

ANNUAL REPORT
FISCAL YEAR 1981

Massachusetts State Ethics Commission

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This Report covers the activities of the Massachusetts State Ethics Commission during FY81. It is issued pursuant to the mandate of Section 2(1) of Chapter 268B and is intended to serve as a guide to the responsibilities of the Commission and as a record of its major activities and decisions during FY1981.* Copies of this Report provided to the Governor and General Court include names, salaries and duties of all individuals in the Commission's employ as well as money disbursed by the Commission in FY81.

*The Commission issued an Annual Report for calendar year 1980 in May, 1981. Commencing with this volume, Annual Reports will be issued on a fiscal year basis.

T A B L E O F C O N T E N T S

<u>INTRODUCTION TO THE COMMISSION</u>	1
MAJOR RESPONSIBILITIES.....	1
MEMBERSHIP AND ORGANIZATION.....	2
<u>ADVISORY OPINIONS</u>	4
INTRODUCTION.....	4
CONFLICT OF INTEREST - CHAPTER 268A.....	4
Summary of FY81 Opinions.....	5
Important Rulings.....	5
FINANCIAL DISCLOSURE - CHAPTER 268B.....	7
<u>FINANCIAL DISCLOSURE</u>	8
INTRODUCTION.....	8
FILINGS OF STATEMENTS OF FINANCIAL INTERESTS - FY81.....	8
State Ethics Commission Inspection of Statements Filed in 1981.....	9
Public Access to Statements of Financial Interests.....	10
<u>PUBLIC EDUCATION</u>	11
INTRODUCTION.....	11
REVIEW OF FY81 ACTIVITIES.....	11
<u>INVESTIGATION</u>	13
INTRODUCTION.....	13
REVIEW OF FY81 ACTIVITIES.....	13
REFERRALS FROM THE SPECIAL COMMISSION CONCERNING STATE AND COUNTY BUILDINGS.....	14

<u>ENFORCEMENT</u>	15
INTRODUCTION.....	15
REVIEW OF FY81 ACTIVITIES.....	16
<u>APPENDIX</u>	17

I N T R O D U C T I O N T O T H E C O M M I S S I O N

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

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

MAJOR RESPONSIBILITIES

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

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

MEMBERSHIP AND ORGANIZATION

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

The members of the Commission in FY'81 were:

- * James Vorenberg, Dean of Harvard Law School, Chairman
- * Linda Kistler, Acting Dean, College of Management Science, University of Lowell, Vice-Chairman
- * Marver Bernstein, President of Brandeis University
- * David Brickman, Publisher and Editor-in-Chief of the Malden Evening News, Medford Daily Mercury, and Melrose Evening News
- * Reverend Bernard P. McLaughlin, former teacher of Philosophical Ethics at St. John's Seminary and present Chaplain at Logan International Airport.

On October 1, 1980, Robert Greco took office as General Counsel to the Commission, and Maureen McGee took office as its Executive Director. Mr. Greco had been serving as the Commission's Associate General Counsel. Ms. McGee was previously the Commission's Director of Public Education. They direct the 23-person staff who carry out the Commission's mandate to administer and enforce the conflict-of-interest and financial disclosure laws.

The Commission's full-time staff includes attorneys, special investigators, analysts, accountants and other professional and support personnel. The staff is organized into four general areas: investigation/enforcement; legal analysis; disclosure administration and audit; and public education/information. Members of the investigative unit conduct all investigations and serve as prosecuting attorneys in the Commission's adjudicatory hearings. The legal division drafts conflict of interest opinions, serves as counsel to the Commission in adjudicatory hearings, and conducts legal research on issues relating to both statutes and other matters as necessary. The staff assigned to the administrative and audit unit is responsible for all aspects

of the financial disclosure system including initiating the designation process, providing technical assistance to reporting persons, and reviewing Statements filed with the Commission. The public education and information unit prepares a variety of regular publications to inform public employees and officials about the Commission and the laws it administers; conducts public hearings and seminars; and serves as liaison with the press, public interest groups and others interested in the Commission's work.

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

INTRODUCTION

Any individual covered by Chapters 268A or 268B is entitled to request an advisory opinion regarding his or her duties under the law in a given situation. Though advisory opinions are occasionally requested because of questions concerning the financial disclosure law, by far the largest number are requested because of questions arising under the conflict of interest law.

Chapter 210 transferred responsibility for issuing conflict of interest opinions from the Attorney General to the State Ethics Commission. Municipal employees, however, still should seek the opinion of town counsel. An opinion rendered by the Commission serves as a defense in a criminal action brought under Chapter 268A. It also binds the Commission in subsequent proceedings concerning an employee who requested an opinion and acted in good faith, unless the opinion request omitted or misstated material facts.

Since the Commission assumed responsibility for conflict opinions in November, 1978, requests for opinions have been, by law, confidential. The law does permit the Commission to publish its opinions with names and identifying information deleted.

CONFLICT OF INTEREST - CHAPTER 268A

Chapter 268A of the General Laws -- the state's conflict of interest law -- has regulated the conduct of public officials and employees in Massachusetts since 1963. It sets forth the Standards of Conduct required of all individuals serving state, county and municipal government. The law articulates a basic premise -- public employees owe undivided loyalty to the government which employs them. Public officials and employees should not be in the position of acting for the government when their private interests are involved.

Summary of FY81 Opinions

During FY81 the Commission rendered 172 formal advisory opinions. Among the topics addressed in these opinions were:

- * limitations on the private law work of former state attorneys (EC-COI-80-59, 80-66, 80-73, 80-77, 80-87, 80-108, 81-5, 81-18, 81-28, 81-30, 81-35, 81-51);
- * circumstances under which state employees may teach part-time in educational institutions of the Commonwealth (EC-COI-81-15, 81-24, 81-39, 81-85);
- * state employees serving in elected or appointed municipal offices (EC-COI-80-72, 80-75, 80-82, 80-107, 80-111, 80-115, 81-16, 81-32, 81-41, 81-47, 81-56, 81-78);
- * restrictions on accepting honoraria or awards (EC-COI-81-9, 81-46);
- * state employees whose private employment raises public concern over the impartiality and credibility of their agency's proceedings (EC-COI-80-109, 81-1, 81-21, 81-43, 81-55, 81-66, 81-76);
- * state employees who apply for and receive contracts with their own agency or other state agencies (EC-COI-80-68, 80-69, 80-70, 80-71, 81-7, 81-10, 81-23, 81-25, 81-29, 81-40, 81-43, 81-52, 81-67, 81-84);
- * limitations on maintaining membership on a state board (EC-COI-80-50, 80-57, 80-58, 81-2, 81-3, 81-13, 81-17, 81-74, 81-75, 81-87).

Important Rulings

Of particular interest are two opinions with potentially widespread application:

Teacher as Selectman - In EC-COI-80-89, the Commission departed from its general policy not to render advisory opinions to municipal employees in this case because: 1) town counsel joined in the opinion request; 2) the District Attorney urged the Commission to render an advisory opinion; and 3) the opinion would be of general application to a

large number of cases throughout the Commonwealth. In this opinion the Commission advised a selectman that Section 20 of the conflict of interest law prohibited him from also serving as a teacher in the town in which he is a selectman. The Commission concluded that this dual relationship violated Section 20, which prohibits a municipal employee from having a direct or indirect financial interest in a contract made by a municipal agency in his town. However, the Commission noted that it would take no enforcement action during the current school year because a similar prohibition against state employees teaching in state educational institutions was amended by recent legislation, and because legislation regarding the matter will be submitted to the General Court by several major associations during the 1981 session. The Superior Court concurred with the Commission's conclusion that Section 20 was violated in this case. [See, Walsh v. A. Love, Norfolk Superior Court Civil Action No. 132687 (July 2, 1981.)]

Higher Education Faculty Members as Special State Employees - State employees who qualify as "special state employees" are subject to the provisions of Chapter 268A in a less restrictive way and may, under certain circumstances, lawfully contract with and have a financial interest in contracts with state agencies. In three opinions the Commission ruled on whether certain faculty members in state institutions of higher education qualified as "specials." According to Chapter 268A, state employees qualify as "specials" if they are not paid; or are not elected officials and either are specifically permitted to have private employment during normal working hours or did not earn compensation for more than 800 hours during the preceding 365 days. In each case the Commission examined the particular provisions of each individual's employment contract to determine whether the employee is permitted to engage in private or personal employment during normal working hours.

In EC-COI-81-94, the Commission advised a community college faculty member that he could not contract with a second state agency because his employment contract did not permit him to perform private work during normal working hours. However, in EC-COI-81-64, the Commission advised a state college faculty member that he was a special state employee since his position permitted private employment during normal working hours. Also, in EC-COI-80-79, the Commission advised a part-time acting director at a university that he was a special state employee who could contract with the university if he complied with certain disclosure requirements and if he received an exemption from the governor.

FINANCIAL DISCLOSURE - CHAPTER 268B

Any individual covered by Chapter 268B is entitled to request an advisory opinion regarding his or her duties under that law in a given situation. Requests for opinions and the Commission's response are by law confidential. The law does permit the Commission to publish its opinions with names and identifying information deleted.

The Commission issued four advisory opinions to public officials in FY81 interpreting the provisions of Chapter 268B. In two of these, the Commission found that:

- * A person who filed an SFI as a candidate for state senator but who subsequently withdrew his name from nomination may not have the Commission return or withdraw his SFI simply because he withdrew his candidacy (EC-FD-80-6).
- * A public official need not disclose gambling winnings received by her or members of her immediate family on her SFI (EC-FD-81-2).

By January 1, 1981, the fifty-four heads of state and county agencies submitted lists of individuals holding major policy making positions within their jurisdiction. The Commission mailed 4,077 Statements and Instructions to these designated individuals by March 15, 1981. The Commission staff answered over 800 telephone requests for information in a major effort to provide clear and timely assistance to persons filing Statements with the Commission. Every person who was required to file and failed to do so was contacted by the Commission staff, first by telephone and then by formal letter pursuant to the statute.

State Ethics Commission Inspection
of Statements Filed in 1981

In 1981, virtually 100% of those required to file met their responsibilities under the law. The Commission has received 4,138 Statements of Financial Interests thus far in 1981. (The additional Statements were filed by those newly appointed to fill vacant positions.) The Commission staff reviewed every Statement filed in 1981 to ensure that, on its face, it complied with the requirements of the law. More than 600 reporting persons submitted incorrect or incomplete Statements. Deficiency notices have been sent to these individuals to require them to correct their Statements.

Individuals who failed to file by the May deadline were sent postcard reminders urging them to file immediately. At the same time, agency heads were contacted to enlist their support in reminding their employees to file. Two hundred and eight individuals who failed to file after receiving postcard reminders were sent Formal Notices of Delinquency warning them to file within 10 days or become subject to a civil penalty of up to \$1,000. Four individuals failed to submit their Statements within the 10-day period. The Commission has imposed a civil fine in one of these cases and has scheduled adjudicatory hearings for the remaining three.

Each completed Statement of Financial Interests was carefully inspected by the Commission staff. Specific criteria were applied in the inspection process to identify potential conflicts of interest, apparent inconsistencies on an individual's form and the appearance of intent to withhold required information. Approximately 700 Statements raised questions in at least one of these categories and are

being held for further review. These filers will be contacted and alerted to the items in question. In cases where individuals do not have valid explanations for the apparent problems their forms will be referred to the Commission's enforcement unit for review.

Public Access to Statements of Financial Interests

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

In fiscal year 1981, the Commission received and honored 629 such inspection requests. Reporters from newspapers in Boston and throughout the state initiated sixty percent of the requests. Radio and television stations, private citizens, and representatives of universities made the remaining inspections of Statements filed with the Commission.

The public requested to inspect Statements of public officials much more frequently than those of public employees. The Statements most often requested were those of legislators, members of the judiciary and state senators.

P U B L I C E D U C A T I O N

INTRODUCTION

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

REVIEW OF FY81 ACTIVITIES

In FY81 the Commission concentrated its educational efforts on providing information about the conflict of interest law to state employees. First, a 34-page Guide to the Conflict of Interest Law was prepared to explain the provisions of this 19-year old law in a clear and readable form. The Guide was distributed free of charge to 1300 government officials and legal officers and to members of the General Court. More than 1500 additional copies of the Guide have been requested by state agencies or given out as part of the Ethics Commission's seminars.

Because the Guide provides both simple explanations and specific examples to clarify the meaning of the law's requirements, it is an ideal reference for government managers and lawyers. However, it is both too comprehensive and too costly to warrant distribution to all public employees who need basic information about the law. To meet that need the Commission has published the first two in a series of pamphlets to introduce the law's basic precepts to those affected by it. "Introduction to the Massachusetts State Ethics Commission" and "Massachusetts Conflict of Interest Law for State Employees" have been widely distributed to state government agencies. Agencies have been encouraged to use the pamphlets in employee orientation and in-service training programs.

In addition to these special materials, the Commission has continued to report regularly on its important actions and decisions through its BULLETIN. Each of the five issues of the BULLETIN produced in FY81 was distributed free of charge to over 1300 officials and employees. The Commission also distributes public versions and summaries of its advisory opinions to approximately 150 officials, state and county agencies, law firms and law libraries.

To complement this informational material, the Commission has sponsored a series of meetings and speaking engagements to explain the conflict law. In a total of 28 seminars requested by 17 different state agencies and the state legislature, Commission staff spoke directly to approximately 1,000 government employees about the law's impact on their activities. Half of these meetings were held for executive staffs of state agencies. Enlisting the support of top state government officials in the Commission's efforts to encourage compliance with Chapter 268A is an important by-product of these educational seminars.

The Commission also recognizes its responsibility to inform those in the private sector doing business with government and the public-at-large about the conflict law. In speaking engagements before business and civic groups throughout the state, Commission staff spoke to more than 2,000 people about the requirements of the conflict law and the Commission's work in administering and enforcing it.

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

INTRODUCTION

To carry out its mandate, Chapter 268B directs the Commission to initiate a confidential Preliminary Inquiry into any alleged violation of Chapter 268A or 268B, upon the receipt of either a sworn complaint or of other evidence which is deemed sufficient by the Commission. If a Preliminary Inquiry indicates that there is "no reasonable cause to believe" that either law has been violated, the Commission terminates the Inquiry and notifies the subject and the person who brought the complaint. All Commission records and proceedings of Preliminary Inquiries which are so terminated remain confidential.

REVIEW OF FY81 ACTIVITIES

A growing public awareness that the Commission intends to enforce Chapters 268A and 268B resulted in a 90 percent increase in the number of referrals made to the Ethics Commission in FY81 as compared to FY80. Along with this rise in the number of referrals, there has been an equally dramatic increase in the complexity and seriousness of the matters referred for investigation.

In FY81, 263 matters were referred to the State Ethics Commission for investigation. These matters involved over 400 individuals and businesses. More than half of these referrals came from private citizens, another 15 percent from government agencies, and the rest came to the Commission's attention through media reports, the staff's routine inspection of the Statements of Financial Interests and information developed during other Commission investigations.

As a result of preliminary screening, the majority of these matters were terminated because they were found not to warrant full investigation; referred to other agencies because they were outside the jurisdiction of the Commission; or referred to local officials for investigation and resolution. Twenty-four (24) of these matters were resolved by formal compliance actions undertaken prior to investigation. (See page 15 for an explanation of compliance letters.)

The Commission voted to initiate Preliminary Inquiries into 57 cases in FY81. Nine of these cases concerned alleged violations of the financial disclosure law; 44 concerned violations of the conflict of interest law; and four concerned violations of both.

During the course of the year, the Commission completed 69 Preliminary Inquiries (including 26 which had been initiated in FY80). Fifteen of these Inquiries concerned violations of the financial disclosure law (Chapter 268B); the other 54 concerned the conflict of interest law (Chapter 268A) or a combination of both laws. The subjects of the 54 conflict of interest related Inquiries held the following positions:

Municipal Officials and Employees	13
Appointed State Officials	6
State Inspectors/Investigators	7
Private Businesses & Individuals	7
Elected State Officials	3
State Regulatory Board Members	5
Other State Employees	13

Of the 69 Inquiries completed in FY81, 26 were terminated by the Commission with findings of "no reasonable cause to believe" that the law had been violated. The Commission found "reasonable cause to believe" that either Chapter 268A or 268B or both laws had been violated in 43 Inquiries.

REFERRALS FROM THE SPECIAL COMMISSION CONCERNING STATE AND COUNTY BUILDINGS

In December 1980, the Special Commission Concerning State and County Buildings completed its 2-1/2 year investigation of corruption in the award of design and building contracts. In its Final Report, and in referrals to the State Ethics Commission, the Attorney General and the U.S. Attorney, the Special Commission set out a number of allegations of conflict of interest in the award and supervision of such contracts.

A thorough review of the cases referred from the Special Commission was a major priority for the Ethics Commission during the last half of FY81. Allegations which fell within the Ethics Commission's jurisdiction and its statute of limitations and which were supported by substantial, credible evidence were thoroughly investigated. Three of those investigations resulted in the filing of economic recovery actions against four public officials under Section 9 of Chapter 268A. The Commission's review of these matters will continue into FY82.

E N F O R C E M E N T

INTRODUCTION

The State Ethics Commission is the primary civil enforcement agency for Chapters 268A and 268B. It is required by law to investigate alleged violations and enforce the provisions of the conflict of interest and financial disclosure laws.

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

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

In less serious matters, a confidential Compliance Letter may be issued to advise an individual of violations and explain the consequences if the prohibited conduct continues. (Compliance Letters can also be issued prior to a formal Preliminary Inquiry if the facts are clear and undisputed by the parties, and the conduct is not of a serious nature.)

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

To make the provisions of both statutes effective and enforceable, Chapter 268B empowers the Commission to impose a range of civil penalties, including fines of up to \$1,000 per violation of either law. In addition, the Commission may refer any matter to the Attorney General for criminal investigation, and may bring suit in the Superior Court to rescind any government action influenced by a conflict of interest and to recover any economic advantage gained by individuals who violate the conflict of interest law.

REVIEW OF FY81 ACTIVITIES

In the 43 cases in which the Commission found reasonable cause to believe the law had been violated, the following actions were taken: Fourteen were resolved by Disposition Agreement; ten by compliance action; nine by the issuance of Orders to Show Cause; and ten by the preparation of Civil Actions. In FY81, the Commission imposed a total of \$16,200 in civil penalties on 14 individuals. Ten individuals were fined as a result of Disposition Agreements, and four as a result of Commission Decisions and Orders issued after public adjudicatory hearings. The Commission held six such hearings in FY81. Final Decisions were rendered and published in four of these cases by the end of the fiscal year. Two of these Decisions concerned violations of the financial disclosure law, the other two involved violations of the conflict of interest law.

FY81 was the first year in which the Commission exercised its authority to enforce the conflict of interest law by filing economic recovery suits. The Commission filed four civil actions in Superior Court seeking the recovery of over \$2 million in economic advantage, plus additional punitive damages, from eight individuals and two businesses.

Such civil actions are an important enforcement tool for the Commission as it seeks to deter and penalize abuses of the public trust. By returning to the state the monetary rewards of corruption in government, civil suits can ameliorate the financial disruption caused when government officials place their private interests above the public trust. The Commission expects these suits to become an increasingly important part of its enforcement effort in the future.

A P P E N D I X

The following publications are available from the State Ethics Commission. To receive any of these publications or to add your name to the mailing list for any of our publications, call or write the Commission at:

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

1. General Laws Chapter 268A Conflict of Interest Opinions

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

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

1981 Opinions as printed.

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

2. GUIDE TO THE CONFLICT OF INTEREST LAW

Please include \$1.50 to cover cost of Guide if it is not for use by a State, County or Municipal official or employee.

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

Set of (4) 1979 BULLETINS

Set of (5) 1980 BULLETINS

1981 BULLETINS as printed.

4. Regulations - 930 CMR 1.00: Rules of Adjudicatory Practice and Procedure Before the Commission

930 CMR 2.00: Designation of Public Employees

- ✓ 5. Statements of Financial Interests: Forms and Instructions
- ✓ 6. Procedures Covering Initiation and Conduct of Preliminary Inquiries.
- ✓ 7. Procedures for Inspection and Review of Statements of Financial Interests.
8. Pamphlets (there will be a mailing charge for large orders):
 - ✓ "Introduction to the Massachusetts State Ethics Commission"
 - ✓ "Massachusetts Conflict of Interest Law for State Employees"
 - ✓ "Massachusetts Conflict of Interest Law for Municipal Employees"

