediate family member has a financial interest.

9. The hiring of the DPW operator/laborer position was a particular matter.

10. Christianson participated in this particular matter by recommending that his son be hired for the operator/laborer position.

11. Christianson's son is an immediate family member as that term is defined by the conflict law.

12. Where the DPW operator/laborer position was a compensated position, Christianson's son had a financial interest in the hiring. Christianson knew his son had this financial interest.

13. Therefore, Christianson violated §19 by recommending that his son be hired for the DPW operator/laborer position.

Section 23(b)(2)

Hiring Recommendation

14. Section 23(b)(2) of G.L. c. 268A prohibits a public employee from knowingly or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.

15. Where the standard hiring procedure was not followed, Christianson's son's appointment to the DPW operator/laborer position was an unwarranted privilege.

16. Christianson's son's preferential hiring was an unwarranted privilege of substantial value given that his position was compensated.

17. Christianson used his DPW supervisor position to obtain for his son the substantially valuable unwarranted privilege of his preferential hiring by not following the standard hiring procedure but then nevertheless recommending to the BOS that his son be hired for the DPW operator/laborer position.

18. This privilege of being hired without following the standard hiring procedure was not otherwise properly available to similarly situated individuals.

19. Therefore, by recommending that his son be hired for the DPW operator/laborer position without following the standard hiring procedures, Christianson knowingly or with reason to know used his DPW supervisor position to secure for his son an unwarranted privilege of substantial value that was not properly available to similarly situated individuals, violating § 23(b) (2).

Cover-up

20. Christianson's attempted cover-up, through the creation of fraudulent documents, was an unwarranted privilege.

21. The unwarranted privilege was of substantial value to Christianson because if he had been successful, Christenson may have been able to avoid the penalties and negative consequences associated with the charge that he failed to follow standard operating procedures in the hiring.

22. Christianson used his DPW supervisor position to gain access to the DPW computer files, which enabled him to create a fraudulent document concerning the posting of the DPW operator/laborer position. It was also by virtue of his official position that he was able to forward that misleading document to the Commission.

23. Christianson's access to and use of the DPW computer to attempt to cover-up his misconduct was a privilege that was not otherwise properly available to similarly situated individuals.

24. Therefore, by attempting to cover up, through the creation of fraudulent documents and misstatements, his failure to follow standard operating procedures in the hiring of his son for the DPW operator/laborer position, Christianson knowingly or with reason to know used his DPW supervisor position to secure an unwarranted privilege and/or exemption of substantial value that was not properly available to similarly situated individuals, violating § 23(b) (2).

Resolution

In view of the foregoing violation of G.L. c. 268A by Christianson, the Commission has determined that the public interest would be served by the disposition of this matter without

further enforcement proceedings, on the basis of the following terms and conditions agreed to by Christianson:

(1) that Christianson pay to the Commission the sum of $5,000 as a civil penalty for violating G.L. c. 268A, §§ 19 and 23(b)(2); and

(2) that he waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: October 25, 2007

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY
DOCKET NO. 07-0031

IN THE MATTER OF
WALTER TORTORICI

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Walter Tortorici pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, § 4(j).

On March 14, 2007, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Tortorici. The Commission has concluded its inquiry and, on September 21, 2007, found reasonable cause to believe that Tortorici violated G.L. c. 268A.

The Commission and Tortorici now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Tortorici was named part-time Medfield Building Inspector in February 2005.

2. In his private capacity, Tortorici is a Medfield-based builder specializing in residential remodeling and additions. He currently does business as Design Builders of Medfield and as G.T. Builders.

3. Tortorici pulled 13 permits in Medfield on behalf of his private customers between February 2005 and December 2006. Tortorici was compensated for the work performed in connection with these permits. [1]

4. Tortorici did not participate as building inspector in matters involving permits he pulled.

Conclusions of Law

5. As the Medfield building inspector, Tortorici was a municipal employee as that term is defined in G.L. c. 268A, § 1(g).

Section 17(c)

6. Section 17(c) of G.L. c. 268A prohibits a municipal employee, otherwise than in the proper discharge of official duties, from acting as agent for anyone other than the municipality in connection with a particular matter in which the town is a party or has a direct and substantial interest.

7. A building permit application, the decision to issue a building permit and the inspection of work pursuant to a building permit, are particular matters.

8. Where the town issues the building permit, it is a party to and has a direct and substantial interest in the permit and the work and inspections done pursuant to the permit.

9. Tortorici acted as agent for persons other than the town by applying for or "pulling" 13 building permits on behalf of his private customers. In so doing, Tortorici acted as agent for persons other than the town in connection with the building permit applications which were particular matters in which the town was a party and had a direct and substantial interest.

10. Tortorici's acts of agency in pulling permits for his private clients were not within the proper discharge of his official duties as building inspector.

11. Therefore, Tortorici violated § 17(c) each time he pulled a building permit for his private clients.

Section 17(a)

12. Section 17(a) of G.L. c. 268A prohibits a municipal employee, otherwise than as provided by law for the proper discharge of official duties, from directly or indirectly receiving or requesting compensation from anyone other than the municipality in relation to a particular matter in which the municipality has a direct and substantial interest.

13. A building permit application, the decision to issue a building permit and the inspection of work pursuant to a building permit, are particular matters.

14. Tortorici was privately paid by his customers in connection with these particular matters.

15. Tortorici's receipt of private compensation in connection with these particular matters was not as provided by law for the proper discharge of official duties.

16. Therefore, Tortorici violated § 17(a).

Resolution

In view of the foregoing violation of G.L. c. 268A by Tortorici, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Tortorici:

(1) that Tortorici pay to the Commission the sum of $2,000.00 as a civil penalty for violating G.L. c. 268A, §17(a) and (c); and

(2) that he waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: October 30, 2007

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[1] Under 780 CMR (Commonwealth of Massachusetts State Building Code) § 105.6, part-time building inspectors are prohibited from doing private construction work on projects within their jurisdiction. City and town governments, however, can pass a local option law, G.L. c. 143, § 3Z, which enables building inspectors to do private construction work in their jurisdictions under certain conditions. Chapter 143 requires that inspectors have their private work inspected by an inspector from another town or by a special assistant appointed solely for the purpose of performing such inspections. On April 30, 2007, Medfield adopted the chapter 143, § 3Z exemption.

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY DOCKET NO. 07-0033

IN THE MATTER OF
JAMES MURRAY

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and James Murray, pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On September 13, 2006, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Murray. The Commission concluded its inquiry and, on September 21, 2007, found reasonable cause to believe that Murray violated G.L. c. 268A, §17(a).

The Commission and Murray now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. At all relevant times, Murray was a North Reading Highway Department ("Highway Department") employee. As such, Murray was a municipal employee as that term is defined in G.L. c. 268A, §1(g).

2. Sometime in 2004, Murray and North Reading Water Department employee Diego Nicolo started an unincorporated Wilmington-based business called "D. Nicolo J. Murray Water Pipe Testing."

3. Between 2004 and 2005, Murray and/or Nicolo, in their private capacity, performed pressure tests on water lines on properties located at Holt Road, Mary Road, and for a business known as the Hornet's Nest, all properties located in North Reading.

Mary Road

4. More specifically, in or about October 2005, Nicolo and Murray, in their private capacity, performed a pressure test for property located on

Mary Road. Nicolo's supervisor at the Water Department inspected their work.

5. Nicolo and Murray were paid and split a total of $300 for the pressure test at Mary Road.

6. In or about October 2005, Nicolo and Murray were also hired privately to install approximately 60 feet of water line and a hydrant on the Mary Road property. They were each paid approximately $150 for the work. Nicolo's Water Department supervisor inspected their installation work.

Holt Road

7. In or about November 2005, Nicolo, in his private capacity, performed a water pressure test for property located on Holt Road. Nicolo's Water Department supervisor performed the required inspection.

8. Nicolo was paid approximately $400 privately for doing the test.

9. Murray was not present at the test. Nicolo, however, gave some amount of the approximately $400 to Murray. Murray knew or had reason to know that Nicolo gave him this money because Nicolo had performed the private water test, and that the town would have inspected that test.

Hornet's Nest

10. In or about December 2004, Nicolo performed a private water pressure test for a business known as the Hornet's Nest. Nicolo's Water Department supervisor inspected the test.

11. Nicolo was paid privately approximately $500 to perform the water pressure test. 12. It is unclear whether Murray was present at the test. Nicolo, however, gave some amount of the approximately $500 to Murray. Murray knew or had reason to know that Nicolo gave him this money because Nicolo had performed the private water test, and that the town would have inspected that test.

General

13. Nicolo had asked and received permission to perform private water tests in North Reading from his Water Department superintendent and the Director of Public Works. Neither Nicolo nor Murray sought advice about how performing and being paid to perform this work might violate the conflict of interest statute.

14. After another town employee raised conflict of interests concerns to Nicolo's supervisor about Nicolo and Murray performing private water pressure tests, Nicolo and Murray stopped doing private water pressure tests and related work in North Reading.

Conclusions of Law

Section 17(a)

15. Section 17(a) prohibits a municipal employee from, otherwise than as provided by law for the proper discharge of official duties, receiving compensation from anyone other than the town in relation to a particular matter in which the town is a party or has a direct and substantial interest.

16. The Town's inspections of the above-described water pressure tests and the water line installation were particular matters.

17. The Town was a party to the water pressure tests and water line installation that Nicolo and Murray performed privately because the Water Department Superintendent inspected the tests and water line installation. The Town also had a direct and substantial interest in the water pressure tests and water line installation.

18. As to Holt Road, Mary Road, and the Hornet's Nest, Murray was paid privately for the private water pressure tests. Murray was also privately paid to install a water line on Mary Road. Thus, in all instances, Murray received compensation for the private water pressure tests, whether he or Nicolo performed the work.

19. Murray's being paid in connection with this private work was not otherwise than as provided by law.

20. Thus, Murray's receipt of private compensation in relation to matters in which the town had a direct and substantial interest violated §17(a).

Resolution

In view of the foregoing violation of G.L. c. 268A by Murray, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Murray:

(1) that Murray pay to the Commission the sum of $750.00 as a civil penalty for violating G.L. c. 268A, §17(a);

(2) that Murray waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: November 28, 2007

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY DOCKET NO. 07-0034

IN THE MATTER OF
DIEGO NICOLO

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Diego Nicolo, pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On September 13, 2006, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Nicolo. The Commission concluded its inquiry and, on September 21, 2007, found reasonable cause to believe that Nicolo violated G.L. c. 268A, §§17(a) and 23(b)(2).

The Commission and Nicolo now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. At all relevant times, Nicolo was a North Reading Water Department ("Water Department") employee. As such, Nicolo was a municipal employee as that term is defined in G.L. c. 268A, §1(g).

2. Sometime in 2004, Nicolo and North Reading Highway Department employee James Murray started an unincorporated Wilmington-based business called "D. Nicolo J. Murray Water Pipe Testing."

3. Between 2004 and 2005, Nicolo and/or Murray, in their private capacity, performed pressure tests on water lines on properties located at Holt Road, Mary Road, Central Place and for a business known as the Hornet's Nest, all properties located in North Reading.

Mary Road

4. More specifically, in or about October 2005, Nicolo and Murray in their private capacity performed a pressure test for property located on Mary Road. Nicolo's supervisor at the Water Department inspected their work.

5. Nicolo and Murray were paid and split a total of $300 for the pressure test at Mary Road.

6. In or about October 2005, Nicolo and Murray were also hired privately to install approximately 60 feet of water line and a hydrant on the Mary Road property. They were each paid approximately $150 for the work. Nicolo's Water Department supervisor inspected their installation work.

Holt Road

7. In or about November 2005, Nicolo, in his official capacity as a Water Department employee, went to the property located at Holt Road and turned the water on so that the contractor could test the line. The contractor found a leak and repaired it. As a Water Department employee, Nicolo performed an informal inspection of the contractor's repair work.

8. After completing the repair, the contractor finished installing a water line, a hydrant, and a tap line so that water could be provided to a house. Nicolo again inspected the new installation to verify that the work was done properly

9. Sometime during this process, the contractor asked Nicolo if he knew of anyone who could do the required water pressure test. Nicolo responded by saying that he could do the job. At the time of this discussion, Nicolo was on town time and in a uniform that included his town office logo.

10. Nicolo, in his private capacity, later performed the water pressure test. He took vacation time from his municipal job to do the test. Nicolo's Water Department supervisor performed the required inspection.

11. Nicolo was paid privately approximately $400 for doing the test. He gave some amount of that money to his business partner, James Murray.

Hornet's Nest

12. In or about December 2004, Nicolo performed a private water pressure test for a business known as the Hornet's Nest. Nicolo's Water Department supervisor inspected the test.

13. Nicolo was paid privately approximately $500 to perform the water pressure test. Nicolo split the money with Murray.

Central Place

14. In or about August 2005, Nicolo and Murray performed a private water pressure test for a property on Central Place. Nicolo's Water Department supervisor inspected the test.

15. The evidence indicates that Nicolo and Murray were not paid for this work, but instead the contractor lent Nicolo equipment in exchange for the pressure test.

General

16. Nicolo had asked and received permission to perform private water tests in North Reading from the Water Department superintendent and the Director of Public Works. Neither Nicolo nor Murray sought advice about how performing and being paid to perform this work might violate the conflict of interest statute.

17. After another town employee raised conflict of interests concerns to Nicolo's supervisor about Nicolo and Murray performing private water pressure tests, Nicolo and Murray stopped doing private water pressure tests and related work in North Reading.

Conclusions of Law

Section 17(a)

18. Section 17(a) prohibits a municipal employee from, otherwise than as provided by law for the proper discharge of official duties, receiving compensation from anyone other than the town in relation to a particular matter in which the town is a party or has a direct and substantial interest.

19. The Town's inspections of the above-described water pressure tests and the water line installation were particular matters.

20. The Town was a party to the water pressure tests and water line installation that Nicolo and Murray performed privately because the Water Department Superintendent inspected the tests and water line installation. The Town also had a direct and substantial interest in the water pressure tests and water line installation.

21. G.L. c. 268A, §1(a) defines "compensation" as "any money, thing of value or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another."

22. As to Holt Road, Mary Road, and the Hornet's Nest, Nicolo was paid privately for performing private water pressure tests. Nicolo was also privately paid to install a water line on Mary Road. As to Central Place, Nicolo received the benefit of being provided equipment by the contractor in exchange for Nicolo doing the water pressure test. Thus, in all instances, Nicolo received compensation for the private work he performed.

23. This private work was inspected by the town. Therefore, the private work was in relation to the town's inspections.

24. Nicolo's being paid to perform this private work was not otherwise than as provided by law.

25. Thus, Nicolo's receipt of private compensation in relation to matters in which the

town had a direct and substantial interest violated §17(a).

Section 23(b)(2)

26. Section 23(b)(2) prohibits a municipal employee from knowingly or with reason to know using his official position to secure for himself or others an unwarranted privilege of substantial value which is not properly available to similarly situated individuals.

27. Using one's official position to obtain private work is a privilege.

28. When the contractor on the Holt Road job asked Nicolo if he knew of anyone who could do the required water pressure test, Nicolo, who was on town time and in his official uniform, responded by saying that he could do the job but not on town time. By so responding, while in uniform and on town time, Nicolo in effect used his official position to obtain the job. Therefore, the use of his position was an unwarranted privilege.

29. That unwarranted privilege was of substantial value because Nicolo and Murray split approximately $400 for private work performed on Holt Road that resulted from the use of position.

30. Nicolo's use of his official position to obtain private work is an unwarranted privilege not properly available to similarly situated individuals.

31. Thus, Nicolo used his position to secure an unwarranted privilege of substantial value for himself which was not property available to similarly situated individuals, in violation of §23(b)(2).

Resolution

In view of the foregoing violation of G.L. c. 268A by Nicolo, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Nicolo:

(1) that Nicolo pay to the Commission the sum of $1,000.00 as a civil penalty for repeatedly violating G.L. c. 268A, §17(a) and for violating §23(b)(2);

(2) that Nicolo waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: November 28, 2007

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY DOCKET NO. 07-0035

IN THE MATTER OF
RAYMOND PAYSON

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Raymond Payson pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, § 4(j).

On June 13, 2007, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Payson. The Commission concluded its inquiry and, on September 21, 2007, found reasonable cause to believe that Payson violated G.L. c. 268A.

The Commission and Payson now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. During the relevant period, Payson was chairman of the North Attleborough Planning Board.

2. Payson and his brother own a 7.6-acre vacant lot on Landry Avenue in North Attleborough. The Paysons' lot abuts an 11.1-acre lot at 344 John Dietsch Boulevard owned by

Corliss Development Group, L.L.C. ("the Corliss property").

3. In early spring 2006, plans were drafted to develop the Corliss property for commercial use involving garages and offices for local contractors. In March 2006, Corliss submitted his plans for the development to the Planning Board. Key development issues were road access and intersections. Decisions concerning these issues would likely affect the value of Payson's abutting property as these decisions would determine whether Corliss Landing would pay for a road layout that would give access to Payson's lot.

4. In or about late spring 2006, Payson stated that he was not going to participate in the Corliss property development matters as a Planning Board member because of his abutter status.

5. Notwithstanding this statement, Payson participated as a Planning Board member in the following matters concerning the Corliss property development:

a) approving the May 25, 2006 site plan application;

b) attending and participating in discussions on the September 18, 2006 Planning Board site walk;

c) approving the October 5, 2006 site plan modification;

d) inspecting the property on November 28, 2006 with the Planning Board engineer; and

e) writing a November 28, 2006 letter to Corliss on Planning Board letterhead stating that utility work was "at risk of not receiving planning board approval."

Conclusions of Law

6. Section 19 of G.L. c. 268A prohibits municipal employees from participating in their official capacity in particular matters in which, to their knowledge, they have a financial interest.

7. As the Planning Board chairman, Payson was a municipal employee as that term is defined in G.L. c. 268A, § 1.

8. The Planning Board's approvals, decisions and inspections regarding the Corliss property development were particular matters.

9. Payson, as a Planning Board member, repeatedly participated as described above in such matters involving these decisions concerning the Corliss property development.

10. Payson had a financial interest in the Planning Board's decisions regarding the Corliss property as the decisions would have a reasonably foreseeable financial impact on his abutting property's value.

11. Payson knew of his financial interest in the particular matters before the Planning Board concerning the Corliss property when he repeatedly participated as a Planning Board member in the particular matters as described above.

12. Accordingly, by participating as a Planning Board member as described above in the particular matters involving the Corliss property development, Payson repeatedly violated § 19.

Resolution

In view of the foregoing violation of G.L. c. 268A by Payson, the Commission has determined that the public interest would be served by the disposition of this matter without

further enforcement proceedings, on the basis of the following terms and conditions agreed to by Payson:

13. that Payson pay to the Commission the sum of $5,000 as a civil penalty for repeatedly violating G.L. c. 268A, § 19 and

14. that he waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: November 29, 2007

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY
DOCKET NO. 07-0038

IN THE MATTER OF
ANTHONY GIANNINO

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Anthony Giannino pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, § 4(j).

On July 25, 2006 and December 13, 2006, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Giannino. The Commission has concluded its inquiry and, on April 25, 2007, found reasonable cause to believe that Giannino violated G.L. c. 268A.

The Commission and Giannino now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Giannino is employed by the City of Revere Department of Public Works (DPW) as a drain department foreman.

2. Randy Adamson is employed by the DPW as a sewer foreman.

3. Joseph Maglione is the DPW Water and Sewer Enterprise Fund General Foreman.

4. As DPW employees, Giannino and Adamson were responsible for installing and repairing the city's sewer and storm main lines.

5. The DPW does not install or maintain the private connections between the City's main water and sewer lines and residential or business properties. Work on such service lines is handled by private contractors. The City maintains a list of approximately a dozen licensed, bonded drain layers who are authorized to do work in the City. Neither Adamson nor Giannino is a licensed drain layer.

6. In Revere, a street opening permit is necessary whenever a contractor performs work in a public way. Repairing or installing a sewer or water service line usually requires a street opening permit issued by the DPW. In order to obtain such a permit, a contractor must be on the list of licensed drain layers. Street opening permits cost $200. Before a drain-laying project requiring a permit is complete, it must be inspected by the DPW.

7. Maglione is responsible for inspecting sewer and water work performed under permit in the City.

8. From 2002 until March of 2006, Adamson and Giannino performed approximately 25 private water and/or sewer service projects in the City. The projects usually consisted of either 1) repairs to residential or business sewer or water lines, or 2) installation of new water and sewer lines. Most of these projects required permits: on a few occasions, the permit was obtained through a licensed contractor; on other occasions, no permit was sought.

9. Adamson and Giannino were privately compensated for the private drain-laying work they did in the City.

10. Adamson and Giannino testified that, in 2002, Maglione approached them and asked for $200-250 for every new water and/or sewer service installation that Adamson and Giannino privately performed. Adamson and Giannino testified that during the period of approximately 2002 through summer 2005, they gave Maglione a total of $3,000-4,000 regarding these installations.

Conclusions of Law

Chapter 268A, §2(a)

11. Section 2(a) of G.L. c. 268A, in relevant part, prohibits anyone from corruptly giving anything of value to a municipal employee with intent to influence any official act or act within his official responsibility.

12. As noted above, Giannino and Adamson repeatedly gave Maglione payments of $200-250 for every new water and/or sewer service

installation that Giannino and Adamson privately performed.

13. During the period of approximately 2002 through summer 2005, Giannino and Adamson gave Maglione approximately $3,000-4,000 in such payments.

14. Giannino and Adamson gave these payments with the corrupt intent of influencing Maglione in the performance of his official acts and/or acts within his responsibility as DPW Water and Sewer Enterprise Fund General Foreman regarding the above-described private water and/or sewer service line work. Those acts included but were not limited to allowing work to go forward despite Adamson and Giannino's not being licensed and/or lacking permits; overlooking conflict-of-interest issues raised by Adamson and Giannino's private work; expediting or not requiring the approval process regarding adherence to building codes; and/or other preferential decisions in Giannino and Adamson's favor concerning city water and/or sewer matters.

15. Thus, by corruptly giving Maglione money in return for official acts and/or acts within his responsibility as DPW Water and Sewer Enterprise Fund General Foreman regarding the private work, Giannino repeatedly violated § 2(a).

Chapter 268A, §17(a)

16. Section 17 (a) of G.L. c. 268A prohibits municipal employees from otherwise than as provided by law for proper discharge of official duties directly or indirectly receiving or requesting compensation from anyone other than their city, town or municipal agency in relation to a particular matter in which the same city or town is a party or has a direct and substantial interest.

17. Giannino received compensation for private water and sewer service line work he performed in the City.

18. The decisions to issue City permits for water and sewer service line work and the inspections pursuant to those permits are particular matters.

19. The compensation Giannino received for performing water and sewer service line work was in relation to particular matters in which the City had a direct and substantial interest.

20. Giannino's receipt of private compensation for work he performed privately was not as provided by law for the proper discharge of his official duties.

21. Therefore, on each occasion he received private compensation in relation to particular matters in which the City had a direct and substantial interest, Giannino violated §17(a).

Resolution

In view of the foregoing violation of G.L. c. 268A by Giannino, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Giannino:

(1) that Giannino pay to the Commission the sum of $8,000 as a civil penalty for repeatedly violating G.L. c. 268A, §§ 2(a) and 17(a); and

(2) that Giannino waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: December 10, 2007

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY DOCKET NO. 07-0037

IN THE MATTER OF
RANDY ADAMSON

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Randy Adamson pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c.

268B, § 4(j).

On July 25, 2006 and December 13, 2006, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Adamson. The Commission has concluded its inquiry and, on April 25, 2007, found reasonable cause to believe that Adamson violated G.L. c. 268A.

The Commission and Adamson now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Randy Adamson is employed by the DPW as a sewer foreman.

2. Anthony Giannino is employed by the City of Revere Department of Public Works (DPW) as a drain department foreman.

3. Joseph Maglione is the DPW Water and Sewer Enterprise Fund General Foreman.

4. As DPW employees, Adamson and Giannino were responsible for installing and repairing the city's sewer and storm main lines.

5. The DPW does not install or maintain the private connections between the City's main water and sewer lines and residential or business properties. Work on such service lines is handled by private contractors. The City maintains a list of approximately a dozen licensed, bonded drain layers who are authorized to do work in the City. Neither Adamson nor Giannino is a licensed drain layer.

6. In Revere, a street opening permit is necessary whenever a contractor performs work in a public way. Repairing or installing a sewer or water service line usually requires a street opening permit issued by the DPW. In order to obtain such a permit, a contractor must be on the list of licensed drain layers. Street opening permits cost $200. Before a drain-laying project requiring a permit is complete, it must be inspected by the DPW.

7. Maglione is responsible for inspecting sewer and water work performed under permit in the City.

8. From 2002 until March of 2006, Adamson and Giannino performed approximately 25 private water and/or sewer service projects in the City. The projects usually consisted of either 1) repairs to residential or business sewer or water lines, or 2) installation of new water and sewer lines. Most of these projects required permits: on a few occasions, the permit was obtained through a licensed contractor; on other occasions, no permit was sought.

9. Adamson and Giannino were privately compensated for the private drain-laying work they did in the City.

10. Adamson and Giannino testified that, in 2002, Maglione approached them and asked for $200-250 for every new water and/or sewer service installation that Adamson and Giannino privately performed. Adamson and Giannino testified that during the period of approximately 2002 through summer 2005, they gave Maglione a total of $3,000-4,000 regarding these installations.

Conclusions of Law

Chapter 268A, §2(a)

11. Section 2(a) of G.L. c. 268A, in relevant part, prohibits anyone from corruptly giving anything of value to a municipal employee with intent to influence any official act or act within his official responsibility.

12. As noted above, Giannino and Adamson repeatedly gave Maglione payments of $200-250 for every new water and/or sewer service installation that Giannino and Adamson privately performed.

13. During the period of approximately 2002 through summer 2005, Giannino and Adamson gave Maglione approximately $3,000-4,000 in such payments.

14. Giannino and Adamson gave these payments with the corrupt intent of influencing Maglione in the performance of his official acts and/or acts within his responsibility as DPW Water and Sewer Enterprise Fund General Foreman regarding the above-described private water and/or sewer service line work. Those acts included but were not limited to allowing work to go forward despite Adamson and Giannino's not being licensed and/or lacking permits; overlooking conflict-of-interest issues raised by Adamson and

Giannino's private work; expediting or not requiring the approval process regarding adherence to building codes; and/or other preferential decisions in Giannino and Adamson's favor concerning city water and/or sewer matters.

15. Thus, by corruptly giving Maglione money in return for official acts and/or acts within his responsibility as DPW Water and Sewer Enterprise Fund General Foreman regarding the private work, Adamson repeatedly violated § 2(a).

Chapter 268A, §17(a)

16. Section 17 (a) of G.L. c. 268A prohibits municipal employees from otherwise than as provided by law for proper discharge of official duties directly or indirectly receiving or requesting compensation from anyone other than their city, town or municipal agency in relation to a particular matter in which the same city or town is a party or has a direct and substantial interest.

17. Adamson received compensation for private water and sewer service line work he performed in the City.

18. The decisions to issue City permits for water and sewer service line work and the inspections pursuant to those permits are particular matters.

19. The compensation Adamson received for performing water and sewer service line work was in relation to particular matters in which the City had a direct and substantial interest.

20. Adamson's receipt of private compensation for work he performed privately was not as provided by law for the proper discharge of his official duties.

21. Therefore, on each occasion he received private compensation in relation to particular matters in which the City had a direct and substantial interest, Adamson violated §17(a).

Resolution

In view of the foregoing violation of G.L. c. 268A by Giannino, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Adamson:

(1) that Adamson pay to the Commission the sum of $8,000 as a civil penalty for repeatedly violating G.L. c. 268A, §§ 2(a) and 17(a); and

(2) that Adamson waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: December 12, 2007

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY DOCKET NO. 07-0040

IN THE MATTER OF
DIANA BRENSILBER-CHIDSEY

DISPOSITION AGREEMENT

The State Ethics Commission and Diana Brensilber Chidsey enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On December 13, 2006, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict-of-interest law, G.L. c. 268A, by Chidsey. The Commission has concluded its inquiry and, on October 17, 2007, found reasonable cause to believe that Chidsey violated G.L. c. 268A.

The Commission and Chidsey now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Chidsey was employed by the Executive Office of Public Safety ("EOPS") from June 1994 to August 2003. From August 1997 until August 2003, she served as Director of

Research and Evaluation at EOPS. From April 2002 to September 2002, Chidsey also held the title of Chief of Staff to the EOPS. In April and May of 2003, Chidsey served as Programs Division Acting Executive Director.

2. In 2002 and 2003, EOPS distributed millions of dollars in federal and state grant money ("EOPS grants") to Massachusetts law enforcement agencies.

3. Crest Associates ("Crest") was a Boston-based firm that provided grant application and program management services to Massachusetts municipal law enforcement agencies that were seeking these grants.

4. Crest's clients applied for and received several million dollars in EOPS grants in 2002 and 2003.

5. Crest was paid fees by its clients for services it provided in connection with EOPS grants.

6. In or about 2002, Chidsey's fiancé was hired as a consultant by Crest. Chidsey did not disclose this fact to her EOPS appointing authority.

7. In approximately September 2002, Chidsey became a consultant for Crest.

8. In September 2002, Chidsey submitted a written request seeking permission from the then EOPS Secretary to provide consulting services to police departments outside of Massachusetts. The Secretary approved her request "based upon the information presented in your request and your representation that this work will not conflict with the duties of your current position." Although the Secretary was informed orally that Chidsey would be providing consulting services for Crest, Chidsey did not disclose in her written submission that she was working as a consultant for Crest.

9. In January 2003, a new EOPS administration took over. Chidsey did not respond to a formal request from EOPS in March 2003 to disclose any outside employment.

10. In the late spring and early summer of 2003, Chidsey contributed to the planning of a federally-funded EOPS state homeland security grant program. Crest subsequently applied for state homeland security grants on behalf of its police department clients. Chidsey served on one of seven EOPS teams which rated applications for the state homeland security grants. While none of the applications rated by Chidsey's team were on behalf of Crest clients, the applications were in competition with those submitted by Crest for its clients.

11. In August 2003, Chidsey left EOPS and accepted a full-time consulting position with Crest.

Conclusions of Law

12. As the EOPS Director of Research and Evaluation, as the EOPS Chief of Staff and as the EOPS Program Division Acting Executive Director, Chidsey was a state employee within the meaning of G.L. c. 268A.

13. Section 23(b)(3) of G.L. c. 268A in relevant part prohibits a public employee from, knowingly or with reason to know, acting in a manner which would cause a reasonable person, knowing all of the relevant facts, to conclude that anyone can improperly influence or unduly enjoy that person's favor in the performance of his official duties.

14. By contributing to the planning of a federally-funded EOPS state homeland security grant program that Crest subsequently applied for on behalf of its police department clients and by assisting in rating the proposals or applications for such grants submitted by Crest's clients' competitors, Chidsey repeatedly participated as an EOPS employee in EOPS grants that directly or indirectly impacted Crest clients (and thus Crest) while both she and her husband were working as consultants for Crest. In doing so, Chidsey knowingly acted in a manner which would cause a reasonable person with knowledge of the relevant facts to conclude that Crest could unduly enjoy her favor in the performance of her official duties.

15. Accordingly, Chidsey repeatedly violated §23(b)(3).

Resolution

In view of the foregoing violations of G.L. c. 268A by Chidsey, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the

following terms and conditions agreed to by Chidsey:

(1) that Chidsey pay to the Commission the sum of five thousand dollars ($5,000.00) as a civil penalty for repeatedly violating G. L. c. 268A § 23(b)(3); and

(2) that Chidsey waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: December 18, 2007

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

IN THE MATTER OF
LOUIS DINATALE

PUBLIC ENFORCEMENT LETTER

Dear Mr. DiNatale:

As you know, the State Ethics Commission conducted a preliminary inquiry into whether you, as the University of Massachusetts-Lowell Executive Director of Public Affairs and Director of the Center for Economic and Civic Opinion (CECO) violated § 23(b)(3) by consulting for private clients on matters related to and/or overlapping with UMass-Lowell polls. Based on the staff's inquiry (discussed below), the Commission voted on September 21, 2007, to find that there is reasonable cause to believe that you violated G.L. c. 268A, § 23(b)(3).

For the reasons discussed below, however, the Commission has concluded that further proceedings in your case are not necessary. Instead, the Commission has determined that the public interest would be better served by bringing to your attention, and to the public's attention, the facts revealed by the preliminary inquiry, and by explaining the application of the law to the facts, with the expectation that this advice will ensure your understanding of and future compliance with these provisions of the conflict-of-interest law.

By agreeing to this public letter as a final resolution of this matter, you do not admit to the facts and law discussed below. The Commission and you have agreed that there will be no formal action against you in this matter and that you have chosen not to exercise your right to a hearing before the Commission.

IV. Facts

You were hired by the University of Massachusetts Lowell ("UMass Lowell") in 2003 as director of the Center for Economic and Civic Opinion after years of service at the University of Massachusetts Boston. Your duties include conducting various polls for the University, some of which involve political issues and campaigns. You conducted such polls in your prior position as well. The purpose of such polls is to enhance the image of the University, and your political acumen and professional reputation are important to that goal.

In your private capacity, you have also conducted polls as a paid political consultant. In or about early 2005, Christy Mihos hired you as a private political pollster. At the time, Mihos was contemplating running for governor. You conducted a political poll for Mihos from September 25-29, 2005. It queried Republican voters about a range of political issues and included numerous questions about Mihos as a Republican candidate for governor.

You also conducted a University poll of 400 registered voters (Republicans, Independents, and Democrats) around the same time as the private poll for Mihos. The University poll, conducted between September 19th and September 27th, 2005, included three questions concerning Christy Mihos in possible match-ups as a Republican candidate for governor against three different Democratic opponents: Thomas Reilly, Deval Patrick, and William Galvin. The poll also included a fourth question about Mihos as an Independent candidate versus Republican Kerry Healy and Democrat Tom Reilly.

You made no disclosure to your appointing authority regarding the particular private polling work you performed for Mihos, although your appointing authority was generally aware that you engaged in private polling work.

V. Discussion

As director of the University Center for Economic and Civic Opinion, you are a state employee as that term is defined in G.L. c. 268A, § 1(q). As such, you were subject to the conflict of interest law G.L. c. 268A generally and, in particular for the purposes of this discussion, to § 23(b)(3) of that statute.

Section 23(b)(3) prohibits a municipal employee from knowingly, or with reason to know, acting in a manner which would cause a reasonable person, knowing all of the facts, to conclude that anyone can improperly influence or unduly enjoy the employee's favor in the performance of his official duties or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. This section's purpose is to deal with appearances of impropriety, and in particular, appearances that public employees may be biased in favor or against certain people in the performance of their official duties. This subsection further provides, in effect, that the appearance of impropriety can be obviated if the state employee discloses in writing to his appointing authority all of the relevant circumstances which would otherwise create the appearance of conflict. The appointing authority must maintain the written disclosure as a public record.

The Commission generally applies § 23(b)(3) where an appearance arises that the integrity of a public official's action might be undermined by a private relationship or interest. *Flanagan*, 1996 SEC 757, 763; *Commission Advisory No. 05-01, The Standards of Conduct (Section 23).*

By conducting public polling in September 2005 as a University employee that included questions concerning Mihos while having a private relationship with Mihos, you acted in a manner that would cause a reasonable person to conclude that you could be improperly influenced by Mihos or that Mihos could unduly enjoy your favor in the performance of your official duties, in short, that you might be biased in his favor. This appearance problem was exacerbated by the fact that your private relationship included conducting a private political poll for Mihos that overlapped in time and subject matter with your University poll. You did not make a timely disclosure of the relevant circumstances to your state appointing authority. Therefore, the Commission voted to find that there is reasonable cause to believe that you violated § 23(b)(3).

The point the Commission wants to emphasize is that it is essential that public employees' objectivity, both in fact and in appearance, be maintained so that public confidence in their official actions can be assured. Accordingly, no public official should be involved in any situation where he/she has a potentially compromising relationship with a party with an interest in his/her public work without *first* fully and in writing disclosing the relevant facts concerning that particular matter to his appointing authority. [1]

VI. Disposition

The Commission is authorized to resolve violations of G.L. c. 268A with civil penalties of up to $2,000 for each violation. The Commission, however, chose to resolve this case with an education letter rather than imposing a fine because it believes the public interest would best be served by doing so. Public employees need to disclose in writing any particular private activity that may create an appearance that the objectivity of their public work can be compromised; general awareness on the part of an appointing authority of somewhat similar private activity by them is not enough. The purpose of this public education letter is to emphasize that point.

Based upon its review of this matter, the Commission has determined that your receipt of this public education letter should be sufficient to ensure your understanding of and future compliance with the conflict of interest law.

This matter is now closed.

Very truly yours,

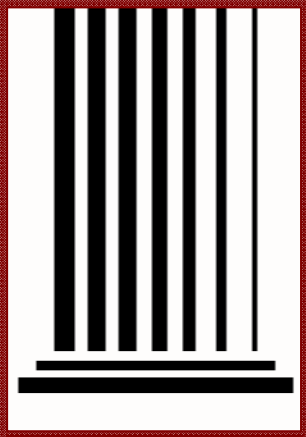
David A. Wilson
Acting Executive Director

DATE: December 19, 2007

[1] In the educational spirit of a public letter, you should also be aware that serving as a private political consultant while conducting public polls could raise issues under § 23(b)(2). UMass Lowell's audit has

demonstrated that no University resources were used in your private polling, but there are other potential implications. Section 23(b)(2) prohibits any state employee from knowingly, or with reason to know, using or attempting to use his official position to secure for anyone an unwarranted privilege of substantial value which is not properly available to similarly situated individuals. Section § 23(b)(2) would be violated if one were to use public polling to gain some kind of advantage for a private client.

ADVICE ◇ EDUCATION ◇ DISCLOSURE ◇ ENFORCEMENT



COMMISSION MEMBERS

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M. Tracey Maclin, Vice Chairman
Matthew N. Kane
Jeanne M. Kempthorne
David L. Veator

MASSACHUSETTS STATE ETHICS COMMISSION
One Ashburton Place, Room 619
Boston, MA 02108
617-371-9505
www.mass.gov/ethics