

ADVICE



EDUCATION



DISCLOSURE



ENFORCEMENT

**2016-2017**  
**Advisory Opinions**  
**Enforcement Actions**

**MASSACHUSETTS STATE ETHICS COMMISSION**  
One Ashburton Place, Room 619  
Boston, MA 02108  
617-371-9500  
[www.mass.gov/orgs/state-ethics-commission](http://www.mass.gov/orgs/state-ethics-commission)

Included in this publication are:

**State Ethics Commission Decisions and Orders and Disposition Agreements  
issued in 2016 and 2017\***

Cite Enforcement Actions by name of respondent, year, and page, as follows:  
*In the Matter of John Doe*, 2016 SEC (page number).

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

**\* No Formal Legal Opinions or Advisories were issued in 2016 or 2017**

## TABLE OF CASES

(By Subject or Respondent from 1979 through 2017)

CASES WITHOUT PAGE NUMBERS WERE NOT PUBLISHED BUT ARE AVAILABLE UPON REQUEST.

<b>Name (Year)</b>	<b>Page</b>	
Abrams, Hal (2003) .....		Barrasso, Kathy (2004) .....
1105		1190
Ackerley Communications (1991) .....		Bartley, John (1994) .....
518		685
Adamson, Randy (2007) .....		Basile, Alesandro (2014) .....
2127		2493
Almeida, Victor (1980) .....		Bassett, Timothy (2011) .....
14		2400
Alves, Alan (2000) .....		Bates, Stanley (1993) .....
957		642
Amorello, Matthew (2009) .....	2213	Battle, Byron (1988) .....
Anderson, Joan (2009) .....	2205	369
Angelo, Steven (2003) .....	1144	Bauer, Wolfgang (1996) .....
Ansart, James (1998) .....	905	771
Antonelli, Ralph (1986) .....	264	Bayko, Andrew (1981) .....
Antonelli, Rocco J., Sr. (1982) .....	101	34
Aragona, David (2007) .....	2091	Baylis, Robert (2007) .....
Arlos, Peter (2006) .....	2050	2093
Associated Industries of Massachusetts (1996) ....	790	Beaudry, Francis (1996) .....
Atsalis, Demetrius (2014) .....	2504	799
Atstupenas, Ross A. (2002) .....	1061	Becker, Mark (2006) .....
Auty, J. Martin (1998) .....	904	2062
Aylmer, John F. (1990) .....	452	Bencal, Michael (2006) .....
Baez, Priscilla (2010) .....	2290	2041
Bagni, William L., Sr. (1981) .....	30	Benevento, Anthony (1993) .....
Bailey, Susan (2010) .....	2289	632
Baj, Frank (1987) .....	295	Berlucchi, Stephen (1994) .....
Baldwin, Charles O. (1990) .....	470	700
Banas, Vicki (2017) .....	2601	Bernard, Paul A. (1985) .....
Banks, Rudy (1992) .....	595	226
Barboza, Joanne (1985) .....	235	Bernstein, Susan P. (2003) .....
Barletta, Vincent D. (1995) .....	736	1097
Barnes, James (2003) .....	1154	Besso, Donald P. (2003) .....
Barranco, John (2014) .....	2502	1148
		Beukema, John (1995) .....
		732
		Bingham, G. Shepard (1984) .....
		174
		Birchall, Charles III (2011) .....
		2398
		<b>Name (Year)</b>
		<b>Page</b>
		Bitzas, George (2009) .....
		2236
		Bonavita, Richard (2008) .....
		2140
		Borstel, Charles (2013) .....
		2468
		Bossi, Ruthanne (2002) .....
		1043
		Boston Collector-Treasurer's Office (1981) .....
		35
		Boyle, James M. (1989) .....
		398
		Bradley, Christopher (2007) .....
		2086

Brawley, Henry A. (1982) .....	Cabral, Francisco (2003) .....
84	1101
Breen, Mark A. (1992) .....	Cahoon, Kevin (2007) .....
588	2114
Brennan, James W. (1985) .....	Caissie, Jennie (1999) .....
212	927
Brennan, Maureen (2009) .....	Caliri, Michael A. (2001) .....
2238	995
Brensilber-Chidsey (2007) .....	Callahan, Francis (2002) .....
2129	1044
Bretschneider, Richard (2007) .....	Calo, Robert (1994) .....
2082	704
Bretschneider, Richard (2011) .....	Camandona, Robert (1982) .....
2406	Campanini, Eileen (2004) .....
Brewer, Walter (1987) .....	1184
300	Campagnone, Joyce (2015) .....
Briggs, Sherman, Jr. (2013) .....	2562
2455	Campbell, Thomas (2007) .....
Brooks, Edward (1981) .....	2108
74	Capalbo, Kevin (2005) .....
Brougham, Harry L. (1999) .....	2028
934	Capman, Mary (2011) .....
Brunelli, Albert R. (1988) .....	2362
360	Cardelli, John (1984) .....
Buckley, Elizabeth (1983) .....	197
157	<b>Name (Year) Page</b>
Buckley, John R. (1980) .....	Carignan, David (2000) .....
2	197
Bukowski, Paulin J. (1998) .....	Caroleo, Vincent (1980) .....
923	Carroll, Ann R. (1983) .....
Bump, Suzanne M. (1994) .....	144
656	Cass, William F. (1994) .....
Bunker, David (2003) .....	665
1161	Cassidy, Peter J. (1988) .....
Buonopane, Angelo R. (2006) .....	371
2040	Cataldo, Edward (2007) .....
Burger, Robert (1985) .....	2103
216	Cataldo, Robert (1996) .....
Burgess, Richard (1992) .....	793
570	Celino, David (2010) .....
Burgmann, Robert (1993) .....	2345
627	Cellucci, Argeo Paul (1994) .....
Burke, John P. (1987) .....	688
323	Cellucci, Joseph D. (1988) .....
Burke, William A., Jr. (1985) .....	346
248	Chase, Dana G. (1983) .....
Burlingame, Elliot (1992) .....	153
578	Chilik, Thomas A. (1983) .....
Burnett, Thomas E. (2004) .....	130
1193	Chilik, Thomas (2004) .....
Bush, Elaine (1995) .....	1164
731	Chmura, John (1980) .....
Butters, William (1992) .....	Choate Group, The (1996) .....
601	792
Byrne, James (2005) .....	Christianson, Carl G. Jr. (2007) .....
2032	2117
Byrnes, Michael (2013) .....	Christopher, Kathryn (2015) .....
2458	2568

Churchill, Robert (2000) .....	965
Cibley, Lawrence J. (1989) .....	422
Cimeno, Kenneth (1988) .....	355
Cislak, Thomas E. (2006) .....	2057
Clancy, Edward J. (2000) .....	983
Clark, Darryl (2014) .....	2508
Clifford, Andrew P. (1983) .....	
Cobb, Cynthia B. (1992) .....	576
Coelho, Paul (2004) .....	1180
Cohen, Alan (2011) .....	2379
Cokinos, Paul (2007) .....	2100
Cole, Harold (2004) .....	1197
Cole, Michael (2010) .....	2342
Cole, Robert G. (2010) .....	2339
Cole, Robert G. (2009) .....	2285
Colella, George (1989) .....	409
Collas, Andrew (1988) .....	360
Collett, Thomas (2004) .....	1179
Collins, James M. (1985) .....	228
Columbus, Robert (1993) .....	636
Comiskey, Robert (2002) .....	1079
Commeret, Thomas (2009) .....	2268
Conlon, William (2011) .....	2382
Connery, James F. (1985) .....	233
Connors, Brian (2013) .....	2459
Corbosiero, Guy (2010) .....	2332
Cornacchioli, Louis (2003) .....	1146
Corso, Carol (1990) .....	444
Corson, Philip T. (1998) .....	912

Costa, Frank (2001) .....	1000
Cotter, Donna (2011) .....	2356
Coughlin, Marguerite (1987) .....	316
Coughlin, Robert K. (2008) .....	2195
Counter, Joseph (1980) .....	
Covington, Gene (2010) .....	2350
Cox, John F. (1994) .....	676
Craven, James J., Jr. (1980) .....	17
Crean, Thomas (2007) .....	2084
<b>Name (Year)</b> .....	<b>Page</b>
Croatti, Donald (1988) .....	360
Cronin, Frederick B., Jr. (1986) .....	269
Crossen, Ralph (2003) .....	1103
Crossman, David (1992) .....	585
Cummings, Thomas (1980) .....	
Cunningham, George (1982) .....	85
Curtin, Peter (2001) .....	1024
Daigle, Valorie (2009) .....	2280
Daly, Joseph (2008) .....	2143
D'Amico, Michael J. (2002) .....	1083
D'Arcangelo, Ronald J. (2000) .....	962
Dean, Daniel (2010) .....	2352
Dean, Daniel (2010) .....	2353
DeFeo, Lona (2009) .....	2229
Deibel, Victoria (2001) .....	1002
DeLeire, John A. (1985) .....	236
DelPrete, Edmund W. (1982) .....	87
DeMarco, Robert (2003) .....	1157
DeMoura, Paul (2010) .....	2346
DeNucci, A. Joseph (2011) .....	2391
DeNucci, A. Joseph (2011) .....	2392

DeOliveira, John (1989) .....	430
Deschenes, Douglas (2006) .....	2038
Desrosiers, Yvonne B. (1987) .....	309
Devlin, William J. (1998) .....	915
Dewald, John (2006) .....	2051
Dias, Joao M.V. (1992) .....	574
Dickinson, Delwin (2013) .....	2489
DiNatale, Louis (2007) .....	2131
DiPasquale, Adam (1985) .....	239
DiPasquale, Julie A. (1996) .....	852
DiPasquale, Julie A. (1996) .....	853
DiVirgilio, Dominic (1993) .....	634
Doherty, Eugene (2012) .....	2438
Doherty, Henry M. (1982) .....	115
Doherty, William G. (1984) .....	192
Donaldson, Robert (1993) .....	628
Donlan, Paul (2007) .....	2107
Donovan, Joseph F. (1999) .....	949
Dormady, Michael (2002) .....	1074
Doughty, Katherine (1995) .....	726
Doyle, C. Joseph (1980) .....	11
Doyle, Patricia A. (2000) .....	967
Dray, David L. (1981) .....	57
Drew, Edward (2008) .....	2164
Driscoll, Lawrence (2008) .....	2137
Duarte, Bruce (2014) .....	2514
Dubay, Francis H. (2003) .....	1099
duBois, Pine (2013) .....	2446

Duggan, Joseph (1995) .....	729
Dulac, G. Paul (2011) .....	2384
Dunnet, John (2012) .....	2422
Duquette, Daniel (2010) .....	2320
Durant, Karen (2014) .....	2500
Edwards, Terry (2009) .....	2248
<b>Name (Year)</b> .....	<b>Page</b>
Egan, Robert (1988) .....	327
Ellis, David (1999) .....	930
Emerson, Michael W.C. (1983) .....	137
Emerson, Michael W.C. (1983) .....	160
Emilio, Frank A. (1994) .....	658
Enis, Paul (1996) .....	779
Erbetta, Robert (2009) .....	2270
Esdale, John (1981) .....	
Esposito, Michele (1991) .....	529
EUA Cogenex (1992) .....	607
Eunson, Donald (1993) .....	623
Famolare, Charles III (2012) .....	2425
Farley, Robert (1984) .....	186
Farretta, Patrick D. (1987) .....	281
Felix, Edward (2003) .....	1142
Fennelly, Edward (2001) .....	1025
Fischer, Jeffery (2010) .....	2292
Fisher, Charles (2012) .....	2424
Fitzgerald, Kevin (1991) .....	548
FitzPatrick, Malcolm (1990) .....	482
Flaherty, Charles F. (1990) .....	498
Flaherty, Charles F. (1996) .....	784

Flaherty, Joseph (2006) .....	2048
Flanagan, James (1996) .....	757
Fleming, David I., Jr. (1982) .....	118
Flynn, Dennis (1985) .....	245
Flynn, Peter Y. (1991) .....	532
Foley, Carole (2001) .....	1008
Foley, Cornelius J., Jr. (1984) .....	172
Foley, Martin V. (1984) .....	
Ford, Robert F. (2004) .....	1188
Foresteire, Frederick (1992) .....	590
Foresteire, Frederick (2009) .....	2220
Forrinstall, John (1992) .....	615
Fortes, Robert (2011) .....	2377
Foskett, Gerry (2016) .....	2596
Foster, Badi G. (1980) .....	28
Foster, James (2002) .....	1082
Fowler, Robert A. (1990) .....	474
Franck, Kevin (2014) .....	2514
Fredrickson, Michael (2003) .....	1156
Fripp, Amy J. (2007) .....	2090
Fryer, Josef (2005) .....	2030
Gagne, Armand (1996) .....	825
Galewski, Robert M. (1991) .....	504
Galewski, Robert (2007) .....	2101
Gannon, Harry (2006) .....	2056
Garvey, Robert J. (1990) .....	478
Gaskins, Mable E. (2001) .....	1010
Gaudette, Paul (1992) .....	619

Gaudette, Paul (1999) .....	952
Geary, James (1987) .....	305
Giampa, Kelly (2006) .....	2037
Giannino, Anthony (2007) .....	2126
Gibney, James (1995) .....	739
<b>Name (Year)</b> .....	<b>Page</b>
Gillis, Robert (1989) .....	413
Gilmetti, Fred L. (1996) .....	836
Giuliano, Patti (2001) .....	1018
Glodis, Guy (2013) .....	2448
Gnazzo, Jerold (1995) .....	748
Goddard Memorial Hospital (1987) .....	293
Goldman, Sachs & Co. (1997) .....	862
Goodhue, Richard. (2000) .....	967
Goodsell, Allison (1981) .....	38
Gorski, Elizabeth (2014) .....	2520
Gosselin, Marie (2002) .....	1070
Goudreault, Marjorie (1987) .....	280
Greeley, John E. (1983) .....	160
Green, Frank (1994) .....	714
Griffin, William T. (1988) .....	383
Griffith, John L. (1992) .....	568
Grossman, Ruvane E. (2005) .....	2021
Guertin, David (2007) .....	2081
Hackenson, Thomas D (2001) .....	1013
Halle, Leon (2002) .....	1073
Haluch, Thomas (2004) .....	1165
Hamel, Therese A. (2006) .....	2039
Hamilton, Andrew (2006) .....	2043

Hanlon, John J. (1986) .....	253
[footnotes published on p. 389 of 1988 <i>Rulings</i> ]	
Hanna, Frederic (1980) .....	1
Hanna, Robert (2002) .....	1075
Hansen, Howard (2017) .....	2604
Harrington, Vera C. (1984) .....	165
Hart, William (1991) .....	505
Hartford, Lynwood, Jr. (1991) .....	512
Hartnett, Jr., James J. (2002) .....	1084
Hartnett, Jr., James J. (2002) .....	1085
Harutunian, Harry K. (2006) .....	2054
Hatch, Donald (1986) .....	260
Hatem, Ellis John (1982) .....	121
Hayes, Kevin (1999) .....	951
Hebert, Raymond (1996) .....	800
Hermenau, Arthur (1994) .....	681
Hewitson, Walter (1997) .....	874
Hickey, John R. (1983) .....	158
Hickson, Paul T. (1987) .....	296
Higgins, Edward, Jr. (2006) .....	2064
Highgas, William, Jr. (1987) .....	303
Highgas, William, Jr. (1988) .....	334
Hilson, Arthur L. (1992) .....	603
Hoeg, Edward C. (1985) .....	211
Hoen, Charles (1979) .....	
Hoey, Paul (2007) .....	2098
Hohengasser, Herbert (1998) .....	922
Honan, Kevin (1994) .....	679
Hopkins, Wendell R. (1987) .....	289

Howarth, Robert (1994) .....	661
Howell, William E. (1991) .....	525
Howlett, Roger W. (1997) .....	859
<b>Name (Year)</b>	<b>Page</b>
Hubbard, Hugh K. (1999) .....	933
Hulbig, William J. (1982) .....	112
Hyde, Stephen, Sr (2014) .....	2543
Iannaco, Ronald (1994) .....	705
Inostroza, Albert (2007) .....	2110
Jackson, Michael (2011) .....	2404
Jacques, Cheryl (2013) .....	2480
Jefferson, Thomas (2010) .....	2303
Jenkins, John (2006) .....	2058
John Hancock Mutual Life Insurance Co. (1994) .....	646
Johnson, Walter (1987) .....	291
Jones, William G. (1983) .....	
Jordan, Patrick F. (1983) .....	132
Joseph, Mark (2012) .....	2440
Jovanovic, Michael (2002) .....	1062
Joy, Thomas (1984) .....	191
Joyce, Kevin (2005) .....	2002
Judd, John (2011) .....	2394
Karlson, Kenneth (2008) .....	2134
Kaseta, Steven J. (1997) .....	865
Keeler, Harley (1996) .....	777
Kellaher, Gary (2015) .....	2555
Kelleher, Michael (2003) .....	1140
Kennedy, Edward J., Jr. (1995) .....	728
Kennedy, Thomas (2009) .....	2255
Kenney, Richard (2005) .....	2006

Keverian, George (1990) .....	460	Laurel-Paine, Tamarin (2003) .....	1110
Khambaty, Abdullah (1987) .....	318	Laurenza, John (2012) .....	2418
Kiley, Edwin (2001) .....	1022	Lavoie, Robert (1987) .....	286
Killion, Sylvia (1999) .....	936	Lawrence, Charles (1987) .....	284
Kincus, David F. (1990) .....	438	LeBlanc, Eugene (1986) .....	278
King, John P. (1990) .....	449	Lemire, June (2002) .....	1080
Kinsella, Kevin B. (1996) .....	833	LeMoine, Eugene (2001) .....	1028
Koffman, Myron (1979) .....		Lewis, Frank E. (1988) .....	360
Kokernak, Thomas (2010) .....	2344	Life Insurance Association of Massachusetts (1997)... 879	
Kominsky, Robert (2003) .....	1112	Life Insurance Association of Massachusetts (2003) ...	1114
Kopelman, David H. (1983) .....	124	Ligonde, Eril (2011) .....	2364
Koval, Joanne (1994) .....	716	Lincoln, Charles (2008) .....	2188
Kuendig, Herbert (1996) .....	831	Ling, Deirdre A. (1990) .....	456
Kulian, Jacob (2005) .....	2005	Lisauskas, Stephen (2010) .....	2329
Kurkjian, Mary V. (1986) .....	260	Llewellyn, John R. (2005) .....	2033
LaFlamme, Ernest (1987) .....	287	Lockhart, Benjamin (1988) .....	339
LaFrankie, Robert (1989) .....	394	Logan, Louis L. (1981) .....	40
LaFratta, Paul (2007) .....	2112	Longo, Kendall (2003) .....	1095
Lahiff, Daniel (2012) .....	2411	Look, Christopher S., Jr. (1991) .....	543
Lally, Joseph P., Jr. (2011) .....	2401	Lozzi, Vincent J. (1990) .....	451
Lamothe, Blake (2014) .....	2496	Lunny, David M. (2006) .....	2044
Landy, David (2011) .....	2407	Lussier, Thomas (2002) .....	1076
Langone, Frederick C. (1984) .....	187	Lynch, William (2007) .....	2105
Langsam, Joan (2001) .....	1029	Mach, Leonard (1993) .....	637
Lannon, William C. (1984) .....	208	Mackenzie-Betty, Keith (2017) .....	2617
Lanzetta, Scott (2009) .....	2278	Magliano, Francis M. (1986) .....	273
Lanzetta, Scott (2009) .....	2278	Magliano, Frank (1988) .....	333
Larkin, John, Jr. (1990) .....	490	Maglione, Joseph (2008) .....	2172
Laumann, Brian (2010) .....	2287	Mahoney, Eugene J. (1983) .....	146
<b>Name (Year)</b>	<b>Page</b>		

Main, Brian (1997) .....	877	May, David E. (1983) .....	161
Malcolm, Stephen (1991) .....	535	Mazareas, James (2002) .....	1050
Malone, Marjorie (2012) .....	2410	Mazzarella, Dean (2012) .....	2442
Maloney, William J. Jr. (2001) .....	1004	Mazzilli, Frank (1996) .....	814
Manca, Charles J. (1993) .....	621	McCarthy, David F. (2003) .....	1138
Mann, Charles W. (1994) .....	644	McCarthy, Stephen (2011) .....	2355
Manning, James (2007) .....	2076	McCormack, Michael (1991) .....	546
Mannix, Michael (1983) .....		McCormick, James (2014) .....	2494
Manzella, Robert (2001) .....	1036	McClure, Richard (2013) .....	2471
Mara, Francis G. (1994) .....	673	McDermott, Patricia (1991) .....	566
Marble, William (1990) .....	436	McDonough, Richard (2014) .....	2503
Marchand, Francis (2007) .....	2113	McGee, Terrence J. (1984) .....	167
Marchesi, John (1992) .....	597	McGinn, Joseph C. (1983) .....	163
Marguerite, Patrick (1996) .....	773	McGovern, Edward (2016) .....	2590
Marinelli, Linda (1995) .....	721	McGrath, Walter R. (2004) .....	1186
Marshall, Clifford H. (1991) .....	508	McKinnon, Richard (2011) .....	2366
Marshall, Clifford H. (1995) .....	719	McKinnon, Robert S. (2000) .....	959
Martin, Brian J. (1999) .....	945	McLean, William G. (1982) .....	75
Martin, Frank (1999) .....	931	McMann, Norman (1988) .....	379
Martin, John K. (2002) .....	1048	McNamara, Owen (1983) .....	150
Martin, Michael (1982) .....	113	McPherson, Donald G. (2004) .....	1182
Martin, Scott (2009) .....	2273	Melanson, Norman (1999) .....	955
Massa, John (1998) .....	910	Menard, Joan (1994) .....	686
Massachusetts Candy & Tobacco Distributors (1992) ...	609	Michael, George A. (1981) .....	59
Massachusetts Department of Mental Health (1981) .....	50	Michienzi, Vincent, Sr. (2017) .....	2618
Massachusetts Medical Society (1995) .....	751	Middlesex Paving Corp. (1994) .....	696
<b>Name (Year)</b>	<b>Page</b>	Mihos, James C. (1986) .....	274
Masse, Kenneth (1980) .....		Molla, Francis (1996) .....	775
Mater, Gary P. (1990) .....	467	Molloy, Francis J. (1984) .....	191
Matera, Fred (1983) .....			

Molloy, Julie C. (2008) .....	2140	Newcomb, Reginald (2009) .....	2199
Molloy, Julie C. (2008) .....	2141	Newcomb, Thomas (1985) .....	246
Mondeau, Marilyn (1996) .....	781	Newton, Geoffrey (1995) .....	724
Montalbano, Janis (2000) .....	969	Newton, Wayne (1994) .....	652
Moore, Brian (2006) .....	2069	Nickinello, Louis R. (1990) .....	495
Moore, Elizabeth (2011) .....	2386	Nichols, Robert (2015) .....	2570
Morency, Robert (1982) .....		Nicolo, Diego (2007) .....	2122
Morin, Peter B. (1994) .....	663	Nieski, Martin (1998) .....	903
Morley, Hugh Joseph (2004) .....	1195	Niro, Emil N. (1985) .....	210
Moshella, Anthony (1980) .....		Nolan, Thomas H. (1989) .....	415
Muir, Roger H. (1987) .....	301	Nolan, Thomas J. (1987) .....	283
Mullen, Kevin (1992) .....	583	Northeast Theatre Corporation (1985).....	241
Mullin, Sean G. (1984) .....	168	Norton, Thomas C. (1992) .....	616
Munyon, George, Jr. (1989) .....	390	Nowicki, Paul (1988) .....	365
Murphy, Edward M. (1997) .....	867	Nugent, Ernest (2000) .....	980
Murphy, John E. (1996) .....	851	Nutter, Benjamin (1994) .....	710
Murphy, Michael (1992) .....	613	O'Brien, Dennis (2013) .....	2468
Murphy, Patrick (2001) .....	1003	O'Brien, George J. (1982) .....	
Murphy, Peter (2006) .....	2070	O'Brien, John (2012) .....	2437
Murphy, Robert (2015) .....	2572	O'Brien, John L., Jr. (2017) .....	2598
Murray, James (2007) .....	2120	O'Brien, John P. (1989) .....	418
Muzik, Robert (1999) .....	925	O'Brien, Robert J. (1983) .....	149
Najemy, George (1985) .....	223	O'Donnell, Michael (2011) .....	2402
<b>Name (Year)</b> .....	<b>Page</b>	Ogden Suffolk Downs, Inc. (1985) .....	243
Nash, Kenneth M. (1984) .....	178	Ohman, John W. (2003) .....	1108
Nelson, David R. (1995) .....	754	O'Leary, Rae Ann (1979) .....	
Nelson, George, Jr. (1991) .....	516	O'Neil, Matthew (2001) .....	1039
Nelson, Lori (2016) .....	2595	Oser, Patrick J. (2001) .....	1991
Nelson, Phillip (2000) .....	974	O'Toole, Edward (1994) .....	698
Nelson, Robert (2006) .....	2053	O'Toole, Michael (2008) .....	2165
		Owens, Bill (1984) .....	176

P.A. Landers (2008) .....	2147	Pierce, Richard (2012) .....	2414
P.J. Keating Co. (1992) .....	611	Pigaga, John (1984) .....	181
P.J. Riley & Co. (2009) .....	2207	Pignone, Edward (1979) .....	
Padula, Mary L. (1987) .....	310	Pitaro, Carl D. (1986) .....	271
Palazzola, Olimpia (2008) .....	2194	Plante, Curtis (2010) .....	2335
Paleologos, Nicholas (1984) .....	169	Poirier, Kevin (1994) .....	667
Palumbo, Elizabeth (1990) .....	501	Poley, Philip (2013) .....	2462
Panachio, Louis J. (1984) .....		Pollard, Sharon (2007) .....	2088
Parisella, Ralph (1995) .....	745	Potaski, Michael (2014) .....	2507
Parseghian, Scott (2017) .....	2621	Pottle, Donald S. (1983) .....	134
Partamian, Harold (1992) .....	593	Powers, Michael D. (1991) .....	536
Partamian, Harold (1996) .....	816	Powers, Stephen (2002) .....	1046
Pathiakis, Paul (2004) .....	1167	Prue, Richard (2014) .....	2505
Pavlidakes, Joyce (1990) .....	446	Prunier, George (1987) .....	322
Payson, Raymond (2007) .....	2124	Puccini, Richard (2017) .....	2620
Pearson, William P. (1995) .....	741	Quigley, Andrew P. (1983) .....	
Pedro, Brian (2002) .....	1057	Quinn, Robert J. (1986) .....	265
Pellicelli, John A. (1982) .....	100	Quirk, James H., Jr. (1998) .....	918
<b>Name (Year)</b> .....	<b>Page</b>	Race, Clarence D. (1988) .....	328
Pender, Peter (2006) .....	2046	Rainville, Lucien (1999) .....	941
Penn, Richard (1996) .....	819	Ramirez, Angel (1989) .....	396
Penn, Richard (1996) .....	822	Rankow, Norman (2012) .....	2435
Pepoli, Bethann (2009) .....	2283	Rapoza, Stephen (2004) .....	1187
Perreault, Lucian F. (1984) .....	177	Rebello, Joseph (2007) .....	2077
Peters, Victor (1981) .....		Recore, Jr., Omer H. (2002) .....	1058
Peterson, Seth (2015) .....	2564	Reed, Mark P. (1997) .....	860
Petruzzi & Forrester, Inc. (1996) .....	765	Reinertson, William (1993) .....	641
Pezzella, Paul (1991) .....	526	Renna, Robert G. (2002) .....	1091
Phinney, David L. (2001) .....	992	Rennie, Robert J. (1984) .....	
Piatelli, Theresa Lord (2010) .....	2296	Reynolds, Adelle (2001) .....	1035
Picano, Louis (2011) .....	2358	Reynolds, Richard L. (1989) .....	423

Rhodes, Warren (1983) .....		Ruberto, James M. (2010) .....	2320
Ricci, Heidi (2011) .....		Ruffo, John (1995) .....	718
2368		Russo, James (1996) .....	832
Richards, Lowell L., III (1984) .....		Russo, James N. (1991) .....	523
173		Ryan, Patrick (1983) .....	127
Richenburg, Henry (2015) .....	2551	Saccone, John P. (1982) .....	87
Riley, Eugene P. (1984) .....		Sakin, Louis H. (1986) .....	258
180		Saksa, Mary Jane (2003) .....	1109
Riley, Michael (1988) .....		Salamanca, Anthony (1994) .....	702
331		Sanna, John, Jr. (2003) .....	1160
Riley, Thomas E., Jr. (2009) .....		Sandonato, Francis (1994) .....	707
2207		Sansone, Casper Charles (1997) .....	872
Ripley, George W., Jr. (1986) .....		Sawyer, John (2003) .....	1102
263		Scaccia, Angelo M. (1996) .....	838
Risser, Herbert E., Jr. (1981) .....		Scaccia, Angelo M. (2001) .....	1021
58		Scafidi, Theodore L. (1988) .....	360
Rivera, Mark (2010) .....		Schumm, Marge (2002) .....	1072
2316		Schmidt, William (2011) .....	2360
Rizzo, Anthony (1989) .....		Schmidt, William (2011) .....	2361
421		Scola, Robert N. (1986) .....	388
Robinson, Lee (1995) .....		[note: published in 1988 <i>Rulings</i> ]	
750		Scott, Jack (2009) .....	2262
<b>Name (Year)</b>	<b>Page</b>	Seguin, Roland (1993) .....	630
Rockland Trust Company (1989) .....		Serra, Ralph (1983) .....	
416		Sestini, Raymond (1986) .....	255
Roeder, Harold (2008) .....		Seveney, Richard (2001) .....	1033
2135		Shalsi, Ralph (2001) .....	999
Rogers, John, Jr. (1985) .....		Shane, Christine (1983) .....	150
227		Sharrio, Daniel (1982) .....	114
Rogers, Raymund (2002) .....			
1060			
Romano, James (2004) .....			
1187			
Romeo, Paul (1985) .....			
218			
Rosario, John J. (1984) .....			
205			
Rose, John (2015) .....	255		
Ross, Michael (2007) .....			
2075			
Rostkowski (2006) .....			
2047			
Roth, Taylor (2009) .....			
2207			
Roth, Taylor (2009) .....			
2250			
Rotondi, Michael H. (2005) .....			
2001			
Rowan, Daniel (2010) .....			
2293			
Rowan, Daniel (2010) .....			
2294			
Rowe, Edward (1987) .....			
307			
Ruberto, James M. (2008) .....			
2149			

Shay, John (1992) .....	591	Stevenson, Mark (2015) .....	2582
Sheehan, Robert F., Jr. (1992) .....	605	St. John, Robert (1990) .....	493
Shemeth, William R., III (1999) .....	944	St. Germain, Matthew (2004) .....	1192
Shiraka, Stephen V. (2004) .....	1163	Stone, John R., Jr. (1988) .....	386
Silva, John (2009) .....	2202	Stone & Webster Engineering Corp. (1991) .....	522
Silva, Steven (2004) .....	1198	Story, Elizabeth (2010) .....	2314
Simard, George (1990) .....	455	Story, Elizabeth (2010) .....	2315
Simches, Richard B. (1980) .....	25	Straight, Matthew (2007) .....	2079
Singleton, Richard N. (1990) .....	476	Strong, Kenneth R. (1984) .....	195
<b>Name (Year)</b> .....	<b>Page</b>	Studenski, Paul V. (1983) .....	
Slaby, William (1983) .....		Sullivan, Delabarre F. (1983) .....	128
Slattery, Joseph (2008) .....	2186	Sullivan, J. Nicholas (2000) .....	963
Smith, Alfred D. (1985) .....	221	Sullivan, John P. (1999) .....	937
Smith, Arthur R., Jr. (2000) .....	983	Sullivan, Paul H. (1988) .....	340
Smith, Bernard J. (1980) .....	24	Sullivan, Richard E., Sr. (1984) .....	208
Smith, Charles (1989) .....	391	Sullivan, Robert P. (1987) .....	312
Smith, James H. (1991) .....	540	Sullivan, William (2006) .....	2060
Smith, Jean-Marie (2010) .....	2318	Sun, Gang (2012) .....	2420
Smith, Lincoln (2008) .....	2152	Sunskis, Algird (2013) .....	2471
Smith, Ross W. (1996) .....	778	Sutter, C. Samuel (1999) .....	926
Smith, Russell (1993) .....	639	Sweeney, Michael (1999) .....	939
Sommer, Donald (1984) .....	193	Sweetman, Arthur (1983) .....	
Spencer, Manuel F. (1985) .....	214	Swift, Jane M. (2000) .....	979
Snell, Thomas (2015) .....	2588	Tarbell, Kenneth (1985) .....	219
Speranza, Jack (2009) .....	2246	Tardanico, Guy (1992) .....	598
Stamps, Leon (1991) .....	521	Tarmey, Edmund F. (2007) .....	2107
Stanley, Cheryl (2006) .....	2073	Tetreault, Michael A. (2000) .....	972
Stanton, William J. (1992) .....	580	Tevald, Joseph S. (2001) .....	1019
State Street Bank & Trust Company (1992) .....	582	The New England Mutual Life Insurance Co. (1994) .....	693

Thomas, Cathie (1999) .....	942	Vincent, Mark (2007) .....	2115
Thompson, Allin P. (1998) .....	908	Vinton, Barry (2001) .....	1040
Thompson, James V. (1987) .....	298	Wallen, Frank (1984) .....	197
Thornton, Vernon R. (1984) .....	171	Walley, Kenneth (2001) .....	1037
Tilcon Massachusetts, Inc. (1994) .....	653	Walsh, David I. (1983) .....	123
Tinkham, Robert C., Jr. (2006) .....	2035	Walsh, Michael P. (1994) .....	711
<b>Name (Year)</b>	<b>Page</b>	Walsh, Thomas P. (1994) .....	670
Tivnan, Paul X. (1988) .....	326	Walsh-Tomasini, Rita (1984) .....	207
Tocco, Michael (2011) .....	2377	Ward, George (1994) .....	709
Tompkins, Steven (2015) .....	2567	Weddleton, William (1990) .....	465
Tortorici, Walter (2007) .....	2119	Weissman, Mark (2008) .....	2189
Townsend, Erland S., Jr. (1986).....	276	Welch, Alfred, III (1984) .....	189
Trant, Scott (2006) .....	2067	Whalen, Donald (1991) .....	514
Travis, Philip (2001) .....	1014	Wharton, Thomas W. (1984) .....	182
Traylor, George (1995) .....	744	Wheeler, Edward (2011) .....	2380
Triplett, James B. (1996) .....	796	Wheeler, Richard (2009) .....	2252
Triplett, James B. (1996) .....	796	Whitcomb, Roger B. (1983) .....	
Triplett, James B. (1996) .....	827	White, Kevin H. (1982) .....	80
Trodella, Vito (1990) .....	472	White, W. Paul (1994) .....	690
Truehart, Paul (2011) .....	2388	Wilkerson, Dianne (2001) .....	1026
Truehart, Paul (2011) .....	2389	Wilkerson, Dianne (2010) .....	2334
Tucker, Arthur (1989) .....	410	Willauer, Whiting (2011) .....	2395
Tulimieri, Joseph (2015) .....	2560	Williams, Helen Y. (1990) .....	468
Tully, B. Joseph (1982) .....		Willis, John J., Sr. (1984) .....	204
Turner, Joseph (2011) .....	2370	Wilson, Laval (1990) .....	432
Turner, William E., Jr. (1988) .....	351	Wilson, Robert (2014) .....	2498
United States Trust Company (1988) .....	356	Winsor, Shawn S. (2007) .....	2095
Uong, Chanrithy (2005) .....	2013	Wong, Diane (2002) .....	1077
Vallianos, Peter (2001) .....	1032	Woodward Spring Shop (1990) .....	441
Van Tassel, Gary (2006) .....	2071		

Wormser, Paul M. (2010) .....	
2303	
Young, Charles (1983) .....	
162	
Zakrzewski, Paul (2006) .....	2061
Zeppieri, D. John (1990) .....	448
Zeneski, Joseph (1988) .....	366
Zerendow, Donald P. (1988) .....	352
Zora, Joseph, Jr. (1989) .....	401
Zora, Joseph, Sr. (1989) .....	401

<b>Name (Year)</b>	<b>Page</b>
Zager, Jeffrey (1990) .....	
463	

**State Ethics Commission Enforcement Actions**

Summaries of 2016 Enforcement Actions ..... *i*  
Summaries of 2017 Enforcement Actions ..... *iii*

**2016 Enforcement Actions**

In the Matter of Edward McGovern .....  
2590  
In the Matter of Lori Nelson .....  
2595  
In the Matter of Gerry Foskett .....  
2596

**2017 Enforcement Actions**

In the Matter of John L. O'Brien, Jr. .... 2598  
In the Matter of Vicki Banas ..... 2601  
In the Matter of Howard Hansen ..... 2604  
In the Matter of Keith Mackenzie-Betty ..... 2617  
In the Matter of Vincent Michienzi, Sr. .... 2618  
In the Matter of Richard Puccini ..... 2620  
In the Matter of Scott Parseghian ..... 2621



## **Summaries of Enforcement Actions Calendar Year 2016**

### **In the Matter of Edward McGovern**

The Commission issued a Decision and Order concluding the adjudicatory proceeding regarding Agawam Police Department (APD) Lieutenant Edward McGovern by finding that Lt. McGovern violated section 23(b)(2)(ii) of the conflict of interest law, General Laws chapter 268A, by giving preferential treatment to a fellow Agawam police officer suspected of driving her personal vehicle the wrong way on a state highway in Agawam while intoxicated. The Commission ordered Lt. McGovern to pay a \$7,500 civil penalty. On June 29, 2012, the West Springfield Police Department (WSPD) received a call reporting a wrong-way driver on Route 5 North. A WSPD officer located an SUV on Route 5 North in Agawam near the Agawam/West Springfield town line. The SUV was stopped facing the wrong direction in the middle of the left travel lane, next to the guardrail separating the divided highway. APD Officer Danielle Petrangelo was sitting on the guardrail next to the passenger side of the SUV. Responding APD officers contacted their supervisor, who then called Lt. McGovern and told him that Officer Petrangelo was involved in the incident. Lt. McGovern agreed to go to the scene. When Lt. McGovern arrived at the scene, he observed that Officer Petrangelo was incoherent, intoxicated, and drunk. As the highest-ranking officer present, Lt. McGovern became the officer-in-charge when he arrived. Lt. McGovern decided not to arrest Officer Petrangelo or issue a citation to her. Instead, he ordered one APD officer to drive the SUV to the APD Station, and another APD officer to drive Officer Petrangelo to her residence. The Commission determined that Lt. McGovern failed to conduct any meaningful investigation, and he chose to ignore evidence indicating that Officer Petrangelo had operated the SUV on a public way. By failing to conduct a meaningful investigation, and by failing to arrest Officer Petrangelo or issue a citation to her despite having sufficient evidence that she operated the vehicle, Lt. McGovern used his APD position to provide Officer Petrangelo with preferential treatment, which amounted to an unwarranted benefit or privilege in violation of G.L. c. 268A, § 23(b)(2)(ii).

### **In the Matter of Lori Nelson**

The Commission issued a Final Order to allow a Joint Motion to Suspend Proceedings, Accept the Respondent's payment of a \$200 civil penalty and dismiss the proceedings, concluding the adjudicatory

proceeding involving Lori Nelson, the former Deputy Chief of Staff for the Massachusetts Department of Transportation-Massachusetts Bay Transportation Authority. Ms. Nelson paid the \$200 civil penalty for failing to timely file her calendar year 2014 Statement of Financial Interests (SFI). The Commission's Enforcement Division issued an Order to Show Cause on October 20, 2015 alleging that Ms. Nelson violated the Financial Disclosure Law, General Laws chapter 268B, by failing to file her 2014 SFI on time. Ms. Nelson did not file her SFI until the date the OTSC was issued. According to the Commission's civil penalty schedule for late filers, Ms. Nelson owed a \$2,500 civil penalty. Ms. Nelson was no longer employed at MassDOT-MBTA, and she represented to the Commission that a civil penalty of \$2,500 would pose an undue hardship. The Order stated, "The parties assert that the interests of justice, the parties and the Commission will be served by the acceptance of the \$200 civil penalty."

### **In the Matter of Gerry Foscett**

The Commission approved a Disposition Agreement in which Gerry Foscett, the Town of Charlton Highway Department Superintendent, admitted to violating the conflict of interest law, General Laws chapter 268A, on multiple occasions by hiring three of his brothers and his son to plow snow for the Town, and by hiring his son to build a retaining wall at the new Highway Department barn. Mr. Foscett paid a \$7,500 civil penalty. In 2002, Mr. Foscett sought advice from the Commission's Legal Division about hiring his brother, uncle and nephew for snowplowing. Because the uncle and nephew are not Mr. Foscett's "immediate family" members, the Legal Division advised Mr. Foscett to file a § 23(b)(3) disclosure with his appointing authority to dispel the appearance of a conflict of interest before hiring them. The Legal Division also advised Mr. Foscett to file a § 19(b)(1) disclosure and obtain "written permission" from his appointing authority prior to hiring his brother, a member of his immediate family. In 2010 through 2013, Mr. Foscett hired two of his brothers and his son to plow snow for the Town. Mr. Foscett approved payments by the Town to his brothers and his son totaling approximately \$44,000 for the snowplowing work. Mr. Foscett did not file § 19(b)(1) disclosures with the Board of Selectmen (BOS), his appointing authority, and did not obtain permission from the BOS to hire his brothers and son, as he was advised to do by the Legal Division. Instead, Mr. Foscett

filed

§ 23(b)(3) disclosures with the Town Clerk's office. Mr. Foskett therefore violated § 19 on each occasion that he hired his brothers and his son to snowplow for the Town since he did not obtain permission from the BOS to do so. From 2011 through 2013, Mr. Foskett hired WSF Plowing (WSF), a snow removal company operated by his sister-in-law, to plow snow for the Town. Mr. Foskett's brother performed the snow removal work for the company. Mr. Foskett approved payments to WSF totaling approximately \$14,000. Mr. Foskett did not file any disclosures regarding WSF. By hiring and approving payments to WSF, while knowing that his brother had a financial interest in those decisions, Mr. Foskett violated § 19. This conduct also created an appearance of conflict of interest in violations of §

23(b)(3). In March 2012, the Highway Department required a contractor to construct a retaining wall for its new barn. Mr. Foskett's administrative assistant solicited a quote from Mr. Foskett's son, who submitted a quote of \$750 to construct the retaining wall. Mr. Foskett accepted his son's quote and approved payment of \$750 to his son for constructing the retaining wall. Mr. Foskett filed a § 23(b)(3) disclosure with the Town Clerk's office, instead of the required § 19(b)(1) disclosure with the BOS. Mr. Foskett did not obtain written permission from the BOS to hire his son to construct the retaining wall. By accepting his son's quote and approving payment to his son for constructing the retaining wall, Mr. Foskett violated § 19 in this instance as well.



## **Summaries of Enforcement Actions Calendar Year 2017**

### **In the Matter of John L. O'Brien, Jr.**

The Commission issued a Public Education Letter to Southern Essex District Registrar of Deeds John O'Brien to resolve allegations that Mr. O'Brien violated the conflict of interest law, General Laws chapter 268A, by using his position as Registrar to obtain the home addresses of Registry employees for his campaign committee mailing list, disclosing the addresses to his campaign committee, and, through his campaign committee, soliciting campaign donations from Registry employees. Between 2011 and 2016, Mr. O'Brien obtained home addresses of Registry employees, which are confidential, from Registry personnel records and from resumes provided by job applicants and gave the addresses to his campaign committee. In 2011, Mr. O'Brien, through his campaign committee, invited Registry employees to a \$100 per person fundraising event at a local pizza shop. In 2016, the campaign committee mailed a fundraising solicitation, as well as a follow up solicitation to those who did not respond, to nearly all Registry employees. The Commission determined that there was reasonable cause to believe Mr. O'Brien violated §§ 23(b)(2)(ii) and 23(c)(2) of G.L. c. 268A, but that the matter should be resolved with a Public Education Letter to Mr. O'Brien, rather than through adjudicatory proceedings, in the interest of educating public employees about the requirements of the conflict of interest law. Mr. O'Brien agreed to the resolution.

### **In the Matter of Vicki Banas**

The Commission issued a Public Education Letter to Department of Developmental Services employee Vicki Banas to resolve allegations that Ms. Banas violated the conflict of interest law, General Laws chapter 268A, by, as a DDS Program Manager in the DDS Central/West Region, soliciting quotes and approving work performed at DDS facilities by a company owned by a family member as well as another company owned by a close family friend. In 2012, Ms. Banas was responsible for decommissioning three state swimming pools and installing concrete blocks at the Monson Developmental Center, which was closing. Ms. Banas approved a \$6,750 purchase order to S&K Lawn Care to fill in the pools, and a \$4,310 purchase order to Banas Sand and Gravel to install the concrete blocks around the property. S&K Lawn Care was owned by a close family friend, and Banas Sand and Gravel was owned by Ms. Banas' father-in-law. Ms. Banas' spouse was also employed at Banas Sand and

Gravel. In 2013, Ms. Banas was assigned to decommission a swimming pool at the Glavin Developmental Center in Shrewsbury, which was also closing. Ms. Banas solicited a price quote from S&K Lawn Care based on specifications that were not given to other vendors who submitted quotes, and thereafter approved a \$9,876 purchase order and invoice to S&K Lawn Care to fill in the pool. Banas Sand and Gravel was a subcontractor to S&K Lawn Care on that project. Banas Sand and Gravel was paid \$5,000 for the work. In 2013 and 2014, Ms. Banas recommended that DDS hire S&K Lawn Care to perform landscaping work and snow removal at the Monson Developmental Center and Glavin Developmental Center. At no time did Ms. Banas file required written disclosures with her DDS appointing authority concerning her private relationship with the owner of S&K Lawn Care, nor did she file required written disclosures with, or obtain advance written approval from, her DDS appointing authority prior to approving purchase orders and invoices for Banas Sand and Gravel. She also failed to file disclosures concerning Banas Sand and Gravel with the State Ethics Commission as required by the conflict of interest law. The Commission determined that there was reasonable cause to believe that Ms. Banas violated §§ 6, 23(b)(2)(ii) and 23(b)(3) of G.L. c. 268A, but that the matter should be resolved with a Public Education Letter to Ms. Banas, rather than through adjudicatory proceedings, in the interest of educating public employees about the requirements of the conflict of interest law. Ms. Banas agreed to the resolution.

### **In the Matter of Howard Hansen**

The Commission concluded an adjudicatory proceeding regarding former Stoughton Town Moderator Howard Hansen by issuing a Decision and Order finding that Mr. Hansen violated several sections of the conflict of interest law, General Laws chapter 268A, and ordering Mr. Hansen to pay a \$4,000 civil penalty. Mr. Hansen served as the elected, paid Stoughton Town Moderator from 1993 through 2016. Between 2009 and 2014, Mr. Hansen, as Town Moderator, repeatedly contracted with Hansen Brothers Printing Co., a company he owned as sole proprietor, for printing and copying services for the Town. Mr. Hansen did not obtain quotes from other potential printing vendors as required by the Town's procurement policy. He did not use any of the more than 30 photocopiers or printers available to him in Town Hall. As the owner of Hansen Brothers

Printing Co., Mr. Hansen submitted invoices to the Town for printing and copying services, and as Town Moderator, he completed paperwork approving his own company's invoices. Hansen Brothers Printing Co. received a total of approximately \$13,000 from the Town for printing and copying services during this time. Mr. Hansen violated § 19 of G.L. c. 268A each time he made decisions as Town Moderator to hire and authorize payment to Hansen Brothers Printing Co. for printing and copying services. Before Mr. Hansen became Town Moderator, Hansen Brothers Printing Co. had provided printing and copying services to the Town from 1968 to 1993. In 1993, Mr. Hansen requested that the Board of Selectmen designate the Town Moderator position as a special municipal employee position. Although this designation made Mr. Hansen eligible for two exemptions under G.L. c. 268A, § 20, he was still required to satisfy the requirements of an exemption in order to have a financial interest in any contract between the Town and Hansen Brothers Printing Co. while he was Town Moderator. To use the exemptions, Mr. Hansen was required to file disclosures with the Town Clerk, and, in most instances, he needed to obtain approval from the Selectmen. The Commission found that Mr. Hansen never satisfied the requirements of the exemptions and never obtained the required approvals. The Commission ruled that Mr. Hansen repeatedly violated § 20 of G.L. c. 268A by having a financial interest as sole proprietor of Hansen Brothers Printing Co. in each contract for printing and copying services that the Town had with Hansen Brothers Printing Co. between 2009 and 2013. The Commission concluded that Mr. Hansen violated § 23(b)(2)(ii) of G.L. c. 268A by failing to seek competitive quotes for printing and copying services and by instead dealing exclusively with his own business. Other printing and copying service businesses were deprived of the opportunity to compete for the Town's business." In assessing a civil penalty of \$4,000, the Commission took into consideration that other Town officials knew for years that Mr. Hansen was directing business to his own company but did nothing to stop it. The Commission noted that this was grounds for mitigating the penalty, but it did not excuse Mr. Hansen's conduct.

#### **In the Matter of Keith Mackenzie-Betty**

The Commission approved a Disposition Agreement in which Keith Mackenzie-Betty, a Town of Barnstable Department of Public Works (DPW) building design architect, admitted to violating the conflict of interest law, General Laws chapter 268A, by using his DPW position to obtain free inmate

labor to install a new roof on his home. Mr. Mackenzie-Betty paid an \$8,000 civil penalty for the violation. The Barnstable County Sheriff's Office offers non-profit organizations and government entities free county jail inmate labor through its Community Service Work Crew program. The Town of Barnstable DPW occasionally uses Community Service inmate work crews to make improvements to Town-owned properties. In 2014, Mr. Mackenzie-Betty used his DPW email account to apply for a work crew to replace the roof shingles on a two-story house in Barnstable and for a work crew to replace the wall shingles on a Town-owned barn. In applying, Mr. Mackenzie-Betty did not disclose that the two-story house was his private residence. In addition, he identified "Mackenzie-Betty/Department of Children and Families" as the "organization" requesting the work crew although he had not communicated with DCF, for which he occasionally provided emergency foster care, about the replacement of his roof. As an individual with a private project, Mr. Mackenzie-Betty was not eligible for a free inmate work crew. The replacement of his home's roof, which Mr. Mackenzie-Betty scheduled and managed using his town email account and cell phone, was completed by an inmate work crew over a six-day period in October 2015, using roofing materials purchased by Mr. Mackenzie-Betty. The estimated value of the free inmate labor Mr. Mackenzie-Betty received was \$4,204. The cost to the Sheriff's Office to supervise the inmate work crew was \$1,680. Because Mr. Mackenzie-Betty was an individual, and not a governmental entity or a nonprofit organization, he was ineligible for an inmate work crew and the nearly \$6,000 worth of free inmate labor and supervision he obtained for his private roof project was an unwarranted privilege. "By sending his private roof project application to the Barnstable County Sheriff's Office along with a legitimate DPW application and using his DPW assigned email and his DPW-issued phone to manage his private roof project, Mr. Mackenzie-Betty used his official position to secure this unwarranted privilege for himself." By using his DPW architect position to obtain for his private roof project nearly \$6,000 worth of free inmate labor and supervision for which he was not eligible, Mr. Mackenzie-Betty violated § 23(b)(2)(ii) of G.L. c. 268A.

#### **In the Matter of Vincent Michienzi, Sr.**

The Commission approved a Disposition Agreement in which Vincent Michienzi, Sr., admitted to violating the conflict of interest law, General Laws chapter 268A, by voting as a member of the Bourne Planning Board to approve a special permit for one of his commercial tenants. Mr. Michienzi paid a \$5,000

civil penalty. Mr. Michienzi owned commercial property located at 111 Main Street in Bourne, which he leased to a commercial tenant to operate an antique store/flea market. In July 2012, Mr. Michienzi's tenant filed a special permit application with the Planning Board to operate the antique store with a tent on the property. On January 10, 2013, the Planning Board approved the special permit, with Mr. Michienzi voting to approve the permit. Mr. Michienzi violated § 19 of G.L. c. 268A by voting to approve his commercial tenant's special permit application when he knew he had a financial interest in the matter. Michienzi also violated § 23(b)(3) of G.L. c. 268A because his voting to approve the special permit for his tenant would cause a reasonable person to think that Michienzi acted with favoritism toward his tenant in performing his Planning Board duties.

#### **In the Matter of Richard Puccini**

The Commission issued a Public Education Letter to Bristol-Plymouth Regional Technical School carpentry instructor Richard Puccini to resolve allegations that Mr. Puccini violated the conflict of interest law, General Laws chapter 268A by contracting with the school to provide it with architectural design services. On multiple occasions since 2009, Mr. Puccini, owner of the architectural design firm Puccini Designs, contracted to provide architectural design services to the school, including the design of an addition to the main school building and the design of a child care center. Mr. Puccini was paid a total of almost \$60,000 for these services. Mr. Puccini's design services were requested by his school supervisors and he did not solicit architectural work from the school. None of the school design work was publicly bid, nor did the school seek competing quotes for the services Mr. Puccini provided. The Commission concluded that there was reasonable cause to believe that Mr. Puccini violated § 20 of G.L. c. 268A but chose to resolve the matter with a Public Education Letter to Mr. Puccini, rather than through adjudicatory proceedings, because Mr. Puccini provided his architectural services at the request of his school supervisors and did not solicit the work. Mr. Puccini agreed to the resolution.

#### **In the Matter of Scott Parseghian**

The Commission issued a Public Education Letter to Wayland High School employee Scott Parseghian to resolve allegations that Mr. Parseghian violated the conflict of interest law, General Laws chapter 268A, by making purchases of athletic apparel for Wayland High School sports teams from his father's businesses, and by representing those businesses in merchandise purchases by Wayland High School teams, clubs and departments. Mr. Parseghian was the Head Football Coach for sixteen years and served as the High School Assistant Principal between 2004 and 2016. As Head Football Coach, Mr. Parseghian ordered merchandise from his father's athletic apparel businesses on forty-one occasions, accounting for approximately \$60,000 of the approximately \$150,000 in total purchases made from those businesses from 2001 until 2015. On forty-six occasions, Mr. Parseghian took orders for merchandise purchases from his father's businesses from other High School staff. Those purchases also totaled approximately \$60,000. The Commission concluded that there was reasonable cause to believe that Mr. Parseghian violated § 19 of G.L. c. 268A by, as Head Football Coach, making purchases from his father's businesses, that he violated § 17(c) by representing his father's businesses in connection with purchases made by other High School staff, and that he violated § 23(b)(3) because his involvement as a Wayland High School employee in the purchases from his father's businesses would cause a reasonable person to conclude that he unduly favored his father in his purchasing decisions as Head Football Coach. The Commission chose to resolve this matter with a Public Education Letter rather than initiating adjudicatory proceedings against Mr. Parseghian because Wayland High School investigated the matter and imposed a financial penalty on him, and because Mr. Parseghian fully cooperated with the Commission's investigation. Mr. Parseghian agreed to the resolution.



---

COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION  
ADJUDICATORY  
DOCKET NO. 14-0006

IN THE MATTER OF  
EDWARD MCGOVERN

Appearances: Karen Gray, Esquire  
Counsel for Petitioner

Vincent A. Bongiorno, Esquire  
Thomas A. Kenefick, III., Esquire  
Counsel for Respondent

Commissioners: Dortch-Okara, Ch., Trach, Quinlan,  
Mills, Sartory

Presiding Officer: Barbara A. Dortch-Okara

**DECISION AND ORDER**

Petitioner filed an Order to Show Cause (“OTSC”) on July 14, 2014, against Respondent, Agawam Police Department Lieutenant Edward McGovern. The OTSC alleges that McGovern violated G.L. c. 268A, § 23(b)(2)(ii) by giving preferential treatment to an Agawam Police Officer suspected of driving her personal vehicle the wrong way on a state highway in Agawam while intoxicated.

An evidentiary hearing was held on September 11 and 15, 2015.<sup>1</sup> At the hearing, the parties made opening statements and introduced evidence through witnesses and exhibits. Both parties filed briefs.<sup>2</sup> The parties presented closing arguments to the Commission on November 18, 2015.<sup>3</sup>

The Commission began its deliberations in executive session on this matter on November 18, 2015, and continued deliberations on December 16, 2015.<sup>4</sup> In rendering this Final Decision and Order, each undersigned member of the Commission has considered the testimony, the evidence in the public record, and the arguments of the parties.

**I. FINDINGS OF FACT**

1. Edward McGovern (“McGovern”) is a Lieutenant in the Agawam Police Department (“APD”), a position he has held since May 2010.

2. As a Lieutenant, McGovern reports directly to the Police Chief. Pursuant to the APD chain of command:

Patrolmen are subordinate to Sergeants and other superior officers; Sergeants are subordinate to Lieutenants and the Police Chief; and Lieutenants are subordinate to the Police Chief.

3. At approximately 9:15 pm on Friday, June 29, 2012, the West Springfield Police Department (“WSPD”) received an anonymous call reporting a wrong-way driver on Route 5 North.<sup>5</sup> This information was transmitted over the Western Massachusetts Law Enforcement Communications (“WMLEC”) radio, and McGovern heard the report over his police-issued portable radio.<sup>6</sup>

4. WSPD Patrolman Eric Johnson (“Johnson”), and APD Patrolmen William Pierson (“Pierson”) and James Wheeler (“Wheeler”) were dispatched to the area to locate the wrong-way vehicle. Minutes later Johnson located a tan sport utility vehicle (“SUV”) on Route 5 North in Agawam near the Agawam/West Springfield town line.

5. When Johnson found the SUV it was stopped facing the wrong direction (south-bound), in the middle of the left-hand travel lane, next to the guardrail separating the divided highway. The speed limit where the SUV was located was 55 miles per hour and there were no sidewalks, businesses, or residences nearby.

6. Johnson pulled his cruiser in nose-to-nose with the SUV and reported the license plate to his supervisor over the radio. Johnson then saw Danielle Petrangelo (“Petrangelo”) sitting on the guardrail next to the passenger side of the SUV. She had red eyes and was crying. Johnson recognized Petrangelo; they had gone to high school together and he knew that she was an APD officer.

7. Pierson arrived at the scene less than one minute after Johnson. Wheeler arrived several minutes after Pierson. The SUV was still running when Wheeler arrived. Johnson told Pierson that Petrangelo was at the scene. Pierson recognized the SUV as Petrangelo’s vehicle. Pierson and Wheeler observed damage on the passenger side of the SUV consistent with striking a guardrail. Wheeler, a trained accident investigator, believed the damage was “fresh.”

8. Pierson, Wheeler and Petrangelo were co-workers at the APD. Pierson and Petrangelo were also close friends who frequently socialized together. Pierson knew Petrangelo had been placed on administrative leave from the APD pending an internal affairs investigation related to an incident in which she shot an unarmed woman in the face while handling a call (“shooting incident”).

9. Johnson, Pierson and Wheeler were all uncomfortable handling the incident because of their relationship with Petrangelo. Pierson believed his relationship with Petrangelo created a conflict of interest, and in order to

avoid a conflict he called his supervisor, Street Sergeant Anthony Grasso (“Grasso”), to request assistance.

10. Grasso was handling another matter when he received Pierson’s call; he told Pierson that he would contact Lieutenant McGovern. Grasso then called McGovern and told him Petrangelo was involved in the incident, and the APD officers at the scene needed assistance from a supervisor. Grasso told McGovern he was unable to go because he was tied up with another call. McGovern agreed to go to the scene.

11. After speaking to Grasso, Pierson approached Petrangelo and asked her if she was okay and how she had gotten there. She said she could not recall how she had gotten there and she asked Pierson if he was going to arrest her. Pierson told Petrangelo a supervisor was on the way and it “was not his call” whether to arrest her. Pierson then helped Petrangelo into the front seat of his cruiser. He believed Petrangelo was intoxicated and that she had been driving the SUV.

12. In order to make Route 5 safe for oncoming traffic, Wheeler and Pierson moved the three police cruisers to the side of the road, and Wheeler backed the SUV into an access road directly off Route 5. The access road led to the back entrance of a water treatment facility. Approximately sixty feet from the side of Route 5 into the access road was a gate, which, when closed, prevented vehicles from entering the water treatment facility from Route 5. At the time of the incident, the gate was closed and locked, so that the only way to enter or exit the access road where Wheeler parked the SUV, was from Route 5.

13. McGovern arrived at the scene shortly after the vehicles were moved. As a Lieutenant, and the highest-ranking officer present, McGovern became the officer-in-charge when he arrived.<sup>7</sup>

14. McGovern had known Petrangelo since 2000, when she became an APD Officer, and he served as her direct supervisor from 2007-2010. McGovern recognized Petrangelo’s SUV and he saw her sitting in the front seat of Pierson’s cruiser. He also observed that the police officers, cruisers, Petrangelo, and SUV were the only individuals and vehicles present at the scene.

15. When McGovern arrived at the scene he spoke to Petrangelo. He asked her how she had gotten there, where she had been, and who she had been with. She told him she had been in Springfield with her friend, Sara, but she “didn’t know” how she had gotten there. McGovern asked her if Sara had been driving. Petrangelo’s demeanor then changed, her tone became serious, and she said, “[y]ou’re here to hurt me.” McGovern told her he was not there to hurt her, he was just trying to figure out what had happened. Petrangelo said, “[n]o, you’re not. You’re the boss. I know

the game. I’m not taking your tests. I’m not going to the hospital. I’m not answering your questions.” McGovern understood this to mean that Petrangelo was not going to cooperate with any type of investigation, and she was not going to take field sobriety tests.<sup>8</sup> McGovern asked Petrangelo how her SUV had been damaged, but she refused to respond. He then told her to get back into Pierson’s cruiser. McGovern concluded that Petrangelo was incoherent, intoxicated, and drunk.

16. As McGovern finished talking to Petrangelo, Sergeant Grasso arrived at the scene. Grasso was Petrangelo’s direct supervisor and had a close relationship with her. Petrangelo told Grasso, “I’m sorry. I screwed up. I did it to you again. I’m embarrassed.” According to Grasso, Petrangelo was very emotional, smelled of alcohol, had slurred speech, glassy eyes and was under the influence.

17. After speaking with Petrangelo, McGovern talked to Johnson, Pierson and Wheeler. First, McGovern asked Johnson whether there were any charges pending against Petrangelo in West Springfield. Johnson responded that there were none. Second, McGovern asked the Officers whether there were any witnesses and they responded that there were not. Third, McGovern asked the Officers whether they had any evidence that Petrangelo had been operating the SUV. Johnson, Pierson and Wheeler all told McGovern that they did not have evidence Petrangelo had been operating the vehicle.

18. McGovern did not ask Johnson, Wheeler, or Pierson where the SUV was located when they arrived at the scene, or whether Petrangelo made any statements or admissions. Johnson, Wheeler and Pierson did not provide McGovern with additional information about the incident and McGovern did not inquire further.

19. Following his conversation with Johnson, Wheeler and Pierson, McGovern spoke to Grasso.<sup>9</sup> McGovern told Grasso, “we can’t arrest her.” Grasso testified that he would have arrested Petrangelo, or issued a citation to her, for operating under the influence (“OUI”).<sup>10</sup>

20. Next, McGovern ordered Wheeler and Grasso to drive the SUV to the APD Station, and he ordered Pierson to drive Petrangelo to her residence.<sup>11</sup> Pierson retrieved Petrangelo’s purse from the SUV and drove her home. McGovern followed them in his vehicle. While driving to Petrangelo’s house, Petrangelo told Pierson she had “fucked up.”

21. Petrangelo was not able to get into her house when they arrived because her house key was on the key ring with the key to her SUV. Pierson called Petrangelo’s boyfriend who had a key. McGovern, Pierson and Petrangelo waited outside for Petrangelo’s boyfriend to

arrive with the key. While they were waiting, Petrangelo told Pierson that she “could have killed someone when she had been driving.”<sup>12</sup> Petrangelo’s boyfriend arrived with the key approximately ten minutes later and she went into the house. McGovern and Pierson went back to the APD Station, arriving shortly after 10:00 pm.

22. McGovern’s next shift began at 4:00 pm, Saturday, June 30, 2012. At the beginning of his shift, McGovern spoke to Acting Police Chief Richard Light (“Light”) about the incident. Light told McGovern he was going to assign the matter to an internal affairs investigation and advised McGovern that he did not need to take any other action in connection with the incident.

23. Light designated Lieutenant Eric Gillis (“Gillis”) to investigate Petrangelo’s actions on the night of the incident. Gillis interviewed Pierson, Grasso, Wheeler and McGovern and wrote an Internal Affairs Report (“IA Report”) based on the information he obtained during the interviews.<sup>13</sup> The IA Report stated that it was, “quite clear that Officer Petrangelo was intoxicated on the evening of June 29, 2012. Her operation of her motor vehicle on Route 5, the wrong way not only jeopardized her own safety, but that of the entire motoring public as well. That her actions did not result in a devastating tragedy, is simply miraculous. . . .” The IA Report did not suggest that another individual could have been operating the vehicle.

24. Light subsequently asked Hampden County District Attorney, Mark Mastroianni (“Mastroianni”), to review the circumstances of the incident and undertake a further investigation into the matter. On October 24, 2012, Mastroianni advised Light that the District Attorney’s Office would not “initiate any further investigation” into the matter. Mastroianni stated that the although facts in the IA Report “overwhelmingly” demonstrated probable cause to arrest Petrangelo for OUI and operating to endanger, because Petrangelo was neither arrested, nor issued a citation by the officers at the time of the incident, criminal charges could not now be pursued against her in connection with the incident.<sup>14</sup> Mastroianni also stated that the “failure of investigators to arrest or issue a citation for criminal motor vehicle infractions at the scene [was] inexplicable based upon the facts included in the [IA] report,” and a “reasonable conclusion from these circumstances suggests . . . Petrangelo received preferential treatment from the [APD] based upon her status as a police officer.”

25. APD policy regarding OUI states that “[a]ppropriate enforcement action consists of immediate arrest, or if circumstances do not allow for an arrest, issuance of a citation . . . Officers should be aware that arrests should be a priority for this event.” APD policy also states that the APD is “definitely and unequivocally opposed to

preferential treatment pertaining to adjudication of traffic cases in any manner by any agency, official, or person.”

26. The penalties for an OUI violation may include incarceration, loss of driver’s license, and/or fines.

27. Pierson was not aware of any other situation in which a probable OUI driver who was suspected of going the wrong way on a highway was released by the APD without arrest or citation. Grasso was familiar with two cases involving wrong-way drivers other than Petrangelo occurring during his time with the APD; one of those incidents resulted in a head-on collision with two fatalities.

28. Grasso and Pierson both testified that they would have arrested Petrangelo for OUI and operating to endanger.

## II. DISCUSSION

G.L. c. 268A, § 23(b)(2)(ii), prohibits public employees from knowingly, or with reason to know, using or attempting to use their official positions to secure for themselves or others unwarranted privileges or exemptions of substantial value which are not properly available to similarly situated individuals. In order to establish a violation of § 23(b)(2)(ii), Petitioner must prove by a preponderance of the evidence that:<sup>15</sup> (1) McGovern was a municipal employee,<sup>16</sup> (2) who knowingly or with reason to know used or attempted to use his official position; (3) to secure an unwarranted privilege or exemption for himself or others; (4) which was of substantial value;<sup>17</sup> and (5) which was not properly available to similarly situated individuals. The weight to be attached to any evidence in the record, including evidence concerning the credibility of witnesses, rests within the sound discretion of the Commission.<sup>18</sup>

### A. Used or Attempted to Use His Official Position

We must first determine whether McGovern knowingly, or with reason to know, used or attempted to use his official position as an APD Lieutenant to give preferential treatment to Petrangelo in connection with the incident. McGovern maintains that Pierson, Wheeler, and/or Grasso were responsible for investigating the incident, and it was up to them to decide whether to arrest or issue a citation to Petrangelo. He also asserts that other officers could have issued a citation to Petrangelo the day after the incident following a subsequent investigation, in which he was not involved. Petitioner contends McGovern knew he was the ultimate authority at the scene, and he failed to act in accordance with his authority, and therefore used his position to allow Petrangelo to escape arrest or citation for charges arising from the incident.

Based on the evidence in the record, we find Petitioner has proven by a preponderance of the evidence that McGovern

knowingly, or with reason to know used his official position as an APD Lieutenant to make a determination not to arrest Petrangelo, or to issue a citation to her. It is not disputed that McGovern, as the senior ranking official present, was the officer-in-charge when he arrived at the scene of the incident and that he remained in charge until the scene was cleared. McGovern made decisions and gave orders at the scene that he expected the subordinate officers to obey. The subordinate officers at the scene requested assistance from a supervisor, in part, because they were uncomfortable handling an incident involving a fellow APD Officer and were concerned that it would be a conflict of interest for them to be involved. Likewise, if McGovern was unable to act in an impartial manner, he could have attempted to contact his supervisor, the Police Chief, for assistance.

#### **B. To Secure an Unwarranted Benefit or Privilege or Exemption for Himself or Others**

Next, we must determine whether McGovern used his position to obtain an unwarranted benefit or privilege for Petrangelo. The Commission has previously concluded that an “unwarranted privilege” is one that is “[l]acking adequate or official support” or “having no justification; groundless.” *EC-COI-98-2*; see, e.g., *In re Smith*, 2008 SEC 2152 (employee who worked for the City Council violated

§ 23(b)(2) where, rather than take steps enabling a parking garage to conduct its usual investigation of a damage claim, he demanded an immediate resolution, saying that he was “on the City Council” and the garage’s permits went through his office and he would remember the name of the owner of the garage); *In re Haluch*, 2004 SEC 1165, 1166 (“public employees may not threaten to use their official position or powers to obtain an advantage for themselves in a private dispute”).

To make an arrest for OUI, a Police Officer must have probable cause to believe that an individual: (1) operated a motor vehicle, (2) on a public way, (3) while under the influence of intoxicating liquor or drugs.<sup>19</sup> To make an arrest for operating to endanger, an officer must have probable cause to believe that an individual has: (1) operated a motor vehicle on a public way; (2) recklessly or negligently; (3) so that the lives or safety of the public might be endangered.<sup>20</sup> Pursuant to APD Arrest Policy and Procedures, “[p]robable cause for arrest exists, if at the time of arrest, the facts within the knowledge of the arresting officer (or within the collective knowledge of the police) are reasonably trustworthy and are sufficient to warrant a person of reasonable caution and prudence to believe that the person being arrested has committed or is committing the crime for which the arrest is being made.” It is not disputed that Petrangelo was intoxicated. There was also

evidence that the SUV traveled on a public way at or around the time of the incident.

McGovern contends that his decision not to effect an arrest or issue a citation was warranted because he lacked probable cause as to the required element of operation of a motor vehicle. We are not persuaded by this argument, and conclude that, to the contrary, there was sufficient evidence to support the inference that Petrangelo was the operator of the SUV at the time of the incident. Proof of operation of a motor vehicle in the context of an OUI or operating to endanger prosecution may be entirely circumstantial; in other words, there is no requirement that the defendant have been observed operating the vehicle or even to have been inside the vehicle. *Commonwealth v. O’Connor*, 420 Mass. 630, 632 (1995) (operation may be inferred from surrounding facts and circumstances); *Commonwealth v. Petersen*, 67 Mass. App. Ct. 49, 52-53 (2006) (sufficient circumstantial proof of operation where car’s engine warm, defendant was registered owner of car and appeared at scene shortly after police arrived, defendant had keys to car, defendant appeared intoxicated and confirmed that he had been drinking, defendant complied with field sobriety tests, and there was no evidence that someone other than defendant operated car); *Commonwealth v. Cabral*, 77 Mass. App. Ct. 909 (2010) (rescript) (sufficient circumstantial proof of operation where driver observed on her hands and knees outside of car at scene of accident).

We find that there was sufficient evidence for McGovern to arrest Petrangelo, or to issue a citation to her at the scene, for OUI and/or operating to endanger. This evidence included the following: (1) McGovern heard a radio report of a wrong-way vehicle on Route 5 on a Friday night at approximately 9:15 pm; (2) shortly after hearing the radio report McGovern received a telephone call that his subordinate officers needed his assistance handling an incident on Route 5 involving Petrangelo; (3) McGovern arrived at the scene on Route 5, an area where the speed limit is 55 miles per hour, and there are no sidewalks, businesses or residences nearby; (4) McGovern recognized the SUV as Petrangelo’s vehicle, and he observed that there were no other individuals present who could have been operating the SUV; (5) McGovern observed that the SUV was parked approximately sixty feet off Route 5 in an access road leading to a water treatment facility; (6) the only way to enter or exit the access road where the SUV was parked was from Route 5; and (7) Officer Pierson retrieved Petrangelo’s purse from the SUV after McGovern ordered Pierson to drive Petrangelo home. These facts, all known to McGovern, were strong circumstantial evidence of Petrangelo’s operation of the motor vehicle.

We also find that McGovern was the officer-in-charge, and as such, he was responsible for determining what occurred at the scene. While the subordinate officers, Johnson,

Pierson, and Wheeler, were not forthcoming with their observations prior to McGovern's arrival, McGovern failed to conduct any meaningful investigation. Although McGovern asked the subordinate officers whether they had "operation," when they responded that they did not, he failed to make any additional inquiries, and he chose to ignore all other evidence indicating that Petrangelo had operated the SUV on a public way. McGovern never asked the subordinate officers where the SUV was located when they arrived at the scene. Nor did he ask the subordinate officers whether Petrangelo had made any statements or admissions. Had McGovern made these basic inquiries, he could have learned from Johnson, Pierson, and/or Wheeler that when they arrived at the scene, the SUV was stopped with the engine running, facing the wrong direction, in the left-hand travel lane, and that Petrangelo was sitting on the guardrail next to it. These facts would have been additional evidence of operation.

By failing to conduct a meaningful investigation and failing to arrest or issue a citation to Petrangelo, despite having sufficient evidence that she operated the vehicle, McGovern used his APD position to provide Petrangelo with preferential treatment, which amounted to an unwarranted benefit or privilege.<sup>21</sup>

**C. Which was of substantial value and was not properly available to similarly situated individuals**

Finally, we must determine whether the unwarranted benefit or privilege Petrangelo received from McGovern as a result of not being arrested or issued a citation at the scene of the incident was of substantial value and was not available to similarly situated individuals.<sup>22</sup>

McGovern asserts that APD Officers are not required to arrest all individuals who are suspected of OUI or operating to endanger and may use their discretion not to arrest or issue a citation, even when an operator appears intoxicated. Petitioner maintains that, unlike Petrangelo, other individuals suspected of OUI and/or operating to endanger in Agawam were unable to avoid arrest or citation because of their status as a police officer and/or their relationship with McGovern. Further, Petitioner contends that Petrangelo received a benefit or privilege of substantial value because the penalties for a first-time conviction of OUI and/or operating to endanger may include fines, incarceration, legal fees, insurance increases, and suspension and/or loss of license.

We find that the Petitioner has met its burden of proving this element by a preponderance of the evidence. APD policy was to make arrests in circumstances such as this a priority, and it strains credulity to suggest that a civilian who came to police attention under these conditions would have avoided arrest.<sup>23</sup> Although APD Officers have some

discretion and are not required to arrest or issue a citation to all individuals who are suspected of committing a crime, there is sufficient evidence that Petrangelo was treated differently from similarly situated individuals. Grasso would have arrested Petrangelo for OUI and/or operating to endanger. Further, there was no evidence that the APD has ever released an individual suspected of operating a vehicle the wrong way on a public road while intoxicated without making an arrest or issuing a citation. To the contrary, Pierson and Grasso were not aware of any situation in which a suspected OUI driver, believed to have been operating a vehicle the wrong way on a highway, was released by the APD without arrest or citation. Avoiding arrest in these circumstances was a privilege not available to similarly situated individuals, and, given the possible penalties upon conviction, a privilege of substantial value.

Accordingly, we find that Petitioner has proved, by a preponderance of the evidence, that Edward McGovern violated G. L. c. 268A, § 23(b)(2)(ii) by knowingly, or with reason to know, using his position as an Agawam Police Department Lieutenant to provide an unwarranted privilege or exemption of substantial value to Danielle Petrangelo, a fellow Agawam police officer, by failing to arrest or to issue a citation, or even to properly investigate her for motor vehicle offenses on June 29, 2012, despite probable cause to believe she had committed a crime.

**III. ORDER**

Having concluded that Respondent Edward McGovern violated G.L. c. 268A, § 23(b)(2)(ii) and pursuant to the authority granted it by G.L. c. 268B, § 4(j), the State Ethics Commission hereby **ORDERS** Edward McGovern to pay a civil penalty of \$ 7,500.

**DATE AUTHORIZED:** December 16, 2015

**DATE ISSUED:** January 5, 2016

---

<sup>1</sup> 930 CMR 1.01(10)(b).

<sup>2</sup> 930 CMR 1.01(10)(m).

<sup>3</sup> 930 CMR 1.01(10)(f).

<sup>4</sup> G.L. c. 268B, § 4(i); 930 CMR 1.01(10)(o)(1).

<sup>5</sup> Route 5 is a State Highway with two north-bound lanes, two south-bound lanes, and a double guardrail separating the opposing travel lanes.

<sup>6</sup> The WMLEC radio enables the WSPD and APD to monitor each other's transmissions.

<sup>7</sup> Pursuant to APD Rules & Regulations, “officer-in-charge,” is “[t]he officer in command of any functional unit or subdivision of the department at any given time; or the officer in charge, and responsible for, any police action or operation.”

<sup>8</sup> A Police Officer may offer an individual suspected of Operating Under the Influence (“OUI”) and/or operating to endanger the opportunity to take a field sobriety test, however, the individual has a constitutional right to refuse to take the test, and the fact that he/she does not wish to perform the test cannot be used as evidence to establish guilt or probable cause.

<sup>9</sup> McGovern and Grasso have had a strained relationship for a number of years as a result of several work-related disagreements.

<sup>10</sup> To make an arrest for OUI, a Police Officer must have probable cause that an individual: (1) operated a motor vehicle, (2) on a public way, (3) while under the influence of intoxicating liquor or drugs. *G.L. c. 90, § 24(1)(a)(1)*. Pursuant to the APD Arrest Policy and Procedures, “[p]robable cause for arrest exists, if at the time of arrest, the facts within the knowledge of the arresting officer (or within the collective knowledge of the police) are reasonably trustworthy and are sufficient to warrant a person of reasonable caution and prudence to believe that the person being arrested has committed or is committing the crime for which the arrest is being made.”

<sup>11</sup> Pursuant to APD Rules and Regulations, “[a]n order is a command or instruction . . . given or issued by a superior officer” and “[a]ll lawful orders . . . shall be carried out fully and in the manner prescribed.”

<sup>12</sup> According to Pierson, Petrangelo made this statement in front of McGovern; however, it is unclear whether McGovern heard Petrangelo make this statement.

<sup>13</sup> Johnson was not interviewed as part of the APD internal affairs investigation because Light did not want to involve the WSPD in the investigation.

<sup>14</sup> Pursuant to *G.L. c. 90C, § 2*, “[a] failure to give a copy of the citation to the violator at the time and place of the violation shall constitute a defense in any court proceeding for such violation, except where the violator could not have been stopped or where additional time was reasonably necessary to determine the nature of the violation or the identity of the violator, or where the court finds that a circumstance, not inconsistent with the purpose of this section to create a uniform, simplified and non-criminal method for disposing of automobile law violations, justifies the failure.”

<sup>15</sup> *930 CMR 1.01(o)(2)*.

<sup>16</sup> It is not disputed that at all relevant times McGovern was a municipal employee.

<sup>17</sup> For purposes of *G.L. c. 268A*, anything worth \$50 is of “substantial value.” *930 CMR 5.05*.

<sup>18</sup> *930 CMR 1.01(10)(n)*.

<sup>19</sup> *G.L. c. 90, § 24(1)(a)(1); Commonwealth v. O’Connor*, 420 Mass. 630, 631 (1995).

<sup>20</sup> *G.L. c. 90, § 24(2)(a); Commonwealth v. Jewett*, 471 Mass. 624, 630-31 (2015).

<sup>21</sup> We are not persuaded by McGovern’s assertion that other APD officers could have arrested Petrangelo or issued a citation to her the day after the incident. Actions which other APD officers could have taken later are not relevant to our determination of whether McGovern knowingly, or with reason to know, used his APD position to provide an unwarranted privilege or exemption of substantial value to Petrangelo. Moreover, Hampden District Attorney Mastroianni concluded that his office could not pursue criminal charges against Petrangelo in connection with the incident because she was not arrested or issued a citation for criminal motor vehicle infractions at the time and place of the violation. Pursuant to *G.L. c. 90C, § 2*:

A failure to give a copy of the citation to the violator at the time and place of the violation shall constitute a defense in any court proceeding for such violation, except where the violator could not have been stopped or where additional time was reasonably necessary to determine the nature of the violation or the identity of the violator, or where the court finds that a circumstance, not inconsistent with the purpose of this section to create a uniform, simplified and non-criminal method for disposing of automobile law violations, justifies the failure.

There is no evidence that Petrangelo could not have been stopped, or that additional time was reasonably necessary to establish Petrangelo’s identity or to establish probable cause that she violated the OUI and/or operating to endanger laws.

<sup>22</sup> “Substantial value,” is defined as \$50 or more. *930 CMR 5.05*.

<sup>23</sup> APD Policy regarding OUI specifically states, “[o]fficers should be aware that arrests should be a priority for this event.”

---

COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION  
ADJUDICATORY  
DOCKET NO. 15-0007

IN THE MATTER OF  
LORI NELSON

**FINAL ORDER**

On January 11, 2016, the parties filed a Joint Motion to Suspend Proceedings, Accept Respondent's Payment of the Civil Penalty and Dismiss the Proceedings ("Motion"). The Presiding Officer, Regina L. Quinlan, referred the Motion to the full Commission for deliberations on January 21, 2016.

In the Motion, Petitioner states that Respondent Lori Nelson served as the Massachusetts Department of Transportation-Massachusetts Bay Transportation Authority (MassDOT-MBTA) Deputy Chief of Staff and was required to file a Statement of Financial Interest (SFI) for calendar year 2014 in accordance with G.L. c. 268B, § 5 and 930 CMR 2.00. The Respondent filed her SFI the date the Order to Show Cause was issued. Respondent has tendered the payment of the \$200 civil penalty.

In support of the Motion, the parties state that Respondent was terminated from her position at the MBTA and that her counsel misinformed her that she had no further obligation to file an SFI for calendar year 2014 due to her termination from employment. Respondent also represented to the Commission that a fine of \$2,500 would pose an undue hardship.

The parties assert that the interests of justice, the parties and the Commission will be served by the acceptance of the \$200 civil penalty.

**WHEREFORE**, the Commission hereby **ALLOWS** the Motion. Respondent's tendered payment of the \$200 civil penalty for violating G.L. c. 268B, § 5 is accepted. Commission Adjudicatory Docket No. 15-0007, *In the Matter of Lori Nelson* is **DISMISSED**.

**DATE AUTHORIZED:** January 21, 2016

**DATE ISSUED:** January 28, 2016

---

COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION  
ADJUDICATORY  
DOCKET NO. 16-0002

IN THE MATTER OF  
GERRY FOSKETT

**DISPOSITION AGREEMENT**

The State Ethics Commission ("Commission") and Gerry Foscett ("Foscett") enter into this Disposition Agreement pursuant to Section 3 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 October 16, 2014, 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. On December 16, 2015, the Commission concluded its inquiry and found reasonable cause to believe that Foscett violated G.L. c. 268A, §§ 19 and 23(b)(3).

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

**A. Background**

1. Gerry Foscett, a resident of Charlton, Massachusetts, was during the relevant time the Town of Charlton ("Town") Highway Department Superintendent ("Highway Superintendent"). Foscett's appointing authority is the Board of Selectmen.

2. As Highway Superintendent, Foscett is in charge of hiring contractors for snowplowing Town roads.

3. In 2002, Foscett sought advice from the Legal Division of the State Ethics Commission about hiring his brother, uncle and nephew for snowplowing. The Legal Division advised Foscett to file a § 23(b)(3) disclosure,<sup>1</sup> which would dispel the appearance of a conflict of interest, prior to hiring his uncle and nephew. The Legal Division also advised Foscett to file a § 19(b)(1) disclosure<sup>2</sup> and to obtain "written permission" from his appointing authority to hire his brother, a member of his immediate family.

**B. Hiring his Brothers and Son for Snowplowing**

**Findings of Fact**

4. In 2010 through 2013, Foscett hired two of his brothers and his son for snowplowing on behalf of the Town and approved payment to them.

5. In the same period, Foskett approved payments from the Town to his brothers and his son for snowplowing totaling approximately \$44,000.

6. Foskett filed § 23(b)(3) disclosures with the Town Clerk regarding the hiring of his brothers and son.

7. Contrary to the advice provided to him by the Legal Division, Foskett did not file a § 19(b)(1) disclosure with his appointing authority and did not obtain “written permission” from his appointing authority to hire his brothers. Foskett also failed to file a § 19(b)(1) disclosure with his appointing authority and did not obtain his appointing authority’s written determination permitting him to hire his son.

#### **Conclusions of Law: Section 19**

8. Section 19 of G.L. c. 268A prohibits a municipal employee from participating<sup>3</sup> as such an employee in a particular matter<sup>4</sup> in which, to his knowledge, an immediate family member<sup>5</sup> has a financial interest.<sup>6</sup>

9. As the Highway Superintendent, Foskett is a municipal employee as that term is defined in G.L. c. 268A, § 1(g).

10. Foskett’s brothers and son are members of his immediate family.

11. The decisions to hire contractors for snowplowing and to approve payments to those contractors were particular matters.

12. Foskett participated in those particular matters as the Highway Superintendent by hiring his brothers and son for snowplowing and approving payments to them for that work.

13. At the time of his participation, Foskett knew his brothers and son each had a financial interest in his decisions to hire and to approve payments to them for snowplowing.

14. Accordingly, by hiring his brothers and son for snowplowing and approving payments to them for that work, Foskett violated § 19. Foskett did not avoid or cure the § 19 violation by filing § 23(b)(3) disclosures with the Town Clerk because doing so did not fulfill the requirements of § 19(b)(1) that he: (1) file a disclosure with his appointing authority, the Board of Selectmen, and (2) receive a written determination from the Board of Selectmen allowing Foskett to hire his immediate family members.

#### ***C. Hired His Sister-in-Law’s Company for Snow Removal***

##### **Findings of Fact**

15. In 2011, WSF Plowing was a snow removal company operated by Foskett’s sister-in-law. Foskett’s brother<sup>7</sup> performed snow removal work for the company and his sister-in-law maintained WSF Plowing’s financial records.

16. From 2011 through 2013, Foskett hired WSF Plowing for snow removal in the Town and approved Town payments to WSF Plowing totaling approximately \$14,000.

17. Foskett, as Highway Superintendent, assigned his brother snowplow routes in the Town, and knew his brother had a financial interest in that work.

18. Foskett did not file any disclosures with his appointing authority related to WSF Plowing.

##### **Conclusions of Law: Section 19**

19. Foskett’s brother is a member of his immediate family.

20. The decisions to hire contractors for snowplowing and to approve payments to those contractors were particular matters.

21. Foskett participated in those particular matters as the Highway Superintendent by hiring WSF Plowing and approving payments to WSF Plowing for snow removal.

22. At the time of his participation, Foskett knew that his brother had a financial interest in his decision to hire and to approve payments to WSF Plowing for snow removal. Specifically, Foskett knew that his brother was plowing for WSF Plowing because Foskett assigned him the routes to plow.

23. Accordingly, by hiring and approving payments to WSF Plowing, while knowing that his brother had a financial interest in those decisions, Foskett violated § 19.<sup>8</sup>

#### ***D. Hiring his Son to Build a Retaining Wall***

##### **Findings of Fact**

24. In March 2012, the Highway Department required a contractor to construct a retaining wall for its new barn.

25. Foskett’s administrative assistant solicited a quote from Foskett’s son to construct the retaining wall.

26. Foskett’s son provided a quote of \$750.

27. Foskett accepted his son's quote and approved payment of \$750 to his son for constructing the retaining wall.

28. Foskett filed a § 23(b)(3) disclosure with the Town Clerk regarding the hire of his son.

### Conclusions of Law: Section 19

29. As stated earlier, Foskett's son is a member of his immediate family.

30. The decisions to hire a contractor to build a retaining wall and to approve payment to that contractor were particular matters.

31. Foskett participated in those particular matters as the Highway Superintendent by accepting his son's quote to construct the retaining wall and approving payment of \$750 to his son for that work.

32. At the time of his participation, Foskett knew that his son had a financial interest in his decision to accept his son's quote and approve payment to his son for construction of the retaining wall.

33. Accordingly, Foskett violated § 19.

In view of the foregoing violations of G.L. c. 268A by Foskett, 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 Foskett:

(1) that Foskett pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$7,500 as a civil penalty for violating G.L. c. 268A, §§ 19 and 23(b)(3); and

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

**DATE:** April 28, 2016

---

<sup>1</sup> Section 23(b)(3) prohibits a public employee from acting in a manner, which would cause a reasonable person having knowledge of the relevant circumstances, to conclude that any person can improperly influence 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, position or undue influence of any party or person. The section further states that it shall be unreasonable to so

conclude if the public employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

<sup>2</sup> Section 19 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. Section 19(b)(1) provides an exemption if the municipal employee makes full disclosure of such financial interest to his appointing authority and receives an advance a written determination from his appointing authority that the financial interest is not so substantial as to be deemed likely to affect the integrity of the services, which the municipality may expect from the employee.

<sup>3</sup> "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).

<sup>4</sup> "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, decision, determination or finding. G.L. c. 268A, § 1(k).

<sup>5</sup> "Immediate family" means the employee and his spouse, and their parents, children, brothers and sisters. G.L. c. 268A, § 1(e).

<sup>6</sup> "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 embraces private interests, no matter how small, which are direct, immediate or reasonably foreseeable. *See EC-COI-84-98*.

<sup>7</sup> This allegation relates to a different brother than the two brothers referred to in the previous section.

<sup>8</sup> Foskett's actions in hiring and approving payments to WSF Plowing also created the appearance of a conflict of interest in violation of § 23(b)(3). That section prohibits a public employee 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 any person can improperly influence 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. A public employee may avoid an appearance of a conflict of interest by filing a disclosure with his appointing authority. By hiring and approving payment to his sister-

in-law's company without first filing a § 23(b)(3) disclosure with his appointing authority, Foskett acted in a manner which created the appearance of a conflict of interest.

---

**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**IN THE MATTER OF  
JOHN L. O'BRIEN, JR.**

**PUBLIC EDUCATION LETTER**

May 11, 2017

John L. O'Brien, Jr.

Re: Public Education Letter

Dear Mr. O'Brien,

As you know, the State Ethics Commission conducted a preliminary inquiry into allegations that you violated the conflict of interest law, G.L. c. 268A. The preliminary inquiry focused on allegations that, from 2011 to 2016, you used your Registrar position to obtain Registry employees' home addresses for your campaign mailing list; you solicited campaign donations from Registry employees over whom you have official authority; and you shared confidential information from Registry records - the home addresses of Registry employees - with your campaign committee.

On April 20, 2017, the Commission voted to find reasonable cause to believe that you violated G.L. c. 268A. Rather than initiating adjudicatory proceedings against you, however, the Commission chose to resolve this matter through this Public Education Letter because other public employees will benefit from a public discussion of the facts revealed by the preliminary inquiry and an explanation of how the Commission will apply Chapter 268A to the facts. The Commission expects that by resolving this matter publicly through a Public Education Letter, you and other public employees in similar positions and circumstances will have a clearer understanding of the conflict of interest law and how to comply with it.

The Commission and you have agreed that there will be no formal proceedings against you in this matter, and you have chosen not to exercise your right to a hearing before the Commission.

**I. Facts**

You currently serve as the Registrar of Deeds at the Southern Essex District Registry of Deeds ("Registry"). You have been serving as Registrar of Deeds since 1976 and intend to seek re-election after your current six-year term ends in 2018. Currently, there are about 38 employees employed at the Registry. All Registry employees are classified as employees of the Secretary of State's Office. All Registry employees report either directly to you or to an employee who reports directly to you.

You have a campaign committee, the John O'Brien Campaign Committee (the "Committee"). The Committee consists of you and members of your family, namely your wife, who is the treasurer, your daughter, your niece, and your sister. The Committee operates out of your home. You often help with the Committee's mailings by stuffing envelopes and looking up addresses.

In 2011, the Committee sent a flier ("2011 mailing") to everyone on the Committee's mailing list, advertising a fundraising event to be held on September 29, 2011 at a pizza shop. Tickets to attend this fundraising event were \$100 each. The mailing list used to send the 2011 mailing included, among others, all Registry employees and their home addresses.

In 2016, the Committee, in lieu of hosting a fundraising event, sent a letter to individuals on its mailing list asking for donations. Of the thirty-eight Registry employees, thirty-six Registry employees and their home addresses were on the Committee's 2016 mailing list. The Committee also sent a follow-up letter to individuals who did not contribute after the first letters were sent.

In a sworn interview, you described to the Commission two ways by which you obtained Registry employees' home addresses for use by your campaign committee. The first way was when you interviewed an individual for potential employment at the Registry, and the individual provided her resume and contact information to you. You obtained several addresses in this manner and had them added to your campaign mailing list.

The second way you obtained the home addresses of Registry employees was through the Registry's Human Resources Department. At times, you, in your Registrar position, would need to contact employees at their homes - for example, when you wanted to send them a get-well card or provide work-related notifications. In such instances, you would ask the human resources director for an employee's home address. You would then note the address, sometimes by jotting it down on a piece of paper, for purposes of including it on your Committee's mailing list. You also told us that sometimes when obtaining an employee's address from Human Resources, you would

notice that an employee's address had been updated. You would use that information to update your own Committee's mailing list.

The evidence shows that, through your Committee, you sent campaign mailings to nearly all Registry employees. The Commission, however, is unaware of evidence of any adverse consequences in fact suffered by any Registry employee for refusing to contribute to your campaign. You have indicated that you will not send campaign mailings to any Registry employees in the future.

## II. Discussion

As the Southern Essex District Registrar of Deeds, you are a state employee. As such, you are subject to the conflict of interest law, G.L. c. 268A. Discussed below are three issues that your conduct raises under the conflict of interest law.

### **The first issue is whether you violated § 23(b)(2)(ii) by using your position to obtain the home and mailing addresses of Registry employees for purposes of compiling a mailing of list of potential contributors to your campaign.**

Section 23(b)(2)(ii) 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 an unwarranted privilege or exemption of substantial value not properly available to similarly situated individuals. The Commission has determined that, in general, a public employee may not use his public position to engage in political activity, because a public employee who does so is using his official position to secure for himself or others (such as a candidate) unwarranted privileges of substantial value that are not properly available to similarly situated persons.

Based on the evidence, the Commission found reasonable cause to believe that you violated § 23(b)(2)(ii) because you used your Registrar position to obtain Registry employees' home addresses to compile your mailing list for purposes of sending out campaign-related solicitations, in order to give yourself and your campaign an unwarranted privilege of substantial value.

You used your Registrar position to obtain Registry employees' mailing addresses when you collected that information while conducting informational interviews with potential candidates for employment at the Registry; and by requesting that information from the Human Resources Department, even if you also had a work-related need for that information. By giving the Registry employees' mailing addresses, which you obtained by using your position, to your campaign committee, you were giving

yourself a privilege of substantial value. This privilege was unwarranted because the Public Records Law prohibited you from sharing employees' home addresses, which are confidential, with your campaign committee. Furthermore, the Commission has consistently interpreted § 23(b)(2)(ii) to prohibit public employees from using public resources for private purposes. The Registry's employee records are a public resource, and cannot be used in campaign fundraising, which is a private purpose. Finally, the privilege was not available to other similarly situated individuals - that is, other potential candidates running for the Registrar position, who would not have access to the Registry's employee records.

### **The second issue is whether you violated § 23(b)(2)(ii) by sending to Registry employees mailings soliciting donations to your and other political candidates' campaigns.**

Section 23(b)(2)(ii) restricts the ability of public employees to engage in private dealings with persons over whom they have official authority. Such private dealings are inherently coercive, and therefore violate § 23(b)(2)(ii), because the person or entity under the public employee's official authority, or with whom the public employee has official dealings, may not feel free to decline to enter into a private business relationship, or may feel obliged to give the public employee favorable treatment.

In certain circumstances, where certain safeguards are present, private dealings between public employees and those under their official authority are permissible only when: (1) the private business relationship or other private dealing is initiated by the person or entity under the public employee's authority, or with whom the public employee has or expects to have official dealings, and not by the public employee; (2) the private business relationship or other private dealing is entirely voluntary; (3) the private business relationship or other private dealing does not involve special or favorable treatment given to the public employee because of his official position; and (4) the private business relationship or other private dealing is disclosed publicly in writing by the public employee.

A public employee's immediate subordinates, as well as their subordinates, are under the public employee's official authority. See *EC-COI-95-9, 92-7, 84-61*. All of the employees at the Registry were under your official authority. By soliciting donations to a private cause, such as your own campaign, you were engaging in private dealings with your subordinates. See *In re Travis*, 2001 SEC 1014 (state representative found to have violated § 23(b)(2) by requesting that an entity with whom he had official dealings donate to a non-profit entity). You were prohibited from initiating such private dealings with your subordinates, the

Registry employees. By doing so, you created an inherently coercive situation.

The evidence shows that you initiated private dealings with your subordinates by, through your campaign committee, sending targeted campaign fundraising solicitations to all or most Registry employees. Therefore, the Commission found reasonable cause to believe that you violated § 23(b)(2)(ii).

**The third issue is whether you violated § 23(c)(2) by disclosing Registry employees' home addresses obtained from Registry employee records to your campaign committee.**

Section 23(c)(2) prohibits a public employee from improperly disclosing material or data within the exemptions to the definition of public records as defined by § 7 of chapter four and acquired by him in the course of his official duties, and from using such information to further his personal interest.

Pursuant to G.L. c. 4, § 7, cl. 26 (o), the following is exempted from the definition of public records:

the home address [...] of an employee of [...] an agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, [...] in the custody of a government agency which maintains records identifying persons as falling within those categories [...]

Applications from prospective employees who are subsequently hired as employees, and the mailing addresses of employees maintained by the Human Resources Department, are records that are in the custody of the Registry. The Registry maintains these records as records of its employees. Therefore, the home addresses contained in Registry records, are exempted from the definition of public records. You admitted that you obtained the contact information for Registry employees from Registry records and disclosed it to your campaign committee.

Therefore, the Commission found reasonable cause to believe that you violated § 23(c)(2) because you improperly disclosed data within the exemptions to the definition of public records and acquired by you in the course of your official duties and used such information to further your personal interest.

### **III. Disposition**

The Commission is authorized to resolve violations of G.L. c. 268A with civil penalties of up to \$10,000 for each violation, except that a civil penalty of up to \$25,000 may be imposed for G.L. c. 268A, § 2 violations (bribes). The

Commission, however, has chosen to resolve this matter with this Public Education Letter because it believes the public interest would best be served by doing so. Public officials should understand that they may not send campaign fundraising solicitations to employees under their official responsibility, use public resources to benefit their campaign efforts, or share confidential information maintained by public agencies for agency operational purposes with campaign committees. The purpose of this Public Education Letter is to ensure understanding of these restrictions.

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  
Executive Director

---

**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**IN THE MATTER OF  
VICKI BANAS**

**PUBLIC EDUCATION LETTER**

July 26, 2017

Ms. Vicki Banas  
c/o Charles E. Dolan, Esquire  
Raipher, P.C.  
265 State Street  
Springfield, MA 01103-2008

Re: Public Education Letter

Dear Ms. Banas:

As you know, the State Ethics Commission conducted a preliminary inquiry into whether you, as a Department of Developmental Services ("DDS") Program Manager, violated §§ 6, 23(b)(2)(ii) and 23(b)(3) of G.L. c. 268A, the conflict of interest law, by hiring a company in which you or an immediate family member had a financial interest, and by hiring the company of a close and longtime family friend, to perform work for DDS.

On May 18, 2017, the Commission voted to find reasonable cause to believe you violated G.L. c. 268A. Rather than initiating adjudicatory proceedings against you, however, the Commission chose to resolve this matter through this Public Education Letter because: (1) DDS investigated the matter and demoted you to a non-managerial position, which resulted in a reduction in your pay; and (2) the Commission expects that, by resolving this matter through a Public Education Letter, you and other public employees in similar circumstances will have a clearer understanding of the conflict of interest law and how to comply with it.

The Commission and you have agreed there will be no formal proceedings against you in this matter, and you have chosen not to exercise your right to a hearing before the Commission.

## **FACTS**

On September 23, 1984, you were hired as a recreational therapist at the Monson Developmental Center. In 1987, you were promoted to program director, a management position. As a program director, you were responsible for planning and directing activities for DDS clients, such as cooking classes. In or about 2011, you became a program manager responsible for overseeing the center's carpenters, grounds crew and other maintenance personnel.

During the relevant period, your appointing authority was the DDS Central/West Regional Director.

### **Closure of Monson Developmental Center**

In 2008, Governor Deval Patrick's administration announced plans to close four state developmental centers as part of its "Community First Olmstead Plan" agenda. The plan identified four developmental centers for closure: Fernald, Monson, Templeton and Glavin. The Division of Capital Asset Management and Maintenance ("DCAMM") provided funding and technical support for the closures.

During the relevant period, 2012-2014, your spouse worked for Banas Sand and Gravel, a family-owned concrete business. Your spouse was an hourly employee, did not earn commissions, and did not have any ownership interest in the company. Your father-in-law was the company's president and treasurer and had an ownership interest in the company. You were aware of your father-in-law's status with the company and of his ownership interest in it.

S&K Lawn Care is a landscaping company owned and operated by a close and longtime friend of your family. S&K Lawn Care is on a statewide contract for landscaping and related services.

In or about 2012, you were assigned to coordinate the closure of Monson Developmental Center. It is not clear

who assigned you this task. The closure required the decommissioning of three swimming pools. DCAMM provided you with the specifications for the pool closures, which included filling the pools with clean sand or gravel.

In May 2012, a Monson maintenance manager obtained three quotes, including a quote from S&K Lawn Care, to close the three swimming pools. You signed off the purchase order for the work to begin and confirmed completion of the work so that S&K Lawn Care could receive payment. S&K Lawn Care charged \$6,750 for the work and received payment in that amount.

You did not disclose your family's close and longtime friendship with the owner and operator of S&K Lawn Care to your DDS appointing authority.

The closure of the Monson center also required placement of concrete blocks around the perimeter of the 350-acre site. You solicited and received quotes from three companies, including Banas Sand and Gravel. You directly contacted your spouse by telephone in order to obtain Banas Sand and Gravel's quote, which was the lowest quote. You informed a DCAMM project manager that you had secured a quote from your spouse's company to supply concrete blocks and asked whether it would be a problem. The DCAMM project manager responded that he did not know DDS's requirements but that at DCAMM, as long as there were quotes from three parties, there was no issue.

Thereafter, you signed off on the purchase order for delivery of the concrete blocks by Banas Sand and Gravel and confirmed delivery so that Banas Sand and Gravel could receive payment. Banas Sand and Gravel charged \$4,310 for supplying and delivering the concrete blocks and received payment in that amount.

You did not disclose to your appointing authority or the State Ethics Commission that your immediate family had a financial interest in the contract to supply the concrete blocks for the Monson center.

### **Closure of the Glavin Developmental Center Pool**

The Glavin Developmental Center was located in Shrewsbury, Massachusetts. In February 2013, Glavin maintenance workers sought vendors to decommission the Glavin swimming pool. A Glavin maintenance worker secured two quotes in the amounts of \$17,500 and \$14,665.<sup>1</sup> The worker contacted S&K Lawn Care, but the company declined to submit a quote because of the distance to Glavin.

In or about June 2013, you were assigned to close the Glavin pool and to contact S&K Lawn Care for a quote. It is not clear who assigned you this task. Our information is

that there was a push to close the pool prior to the end of the fiscal year, June 30, 2013.

You asked the owner of S&K Lawn Care to reconsider his decision not to submit a quote on the Glavin pool closure and to submit a quote under \$10,000. You believed a quote over \$10,000 would trigger a longer process that would impede your ability to close the pool before the end of the fiscal year. When the owner of S&K Lawn Care declined to submit a quote because of the distance, you suggested that he contact your spouse for recommendations as to companies near Shrewsbury to supply the fill for the pool.

After talking with your spouse, S&K Lawn Care submitted a quote of \$9,876.45 to decommission the Glavin pool. In order to document that three quotes for the pool closure had been obtained, you added S&K Lawn Care's quote to the quote sheet containing the two quotes secured earlier by Glavin maintenance employees. The quote from S&K Lawn Care was not, however, in response to the same specifications as the earlier two quotes. The scope of work you provided to S&K Lawn Care required removal of a fence and the pool liner and filling the pool with clean sand or gravel. By contrast, the earlier quotes were based on specifications provided by DDS maintenance workers requiring removal of the existing in-ground pool, filling the hole left after the pool's removal, and adding substantial landscaping, including spreading 50 yards of loam, fertilizing and planting grass seed.

S&K Lawn Care was awarded the contract for the Glavin pool closure. Banas Sand and Gravel was the subcontractor. Banas Sand and Gravel used its trucks to transport fill from a dealer near the Glavin center. Banas Sand and Gravel charged S&K Lawn Care \$5,000.

You approved the purchase order for S&K Lawn Care to close the Glavin pool. S&K Lawn Care submitted a \$9,876.45 invoice for the work. You approved the invoice. S&K Lawn Care was paid \$9,876.45, and, in turn, paid Banas Sand and Gravel \$5,000.

You did not disclose to your appointing authority or the State Ethics Commission that your immediate family had a financial interest in the Glavin pool-decommissioning contract or that S&K Lawn Care was owned and operated by a close and longtime friend of your family.

#### **Additional Official Dealings with S&K Lawn Care**

In November 2013, you assembled quotes for landscaping and snow removal at the Glavin center. You emailed five vendors under statewide contract, including S&K Lawn Care, and copied DCAMM and DDS staff on the email. S&K Lawn Care submitted the lowest quote and was awarded the contract.

In Spring 2014, you advocated for Spring cleanup and mowing services at the Glavin center and the Monson center cemeteries, among other parcels. You were advised that DDS would be reducing the landscaping and lawn services. You repeatedly requested lawn care services for the Glavin cemetery asking whether DDS should seek new quotes or use S&K Lawn Care.

Again, you did not disclose to your appointing authority that the owner and operator of S&K Lawn Care was a close and longtime friend of your family.

#### **LEGAL ANALYSIS**

As a DDS Program Manager, you were a "state employee" as that term is defined by G.L. c. 268A, § 1(q), because you were employed by a state agency. Your conduct involving the Monson and Glavin closures raises concerns under §§ 6, 23(b)(2)(ii) and 23(b)(3) of G.L. c. 268A, the conflict of interest law.

Your conduct first raises concerns under § 6, which prohibits a state employee from participating as such in a particular matter in which, to her knowledge, she or her immediate family has a financial interest. The purpose of § 6 is to avoid self-dealing and nepotism. Where the state employee's duties require her to participate in a particular matter in which, to her knowledge, a member of her family has a financial interest, she must first advise her appointing authority and the State Ethics Commission in writing of the nature and circumstances of the particular matter and make full disclosure of such financial interest. Thereafter, the appointing authority shall either (1) assign the particular matter to another employee; (2) assume responsibility for the particular matter; or (3) make a written determination that the financial interest is not so substantial as to be deemed likely to affect the integrity of the services which the Commonwealth may expect from the employee.

The contract to supply concrete blocks for the Monson closure was a particular matter. You participated in that contract personally and substantially as a state employee by, as a DDS program manager, obtaining quotes, approving the purchase order for Banas Sand and Gravel to supply the concrete blocks and confirming delivery of the concrete blocks in order for Banas Sand and Gravel to receive payment.

"Immediate family" includes the public employee's spouse "their parents, children, brothers and sisters." G.L. c. 268A, § 1(e). Your father-in-law is a member of your "immediate family" as that term is defined under § 1(e) because he is your spouse's father. Your father-in-law had an ownership interest in Banas Sand and Gravel and, thus, a financial interest in the Monson concrete blocks contract. You were

aware of your father-in-law's ownership interest in Banas Sand and Gravel and his financial interest in the company's contract to supply the concrete blocks to close the Monson center.<sup>2</sup> Thus, the Commission found reasonable cause to believe you violated § 6 by participating as a state employee in a particular matter in which an immediate family member had, to your knowledge, a financial interest. Rather than participating in the matter, you were required by § 6 to make the above-described written disclosures to your appointing authority and the State Ethics Commission and wait to receive further direction from your appointing authority in accordance with the statute. The DCAMM project manager to whom you disclosed your relationship to Banas Sand and Gravel was not your appointing authority.

The Commission also found reasonable cause to believe your conduct involving the Glavin pool violated § 6. The contract to decommission the Glavin pool was a particular matter. You participated in that particular matter as a state employee by, as a DDS program manager, (1) recommending S&K Lawn Care contact Banas Sand and Gravel, (2) approving the purchase order for the work, and (3) approving the invoice once the work was complete. Based on the facts, it is more likely than not that you knew Banas Sand and Gravel would be a subcontractor if DDS awarded the pool-decommissioning contract to S&K Lawn Care. As stated earlier, your father-in-law is your immediate family and he had a financial interest in Banas Sand and Gravel and thus, the Glavin pool contract. Therefore, there was reasonable cause to believe you violated § 6 with respect to the Glavin contract.

Your conduct also raises concerns under § 23(b)(2)(ii). This section prohibits a public employee from knowingly, or with reason to know, using her official position to secure an unwarranted privilege of substantial value that is not properly available to similarly situated individuals.

The opportunity to enter into a contract with DDS to close the Glavin pool was a privilege. Your award of this privilege to S&K Lawn Care was unwarranted because it was based on the company's response to specifications that you provided solely to S&K Lawn Care and not to any other vendor. You also directed S&K Lawn Care to submit a quote under \$10,000. To avoid securing for S&K Lawn Care this unwarranted privilege, you should have used the same specifications, including the price requests, for all of the vendors.

Accordingly, you used your position as a DDS program manager charged with closing the Glavin pool to secure an unwarranted privilege for S&K Lawn Care. This unwarranted privilege was of substantial value, as the contract was worth nearly \$10,000, and was not properly available to the other companies that submitted quotes on the project. Therefore, there was reasonable cause to

believe you violated § 23(b)(2)(ii) by awarding the contract to S&K Lawn Care.

Finally, your conduct raises concerns under § 23(b)(3), which prohibits a public employee from knowingly, or with reason to know, acting in a manner that would cause a reasonable person, knowing the relevant facts, to conclude the public employee is likely to act or fail to act because of kinship, position or undue influence. This section deals with the appearance of undue influence or favoritism. A public employee may avoid an appearance problem by making a full written disclosure to her appointing authority of the facts that would lead to an appearance of undue influence or favoritism.

At no point did you make any written disclosures to your appointing authority that Banas Sand and Gravel was owned by your spouse's family or that the owner and operator of S&K Lawn Care was a close and longtime friend of your family. Each time you acted officially as to these companies while having a significant undisclosed relationship with them, you created the appearance of undue influence or favoritism. Therefore, the Commission found reasonable cause to believe you violated § 23(b)(3) in taking these official actions.

#### **DISPOSITION**

The Commission is authorized to resolve violations of G.L. c. 268A with civil penalties of up to \$10,000 for each violation, except that a civil penalty of up to \$25,000 may be imposed for G.L. c. 268A, § 2 violations (bribes). The Commission, however, has chosen to resolve this matter with this Public Education Letter because it believes the public interest would best be served by doing so.

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  
Executive Director

---

<sup>1</sup> DDS received a third quote but did not consider it because the vendor was not under statewide contract.

<sup>2</sup> Our information is that your husband did not have a financial interest in the company and his employment was not connected to any DDS contract.

COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION  
ADJUDICATORY  
DOCKET NO. 16-0001

IN THE MATTER OF  
HOWARD HANSEN

Appearances: Candies Pruitt-Doncaster, Esq.  
Counsel for Petitioner

David W. McCarter, Esq.  
Counsel for Respondent

Commissioners: Barbara A. Dortch-Okara, Regina L.  
Quinlan, David A. Mills, Thomas J. Sartory, Maria J.  
Krokidas

Presiding Officer: Commissioner Thomas J. Sartory

**DECISION AND ORDER**

**I. Introduction**

Howard Hansen was the Town Moderator in Stoughton during the period 2009 through 2014.<sup>1</sup> Hansen, for himself and as sole proprietor of Hansen Brothers Printing Co., submitted invoices for charges to the Town for copying and printing services he provided to himself as Town Moderator or to other Town officials, then approved the charges as Town Moderator. The evidence presented at an adjudicatory hearing on March 29, 2017 proved that Hansen thereby violated § 19 by participating as a municipal employee in particular matters in which he had a financial interest; violated § 20 by having a financial interest in a series of contracts with the Town while serving as a municipal employee; and violated § 23(b)(2)(ii) by using or attempting to use his official position to secure for himself and Hansen Brothers Printing Co. unwarranted privileges and exemptions in the approximate amount of \$13,000 which were not properly available to other similar vendors.

**II. Findings of Fact**

On the basis of the evidence, we make the following findings of fact.

**Service as Town Moderator.**

Hansen was elected as Town Moderator of Stoughton in 1993 and was re-elected each year through 2016.

**Printing services prior to 1993.**

Hansen is the sole proprietor of Hansen Brothers Printing Co. Hansen Brothers Printing Co. provided services to the Town of Stoughton since 1968 or 1969. Prior to 1993, Hansen provided printing services to the Town. After he became Town Moderator in 1993, he stopped much of his business with the Town, so he no longer had that income.

**Request for special municipal employee designation and Declaration of Disclosure.**

On February 18, 1993, Hansen requested that the Selectmen designate the position of Town Moderator as a special municipal employee position. (Ex. 5A). As part of his request, he explained:

The reason for requesting this designation is that I, Howard Hansen, am the sole proprietor of Hansen Brothers Printing Co. Hansen Brothers Printing Co. has from time to time bid and produced work for the Town of Stoughton or its departments or boards.....

As a practice in the Town of Stoughton, the Town Manager is the Chief Procurement officer who is directed to act according to the provisions of the Massachusetts Procurement Law, Chapter 30B. He is obligated to award bids in the best interest of the Town, and when so directed, disclose and/or obtain approval from the Board of Selectmen upon making such contracts. By this law, any contract awarded to the firm of Hansen Brothers Printing Co. has to meet all specifications and criteria established for any competitive bid.

The law requires that the status of Special Municipal Employee be voted by the Board of Selectmen so that I may continue to bid and contract for such work.

In the letter to the Board of Selectmen, Hansen did not indicate that, as Town Moderator, he intended to hire his own company to do work for the Town, particularly without going through a bidding process.

Also on February 18, 1993, Hansen filed a second document entitled "Declaration of Disclosure, Ch.268A, Sec. 19, 20 and 23" with the Town Clerk. (Ex. 5B). He wrote:

To whom it may concern:

Pursuant to the provisions of M. G.L. c. 268A, Sections 19, 20 and 23;

I, Howard Hansen, Moderator of the Town of Stoughton, having requested status as a Special Municipal Employee, do hereby disclose that as sole proprietor of Hansen Brothers Printing Company, a business located in the town of Stoughton, Massachusetts, do bid and engage in contracts with the Town of Stoughton and its departments or boards.

As a bidder and contractor, I am obliged to meet the specifications in an equally competitive manner as any other bidder or contractor and that no special or different criteria is applied in awarding any contract or business association, by virtue of my office.

Being the owner of Hansen Brothers Printing Company, I do have a financial interest in that firm. My financial interest includes paying for all services and materials employed in the production of goods as well as receiving any remuneration relative to that production performed by me.

The “Declaration of Disclosure” does not mention any particular contract which Hansen, as Town Moderator, expected to have with his own company or with himself.

On March 3, 1993, the Town Manager, Phillip J. Farrington, notified Hansen that on March 2, 1993, “the Board of Selectmen voted to approve your request that the Town

Moderator be designated as a Special Municipal Employee of the Town of Stoughton, as requested in your letter of February 18, 1993.” (Ex. 5C).

### **Budget for the Town Moderator**

In Stoughton, Town boards, officers and committees charged with the expenditure of Town funds prepare detailed estimates of expenses and income and submit them to the Town Manager, who submits them to the Selectmen. The Finance Committee considers the estimates and makes recommendations to the Selectmen. Each year, Hansen made a presentation to the Finance Committee about the budget for the Town Moderator’s Office and itemized expenses.

At all relevant times, Hansen was paid either a salary or a stipend for serving as Town Moderator. There was a separate line item in the Town budget for expenses of the Moderator’s Office.

### **Procurement policy**

In 2008, the Town Accountant, William Rowe, created a local procurement manual. The Board of Selectmen approved it in November 2008. The manual applied to all

municipal departments, other than the School Department. The manual provided that, for procurements under \$3,000, Town employees were to use sound business practices. Sound business practices was defined to mean periodically soliciting three quotes to get the best value for the Town. Preferably, the quotes would be written, but they did not have to be in writing.

In 2010, the Town hired a Procurement Officer, but Hansen did not go through the Procurement Officer to make purchases related to his Town Moderator duties.

Hansen, as Town Moderator, did not solicit business quotes for the work or materials provided by Hansen Brothers Printing Co. As sole proprietor of Hansen Brothers Printing Co., Hansen did not submit quotes from Hansen Brothers Printing Co. to the Town regarding the work or materials.

### **Charges to the Town Moderator’s budget for copying, printing and goods**

From 2009 to 2014, Hansen, as Town Moderator, submitted charges to the Town Accountant for services and goods provided by himself or by Hansen Brothers Printing Co. to the Town. Generally, the Town Accountant allowed him about two weeks after Town Meeting to submit requests for expenses. Hansen’s charges were submitted after the services and goods already had been provided to the Town.

Prior to 2014, when Hansen submitted bills, the Town Accountant paid them. The Town Accountant never rejected any of the invoices included as exhibits at the hearing.

### *Hansen’s pricing for services and goods*

For Hansen Brothers Printing Co., Hansen used a “basic standard price list” to determine charges to the Town for services and goods purchased. (Transcript (“Tr.”), 90). To make sure that what he charged the Town was fair and reasonable, “[m]aybe about every two years,” Hansen compared the costs of getting copies from a public facility, such as a library, or copy center. (Tr., 147). Hansen’s price list was “a note piece of paper, notepad piece of paper...” (Tr., 162). He estimated the costs of the services he provided. He had a working price list per copy for different colors, sizes and types of paper.

For example, for Moderator’s Office Supplies provided by Hansen Brothers Printing Co., Hansen took the items listed out of the company’s supplies. Mostly such supplies would be ink and toner and paper that were kept in inventory. He said he did not add any markup – “Basically I’m saying this is what it costs.” (Tr., 166). In a number of instances, receipts from Staples, Stop & Shop, or Walmart showed

that what Hansen Brothers Printing Co. paid for an item was what Hansen Brothers Printing Co. charged the Town for the item.

In an invoice for Hansen Brothers Printing Co. dated June 19, 2009, Hansen charged the Town both for toner and paper and for copies. (See Ex. 4, p. 0010, 0013).

In a single invoice for Hansen Brothers Printing Co. dated June 1, 2010 for Moderator Supplies, Hansen charged 15 cents a copy in one instance and 20 cents a copy in another instance. (See Ex. 4, p. 0024; Tr. 107-108).

On June 29, 2013, in an invoice for Hansen Brothers Printing Co., he charged the Town for two five-page e-mails at \$70 each, for a total of \$140. (See Ex. 4, p. 0076).

#### Other copying options

A significant number of the charges submitted by Hansen were for copies.

According to Town Manager Michael Hartman, there are at least 30 copy machines in the Town Clerk's Office and Town Manager's Office and at least 50 printers in Town Hall. At least four copy machines in Town Hall also have printing functions. Town employees and Town officials, including members of boards and commissions, have access to the Town Hall copy machines and printers. The Town Moderator had such access.

Hansen did not use the copiers at Town Hall.

#### **Hansen's Schedules of Bills Payable**

A schedule of bills payable is a summary which is attached to the front of vendor invoices. It outlines the vendor code, vendor name and address, the purchase order, if applicable, the account codes to which the invoice is to be charged, and the amount of the invoice. The schedule of bills payable is used to authorize the payment of the bills, as required by G.L. c. 41, § 56. The schedule of bills payable must be signed by the department head or, in his absence, the assistant department head.

As Town Moderator, Hansen submitted Schedules of Bills Payable to the Town Accountant. He attached his own invoices from himself, Howard Hansen, and from Hansen Brothers Printing Co. to the Schedules. (Ex. 4, p. 0001 – 0093; Ex. 8).

Every Schedule submitted by Hansen was signed as "Department Head, Howard Hansen." The Town Accountant confirmed that Hansen was considered a department head, and when Hansen signed schedules of

bills payable, he did so as a department head. Hansen acknowledged that presenting the bills "was my department responsibility."

There were separate vendor numbers for the two types of invoices Hansen submitted. The vendor number for payments to Howard Hansen, individually, was 26487. For charges from Hansen Brothers Printing Co., the vendor number was 8037. Payments for both the invoices for Howard Hansen and the invoices for Howard Hansen Printing Co. were charged against the budget line item for expenses of the Town Moderator's Office.

#### **Reimbursements**

Generally, for the invoices for payments to be made to him individually, Hansen used letterhead saying, "Town Moderator." The invoices he submitted on behalf of his business said, "Hansen Brothers Printing Co."

According to the Town Accountant, the invoices for payments to be made to Howard Hansen individually were for "employee reimbursements," but if Hansen was providing services for the Town, they would be under the vendor number for Hansen Brothers Printing Co.

In 2009, Hansen used the word "reimbursement" in the subject line of letters regarding both bills payable to himself and bills payable to Hansen Brothers Printing Co. (Ex. 4, p. 0002 and 0003-0004; 0006 and 0009; and 0010 and 0013). In subsequent years, only the bills payable to himself were entitled "Request for Reimbursement." See bills payable to Hansen (Ex. 4, p. 0022, dated 6/2/10; 0035, dated 6/30/11; 0061, dated 6/30/12; 0069, dated 6/29/13; 0093, dated 6/27/14).

After 2009, the bills payable to Hansen Brothers Printing Co. no longer said "reimbursement". See, e.g., invoices for Moderator Supplies: (Ex. 4, p. 0024, dated 6/1/10; p. 0038, dated 6/18/11; p. 0052, dated 3/28/12); and invoices for Workbook Expenses (Ex. 4, p. 0030, dated 6/2/10; p. 0041, dated 6/20/11; p. 0051, dated 6/29/12; p. 0076, dated 6/29/13).

A Schedule of Bills Payable dated June 20, 2011, showed charges from both Howard Hansen and Hansen Brothers Printing Co., with both vendor numbers. (Ex. 4, p. 0034). In a letter dated June 30, 2011, from Hansen to the Town Accountant, Hansen wrote, "The reimbursement bill for \$71.31 payable to me should be kept separate from the invoices for Hansen Brothers Printing Company." (Ex. 4, p. 0035). Hansen submitted a separate request for the amounts payable to Howard Hansen. (Ex. 4, p. 0036-0037).

### Schedules of bills payable to Howard Hansen

On June 22, 2009, Hansen signed off on a Schedule of Bills Payable for "Reimbursement of Moderator Expenses, FY 2009" for \$606.44 payable to himself, Howard Hansen. The expenses included dues and subscriptions to the Massachusetts Moderators Association, plaques, and expenditures for Annual Town Meeting, including numerous charges for "Supplies" and "copies." (Ex. 4, p. 0002, 0004).

On June 2, 2010, along with MMA dues and associated gas and tolls, Hansen charged the Town for 120 copies of Study Committee Reports for \$24.00 and 60 copies of "Howard's Rules of Order" for \$9.00 which he made for the MMA meeting. (Ex. 4, p. 0021-0022). Howard's Rules of Order were his own, Howard Hansen's, rules of order.

Subsequent bills payable to Hansen, individually, separated costs relating to the MMA from other costs for goods and supplies. Bills he submitted in 2011 and 2012 included charges for "Office Supplies," and the bill for 2013 included charges for "Committee Supplies." These bills attach receipts for purchases directly from Staples, Office Max and Ocean State Job Lot. (Ex. 4, p. 0036-0037, 0061-0065, 0069-0071).

### Schedules of bills payable to Howard Hansen Printing Co.

The Schedules of Bills Payable for charges from Hansen Brothers Printing Co. include both charges related to Hansen's Town Moderator duties and other charges.

#### Duties of the Town Moderator

The Town of Stoughton has a representative Town Meeting with elected Town Meeting members. By statute, G.L. c. 39, § 9, and under the Town Charter, the Moderator is responsible for conducting all Town Meetings. Under G.L. c. 39, § 15, this includes deciding questions of order, publicly declaring votes, and administering oaths of office.

In addition to conducting Town Meeting, the Town Moderator has the following duties:

- Serves on and is Chair of the Committee on Rules.
- Appoints nine members of a Committee on Finance and Taxation which shall prepare the budget Article.
- Appoints one member at large of:
  - the Committee on Municipal Regulations, which shall study and report on Articles

and bylaws and zoning regulations of the Town.

- the Committee on Municipal Operations, which shall study and report on Articles that affect functions performed by offices and departments of Town government.
- the Committee on Intergovernmental Relations, which shall study and report on Articles which affect the relations of the Town with other municipalities, regional government bodies, and agencies of county, state and federal government.

- Appoints a temporary chairman to organize each standing committee.

In 2012, Hansen was made chairman of a Town Code Review Committee, which was going to go over the Town Code book.

#### Charges from Hansen Brothers Printing Co.

The invoices from Hansen Brothers Printing Co. include amounts charged for Moderator Supplies and the Moderator's Workbook. The invoices also include charges relating to Rules Committee meetings, various Standing Committees and Public Hearings.

#### Charges for meetings the Moderator did not need to attend

The Moderator is not a member of the municipal regulations committee, the intra-governmental committee or the municipal operations committee, and his only duties in the Charter are to appoint one member of each and a temporary chairman to organize each. On occasion, Hansen attended meetings of these committees and brought documents that he had prepared.

#### Charges for an event the Moderator was not required to host

On his own accord, Hansen set up a program to encourage residents to run for Town Meeting. He acknowledged that it was not part of the Moderator's job, "but nobody else has that job. Nobody does it." (Tr., 122). In the course of three days, December 12-14, 2012, he sent 170 letters twice to Town Meeting members. On June 30, 2012, he approved payment of an invoice from Hansen Brothers Printing Co. for \$660.95. (Ex. 4, p. 0053, 0059).

#### Charges related to work assigned by Charter to the Town Clerk

By his own account, Hansen performed duties which, by Charter, are assigned to the Town Clerk with regard to precinct caucuses and Organizational Town Meeting, and he submitted requests for payment to Hansen Brothers Printing Co. with regard to the work.

Duties of Town Clerk or precinct clerk

The Charter for the Town of Stoughton indicates that some duties with regard to Town Meeting are to be performed by the Town Clerk or the precinct clerk. Ex 1, Charter.

The Town Clerk has the following duties:

- After the election of Town Meeting representatives, to notify each such representative of his election. Charter, § C7-5.
- In the case of vacancies in a precinct, to call a special meeting of the remaining representatives of the precinct and mail notice of the special meeting to each representative. Charter, C7-6.1.
- With regard to an Organizational Town meeting to be held by Town Meeting Representatives on the Thursday preceding the Annual Town Meeting, to notify Town Meeting Representatives at least seven days before it meets. Charter, § C7-11.
- To notify Town Meeting Representatives of the time and place where Representative Town Meetings are to be held and send the notices by mail at least seven days before the meeting. Charter, § C7-10.
- Within 30 days after sessions of Annual and Special Town Meeting, to post in the Town Hall and publish in a local newspaper or on the official town website a list of Town Meeting Representatives present and absent. Charter, § C7-7.

With regard to the precinct caucuses, candidates receiving the greatest number of votes are to be notified by the precinct clerk. Charter, C7-6.

Charges for work assigned to the Town Clerk

Between 2002 and 2017, there was never a time when the Town did not have either a permanent Town Clerk or an Acting Town Clerk. The Board of Selectmen is the appointing authority for the Town Clerk.

On June 20, 2009, Hansen signed off on charges for \$395.58 for expenses “incurred for the preparation of the

Precinct Caucuses and the Post Caucus recording and organizing the Town Meeting Member election records on behalf of the Town Clerk’s Office.” (Ex. 4, p. 0005, 0006).

In an attached letter to the Town Accountant dated June 19, 2009, Hansen wrote,

This work involved arranging the information prior to the Annual Town Election to determine vacancies and expiring terms of town meeting representatives, mailing letters to newly elected or re-elected town meeting representatives, posting notices and arranging for facilities to hold the caucus. Following the caucus, the entire town meeting membership records had to be updated and verified.

(Ex. 4, p. 0006. See Tr., 86-87).

Having already done the work, Hansen asked what account should pay for it:

It was necessary for the Moderator to do this task as there was no one in the Town Clerk’s Office familiar with the work.

You will note there are some unexpended funds remaining in the Moderator’s account that could be used to pay the bill directly. Or perhaps that it should be charged to Elections and Town Meeting Accounts under the Town Clerk’s/Registrar of Voters. Under normal circumstances, this work would not be under the direction of the Moderator. I did allow for this contingency in the 2010 budget.

The invoice for Hansen Brothers Printing Co. for the charge of \$395.58 includes a labor charge of \$240.00 for 8 hours of work. (Ex. 4, p. 0006, 0009.) Hansen charged \$30 an hour for his labor, because “that was basically the going rate.” (Tr., 87).

Also, on June 20, 2009, Hansen approved a charge for \$203.06 for the preparation of the Organizational Town Meeting on April 30, 2009. (Ex. 4, p. 0005, 0010). In a letter to the Town Accountant, Hansen wrote, “It was necessary for the Moderator to organize this material as there was no one in the Town Clerk’s Office familiar with the Organizational Town Meeting business. This process is required by the Town Charter and has to be completed on a strict schedule.” (Ex. 4, p. 0010).

While the Town Clerk’s unfamiliarity with the process was the reason he gave in 2009, Hansen charged for similar preparation for precinct caucuses and organizational meetings from 2010 through 2013. See Precinct Caucuses charges (Ex. 4, p. 0026 dated 6/2/10; p. 0039 dated 6/16/11; p. 0050 dated 6/30/12; p. 0077 dated 6/29/13). See

Organizational Meeting charges (Ex. 4, p. 0027 dated 5/15/10; p. 0043 dated 6/15/11; p. 0054 dated 6/29/12; p. 0077 dated 6/29/13).

Hansen also assigned himself other responsibilities of the Town Clerk. He testified that the Town Clerk has never done adequate record-keeping. He said, "...no one took responsibility for recordkeeping except on an informal basis. So most of all the procedures that have been going on through the town meeting process have been under my direction for the last 27 years." (Tr., 58).

#### Document search for the Treasurer

On April 4, 2013, Hansen signed off as Town Moderator on payment of an invoice for \$984.15 from Hansen Brothers Printing Co. for a "Document Search and Copies of Moderator Records, 2012 ATM for Bond Counsel." (Ex. 4, p. 0066, 0067). A new Town Treasurer had called Hansen looking for documents for bond counsel regarding the 2012 annual meeting. Hansen told the Treasurer that the documents should be in the Town Clerk's Office. He delivered a memorandum and packet of information to the Town Clerk, but the Town Clerk refused to take it. The prior treasurer recommended that Hansen should provide the answer.

Subsequently, Hansen spent 32 hours going through his own records and copying and certifying documents. He commented that one or two items would have been within the scope of his work, but "[t]his is long above any duties of being Moderator." (Tr., 131-132). He then decided on his own what to charge. "So I billed her roughly what you could legally do as a person assigned by the town to perform the minimal task of doing research." (Tr., 132). Hansen subsequently billed \$830.40, (or \$25.95 times 32 hours), plus the cost of copies and materials. (Ex. 4, p. 0067).

Hansen sent the invoice for Hansen Brothers Printing Co. for this work to the Treasurer but handwriting on the invoice says that the amount was charged to the Moderator's Account.

#### **Changes in procedure with regard to the Town Moderator**

The Town Manager is the Chief Administrative Officer and Chief Procurement Officer for the Town of Stoughton.

Michael Hartman has been Town Manager since December 2012. At some point, the Town Manager became concerned with Town Moderator Hansen's billing practices. He was concerned that Hansen was not using sound business practices and was directing business to his own company.

The Town Treasurer/Collector is responsible for cutting checks. The Town Accountant is responsible for conducting the warrant. In 2014, the Town Manager informed the Town Treasurer/Collector and Town Accountant that there were to be no further payments to Hansen. He told the Town Accountant that he could only pay Hansen for reimbursements, not fee for service. The Town Manager also informed Hansen and the Board of Selectmen in writing about his decision.

In response, according to the Town Manager, Hansen "bypassed my office and... attempted to go to the Board of Selectmen to receive payment." (Tr., 39). An invoice that Hansen submitted in 2014 still has not been paid.

In fiscal 2015, by action of the Town Manager and the Finance Committee, and through Town Meeting, the Town Moderator's funds were placed under the Town Clerk's budget and under her direct control. The Town Clerk would now be the department head with responsibility to sign off on the Town Moderator's budget. To be paid, Hansen would first have to receive clarification from the Town Clerk that he could expend the funds.

#### **III. The Burden of Proof**

Petitioner must prove its case and each element of the alleged violations by a preponderance of the evidence. 930 CMR 1.01(10)(o)(2). The weight to be attached to any evidence rests within the sound discretion of the Commission. 930 CMR 1.01(10)(n)3. In determining this case, the Commission must make a determination of every issue of fact or law necessary to its Final Decision. 930 CMR 1.01(10)(o)3.

#### **IV. The Evidence Shows That Hansen Violated § 19**

Under § 19, a municipal employee may not participate as a municipal employee in a particular matter if, to his knowledge, he has a financial interest in the matter. Section 19 includes a disclosure procedure which an appointed municipal employee can use to seek authorization from his appointing authority to participate in a particular matter despite having a financial interest in it. No exemption of this kind is available to elected municipal employees. *See PEL 97-1*, 1996 SEC 822, 823. They must recuse themselves rather than participate in a matter in which they have a financial interest.

There is no dispute that Hansen was an elected municipal employee from 2009 through 2014.

"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..." G.L. c. 268A, § 1(k). Decisions by the Town Moderator to use Hansen Brothers Printing Co. as a vendor for printing services and to authorize payments to Hansen Brothers Printing Co. were particular matters in which the Town was a party and had a direct and substantial interest.<sup>2</sup>

With regard to participation as Town Moderator in the alleged particular matters, as Town Moderator, Hansen decided how much money to request for the Town budget for the Town Moderator, and he decided whether and how to spend the budget he requested. There were copiers and printers he could use for free in Town Hall, but he repeatedly used his own business for copying and printing services. The Schedules of Bills Payable and back-up invoices show that Hansen, signing off as "Department Head," consistently directed payment of amounts from the Town budget to himself or to Hansen Brothers Printing Co.

In defense, Hansen argues first that the act of approving Schedules of Bills Payable was not "participation." "Participate" means "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). Hansen argues that Hansen's signing off on the Schedules of Bills Payable was ministerial, *pro forma*, or preliminary, and not integral to the decision-making process, and so was not "substantial" because the Town Accountant, and not Hansen, decided whether the amounts billed would be paid or not. *See In re Sullivan*, Decision and Order, Docket No. 319 (May 19, 1988), and cases cited.

Approval of payment has been regarded as participation, i.e., personal and substantial participation, in a particular matter in prior cases, however. *See, e.g., In re Foskett*, Disposition Agreement, Docket No. 16-0002 (April 28, 2016) (approval by Town of Charlton Highway Superintendent of payments to his own brothers and son for snowplowing); *In re Prue*, Disposition Agreement, 2014 SEC 2505 (July 31, 2014), (approval by transportation director of the Greater Lawrence Educational Collaborative of invoices submitted by a bus company for which his wife had provided services as a bus monitor); *In re Dickinson*, Disposition Agreement, 2013 SEC 2489 (December 4, 2013) (approval by Hosting Services Director for the Commonwealth of Massachusetts Information Technology Division of contract payments to a vendor with whom he was negotiating prospective employment – relevant provision was § 6, the counterpart to § 19 applicable to state employees).

More specifically, at the hearing in this case, Town Accountant William Rowe testified that the Schedules of Bills Payable were used to satisfy the requirements of G.L.

c. 41, § 56. The text of G.L. c. 41, § 56 regarding Warrants for Payment of Bills provided the following through November 7, 2016:

The selectmen and all boards, committees, *heads of departments* and officers authorized to expend money shall approve and transmit to the town accountant as often as once each month all bills, drafts, orders and pay rolls chargeable to the respective appropriations of which they have the expenditure. *Such approval shall be given only after an examination to determine that the charges are correct and that the goods, materials or services charged for were ordered and that such goods and materials were delivered and that the services were actually rendered to or for the town as the case may be....*

(Emphasis added).

This statute previously was considered in *EC-COI-98-5*, 1998 SEC 704. There, in a Town, the practice was for school administrators to review and approve charges and pass them on to the Superintendent, who then put them on a Schedule and passed it to the School Committee for a final sign-off before they were submitted to the Town Accountant. Even though the practice of the School Committee was to sign off without further review or investigation, the Commission found that, pursuant to the statute, it was the School Committee's responsibility to certify the correctness of the accounts payable. The Commission found, "G.L. c. 41, s. 56 clearly gives the members not only the power to approve bills which are correct, but the concomitant power to disapprove those bills which are not correct. Such power, whether exercised or not, implies discretion and judgment, and removes the signing of the Schedules from the realm of the ministerial." 1998 SEC at 706.

Hansen also argues that the "Declaration of Disclosure, Ch.268A, Sec. 19, 20 and 23" that he filed on February 18, 1993 was a disclosure under § 19(b)(1), and that the response he received from the Selectmen, designating him as a special municipal employee, was effective as an exemption under 19(b)(1).

This argument fails for several reasons. Most importantly, an elected municipal employee is not eligible to use the § 19(b)(1) disclosure procedure and cannot otherwise get authorization from the Selectmen to participate in a particular matter in which he has a financial interest. Once Hansen was an elected employee, his only option was to recuse himself as Town Moderator from any matter regarding payments from the Town that would benefit him. Second, as a matter of law, being a special municipal employee does not make a difference with regard to obligations under § 19.

As to whether Hansen had a financial interest in his decisions to send Town business to, or approve bills from, his own company, Hansen was the sole proprietor of Hansen Brothers Printing Co., so that payments made by the Town to Hansen Brothers Printing Co. were payments in which Hansen had a financial interest.

Hansen argues, however, that the payments Hansen received were only reimbursements of Hansen's out-of-pocket expenses, and that reimbursement did not rise to the level of a financial interest because he just was made whole and received nothing of additional value. For reasons explained in detail in the section below regarding § 20, we have concluded that the payments made by the Town to Hansen Brothers Printing Co. for goods, copying or printing were not reimbursements of Hansen's expenses, but payments for vendor services. "It is established Commission policy that § 19 will apply to every financial interest regardless of size and regardless of whether the interest affects the municipal employee favorably or adversely." *EC-COI-89-33*. If Hansen complains that he did no better than break even in some instances when his sole proprietorship provided vendor services, as a matter of law, for purposes of § 19, a financial interest need not be a gain.

A final issue is whether Hansen had knowledge of his financial interest. The evidence makes clear that he knew he was interested in having his invoices be paid. For example, there was testimony that the Town did not pay an invoice that Hansen submitted in 2014. The fact that Hansen by-passed the Town Manager and went to the Selectmen to pursue the payment proves that he knew he had a financial interest in receiving it.

#### **V. The Evidence Shows That Hansen Violated § 20**

Under § 20, a municipal employee may not have a financial interest, directly or indirectly, in a contract made by the Town he serves, in which the Town was an interested party. An element of the violation is that a municipal employee knows or has reason to know of the financial interest. Section 20 includes some exemptions, however, and if a municipal employee can satisfy the requirements of an exemption, he may have a financial interest in a Town contract.

Hansen repeatedly violated § 20. The Commission has defined "contract" very broadly to include "any type of agreement or arrangement between two or more parties, under which each undertakes certain obligations in consideration for promises made by the other." *In re Pathiakis*, 2004 SEC at 1176.

Petitioner argues that on eleven occasions,<sup>3</sup> Hansen, as Town Moderator on behalf of the Town of Stoughton, made

contracts with Hansen Brothers Printing Co. to provide goods and services in exchange for payments that would be made from the Town Moderator's budget which he controlled. As sole proprietor of Hansen Brothers Printing Co., Hansen subsequently billed the Town, and the Town paid the invoices. Petitioner contends that in each instance, there was a contract made by the Town, the Town had an interest in the contract, and Hansen had a financial interest in the contract. Hansen counters that he only had an arrangement with the Town for reimbursement of out-of-pocket expenses which he incurred as Town Moderator. He asserts that this did not constitute a separate contract and that the elements of a contract -- offer, acceptance, consideration and mutual assent to the terms -- were not met. *See EC-COI-04-4*.

A § 20 violation occurs when a municipal employee has a financial interest in a Town contract distinct from his employment arrangement. If the terms of a municipal employee's employment entitle him to benefits or reimbursements, these are part of his employment arrangement and not a separate contract. For example, reimbursement of an employee's mileage for trips he takes as part of his employment is a part of his employment agreement and not a separate contract. A public employee does not violate § 20 by submitting a request for reimbursement of expenses, such as a mileage report, to which he is entitled as a term of his employment. Amounts that Hansen charged personally for subscriptions and membership dues for the Massachusetts Moderators Association or gas and mileage for its meetings are examples of such reimbursements. (*See Ex. 4, p. 0002, 0003, 0022, 0036, 0069*).

Hansen contends that charges he billed for Hansen Brothers Printing Co. likewise were reimbursements associated with his employment as Town Moderator, rather than a separate contract. He testified that when he appeared before the Finance Committee to present the budget for the Town Moderator, he "[i]temized it as reimbursement," "broke them down... committee supplies, Moderator specific supplies." (Tr., 76). He testified that the Finance Committee was aware that the expenses he was asking for were for reimbursement to him. He then incurred costs as he had indicated for Town Meeting and other commitments, and finally submitted requests for reimbursement of his expenses each year after Town Meeting and meetings of the Rules and Standing Committees were over. He testified that the bill included direct reimbursements for items for which he paid out of pocket, such as notebook covers or pocket portfolios purchased at Ocean State Job Lot. He testified that he also sought reimbursement for his costs for creating or making copies of documents. Hansen contends that the Town's repeated payment of his bills since 1993 demonstrates the

Town's understanding that he was entitled to recover what he spent to do his work.

For the following reasons, we reject Hansen's argument that the payments from the Town to Hansen Brothers Printing Co. were simply reimbursements of his expenses. First, Hansen's own statement is the only evidence that the Finance Committee was aware either that Hansen Brothers Printing Co. would supply the goods, copying and printing that he itemized in the Town Moderator's budget, or that the payments would only reimburse Hansen for his expenses. Coming from Hansen rather than a Finance Committee member, his statement is self-serving hearsay, and as such, we find it unpersuasive.

Second, the Town's historical payment of Hansen's invoices proves that his bills were honored by the Town, but not necessarily that the Town understood he was entitled to recovery of the costs he charged to Hansen Brothers Printing Co. as reimbursements due as part of his employment arrangement. As a matter of common sense, the items for which Hansen sought payment, such as toner, paper, name tags, and notebooks, and the charges for document preparation and copies are not the types of expenses, such as mileage and travel expenses, which are typically reimbursed as part of an employment arrangement.

More to the point, Hansen Brothers Printing Co. was not an employee of the Town, so payments to the business were not payments due to an employee as part of the employee's employment arrangement. Factually, the payments made to Hansen Brothers Printing Co. were indistinguishable from usual vendor transactions. Even if Hansen Brothers Printing Co. paid Staples for a notebook and then provided the notebook to the Town at the same price, it was an ordinary sale to the Town, albeit with no profit to the business.

In addition, there was evidence that the Town regarded the payments to Hansen Brothers Printing Co. as expenses different from reimbursements. The Town Accountant testified that one vendor number was for Hansen's "employee reimbursements", but "[i]f he was performing services for the town, they would be under Hansen Brothers Printing." (Tr., 22). Also, when the Town Manager changed procedures about paying Hansen's bills in 2014, he instructed the Town Accountant to pay Hansen only for reimbursements, not fee for service.

After 2009, even Hansen's own billing distinguished between "reimbursements" to himself as an individual, on the one hand, and charges from Hansen Brothers Printing Co., on the other. This evidence also indicates that the payments to Hansen Brothers Printing Co. were not considered reimbursements to which Hansen was entitled

as part of his service as Town Moderator, but rather that the invoiced transactions with Hansen Brothers Printing Co. were contracts separate from his employment agreement.

A final point is that the evidence does not support a finding that all Hansen received in the course of these transactions was repayment of his expenses. Hansen charged the Town not only for toner and paper, but also for copies made with them, and charged for copies in a single invoice at both 15 cents per copy and 25 cents per copy. He charged \$70 for each of two five-page e-mails. In some instances, the invoices include labor charges as well as charges for items. We think the only possible conclusion from these facts is that Hansen's charges exceeded repayment of his expenses and therefore cannot accurately be characterized as "reimbursement".

After consideration of the evidence, we conclude that in each instance when Hansen Brothers Printing Co. delivered goods and services in exchange for payments from the Town budget, there was a contract for purposes of § 20. Hansen had a financial interest in the contracts as sole proprietor of Hansen Brothers Printing Co.

No exemption to § 20 was satisfied. Section 20 includes exemptions, and if a municipal employee can satisfy the requirements of an exemption under § 20, he may have a financial interest in a contract made by the Town he serves. Petitioner asserts that Hansen never satisfied the requirements of any exemption under § 20 with regard to any contract that he or Hansen Brothers Printing Co. had with the Town between 2009 and 2013. Hansen contends that the "Declaration of Disclosure" that he filed in 1993 satisfied an exemption under § 20 with regard to future contracts.

*Availability of exemptions.* Section 20 includes two exemptions for special municipal employees. Being able to take advantage of these exemptions involves two steps.

First, in a Town, a position must meet one of the eligibility requirements listed in G.L. c. 268A, 1(n) for special municipal employee status, and the Selectmen must vote to designate the position as a special municipal employee position.

Second, with regard to a financial interest in a contract, a municipal employee must satisfy the requirements of one of the two exemptions for special municipal employees. Here, where the relevant contract is between the Town Moderator and Hansen Brothers Printing Co., the appropriate exemption is § 20(d) because Hansen, in his position as Town Moderator, participates in or has official responsibility for the agency that made the contract. To satisfy the requirement of a § 20(d) disclosure, Hansen had to complete a § 20(d) disclosure, get approval of the

exemption from the Selectmen, and file the approved disclosure with the Town Clerk. Separate disclosures would have been appropriate to address each specific contract with a municipal agency unless an ongoing exemption was approved.

In a number of instances, Hansen submitted invoices for goods, copying or printing provided to an official or agency other than the Town Moderator. For example, Hansen Brothers Printing Co. created plaques for the Committee on Finance and Taxation at the request of the Town Manager. (See Ex. 4, p. 0033 and 0047). Because Hansen, as Town Moderator, did not participate in or have official responsibility for the activities of the agency making the contract, he was required to file a disclosure under § 20(c) before performing the work.

Hansen also submitted an invoice from Hansen Brothers Printing Co. for researching documents for the Town Treasurer after a request from bond counsel. (Ex. 4, p. 0067). This work either was part of his Town Moderator duties and he should not have charged the Treasurer for the work, or it was separate work done for the Treasurer, and he had to file a § 20(c) disclosure to do it.

*Failure to satisfy any exemption.* We agree with Petitioner that Hansen did not satisfy any exemption under § 20 in relation to his financial interest in the series of contracts that Hansen Brothers Printing Co. had with the Town between 2009 and 2013. We reject Hansen's contention that the exchange of correspondence in 1993 – his letter to the Selectmen and “Declaration of Disclosure” dated February 18, 1993, and the Selectmen's response dated March 2, 1993 -- met the requirements of any exemption under § 20.

Hansen's letter of February 18, 1993, in which he requested special municipal employee status, does not refer to any specific contract. Rather, it speaks about the obligations his business would have with regard to potential future contracts generally: “...any contract awarded to the firm of Hansen Brothers Printing Co. has to meet all specifications and criteria established for any competitive bid.” (Ex. 5A).

The response from the Selectmen on March 2, 1993 likewise did not refer to any contract, or even to the subject of contracts. It only said that the Selectmen “voted to approve your request that the Town Moderator be designated as a Special Municipal Employee of the Town of Stoughton, as requested in your letter of February 18, 1993.” (Ex. 5C). At most, this response resulted in Hansen being designated as a special municipal employee. It did not provide approval of any specific contract, and it did not provide blanket approval of all possible future contracts between Hansen, acting on behalf of the Town as Town Moderator, and Hansen's own business.

Likewise, in the so-called “Declaration of Disclosure, Ch.268A, Sec. 19, 20 and 23,” Hansen speaks only in general terms about the fact that he bids on contracts, has to meet specifications as other bidders or contractors do, and is not entitled to beneficial treatment because of his public office. (Ex. 5B). He also explains generally that he has a financial interest in Hansen Brothers Printing Co. as its owner. Nothing in the Declaration of Disclosure mentions any particular contract.

There is no evidence that the Selectmen responded at all to the Declaration of Disclosure. Their letter refers only to Hansen's letter dated February 18, 1993, and not to the “Declaration of Disclosure.” There is no evidence that, in 1993 or at any subsequent time, the Selectmen approved an exemption under § 20(d) or otherwise authorized Hansen to have free rein with regard to entering into contracts between his business and the Town.

Consequently, as we have found that Hansen had a financial interest in a series of contracts with the Town from 2009 through 2013, and that he did not satisfy any exemption under § 20 with regard to his financial interest, we conclude that he violated § 20 with regard to each of the contracts.

## **VI. The Evidence Shows That Hansen Violated Section 23(b)(2)(ii)**

Section 23(b)(2)(ii) prohibits a municipal employee from, knowingly or with reason to know, using or attempting to use his official position to secure unwarranted privileges or exemptions which are of substantial value, i.e., worth \$50 or more, and which are not properly available to similarly situated individuals. In precedent, the Commission has found that public employees violated § 23(b)(2)(ii) by departing from or circumventing usual procedure to give themselves or others advantages or exemptions which were worth \$50 or more and not available to people or entities in similar situations.<sup>4</sup>

Petitioner argues that, pursuant to the Town's procurement policy, when the cost of copying or printing would be below \$3,000, Hansen had an obligation to follow “sound business procedures” by seeking three quotes before selecting a vendor for printing and copying services and supplies, and that he misused his official position when he failed to seek three quotes and instead took the printing and copying business himself. Hansen counters that he did not violate any procurement policies of the Town of Stoughton or the state.

The evidence supports a finding that Hansen was required to follow the procurement policy and that he failed to do so. As the Town Accountant testified, the procurement policy

that was instituted in 2008 applied to all municipal departments, other than the school department. The evidence also shows that Hansen never sought three quotes from other copying and printing vendors or selected the vendor with the lowest prices. At most, “maybe every two years,” he compared his own prices with those of other vendors and then consistently took the business himself.

Hansen directs us to testimony by the Town Accountant. The Town Accountant agreed that “[i]t’s fair to say that what was submitted by Mr. Hansen was within the procurement rules of the Town of Stoughton at the time.” (Tr., 30). He also testified that it was “correct” that “[t]hey were not rejected because there was any violation of any procurement rules of the town or the state.” (*Id.*) This testimony is about the point in the procurement process when invoices are submitted, however, not the point when three quotes should be obtained before a vendor is selected.

One element of a § 23(b)(2) violation is whether a municipal employee misused his position knowingly, or with reason to know. This raises the question about whether Hansen knew of the procurement policy and of an obligation to follow it. Hansen testified that he is not familiar with Stoughton’s procurement procedures because they never were presented to him. Hansen also testified that he was not asked to be at a training session for procurement, and that his department was the only one that was not asked. According to Hansen, no one said anything about the training, “other than references that they hired a Procurement Officer.” (Tr., 146).

On the other hand, Hansen’s letters in 1993 indicate that he was aware of various procurement and bidding requirements. The procurement policy adopted in 2008 applied to all employees except school employees. If he in fact was not notified of training and was not trained about the Town’s procurement policy, this does not establish that he was exempted from the policy, or from an obligation to find out what policy applied to him. We conclude that a municipal employee, and particularly an elected Town Moderator who holds a position of exceptional trust, has a duty to find out about the policies and procedures that apply to him in the course of his municipal service.

As to whether Hansen secured an unwarranted privilege or exemption, the term, “unwarranted,” is not defined in G.L. c. 268A, and the Commission has applied common experience and common sense in interpreting the term. In *EC-COI-98-2*, the Commission wrote, “In common usage,

‘unwarranted’ means ‘lacking adequate or official support’ or ‘having no justification; groundless.’” *The American Heritage Dictionary, Second College Edition* 1327 (1991); *Webster’s Third New International Dictionary* 2514 (1993). Privilege is generally defined as “a special legal right,

exemption or immunity granted to a person or class of persons; an exception to a duty.” *Black’s Law Dictionary* 1234 (8<sup>th</sup> ed. 1999).

By by-passing the requirement to collect three quotes and select the most advantageous quote, and instead directing all orders for goods, copying and printing related to the work of the Town Moderator to his own business, Hansen unjustifiably obtained a virtually exclusive opportunity to receive payment from the Town.

By regulation, “substantial value” is \$50 or more. 930 CMR 5.05. The amounts that Hansen invoiced for Hansen Brothers Printing Co. and approved as Town Moderator well exceeded \$50, and in the aggregate exceeded \$13,000.

The advantage that Hansen took by failing to follow sound business practices was not properly available to other vendors similar to Hansen Brothers Printing Co. As the Town Manager confirmed, other printing companies could not unilaterally decide to provide services to the Town and receive payment. Instead, when Hansen failed to consider quotes from them and assign work to them, they were deprived of the opportunity to compete for the Town’s business.

Accordingly, we find that Hansen was required to follow the procurement policies, and that he misused his position as Town Moderator by consistently failing to seek three quotes or select a copying and printing vendor on the basis of that comparison and instead directing the business to his sole proprietorship.

We also find that, as Town Moderator, Hansen uniquely was positioned to maximize the benefit to his own company as a vendor. He repeatedly increased the amount of business he sent to his own printing company by assigning himself work as Town Moderator that was not part of his duties, and then billing the Town after the charges to Hansen Brother Printing Co. already had been incurred. In a number of instances, although he already earned a salary or stipend as Town Moderator, he set his own additional labor charges and invoiced them through his business.

Instances in which he used his Town Moderator position to increase the charges to his business include:

- (1) Although it was “not his job” to run a meeting to recruit Town Meeting representatives, Hansen submitted an invoice for Hansen Brothers Printing Co. on April 30, 2012 for \$660.95 for charges related to running the meeting. (Tr., 122).
- (2) In 2008, he decided on his own accord that no one in the Town Clerk’s Office was capable of performing duties relating to Precinct Caucuses

and the Organizational Town Meeting which, by Charter, were assigned to the Town Clerk. He did this despite the fact that the Town Clerk had an appointing authority, the Board of Selectmen, who had the responsibility to oversee the Town Clerk's work. Although the Town Clerk no longer was new or, presumably, incapable in subsequent years, Hansen submitted and approved charges from Hansen Brothers Printing Co. for goods, copying and printing associated with the same work from 2010 through 2013. From 2009 through 2013, these charges totaled \$2,760.58.

- (3) Among the charges Hansen invoiced for Hansen Brothers Printing Co. were labor charges which, according to his own testimony noted above, he arbitrarily set himself and then billed after already having completed the work. These included:
  - a. Eight hours of labor at a rate of \$30, for a total of \$240, which Hansen invoiced on June 19, 2009 for doing work on Precinct Caucuses that, by charter, was assigned to the Town Clerk. (Ex. 4, p. 0006, 0009).
  - b. Thirty-two hours of labor at a rate of \$25.95, for a total of \$830.40, which he invoiced on December 10, 2012 to the Town Treasurer for work done at her request. (Ex. 4, p. 0067). Hansen decided to charge this amount for research he did as Town Moderator on documents that he himself maintained.

Other labor charges apparently were billed but were not so clearly identified. Presumably, in the invoice dated June 29, 2013 for Moderator's Workbook Expenses, the charge of \$70 for each of two 5-page e-mails on June 29, 2013 was not only for copying.<sup>5</sup> (Ex. 4, p. 0076).

No other copying and printing vendors were in a position to increase the business they got from the Town by adding new Town duties, taking over duties from Town employees or deciding on their own how much to pay themselves for doing Town work. We find that Hansen misused his Town Moderator position to secure an unwarranted privilege for his business by unilaterally and arbitrarily generating these charges for Hansen Brothers Printing Co.

## VII. Penalty

Having found that Hansen violated sections 19, 20 and 23(b)(2)(ii), it remains to set a penalty. By statute, a maximum civil penalty of \$10,000 per violation can be assessed with regard to each of the provisions that Hansen

violated. G.L. c. 268B, § 4(j)(3). As explained below, we have concluded that some mitigation of the penalty is justified.

Hansen asserts that, year after year, he followed the same practice, informing the Finance Committee that he would pay his own business for goods and services related to the Town Moderator's work, submitting invoices from his own business, approving the charges as Town Moderator, and passing them on to the Town Accountant. He emphasizes that the Town Accountant made the payments each year through 2013 without rejecting any of the charges. The Town Manager who was hired in December 2012 raised an objection to the fact that Hansen was steering business to his own sole proprietorship for the first time in 2014.

In a number of instances, the Commission has reduced penalties to be paid by a public employee in light of the fact that other governmental officials knew of or condoned the activity that violated the conflict of interest law. *See, e.g., In re Turner*, 2011 SEC 2370, 2376 (although the policy of the Town cemetery was that a plot should be sold only for a burial, the Cemetery Superintendent knew that a Division Foreman sold four cemetery plots to his parents, who were not near death, prior to an expected change in the price of plots and did nothing to stop the transaction); *In re Green*, 1994 SEC 714, 715 n. 7 (the fact that the Building Inspector was following an established, albeit unlawful, practice in issuing building permits for his own work was known to his appointing authority, the Board of Selectmen); *In re Cassidy*, 1988 SEC 371, 378 (in six appointment processes, Police Chief made no effort to conceal the fact that he was recommending his sons to be appointed as police officers, and Town officials who could have taken preventative action were aware of the situation and chose not to object).

To be clear, we do not regard the fact that other Town officials provided actual or *de facto* approval of Hansen's actions as an excuse for his repeated violations. The conflict of interest law demands that each public employee take responsibility for the integrity of his own governmental service, and we do not suggest that Hansen was relieved of such responsibility because other Town officials did not take action to prevent his violations. As stated in *Turner*, however, we recognize the possibility that "this post-violation inaction by others ... did as a practical matter deprive him of the opportunity to correct his mistake while it was relatively harmless, and it may have misled him into erroneously believing that there was no mistake that needed correction." *Turner*, 2011 SEC at 2376.

## VIII. Order

Accordingly, for his multiple violations of G.L. c. 268A, §§ 19, 20 and 23(b)(2)(ii) during the years, 2009 to 2014,

Respondent Howard Hansen is ordered to pay a civil penalty of \$4,000.00.

**DATE AUTHORIZED:** September 21, 2017

**DATE ISSUED:** October 4, 2017

---

<sup>1</sup> Although Hansen served as Town Moderator since 1993, this case was limited to the period between 2009 and 2014 by reason of the applicable statute of limitations. *See* 930 CMR 1.02(8).

<sup>2</sup> Petitioner alleged that the relevant “particular matters” were decisions to hire Hansen Brothers Printing Co. for “printing work” and “printing services.” Hansen argues that these allegations were not proved because the work Hansen Brothers Printing Co. did was not “printing.” Hansen testified that “printing services ranges from typesetting to graphic design and putting things on a press, photographic work” and involve “production of long, long runs.” (Tr., 70). Apart from making some plaques, Hansen insists that he has done no printing work for the Town since he became Town Moderator in 1993, and that from 2009 to 2014, his charges were for reimbursement for copying and inventory. Hansen’s argument is a red herring. We agree with Petitioner that in common usage, the word “printing” includes copying, that some of Hansen Brothers Printing Co.’s charges in fact were for printing – for example, for 1000 envelopes imprinted with “Moderator” – and that in Question 18 of Hansen’s Revised Response to Request for Admission, he admitted providing printing services between 2009 and 2013 for the Town of Stoughton. At the hearing, Hansen said, “I took this to be a generic statement that I did business with the Town.” In any case, when Hansen Brothers Printing Co. provided a service, the question is whether Hansen, as Town Moderator, violated the conflict of interest law by selecting his own business to provide it and by approving payment to his own business.

<sup>3</sup> Petitioner’s Brief refers to contracts totaling approximately \$13,000. Petitioner makes specific reference to eleven Schedules of Bills Payable or invoices. (Ex. 4, p. 0001, 0014, 0015, 0023, 0029, 0032, 0034, 0036, 0049, 0053, and 0066). The total for the amounts billed in these eleven instances, however, is only \$8,511.41. The record includes additional Schedules of Bills Payable which were charged to the Moderator’s account and are very similar to those which Petitioner listed, and it is not clear why these were not included in Petitioner’s list. *See, e.g.*, p. 0016 (\$365.11), p. 0048 (\$933.21 more), p. 0075 (\$4,256.68). When additional amounts from these invoices are added in, the total exceeds \$13,000.

<sup>4</sup> *See In re Wong*, 2002 SEC 1077 (MBTA’s Assistant General Manager for Organization secured an unwarranted

privilege for her son-in-law where, after an initial review by an RFP review committee, she unilaterally selected his firm absent further input from the committee); *In re Hanna*, 2002 SEC 1075, 1075-176 (submission of bid that Highway Surveyor for the Town of Brimfield sought and obtained from a contractor after the deadline was “an unwarranted privilege as it was offered after the deadline and/or it was an unwarranted exemption as it deviated from and was an attempt to circumvent the proper bidding procedure.”); *In re D’Arcangelo*, 2000 SEC 962 (requests by chief of probation for “consideration” by clerk magistrate with regard to motor vehicle citations issued to his relatives or friends were for an unwarranted privilege; dismissal based on such requests was not properly available to similarly situated individuals facing similar penalties); *In re Jefferson*, 2010 SEC 2304 (Superintendent secured an unwarranted privilege for a school committee member who was his superior by deviating from usual special education procedures to provide direct reimbursement for an out-of-district placement to the school committee member’s child).

<sup>5</sup> Hansen complains that extra labor charges are not part of the allegations. We find that the reference to “printing work” and “printing services” in the Order to Show Cause is general enough to include any goods and services for which Hansen’s printing company charged the Town. The Schedules of Bills Payable for the years 2009 through 2014 which were admitted into evidence showed what expenses Hansen submitted on behalf of Hansen Brothers Printing Co. and approved as Town Moderator, and his charges for extra labor were included.

---

**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss.**

**COMMISSION  
ADJUDICATORY  
DOCKET NO. 17-0001**

**IN THE MATTER OF  
KEITH MACKENZIE-BETTY**

**DISPOSITION AGREEMENT**

The State Ethics Commission (“Commission”) and Keith Mackenzie-Betty (“Mackenzie-Betty”) enter into this Disposition Agreement pursuant to Section 3 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 20, 2016, 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

Mackenzie-Betty. On March 16, 2017, the Commission concluded its inquiry and found reasonable cause to believe that Mackenzie-Betty violated G.L. c. 268A, § 23(b)(2)(ii).

The Commission and Mackenzie-Betty now agree to the following findings of fact and conclusions of law:

### Findings of Fact

1. During the relevant time, Town of Barnstable resident Mackenzie-Betty was a building design architect for the Town of Barnstable (“Town”) Department of Public Works (“DPW”).

2. As a building design architect, Mackenzie-Betty designs improvements to Town structures.

3. On occasion, the DPW Structures and Grounds Department uses the Barnstable County Sheriff Office’s Community Service Work Crew (“inmate work crew”) to work on making improvements to Town-owned properties.

4. The inmate work crews are available to non-profit organizations and federal, state, county or municipal governmental entities.

5. The requesting nonprofit organization or governmental entity provides the materials for the work. The inmate work crew provides free labor, including painting, landscaping, carpentry, roofing, siding, simple construction, demolition, moving and maintenance services.

6. On December 22, 2014, Mackenzie-Betty used his DPW email to submit two applications to the Barnstable County Sheriff’s Office for inmate work crews.

7. The first application was for an inmate work crew to replace wall shingles on a Town-owned pottery barn.

8. The second application was for an inmate work crew to replace the roof shingles on a two-story house. The two-story house was Mackenzie-Betty’s private residence. Mackenzie-Betty did not disclose this fact to the Barnstable County Sheriff’s Office.

9. Mackenzie-Betty identified “Mackenzie-Betty/ Department of Children and Families” as the organization requesting the inmate crew. Mackenzie-Betty did not distinguish between himself and the DPW. While Mackenzie-Betty occasionally provided emergency foster care, including foster care of a child for two days in December 2014, Mackenzie-Betty did not have any foster children residing with him when he submitted the application for the inmate crew and did not communicate with the Department of Children and Families regarding his roof replacement.

10. Mackenzie-Betty used his Town issued email account and Town-issued cell phone to communicate with the Barnstable County Sheriff’s Office regarding scheduling and managing the replacement of the roof on his private residence.

11. Mackenzie-Betty purchased the shingles and other roofing materials with his own funds. An inmate work crew replaced Mackenzie-Betty’s roof shingles over the course of approximately six days in October 2015. These were at least 7-hour days, including lunch and transportation of the inmates to and from the jail.

12. The value of the labor provided by the inmate work crew was approximately \$4,204. A Barnstable County Sheriff’s Office employee supervised the inmates for at least 7 hours per day at \$40/hour. The total cost to the Barnstable County Sheriff’s Office to supervise the inmate work crew at Mackenzie-Betty’s home was \$1,680.

### Conclusions of Law

13. Section 23(b)(2)(ii) 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 which are of substantial value and which are not properly available to similarly situated individuals.

14. As a Barnstable DPW building design architect, Mackenzie-Betty is a municipal employee because he holds a position in a municipal agency. *G.L. c. 268A, § 1(g)*.

15. The free inmate work crew for the Mackenzie-Betty’s roof project was a privilege.

16. The privilege was unwarranted because Mackenzie-Betty was neither a governmental entity, nor a nonprofit organization, and was therefore ineligible for an inmate work crew.

17. This unwarranted privilege was of substantial value<sup>1</sup> because the inmate labor and the Barnstable County Sheriff’s Office supervision of the inmates were worth approximately \$5,884 in total.

18. The unwarranted privilege was not properly available to similarly situated individuals because persons who were neither governmental entities, nor nonprofits organization are unable to secure inmate work crews for private projects.

19. By sending his private roof project application to the Barnstable County Sheriff’s Office along with a legitimate DPW application and using his DPW assigned email and his DPW-issued phone to manage his private roof project,

Mackenzie-Betty used his official position to secure this unwarranted privilege for himself.

20. Thus, by using his official position as a DPW building design architect to secure an inmate work crew for his private roof project, Mackenzie-Betty knowingly or with reason to know used his official position to secure an unwarranted privilege of substantial value for himself that was not properly available to similarly situated individuals in violation of G.L. c. 268A, § 23(b)(2)(ii).

In view of the foregoing violations of G.L. c. 268A by Mackenzie-Betty, 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 Keith Mackenzie-Betty:

(1) that Keith Mackenzie-Betty pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$8,000 as a civil penalty for violating G.L. c. 268A, § 23(b)(2)(ii); and

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

**DATE:** October 26, 2017

<sup>1</sup> The Commission has established a \$50.00 threshold to determine “substantial value.” 930 CMR 5.05.

**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss.**

**COMMISSION  
ADJUDICATORY  
DOCKET NO. 17-0002**

**IN THE MATTER OF  
VINCENT MICHIEZI, SR.**

**DISPOSITION AGREEMENT**

The State Ethics Commission (“Commission”) and Vincent Michienzi, Sr. (“Michienzi”) enter into this Disposition Agreement pursuant to Section 3 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, 2016, 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. On September 21, 2017, the Commission concluded its inquiry and found reasonable cause to believe that Michienzi violated G.L. c. 268A, §§ 19 and 23(b)(3).

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

**Findings of Fact**

1. Michienzi, a resident of Bourne, was a Bourne Planning Board member during the relevant time.
2. In his private capacity, Michienzi is a commercial developer and manager.
3. Michienzi owns a commercial property located at 111 Main Street, Bourne, MA (the “Property”). He also owns property that abuts 111 Main Street.
4. On May 1, 2012, Michienzi executed a two-year lease with a commercial tenant to operate an antique store/flea market (“antique store”) on the Property.
5. On July 16, 2012, the commercial tenant filed an application with the Bourne Planning Board for a special permit to operate the antique store with a tent on the Property.
6. At a January 10, 2013 public hearing, Michienzi voted as a Planning Board member to approve the special permit to operate the antique store on the Property. The Planning Board declined to consider the tent.

**Conclusions of Law**

***Section 19***

7. Section 19 of G.L. c. 268A prohibits a municipal employee from participating<sup>1</sup> as such an employee in a particular matter<sup>2</sup> in which, to his knowledge, he has a financial interest.<sup>3</sup>
8. As a Bourne Planning Board member, Michienzi was a municipal employee as that term is defined in G.L. c. 268A, § 1(g).
9. The special permit application was a particular matter.
10. Michienzi participated in that particular matter as a Bourne Planning Board member by voting to approve the

special permit.

11. Michienzi had a financial interest in the particular matter because (1) it affected the use of his commercial property and (2) the use was the subject of the lease he had signed with his commercial tenant.

12. At the time of his participation, Michienzi knew he had a financial interest in the particular matter.

13. Thus, by voting on a special permit concerning his own commercial property, Michienzi participated as a Bourne Planning Board member in a particular matter in which he had to his knowledge a financial interest in violation of § 19.

**Section 23(b)(3)**

14. Section 23(b)(3) prohibits a municipal employee from knowingly or with reason to know acting in a manner that would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence 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, position or undue influence of any party or person.

15. By voting on a special permit for his tenant's use, Michienzi knowingly or with reason to know acted in a manner that would cause a reasonable person to believe that Michienzi's commercial tenant could enjoy Michienzi's favor in the performance of his official duties as a Bourne Planning Board member in violation of § 23(b)(3).

In view of the foregoing violations of G.L. c. 268A by Michienzi, 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 Michienzi, Sr.:

(1) that Vincent Michienzi, Sr. pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$5,000 as a civil penalty for violating G.L. c. 268A, §§ 19 and 23; and

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

**DATE:** November 30, 2017

<sup>1</sup> "Participate" means to participate in agency action or in a particular matter personally and substantially through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, § 1(j).

<sup>2</sup> "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 or finding. G.L. c. 268A, § 1(k).

<sup>3</sup> "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*.

---

**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**IN THE MATTER OF  
RICHARD PUCCINI**

**PUBLIC EDUCATION LETTER**

November 30, 2017

Richard Puccini  
c/o James H. Fagan  
26 Dean Street  
Taunton, MA 02780

Dear Mr. Puccini:

As you know, the State Ethics Commission conducted a preliminary inquiry into whether you, as a Bristol-Plymouth Regional Technical School employee, violated the conflict of interest law by contracting with your municipal employer to provide architectural services, and, on September 21, 2017, voted to find reasonable cause to believe that you violated Section 20 of the law. Rather than initiating adjudicatory proceedings against you, the Commission chose to resolve this matter through this Public Education Letter.

The Commission and you have agreed there will be no formal proceedings against you in this matter. You have chosen not to exercise your right to a hearing before the Commission. The Commission expects that, by resolving this matter through this letter, you and other public employees in similar circumstances will have a clearer

understanding of the conflict of interest law and how to comply with it.

### **The Facts**

You are a full-time carpentry instructor at the Bristol-Plymouth Regional Technical School (“BP Tech”) and have served in this position since 1984. BP Tech serves the Towns of Berkley, Bridgewater, Dighton, Middleborough, Raynham, and Rehoboth and the City of Taunton, and offers eighteen technical programs while providing a high school curriculum. Privately, you are the sole proprietor of Puccini Designs, an architectural design firm.

On multiple occasions since 2009, you provided architectural services to BP Tech, including designing an addition to the main school building and a child care center. According to BP Tech’s records, you received a total of almost \$60,000 for architectural design work for the school, in fifteen separate payments. You received approximately \$15,000 for the design work for the childcare center alone. None of these projects were publicly bid, nor did BP Tech seek competing quotes for the services you provided. We understand that your BP Tech supervisors requested your architectural design services and that you did not solicit architectural work from BP Tech.

### **Legal Discussion**

Under the conflict of interest law, General Laws chapter 268A, BP Tech is a municipal agency of each city and town it serves, and, as a BP Tech employee, you are municipal employee of each of those municipalities. As a municipal employee, you are subject to the restrictions imposed by the conflict of interest law. The Commission voted to find reasonable cause to believe that you violated § 20 of the conflict of interest law for the following reasons.

Section 20 of the conflict of interest law prohibits a municipal employee from having to his knowledge a financial interest, directly or indirectly, in a contract made by a municipal agency of the city or town by which he is employed, in which the city or town is an interested party. The purpose of this prohibition is to prevent municipal employees from using their public positions to secure contractual opportunities with the municipality that are unavailable to the general public, and to avoid the public perception that municipal employees have an ‘inside track’ to such opportunities.

While a municipal employee of BP Tech, you repeatedly contracted with BP Tech to provide it with architectural services. You knew you had a financial interest in each of these contracts because you were paid for your services. BP Tech, a municipal agency of each of the municipalities it serves, made these contracts with you, and all of the

municipalities served by BP Tech were interested parties in the contracts because, through BP Tech, they paid for and received your architectural services. Accordingly, by having a financial interest in these contracts, you violated § 20. Although there are several exemptions to § 20, none of them were applicable to your contracts with BP Tech.

### **Disposition**

The Commission is authorized to resolve violations of G.L. c. 268A with civil penalties of up to \$10,000 for each violation, except that a civil penalty of up to \$25,000 may be imposed for G.L. c. 268A, § 2 violations (bribes). The Commission, however, has chosen to resolve this matter with this Public Education Letter because it 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. That you provided your architectural services at the request of you BP Tech supervisors and did not solicit the work, was a substantial factor in the resolution of this matter.

The matter is now closed.

Very truly yours,

David A. Wilson  
Executive Director

---

## **COMMONWEALTH OF MASSACHUSETTS STATE ETHICS COMMISSION**

### **IN THE MATTER OF SCOTT PARSEGHIAN**

### **PUBLIC EDUCATION LETTER**

December 12, 2017

Scott Parseghian

Dear Mr. Parseghian:

As you know, the State Ethics Commission conducted a preliminary inquiry into whether you, as a Wayland Public Schools employee, violated §§ 17, 19 and 23(b)(3) of G.L. c. 268A, the conflict of interest law, by purchasing apparel and other goods from businesses owned by your father, and by acting as an agent for the businesses in transactions with Wayland High School.

On September 21, 2017, the Commission voted to find reasonable cause to believe you violated G.L. 268A. Rather than initiating adjudicatory proceedings against you,

however, the Commission chose to resolve this matter through this Public Education Letter because: (1) Wayland High School investigated the matter and already imposed a financial penalty on you; and (2) you brought this matter to the Commission's attention as a self-report and fully cooperated with the Commission's investigation.

The Commission and you have agreed this matter will be resolved publicly with this educational letter and that there will be no formal proceedings against you. You have chosen not to exercise your right to a hearing before the Commission. The Commission expects that, by resolving this matter through this Public Education Letter, you, and other public employees in similar circumstances, will have a clearer understanding of the conflict of interest law and how to comply with it.

### **The Facts**

You have worked for Wayland Public Schools since 1996. Between 2004 and 2016, you served as the Assistant Principal of Wayland High School. You have also served as the Wayland High School head football coach for sixteen years.

At all relevant times, your father, Arnold Parseghian, sold embroidered and screen-printed clothing through businesses he solely owned. Over the years, your father did business as PSCMS, Inc., Hancock Printing and A&S Printing, and his customers included the Wayland Public Schools. Between 2001 and 2015, Wayland High School paid a total of approximately \$150,000 to your father's businesses.

From 2001 until 2015, you participated as a Wayland Public Schools employee in purchases of merchandise from your father's businesses for the Wayland High School football team. You did so by, as football coach, deciding or helping to decide what merchandise to purchase and from whom to purchase it, by placing purchase orders with your father's businesses, and/or by submitting to the Wayland High School or, in 2014 and 2015, to the Wayland Booster Club, requests for payment for the ordered merchandise (check requests). When the decision was to purchase merchandise from your father's businesses, as it often was, you handled the orders. Invoices from your father's businesses and check requests from this time period relating to forty-one purchases for the Wayland High School football team and other High School teams and clubs identify you as the purchaser and total roughly \$60,000. Many of the invoices also identify you as your father's businesses' representative.

During this same time period, you also facilitated purchases of merchandise from your father's businesses for other

Wayland High School teams, clubs and departments. You did so by providing catalogs and keeping samples of your father's businesses' merchandise in your Wayland High School office, taking merchandise orders, and delivering the ordered merchandise. Other Wayland High School staff members, acting on behalf of school athletic teams, clubs, or departments, reviewed catalogs and merchandise samples in your office, placed orders through you with your father's businesses, and/or received delivery of ordered merchandise through you. Invoices and check requests for forty-six purchases from your father's businesses during this time period for these other Wayland High School teams, clubs and departments, identify you as the 'rep' or 'delivery representative' of your father's businesses and total roughly \$60,000.

In or about June 2015, when concerns about whether you had a conflict of interest with respect to the transactions between Wayland High School and your father's businesses were brought to your attention, you ended your involvement in the transactions and self-reported your conduct to the Commission.

### **Legal Analysis**

As an employee of the Wayland Public Schools, you are municipal employee of the Town of Wayland, as defined by c. 268A § 1(g), and subject to the conflict of interest law. The Commission voted to find reasonable cause that you violated §§ 17(c), 19, and 23(b)(3) of this law for the reasons set forth below.

#### ***Section 17***

Your facilitation of transactions between your father's businesses and Wayland High School and its departments, teams and clubs raises concerns under § 17(c) of the conflict of interest law. Section 17 prohibits a municipal employee from acting as agent or attorney for anyone other than his municipal employer in connection with a particular matter in which the municipality is a party or has a direct and substantial interest, unless doing so is part of the employee's official duties. The purpose of this prohibition is to prevent having a municipal employee's loyalty divided between his public employer and another party.

A municipal employee 'acts as an agent' by communicating on behalf of a third party or acting as a liaison for a third party. *See Advisory 88-01: Municipal Employees Acting as Agent for Another Party.* In your case, you offered samples of your father's businesses' merchandise, took purchase orders, and delivered purchased goods. Although you were not compensated by your father's business for these actions, they still constituted acting as agent for your father's businesses in connection with the purchase of the

businesses' merchandise by Wayland High School, its departments, teams and clubs. These purchases of merchandise were "particular matters" in which your municipal employer, the Town of Wayland, had a direct and substantial interest because the purchases were either paid for by Wayland High School, or with monies raised by fundraisers authorized and approved by the High School. The Town has a direct and substantial interest in the expenditure of Wayland High School funds and of monies raised with the authorization of the High School for the benefit of the High School and its teams and clubs.

**Section 19**

Your participation as a municipal employee in purchases of merchandise from your father's businesses raises issues under § 19 of the conflict of interest law. Section 19 prohibits a municipal employee from participating in his official capacity in any particular matter in which, to his knowledge, he or his immediate family has a financial interest. The purpose of § 19 is to avoid self-dealing and nepotism by municipal employees in the performance of their official duties. As described above, you participated as a Wayland High School employee in multiple decisions to purchase merchandise from your father's businesses and submitted requests for payment for items purchased from your father's businesses to the High School or the Booster Club. You were aware that a member of your immediate family, your father, had a financial interest in the purchases. Although you told us that you believed your appointing authority tacitly approved of the business relationship between your father's businesses and the Wayland High School, neither your belief nor your appointing authority's tacit approval, if true, would be have been sufficient to make your participation in the purchases lawful. In order for you to have been able to participate as a municipal employee in purchases from your father's businesses without violating § 19, you would, prior to your participation, have had to have fully disclosed in writing to your appointing authority the facts of your participation and your father's financial interest and received back from your appointing authority a written determination allowing your participation in the purchases. You did not do so.

**Section 23(b)(3)**

Section 23(b)(3) of the conflict of interest law prohibits a public employee from, knowingly or with reason to know, acting in a matter which would cause a reasonable person, with knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy that the public employee's favor in the performance of his official duties, or that the public employee is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. Section 23(b)(3)

addresses the appearance of undue influence or favoritism in the official actions of public employees. Given your participation as Wayland High School head football coach in purchases of merchandise from your father's businesses, a reasonable person would conclude that you are likely to act as a result of kinship to your father, or that your father can unduly enjoy your favor in the performance of your official duties as an employee of the Wayland Public Schools.

A public employee may avoid violating § 23(b)(3) by making a full written disclosure to his appointing authority of the facts that would otherwise lead to an appearance of undue influence or favoritism. At no point did you make such a disclosure. Thus, even if you believed your appointing authority tacitly approved of your actions, you still violated §23(b)(3).

**Disposition**

The Commission is authorized to resolve violations of G.L. c. 268A with civil penalties of up to \$10,000 for each violation, except that a civil penalty of up to \$25,000 may be imposed for G.L. c. 268A, § 2 violations (bribes). Based upon its review of this matter, however, the Commission has determined that the public interest would be best served by the issuance of this educational letter in lieu of adjudicatory proceedings, and 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.

The matter is now closed.

Very truly yours,

David A. Wilson  
Executive Director





ADVICE



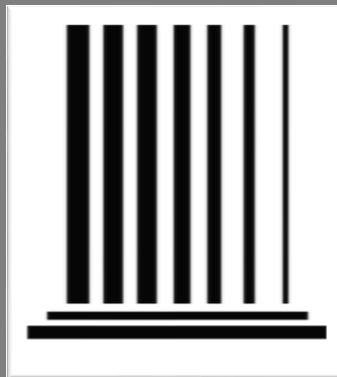
EDUCATION



DISCLOSURE



ENFORCEMENT



**COMMISSION MEMBERS**

**Hon. Barbara Dortch-Okara (ret.), Chair**  
**William J. Trach, Vice-Chair\***  
**Hon. Regina L. Quinlan (ret.), Vice Chair**  
**Hon. David A. Mills (ret.)**  
**Thomas J. Sartory**  
**Maria J. Krokidas\*\***

\*term ended 2016  
\*\* term began 2016

**MASSACHUSETTS STATE ETHICS COMMISSION**  
**One Ashburton Place, Room 619**  
**Boston, MA 02108**