

ADVICE



EDUCATION



DISCLOSURE



ENFORCEMENT

2020
State Ethics Commission
Public Resolutions

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STATE ETHICS COMMISSION
One Ashburton Place, Room 619
Boston, MA 02108
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Included in this publication are:

**State Ethics Commission Public Resolutions including Decisions and Orders, Disposition
Agreements and Public Education Letters issued in 2020***

Cite Public Resolutions by name of subject, year, and page, as follows:
In the Matter of John Doe, 2020 SEC (page number).

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

*No Advisories or Formal Legal Opinions were issued in 2020

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In the Matter of Lawrence Beals

The Commission issued a Public Education Letter to former Winchester Zoning Board of Appeals member Lawrence Beals to resolve allegations he violated the conflict of interest law by, in 2016 and 2017, acting as agent for and being compensated by the developer of the proposed Winning Farm residential development while the developer's special permit application was pending before the ZBA, and by creating an appearance of bias and undue influence while performing his ZBA duties. The Commission found reasonable cause to believe Beals violated the conflict of interest law's prohibition on municipal employees representing or doing paid work for anyone other than the municipality in connection with any matter in which the municipality is a party or has a direct and substantial interest when Beals, while a ZBA member, met with Winning Farm abutters on behalf of the developer and when his architectural firm was paid by the developer for its work in connection with the project. The Commission also found reasonable cause to believe Beals violated the conflict of interest law by creating an appearance of improper influence and bias in the performance of his official duties when he acted on a request for a special permit from an abutter to the Winchester Boat Club, where Beals was a club member, had served in multiple club positions, and had provided pro bono services to the club. The abutter had vocally opposed the Boat Club's proposed expansion in a "fairly contentious permitting process" in 2016. When the abutter requested a special permit from the ZBA in 2017, the abutter asked Beals to recuse himself. Beals, nonetheless, participated in the ZBA's discussion, questioned the abutter, and made suggestions to the other ZBA members, but abstained from the ZBA's vote. The conflict of interest law prohibits a public employee from acting in a manner which would cause a reasonable person to conclude that the employee would be biased or improperly influenced in performing the employee's official actions. The public employee may avoid violating this prohibition by first making a written public disclosure to his appointing authority of the circumstances creating the appearance of bias. Beals did not disclose to his appointing authority, the Board of Selectmen, his history with the Boat Club prior to acting as a ZBA member on the abutter's special permit request.

In the Matter of Peter Skorput

The Commission issued a Final Order approving a Disposition Agreement in which West Stockbridge Fire Chief Peter Skorput, a former Select Board

member, admits to violating the conflict of interest law by continuing to serve as Fire Chief after his election to the Select Board; deciding payment amounts for himself, his daughter, and his nephew; voting as a Select Board member to reappoint himself Fire Chief; and terminating a firefighter who had filed a complaint against him. By continuing to serve as Fire Chief after being elected to the Select Board, Skorput violated the conflict of interest law's prohibition against a serving Select Board member holding an appointed compensated municipal position in the same town. While there are exemptions from this prohibition, including two for which he was potentially eligible, Skorput failed to meet their requirements. On multiple occasions, Skorput violated the conflict of interest law's prohibition against municipal employees participating as such in matters involving their own financial interests or those of an immediate family member. As a Select Board member, Skorput voted in 2013 to reappoint himself Fire Chief and, at various times, participated in the Board's review of complaints about his performance as Fire Chief. As Fire Chief, Skorput decided the amounts of firefighter incentive payments he and his daughter, who was a firefighter, received. As a Select Board member, Skorput signed pay warrants for his daughter's payments. In 2016, Skorput violated the conflict of interest law's prohibition against public employees using their official positions to secure for themselves valuable unwarranted privileges by using his Fire Chief position to retaliate against a fire lieutenant who complained to the Select Board about his job performance. Finally, Skorput created an unlawful appearance of bias and undue influence in the performance of his official duties by, as Fire Chief, deciding the firefighter incentive payment amounts for his nephew, a firefighter and, as a Select Board member, signing pay warrants for those incentive payments. In addition, in 2018, after the Board of Health ordered him to act concerning a dumping site on his property, Skorput voted as a Select Board member against reappointing the Health Agent to that position and positions on two town commissions. Skorput also voted against reappointing the Board of Health Chair to another town position he held. The conflict of interest law requires that when there are circumstances which would cause a reasonable person to conclude that a public employee would act as a result of favoritism or undue influence in performing his official duties, the public employee may not perform those duties without first publicly disclosing those circumstances. Skorput did not make public

disclosures sufficient to dispel the appearance of favoritism or undue influence before acting officially on these matters. Skorput paid a \$5,000 civil penalty for his violations of the conflict of interest law and the Commission dismissed the adjudicatory proceeding against him.

In the Matter of Jeanne Carnevale

The Commission approved a Disposition Agreement in which former Peabody City Treasurer Jeanne Carnevale admits to violating the conflict of interest law by using her public position, city funds, and other public resources in the sales of three tax-delinquent Peabody properties which financially benefited her family and associates. As City Treasurer, Carnevale was responsible for initiating tax title foreclosure proceedings on real estate tax-delinquent properties in Peabody. In 2015, Carnevale, as City Treasurer, hired a private attorney to probate the estate of the deceased owner of a tax-delinquent Catherine Drive property. Carnevale then used her City Treasurer position to compel the estate's administrator and heir to sell the property to a building contracting company that had previously worked on Carnevale's home, using Carnevale's friend as his real estate broker. In 2016, Carnevale, as City Treasurer, hired the same private attorney to probate the estate of the deceased owner of a tax-delinquent Columbia Boulevard property and establish a trust for the deceased owner's daughter, who lived at the property. Carnevale then used her City Treasurer position and other public resources to expedite the daughter's move into Peabody public housing so that the property could be sold to Victory Realty Trust, a trust of which Carnevale's daughter was trustee and Carnevale's husband and her friend's husband were beneficiaries. In 2017, Carnevale acted as City Treasurer in connection with the sale of a tax-delinquent Lynnfield Street property to Victory Realty Trust. Prior to the sale, Carnevale, as City Treasurer, communicated with the city building commissioner regarding the property and requested that the City's Tax Attorney's paralegal prepare an Instrument of Redemption in anticipation of the sale. After Victory Realty Trust purchased the property for \$239,500, Carnevale signed the Instrument of Redemption as City Treasurer, which cleared the tax lien on the property. The conflict of interest law prohibits municipal employees from participating in their official capacities in matters in which they know they or members of their immediate family have a financial interest. Carnevale violated the law by participating as City Treasurer in matters relating to the sales of the Columbia Boulevard and Lynnfield Street properties to Victory Realty Trust, which she knew would financially benefit her family. The conflict of interest

law also prohibits municipal employees from using their official positions to obtain for anyone valuable privileges or benefits that are not properly available to them. Carnevale violated the law by using her position as City Treasurer to compel the sale of the Catherine Drive property to the building contracting company using her friend as the broker, improperly enabling her friend to receive a broker's fee and the company to substantially profit from the resale of the property. Carnevale also violated the law with respect to the Columbia Boulevard property by using her official position and power and other public resources to probate the deceased owner's private estate, establish a private trust, and expedite moving the occupant of the property into public housing, all of which improperly enabled Victory Realty Trust to purchase the property and resell it at a substantial profit and her friend to receive another broker's fee. Carnevale paid a \$50,000 civil penalty for her violations of the conflict of interest law.

In the Matter of James Atkinson

The Commission issued a Public Education Letter to former Methuen City Councilor James Atkinson to resolve allegations he violated the conflict of interest law by participating in two 2017 City Council votes to approve the Methuen Police Department Superior Officers' collective bargaining agreement (CBA). The conflict of interest law prohibits municipal employees, including elected officials, from participating as such in matters involving their own financial interests or those of an organization with which they have an arrangement for future employment. Atkinson was prohibited from voting on the Superior Officers' CBA because at the time of the votes he had a pending offer to work for the Methuen Police Department. Relying upon erroneous advice from the city solicitor, however, the City Council improperly invoked the judicially-created Rule of Necessity and Atkinson voted on the CBA in a pair of September 2017 votes. With Atkinson participating, the City Council on September 18, 2017, twice unanimously voted to approve the Superior Officers' CBA with no presentation, discussion, or explanation prior to the votes regarding the terms, cost, or financial impact of the agreement. The circumstances required to properly invoke the Rule of Necessity did not exist with respect to the City Council's September 2017 votes to approve the Superior Officers' CBA because the City Council was not legally required to vote on the CBA at that time and a quorum of councilors could have been reached without Atkinson. Thus, the Commission found there was reasonable cause to believe that Atkinson's participation in the votes violated the conflict of interest law.

In the Matter of James Jajuga

The Commission issued a Public Education Letter to former Methuen City Councilor James Jajuga to resolve allegations he violated the conflict of interest law by participating in two 2017 City Council votes to approve the Methuen Police Department Superior Officers' collective bargaining agreement (CBA). The conflict of interest law prohibits municipal employees, including elected officials, from participating officially in matters involving their own financial interests or those of an immediate family member. Jajuga was prohibited from voting on the Superior Officers' CBA because, at the time of the votes, Jajuga's son was a superior officer in the Department. Relying upon erroneous advice from the city solicitor, however, the City Council improperly invoked the judicially-created Rule of Necessity and Jajuga voted on the CBA in a pair of September 2017 votes. With Jajuga participating, the City Council on September 18, 2017 twice unanimously voted to approve the Superior Officers' CBA with no presentation, discussion, or explanation prior to the votes regarding the terms, cost, or financial impact of the agreement. The circumstances required to properly invoke the Rule of Necessity did not exist with respect to the City Council's September 2017 votes to approve the Superior Officers' CBA because the City Council was not legally required to vote on the CBA at that time and a quorum of councilors could have been reached without Jajuga. Thus, the Commission found there was reasonable cause to believe that Jajuga's participation in the votes violated the conflict of interest law.

In the Matter of Lynn Vidler

The Commission issued a Public Education Letter to former Methuen City Councilor Lynn Vidler to resolve allegations she violated the conflict of interest law by participating in two 2017 City Council votes to approve the Methuen Police Department Superior Officers' collective bargaining agreement (CBA). The conflict of interest law prohibits municipal employees, including elected officials, from participating officially in matters involving their own financial interests or those of an immediate family member. Vidler was prohibited from voting on the Superior Officers' CBA because at the time of the votes Vidler's husband was a superior officer in the department. Relying upon erroneous advice from the city solicitor, however, the City Council improperly invoked the judicially-created Rule of Necessity and Vidler voted on the CBA in a pair of September 2017 votes. With Vidler participating, the City Council on September 18, 2017, twice unanimously voted to approve the Superior Officers' CBA with no presentation, discussion, or explanation prior to the

votes regarding the terms, cost, or financial impact of the agreement. The circumstances required to properly invoke the Rule of Necessity did not exist with respect to the City Council's September 2017 votes to approve the Superior Officers' CBA because the City Council was not legally required to vote on the CBA at that time and a quorum of councilors could have been reached without Vidler. Thus, the Commission found there was reasonable cause to believe that Vidler's participation in the votes violated the conflict of interest law.

In the Matter of Brian Scheetz

The Commission issued a Public Education Letter to former Office of the State Auditor (OSA) employee Brian Scheetz to resolve allegations he violated the conflict of interest law by representing a private company that marketed software to state agencies in response to the findings of an audit on which he had worked. While Scheetz was employed in the OSA data analytics unit, he, along with an OSA consultant and another OSA employee, formed a private software company, Riscovery, which was incorporated in September 2014. In late 2015, the OSA began an audit of the Department of Children and Families (DCF) using a data analytics tool Scheetz had developed for the office to review medical incidents contained in Medicaid Management Information System data. In December 2017 the OSA released the results of the audit finding that DCF did not effectively identify or investigate injuries to children in its care or report all critical incidents to the Office of the Child Advocate (Child Advocate). The audit also found that DCF should require its staff to routinely monitor Medicaid Management Information System data. Shortly after the DCF audit was released, the OSA consultant allegedly contacted the Child Advocate and DCF on behalf of Riscovery, identifying himself as an OSA consultant and attempting to sell them re-engineered software that could monitor DCF's Medicaid Management Information System data. On December 20, 2017, the OSA began investigating these communications and terminated Scheetz two days later. On January 3, 2018, Scheetz made a presentation to the Child Advocate on behalf of Riscovery, demonstrating the company's proposed data monitoring software. The conflict of interest law prohibits former state employees from representing or performing paid work for anyone other than the state in connection with matters they worked on as state employees. The Commission found reasonable cause to believe Scheetz violated this prohibition of the conflict of interest law by meeting with the Child Advocate on behalf of Riscovery to discuss software the company proposed developing in response to the

OSA's determination that DCF should monitor Medicaid Management Information System data.

In the Matter of Stephen Comtois

The Commission issued a Decision and Order finding that former Brookfield Selectman Stephen Comtois violated the conflict of interest law when he acted as a Selectman concerning the proposed donation to the town of land he was interested in buying and used his official position to derail the proposed donation in order to privately purchase it himself for substantially less than its assessed value. In 2016, a former Brookfield resident informed the Board of Selectmen of her desire to donate a parcel of land to the town which she believed was not buildable, but the town taxed as a buildable lot with an assessed of \$43,900. At a December 13, 2016 meeting, the Board of Selectmen discussed the proposed donation and expressed understanding of the owner's situation. On a motion by Comtois as Chair, the Board unanimously voted to present the question of the proposed donation at the next Town Meeting with the understanding that the town would pay to clear the property's title if the donation was accepted. Comtois then volunteered to inform the property owner of the details of the Board's decision. As a Selectman and the Board's representative, Comtois called the owner's real estate broker. Comtois told the broker that the board would not support the proposed donation to the town, then offered to buy the land. Over the next several weeks, the town's Assistant Assessor asked Comtois for updates on the status of the donation. Comtois responded evasively and caused the Assistant Assessor to believe the donation was progressing. Comtois never told the Assistant Assessor or the other Selectmen that he intended to purchase the property and was pursuing his own interests rather than the town's. Comtois purchased the property for \$200 and a promise to pay all expenses associated with the purchase. At the time, Comtois considered using the land to store vehicles for a driving school he owned and operated. The conflict of interest law prohibits municipal employees from participating as such in matters in which they know they have a financial interest. Comtois violated this legal prohibition by participating as a Selectman in the proposed property donation to the Town by discussing and making recommendations regarding the proposed donation, voting to present the question to Town Meeting, contacting the real estate broker on the Board's behalf, and repeatedly communicating with the Assistant Assessor regarding the status of the donation, all while knowing of his own financial interest in the proposed donation of property. The conflict of interest law also prohibits public employees from using their official positions to obtain valuable, unwarranted privileges

that are not properly available to similarly situated individuals. Comtois violated this legal prohibition by knowingly using his position as a Selectman to derail the planned donation and secure for himself the opportunity to purchase the property. The Commission did not find that Comtois violated the section of the law that addresses appearances of bias and undue influence when, in March 2017, he directed the Brookfield Highway Superintendent to stop an on-call town worker who lacked proper paperwork from clearing snow from sidewalks, without disclosing that the worker had previously confronted him about purchasing the property, as the Commission found his actions regarding the on-call worker arose from his concern about liability for the town due to the on-call worker's missing paperwork. The Commission ordered Comtois to pay a \$20,000 civil penalty for his violations of the conflict of interest law.

In the Matter of Helen Donohue

The Commission issued a Decision and Order finding that Norwood Selectman Helen Donohue violated the conflict of interest law by participating as a selectman in matters related to Eysie Plaza, a strip mall in Norwood, without first disclosing her contentious personal history with the plaza's owner, Paul Eysie. Donohue and Eysie have known each other for decades. Their once amicable relationship became contentious when Eysie bought a dilapidated building across the street from Donohue's home in 2006 and redeveloped it as affordable apartments. Donohue was not happy with the affordable housing project and had vehement arguments with Eysie concerning the height and size of the building, parking, trash removal, and the number of tenants in the apartments. The disputes concerning trash and the number of tenants continued after the completion the apartment building, which Eysie continued to own. In September 2016, Eysie appeared before the Board of Selectmen to request that a warrant be placed before the Special Town Meeting to re-zone Eysie Plaza, which was zoned partially commercial and partially residential, to entirely commercial. Donohue cast the sole vote against Eysie's request. The conflict of interest law requires that when there are circumstances which would cause a reasonable person to conclude that a public employee may be biased or subject to undue influence while performing official actions, the public employee may not perform those actions without first making a written public disclosure of the facts causing the appearance of bias or undue influence. The Commission found that a reasonable person knowing the history of significant personal conflict between Donohue and Eysie would conclude that their contentious relationship could improperly influence Donohue in her performance of her official duties. The

Commission concluded that Donohue, who did not file a disclosure regarding her contentious relationship with Eysie, violated the conflict of interest law when she participated as a selectman in the discussion and vote on Eysie's warrant request. Donohue also participated as a selectman in matters concerning a restaurant located at Eysie Plaza but not owned by Eysie. In June 2016, Donohue cast the lone vote against the restaurant's application for an alcoholic beverages license. In February 2017, she voted in favor of holding a public hearing on the restaurant's request for an entertainment license. The Commission found that Donohue's daughters' financial interest through a real estate trust in a nearby vacant lot did not create an appearance of a conflict of interest for her when she participated in matters regarding Eysie Plaza and the restaurant without disclosing her daughters' interest. The Decision and Order notes that Donohue could have participated in the vote and discussion on Eysie's zoning warrant request if she had first filed a written disclosure regarding her personal history with Eysie. In consideration of the totality of the circumstances, including Donohue's personal situation at and around the time of the violation, the Commission ordered Donohue to pay a \$50 civil penalty for violating the conflict of interest law.

In the Matter of Kirk Moschetti

The Commission approved a Disposition Agreement in which Templeton Planning Board Chair Kirk Moschetti admits to violating the conflict of interest law by participating in Planning Board decisions related to proposals to re-zone areas where he and his family members owned property. At a July 2017 meeting, the Planning Board discussed proposing two warrant articles to Town Meeting to re-zone certain areas of the town to increase Templeton's commercial property tax base. At the time, Moschetti owned residential property in the area and was interested in purchasing an automobile storage business with a pre-existing nonconforming commercial-use status in a residential zone. The Planning Board held a public hearing on the zoning proposals, which were then added to the agenda for the November 2017 Town Meeting, where they did not pass. In November 2018, the Planning Board met to discuss submitting the unsuccessful zoning proposals to the spring 2019 Town Meeting. After many Templeton residents expressed opposition, the Planning Board decided to recommend only one of the two zoning proposals to Town Meeting. In December 2018, the Planning Board held a public hearing on the rezoning proposal including Moschetti's business property. Moschetti participated in discussions and a vote related to proposing a zoning change of parcels including his own. The zoning proposal was placed on the agenda

for the Spring 2019 Town Meeting, where Moschetti answered residents' questions about the proposal. The rezoning article passed. The conflict of interest law prohibits municipal employees from participating as such in matters in which they have a financial interest. Moschetti violated this prohibition by, as a member of the Planning Board, discussing and voting on proposals to re-zone areas of the town that included property he owned. The proposed zoning changes would allow greater opportunities to develop the property with fewer restrictions, increasing its value. Moschetti's financial interests in the proposed zoning changes were not shared by a substantial segment of Templeton's population. Moschetti paid a \$5,000 civil penalty for his violation of the conflict of interest law.

In the Matter of John Buckley

The Commission approved a Disposition Agreement in which Templeton Planning Board member John Buckley admits to violating the conflict of interest law by participating in Planning Board decisions related to proposals to re-zone areas where he owned property. At a July 2017 meeting, the Planning Board discussed proposing two warrant articles to Town Meeting to re-zone certain areas of the town to increase Templeton's commercial property tax base. At the time, Buckley and his wife each owned residential property and jointly owned a campground with a pre-existing nonconforming commercial-use status in a residential zone. The Planning Board held a public hearing on the zoning proposals, which were then added to the agenda for the November 2017 Town Meeting, where they did not pass. In November 2018, the Planning Board met to discuss submitting the unsuccessful zoning proposals to the spring 2019 Town Meeting. After many Templeton residents expressed opposition, the Planning Board decided to recommend only one of the two zoning proposals to Town Meeting. In December 2018, the Planning Board held a public hearing on the rezoning proposal. The zoning proposal was placed on the agenda for the Spring 2019 Town Meeting, where the rezoning article passed. The conflict of interest law prohibits municipal employees from officially participating in matters in which they or their immediate family have a financial interest. Buckley violated this prohibition by, as a member of the Planning Board, discussing and voting on proposals to re-zone areas of the town that included property he and/or his wife owned. The proposed zoning changes would allow greater opportunities to develop the property with fewer restrictions, increasing its value. Buckley's financial interests in the proposed zoning changes were not shared by a substantial segment of Templeton's population. Buckley paid a \$2,000 civil penalty for his violation of the conflict of interest law.

In the Matter of Frank Moschetti

The Commission approved a Disposition Agreement in which Templeton Planning Board member Frank Moschetti admits to violating the conflict of interest law by participating in Planning Board decisions related to proposals to re-zone areas where he and his family members owned property. At a July 2017 meeting, the Planning Board discussed proposing two warrant articles to Town Meeting to re-zone certain areas of the town to increase Templeton's commercial property tax base. At the time, Moschetti or his family members owned property that would be affected by the zoning proposals. Moschetti owned residential property and a septic business with a pre-existing nonconforming commercial-use status in a residential zone. The Planning Board held a public hearing on the zoning proposals, which were then added to the agenda for the November 2017 Town Meeting, where they did not pass. In November 2018, the Planning Board met to discuss submitting the unsuccessful zoning proposals to the spring 2019 Town Meeting. After many Templeton residents expressed opposition, the Planning Board decided to recommend only one of the two zoning proposals to Town Meeting. In December 2018, the Planning Board held a public hearing on the rezoning proposal including Moschetti's business property. Moschetti participated in discussions and a vote related to proposing a zoning change of parcels including his own. The zoning proposal was placed on the agenda for the Spring 2019 Town Meeting, where the rezoning article passed. The conflict of interest law prohibits municipal employees from participating as such in matters in which they or their immediate family have a financial interest. Moschetti violated this prohibition by, as a member of the Planning Board, discussing and voting on proposals to re-zone areas of the town that included property he owned. The proposed zoning changes would allow greater opportunities to develop the property with fewer restrictions, increasing its value. His financial interests in the proposed zoning changes were not shared by a substantial segment of Templeton's population. Moschetti paid a \$2,000 civil penalty for his violation of the conflict of interest law.

In the Matter of Christopher Hicks

The Commission issued a Final Decision and Order finding that former Berkley Planning Board Member Christopher Hicks violated the conflict of interest law by failing to fulfill the statute's education and training

requirements in 2018 and 2019. The conflict of interest law requires that all public employees, including municipal board members, receive a written summary of the law and sign a written acknowledgement that they have received the summary within 30 days of becoming a public employee and every year thereafter. The law also requires that all public employees complete the Commission's conflict of interest law online training program within 30 days of becoming a public employee and every two years thereafter. Hicks was elected to the Berkley Planning Board in May 2018. The Berkley Town Clerk provided Hicks with a written summary of the conflict of interest law at his swearing-in as a Planning Board member and notified him that he was required to sign an acknowledgement that he received the summary and to complete the Commission's online conflict of interest law training program. After Hicks failed to acknowledge his receipt of the summary of the law or complete the online training, the Commission's Public Education Division repeatedly sought Hicks' compliance with the law to no avail. The Commission's Enforcement Division filed an Order to Show Cause against Hicks on July 22, 2020, initiating an adjudicatory proceeding against him. Hicks failed to file an answer to the Order to Show Cause, attend a pre-hearing conference, or attend hearings on September 16 and October 15. In a Decision and Order issued October 20, 2020, the Commission allowed the Enforcement Division's Motion for Summary Decision and allowed Hicks the opportunity to provide any mitigating facts that would justify reduction of a \$2,000 civil penalty. Hicks did not respond. Hicks' sole engagement in the Commission adjudicatory proceeding was to send an email to the Enforcement Division on August 25, 2020, in which he stated he had resigned from the Planning Board and to which he attached an online training completion certificate and an acknowledgement that he had received the summary of the law, each dated August 2, 2020. The Final Decision and Order, issued on December 2, 2020, states that Hicks' compliance with the law more than two years after joining the Planning Board does not excuse his failure to fulfill the training requirements during the time he served on the board, nor does it excuse him from responding to or appearing before the Commission when required to do so. The Commission ordered Hicks to pay a \$2,000 civil penalty for his violation of the conflict of interest law..

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

IN THE MATTER OF
LAWRENCE BEALS

PUBLIC EDUCATION LETTER

January 9, 2020

Lawrence Beals
c/o Mark D. Smith, Esq.
Laredo & Smith, LLP
101 Federal Street, Suite 650
Boston, MA 02110

Dear Mr. Beals:

As you know, the State Ethics Commission conducted a preliminary inquiry into whether you violated the conflict of interest law as a Town of Winchester Zoning Board of Appeals (“ZBA”) Member by receiving compensation and acting as agent for a private party in connection with a matter in which Winchester had an interest and creating an appearance of bias while performing your public duties. You cooperated fully with the inquiry.

On September 20, 2019, the Commission voted to find reasonable cause to believe that your actions, as described below, violated Sections 17(a), 17(c), and 23(b)(3) of the conflict of interest law. The Commission has determined that, in lieu of adjudicatory proceedings, the public interest would be better served by publicly discussing the facts revealed by the preliminary inquiry and explaining the application of the law to those facts in this Public Education Letter. The Commission chose this resolution because you may have incorrectly relied on past advice to you from the Commission. The Commission expects that, by resolving this matter through this Public Education Letter, public employees in similar circumstances will have a clearer understanding of the conflict of interest law and how to comply with it in connection with future conduct.

The Commission and you agree that 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 Facts

Background

Since 1990, you have been the owner and only principal of Beals Associates, Inc., a consulting firm that provides civil engineering, permitting, and construction supervision services.

Since 1999, you have been a member of the Winchester Boat Club and, over the years, have held multiple positions there. Once you joined the Boat Club, Beals Associates began providing professional services to the Boat Club, on a pro bono basis.

From 2011 to May 2018, you were an appointed member of the Winchester ZBA. The Winchester Board of Selectmen was your appointing authority. The ZBA has the authority to decide applications for special permits, petitions for variances from zoning bylaws, site plan approvals, and appeals from decisions of the zoning enforcement officer. The Board of Selectmen have designated ZBA members as special municipal employees for purposes of the conflict of interest law.

Acting as Agent and Receiving Compensation

In November 2015, a real estate developer sought to build an Age-Qualified Community on an undeveloped 12.9-acre parcel of land in Winchester, known as Winning Farm (“Winning Farm Project”).

In or around April 2016, the developer hired Beals Associates to perform professional services related to the permitting of the Winning Farm Project. From 2016 to 2017, the developer compensated Beals Associates, of which you are the sole owner, for services related to the Winning Farm Project, including appearances before Town agencies and boards.

On February 6, 2017, a Beals Associates employee filed an application for a special permit on behalf of the Winning Farm Project with the ZBA. A representative from Beals Associates appeared before the ZBA at a hearing on the special permit on February 28, 2017 and March 20, 2017.

On March 25, 2017, you personally met with abutters of the Winning Farm Project on behalf of the developer, to discuss off-site improvements necessary to receive neighborhood support. On March 26, 2017, you, on behalf of the developer, communicated directly with an abutter regarding changes to the curbing. You also communicated with the abutters on behalf of the developer on April 5, 2017 to obtain the abutters’ approval of the Winning Farm Project’s landscape plans prior to the May 15, 2017 ZBA meeting. Beals Associates requested and received compensation for these meetings.

On May 15, 2017, the ZBA voted to approve the special permit. You properly recused yourself from the vote and left the room at that time.

Beals Associates requested and received compensation for work performed in connection with the May 15, 2017 ZBA hearing. Beals Associates earned an estimated \$300,000 in gross revenue for its work related to the Winning Farm Project; roughly 10% of that amount was for work associated with the special permit granted by the ZBA. You told us that the firm's net profits were much smaller.

Creating an Appearance of Bias

The public process surrounding the Boat Club's renovation and proposed expansion in 2016 for which Beals Associates provided pro bono services, was, according to you, a "fairly contentious permitting process." Kevin Sarney, an abutter of the Boat Club, was publicly opposed to the expansion of the Boat Club. Sarney, via his attorney, argued that the expansion would require a special permit. The ZBA allowed the renovations but denied the proposed expansion. The Boat Club filed suit against the ZBA in Land Court.

In March 2017, Sarney sought a special permit from the ZBA to build a garage. When Sarney appeared before the ZBA, you, as a ZBA member, questioned Sarney about the property lines in his site plan. Sarney asked you to recuse yourself because Sarney felt that you would be biased against any abutter that had opposed the Boat Club's expansion. Based on your interpretation of the advice you received from the Commission on an unrelated matter, you responded that as long as you did not vote, you were allowed to participate in the discussion.

During the Board's discussion of Sarney's permit, based on certain inconsistencies that you and, apparently, the other members of the ZBA perceived in the plans provided by Sarney, you suggested that the Board seek clarification regarding the property lines in Sarney's plans.

Sarney's special permit was allowed, subject to certain conditions on clarifying property lines, including submission of a revised site plan from a land surveyor showing the property lines. You abstained from the vote.

Legal Discussion

As a member of the ZBA, you were a special municipal employee, and, as such, subject to the restrictions of the conflict of interest law, General Laws chapter 268A.

Section 17

Section 17(a) prohibits a municipal employee from, otherwise than in the proper discharge of his official duties, directly or indirectly receiving or requesting compensation from anyone other than the city or town or municipal agency in relation to any particular matter in which the same city or town is a party or has a direct and substantial interest.

Section 17(c) prohibits anyone other than in the proper discharge of his official duties from acting as agent or attorney for anyone other than the municipality in relation to any particular matter in which the municipality is a party or has a direct and substantial interest.

The purpose of this prohibition is to prevent a municipal employee from dividing his loyalty between his public employer and a private party.

Section 17 applies less restrictively to special municipal employees. A special municipal employee is prohibited from receiving or requesting compensation and/or acting as agent for private parties in relation to (1) particular matters in which he has participated as a municipal employee; (2) particular matters which are or within one year have been a subject of his official responsibility; or (3) particular matters pending in a municipal agency in which he is serving.^[1]

As a ZBA member, you are a special municipal employee and, as such, subject to the more flexible provisions described above.

The ZBA's consideration of the Winning Farm Project special permit application was a particular matter. As a ZBA member, you had official responsibility of approving the special permit application and as such, had official authority over all aspects of the special permit application. You were previously advised by the Commission that a public official retains official authority on all matters subject to his review even if he recuses himself from the discussion and vote on those matters.

The Town had a direct and substantial interest in the ZBA special permit for the Winning Farm Project because, in general, matters that involve municipal action, such as a permit granted by a municipality, are considered to be of direct and substantial interest to the municipality. *Commonwealth v. Canon*, 373 Mass. 494, 498 (1977). As owner and operator of Beals Associates, you directly or indirectly received compensation from the Winning Farm Project developer in relation to the ZBA special permit when it was a matter of your official responsibility as a ZBA member. In particular, after an employee of your firm filed a ZBA special permit

application on behalf of the developer, your firm received compensation in connection with the ZBA hearing and your meeting with abutters. Based on these facts, the Commission found reasonable cause to believe that you violated Section 17(a).

In addition, Section 17(c) not only generally prohibits special municipal employees from representing a private party in certain matters before their own board, but it also prohibits them from representing anyone before other municipal boards, to private business or to charitable organizations in matters that are the subject of their official responsibility. A special 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.* You personally acted as agent of the developer of the Winning Farm Project when you met with the abutters regarding the pending ZBA special permit application. The meeting with the abutters was not in the proper discharge of your official duties as a member of the ZBA, and, therefore, not permissible public constituency work. Accordingly, by acting on behalf of a third party in relation to a particular matter which was under your official responsibility as a ZBA member and in which the Town had a direct and substantial interest, the Commission found reasonable cause to believe that you violated Section 17(c).

Section 23(b)(3)

Section 23(b)(3) prohibits a municipal employee from knowingly, or with reason to know, acting in a manner which would cause a reasonable person, knowing all of the facts, to conclude that anyone can improperly influence or unduly enjoy the employee's favor in the performance of his official duties or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. This section's purpose is to address appearances of impropriety, and in particular, appearances that public employees may be biased in favor or against certain people in the performance of their official duties. Section 23 does not apply less restrictively to special municipal employees.

In applying § 23(b)(3), the Commission evaluates whether there is an appearance that the integrity of the public official's action might be undermined by a private relationship or interest. *In the Matter of James Flanagan*, 1996 SEC 757.

By questioning Kevin Sarney regarding his permit application and discussing the application with other ZBA members, when previously you and Mr. Sarney were on opposite sides of the hotly contested expansion of the

Winchester Boat Club, a reasonable person could conclude that you were improperly influenced in your public duties by your relationship with the Boat Club and that you were biased against one of the abutters who contested the Boat Club's expansion plan. Although you did not participate in the vote, you still acted on Mr. Sarney's application in your official capacity by participating in the discussion of the application, potentially influencing the ZBA decision.

Section 23(b)(3) further provides that an appearance of impropriety can be obviated if the public employee discloses in writing to his appointing authority all of the relevant circumstances which would otherwise create the appearance of conflict. You did not file a disclosure regarding your history with the Boat Club and Mr. Sarney with your appointing authority, the Board of Selectmen.

Therefore, based on the above facts, the Commission found reasonable cause to believe that you violated Section 23(b)(3).

Disposition

Based upon its review of this matter, in which you fully cooperated, the Commission has determined that the public interest would be best served by the issuance of this Public Educational Letter and that your receipt of this letter should be sufficient to ensure your understanding of and future compliance with the conflict of interest law.

The matter is now closed.

Sincerely,
Eve Slattery
General Counsel

^[1] The third provision applies only if the employee has served in the municipal agency for more than 60 days during any period of 365 consecutive days.

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

SUFFOLK, ss.

**COMMISSION
ADJUDICATORY
DOCKET NO. 19-0008**

**IN THE MATTER OF
PETER SKORPUT**

Parties: Tracy Morong, Esq.
Counsel for Petitioner

Elizabeth J. Quigley, Esq.
Counsel for Respondent

Commissioners: Maria J. Krokidas, Ch., Thomas J. Sartory, R. Marc Kantrowitz, Josefina Martinez and Wilbur P. Edwards, Jr.

Presiding Officer: Commissioner Josefina Martinez

FINAL ORDER

On January 17, 2020, the parties filed a Joint Motion to Dismiss (“Joint Motion”) with a proposed Disposition Agreement requesting that the Commission approve the Disposition Agreement in settlement of this matter and dismiss the adjudicatory proceeding. On January 21, 2020, the Presiding Officer, Commissioner Martinez, referred the Joint Motion, with the Disposition Agreement, to the full Commission for deliberations.

In the proposed Disposition Agreement, Respondent Peter Skorput admits that he violated G.L. c. 268A, §§ 19, 20, 23(b)(2)(ii), and 23(b)(3). Skorput admits that at a time when he was Fire Chief for the Town of West Stockbridge, he was elected to the Board of Selectmen (“BOS”). Skorput admits that he violated § 20 by failing to obtain an exemption under § 20 to hold positions both as Fire Chief and BOS member and to receive compensation for both positions.

Skorput further admits that he violated § 19 by participating as a BOS member in the reappointment of himself as Fire Chief and by addressing complaints made at BOS meetings by the Town Custodian and a veteran firefighter regarding his fitness as Fire Chief.

Also, Skorput admits that he violated § 19 by participating as Fire Chief in deciding the amount of Fire-person’s Incentive to be paid to himself and his daughter, who was a firefighter in his Department, and also by participating as a BOS member in signing warrants for payments from the Fire Department to his daughter.

In addition, Skorput admits that he violated § 23(b)(3) when, as Fire Chief, he calculated and awarded a yearly Fire-person’s Incentive to his nephew, who was a firefighter, without first filing a disclosure about their family relationship.

Additionally, Skorput admits that he violated § 23(b)(3) by performing official duties as a BOS member regarding the reappointment of two individuals to various Town positions without filing a disclosure explaining that they

recently had taken action against him as West Stockbridge Board of Health (“BOH”) officials in a BOH matter.

Finally, Skorput admits that he violated § 23(b)(2)(ii) by using his position as Fire Chief to terminate a firefighter in retaliation for complaining about Skorput’s performance as Fire Chief.

The Respondent agrees to pay a civil penalty of \$5,000 and to waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in the Disposition Agreement in this and any other administrative or judicial proceeding to which the Commission is or may be a party. Respondent has tendered the payment of the \$5,000 civil penalty.

In support of the Joint Motion, the parties assert that this matter would be fairly and equitably resolved by the terms set forth in the Disposition Agreement and that this resolution would obviate the need for a hearing on any factual issues, saving time and resources for all involved. The parties assert that the interests of justice, the parties and the Commission will be served by the Disposition Agreement.

WHEREFORE, the Commission hereby **ALLOWS** the Motion. Respondent’s tendered payment of the \$5,000 civil penalty for violating G.L. c. 268A, §§ 19, 20, 23(b)(2)(ii), and 23(b)(3) is **ACCEPTED**. Commission Adjudicatory Docket No. 19-0008, *In the Matter of Peter Skorput* is **DISMISSED**.

DATE AUTHORIZED: February 27, 2020

DATE ISSUED: March 2, 2020

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

SUFFOLK, ss.

**COMMISSION
ADJUDICATORY
DOCKET NO. 19-0008**

**IN THE MATTER OF
PETER SKORPUT**

DISPOSITION AGREEMENT

The State Ethics Commission (“Commission”) and Peter Skorput (“Skorput”) 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 23, 2017, 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 January 23, 2019, the Commission concluded its inquiry and found reasonable cause to believe that Skorput violated G.L. c. 268A, §§ 19, 20, and 23.

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

Background

1. Skorput, a resident of West Stockbridge, was during the relevant time the chief of the West Stockbridge Fire Department (“WSFD”).
2. The WSFD Fire Chief is appointed to a three-year term by the West Stockbridge Board of Selectmen (“BOS”).
3. In May 2013, Skorput was elected to the BOS.
4. As of the 2010 census, West Stockbridge’s population was 1,306.

Holding Two Municipal Positions

Findings of Fact

5. As Fire Chief, Skorput received a single yearly payment called a “Fire-person’s Incentive.”
6. BOS members receive a biannual stipend.
7. On May 21, 2013, Skorput contacted the Commission’s Legal Division and asked whether he, as a selectman, could sign a lease on a new fire truck. Skorput was told that, because he was also Fire Chief and because he was using the “selectman’s exemption” to serve in both positions, the conflict of interest law prohibited him from signing the lease unless his doing so was a legal necessity. Skorput was advised to talk to Town Counsel and find out whether there was someone else in town government who could sign the lease and to call back for further advice. Although Skorput called the Legal Division two days later to say that he had not yet spoken with Town Counsel, he did not subsequently contact the Legal Division for further advice.
8. On May 22, 2013, the West Stockbridge Town Administrative Assistant^[1] contacted Town Counsel regarding, in part, exemptions available to Skorput regarding his dual positions as Fire Chief and Selectman under the conflict of interest law.

9. On May 30, 2013, Town Counsel sent an email to the Town Administrative Assistant (“May 30, 2013 email”) which stated that a § 20(d) exemption would allow Skorput to accept pay as both Fire Chief and Selectman. Town Counsel advised that Skorput “follow the requirements” for the exemption and she attached a § 20(d) exemption form to her email.

10. The Town Administrative Assistant showed Town Counsel’s May 30, 2013 email to Skorput.

11. As of January 9, 2017, Skorput had not filed any conflict of interest law disclosures with the Town Clerk, had not obtained a § 20(d) exemption and, was not in compliance with the requirements of the Selectmen’s exemption.

12. From June 2013 to January 2017, Skorput accepted both Fire-person’s Incentive and Selectman’s stipends as follows: in Fiscal Year 2014,^[2] Skorput accepted \$1172.22 as Selectman and \$500 as Fire Chief; in Fiscal Year 2015, he received \$2,200 as Selectman and \$400 as Fire Chief; and in Fiscal Year 2016, he received \$2,000 as Selectman and \$500 as Fire Chief.

13. During this same time period, Skorput acted as a selectman on matters within the purview of the WSFD by signing warrants to pay Fire-person’s Incentives and other WSFD expenses that he requested payment of as Fire Chief.

14. On January 9, 2017, Skorput submitted a 20(f) disclosure form to the BOS.

Conclusions of Law

15. As WSFD Fire Chief, Skorput was a municipal employee as defined in G.L. c. 268A, § 1(g). As a West Stockbridge selectman, Skorput was a special municipal employee as defined in G.L. c. 268A, § 1(n).

16. Section 20 of G.L. c. 268A prohibits a municipal employee from having a financial interest, directly or indirectly, in a contract made by a municipal agency of the same city or town, in which the same city or town is an interested party, of which financial interest the employee has knowledge or reason to know, except as permitted by one of the exceptions to the section.

17. Skorput’s appointment as Fire Chief was a contract with the Town for the purposes of the conflict of interest law.

18. Skorput had a financial interest in this contract because the position of Fire Chief was compensated.

19. In May 2013, when Skorput was elected as a selectman, his financial interest in his Fire Chief position raised an issue under § 20, which prohibited that interest unless the requirements of an exemption to that section were met by Skorput.

20. The “selectman’s exemption” to § 20 allows a compensated, appointed municipal employee who is elected as a selectman in the same municipality to serve in both positions without violating § 20. To qualify for the exemption, the selectman must: a) decline compensation for all but one Town position and b) abstain from voting or acting as a selectman on any matter within the purview of any Town agency that employs the selectman.

21. Skorput failed to meet the requirements of the Selectman’s exemption to § 20 because he accepted both the selectmen’s stipends and the Fire-person’s Incentive and acted as a selectman on matters within the purview of the WSFD, including the warrants to pay the Fire-person’s Incentives and other WSFD expenses.

22. Section 20(d) makes an additional exemption to § 20 available to special municipal employees. Selectmen in a town with a population of fewer than 10,000 people are special municipal employees. G.L. c. 268A, § 1(n). The exemption requires that a written § 20(d) disclosure be approved by the board of selectmen. The approved disclosure must be filed with the town clerk. As a selectman in West Stockbridge, Skorput was eligible to seek this exemption to permit him to serve as both a selectman and Fire Chief and to accept compensation for both positions.

23. A § 20(f) disclosure is available to municipal employees seeking employment in a part time, call or volunteer capacity with the fire department in a municipality with a population of less than 35,000. It allows a person who is already a municipal employee in another position to add the position of firefighter. Given that Skorput held the position of Fire Chief before he became a selectman, the 20(f) disclosure was not available to him.

24. From the time he became a selectman in May 2013 until January 2017, Skorput did not seek or obtain an exemption to § 20. On January 9, 2017, Skorput sought a § 20(f) exemption for which he was not eligible.

25. Therefore, Skorput violated § 20 by continuing to hold the compensated position of Fire Chief after he was elected to the BOS.

Participating in his own reappointment and awarding stipends to himself, his daughter and his nephew

Findings of Facts

26. On June 17, 2013, the BOS voted on the renewal of Skorput’s contract as Fire Chief.

27. Skorput, as a selectman, participated in the vote, and voted in favor of his re-appointment.

28. All members of the WSFD receive a Fire-person’s Incentive.

29. Skorput, as Fire Chief, is responsible for determining the amount of the Fire-person’s Incentives for each firefighter including himself.

30. There are no written criteria to determine how the Fire-person’s Incentives are distributed among the WSFD members.

31. Although Skorput purportedly based the amount of the Fire-person’s Incentive on each member’s participation, Skorput did not document or maintain any records of each member’s participation in trainings, meetings, or response calls.

32. In or about December 2013, 2014, and 2015, as Fire Chief, Skorput unilaterally decided the amount of his own Fire-person’s Incentive. He then signed and submitted a bills payable schedule regarding these Fire-person’s Incentives to the BOS for payment.

33. On or about January 9, 2017, Skorput filed a § 19 conflict of interest disclosure form related to his own Fire-person’s Incentive with the BOS.

34. Tricia Skorput is Skorput’s daughter.

35. From approximately 2011 to 2015, Tricia was a member of the WSFD.

36. In or about December 2013 and 2014, as Fire Chief, Skorput unilaterally decided the amounts of the Fire-person’s Incentive for Tricia. He then signed and

submitted a bills payable schedule regarding these Fire-person's Incentive to the BOS for payment.

37. At no time did Skorput file a conflict of interest disclosure related to his daughter and her Fire-person's Incentives.

38. William Cooper is Skorput's nephew.

39. At all times relevant to this matter, Cooper was a member of the WSFD.

40. In or about December 2013, 2014, and 2015, as Fire Chief, Skorput unilaterally decided on the amounts of the Fire-person's Incentive for his nephew. He then signed and submitted a bills payable schedule regarding these Fire-person's Incentives to the BOS for payment.

41. At no time did Skorput file any conflict of interest disclosures relating to Cooper and his Fire-person's Incentives.

42. In December 2013 and 2014, Skorput, as Selectman, signed warrants for payments including Fire-person's Incentives for his daughter and nephew.

Conclusions of Law

Section 19

Skorput's Reappointment as Fire Chief

43. Except as otherwise permitted,^[3] § 19 of G.L. c. 268A prohibits a municipal employee from participating^[4] as such an employee in a particular matter^[5] in which, to his knowledge, he or an immediate family member^[6] has a financial interest.^[7]

44. The BOS's decision to reappoint Skorput as Fire Chief was a particular matter.

45. Skorput had a financial interest in the particular matter of his reappointment as Fire Chief because it is a compensated position.

46. In June 2013, Skorput participated as Selectman in the particular matter of his reappointment as Fire Chief by voting as a selectman in favor of his reappointment.

47. At the time of his participation, Skorput knew that he had a financial interest in the particular matter of his reappointment as Fire Chief.

48. Accordingly, by participating as Selectman in his reappointment as Fire Chief, Skorput violated § 19.^[8]

Fire-person's Incentives for Skorput and his Daughter

49. The decision regarding the amount of Fire-person's Incentives to pay firefighters and the payment of those Fire-person's Incentives were particular matters.

50. Both Skorput and his daughter had a financial interest in these particular matters because the Fire-person's Incentives were compensation.

51. As Skorput's daughter, Tricia Skorput is a member of Skorput's immediate family.

52. Skorput participated as Fire Chief in these particular matters by deciding the amount of and awarding Fire-person's Incentives to himself and his daughter and submitting them to the BOS for payment.

53. Skorput also participated as Selectman in these particular matters by signing warrants that contained Fire-person's Incentives for his daughter.

54. At the time of his participation as Fire Chief and as Selectman, Skorput knew that both he and his daughter had a financial interest in these particular matters.

55. A § 19 disclosure requires that a municipal employee first advise the official responsible for appointment to his position of the nature and circumstances of the particular matter and make full disclosure of such financial interest and receive in advance a written determination made by that official that the 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.

56. Prior to January 9, 2017, Skorput did not advise his appointing authority, the BOS, of his own financial interest or that of his daughter in the particular matters of determination of the amount and the awarding of the Fire-person's Incentives.

57. Thus, by participating as Fire Chief and as Selectman in particular matters concerning the WSFD Fire-person's Incentives for himself and his daughter, Skorput violated § 19.

Section 23

Fire-person's Incentive for Nephew

58. Section 23(b)(3) of G.L. c. 268A prohibits a municipal 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, rank, position or undue influence of any party or person. The section further provides that it shall be unreasonable to so conclude if such officer or 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.

59. By, as described above, participating as Fire Chief in WSFD matters regarding his nephew, including calculating and awarding a yearly Fire-person's Incentive, Skorput knowingly or with reason to know, acted in a manner which would cause a reasonable person, having knowledge of all the relevant circumstances to conclude that Skorput would be likely to act favorably towards his nephew as a result of kinship in the performance of his official duties as Fire Chief.

Participation and Retaliation Regarding Complaints Against Him

Findings of Facts

60. In September 2014, Dominic Luchi ("Luchi") appeared at the BOS and voiced criticism about Skorput's performance as Fire Chief. Skorput did not recuse himself from participating in the matter as a Selectman. Skorput, while sitting at the selectmen's table, verbally responded to Luchi's complaints.

61. At the October 26, 2015 BOS meeting, Luchi appeared and further discussed his concerns about Skorput. Skorput did not recuse himself from participating in the matter as a selectman. Skorput, while sitting at the selectmen's table, responded to Luchi's complaints.

62. At the November 9, 2015 BOS meeting, the selectmen discussed Luchi's concerns. Skorput did not recuse himself from participating as a selectman in the discussion.

63. In 2016, James Hallock ("Hallock"), a twenty-five-year veteran firefighter, was a lieutenant in the WSFD.

64. At the February 8, 2016 BOS meeting, Hallock submitted a written complaint regarding Skorput's performance as chief. Skorput, as Selectman, stated that he

was "insulted with the exaggerations and lies" by Hallock who was "stabbing him in the back because he wants to become Fire Chief."

65. Approximately twenty-four minutes after the February 8, 2016 BOS meeting adjourned, Skorput sent a text message to Hallock that read, "Turn in your gear."

66. On February 26, 2016, Hallock was summoned to a meeting of the WSFD membership. Thereafter, Skorput terminated Hallock from the WSFD.

67. In February or March 2016, Skorput consulted Town Counsel to ask whether the Town's non-retaliation policy applied to him. Skorput was advised that it did.

68. At the March 7, 2016 BOS meeting, Town Counsel opined that, because of Skorput's actions, the Town was at risk for a lawsuit under the Whistle Blower Act.

69. At the March 21, 2016 BOS meeting, Hallock's concerns were again discussed and the Chair moved to request Town Counsel hire a firm to conduct an audit of the WSFD.

70. An audit was conducted in August 2016 and filed in October and it found that Skorput's record-keeping for the WSFD roster and the process around stipend payments was insufficient.

71. As a result of the audit, Skorput was required to provide regular WSFD reports to the BOS.

Conclusions of Law

Section 19

72. The complaints regarding Skorput's performance as Fire Chief were particular matters.

73. Skorput had a financial interest in the complaints regarding his job performance because such criticism could affect his compensated position as Fire Chief.

74. In September 2014, October 2015, November 2015, and February 2016, Skorput participated as a selectman in the particular matters of the complaints by discussing the merits of the complaints at BOS meetings.

75. At the time of his participation, Skorput knew that he had a financial interest in the particular matters of the complaints.

76. Accordingly, by participating as Selectman in the complaints regarding his fitness as Fire Chief, Skorput violated § 19.

Section 23(b)(2)(ii)

77. 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.

78. The opportunity to retaliate against Hallock for complaining about Skorput's performance as Fire Chief by terminating Hallock without justification was a privilege.

79. The privilege was unwarranted because Skorput was not authorized as Fire Chief to terminate Hallock based on Skorput's personal feelings about Hallock, rather than on objective criteria such as Hallock's work performance; and the privilege was not properly available to individuals similarly-situated to Skorput as Fire Chief.

80. This privilege was of substantial value^[9] because Skorput's termination of Hallock resulted in the removal of a source of complaints that caused the BOS to order an audit and could have resulted in Skorput losing his paid position as Fire Chief. Skorput's stipend was worth more than \$50.

81. Skorput was only in a position to terminate Hallock because he was Fire Chief and he used his position as Fire Chief to cause that termination in retaliation for Hallock's complaint about him to the BOS.

82. Therefore, by, in the manner described above, using his position as Fire Chief to retaliate against Hallock, Skorput knowingly or with reason to know used his official position to secure for himself an unwarranted privilege of substantial value not properly available to other similarly situated individuals in violation of § 23(b)(2)(ii).

Appearance Violation regarding Board of Health Chair and Health Agent

Finding of Facts

83. In June 2017, the Board of Health ("BOH") received notice from the Department of Environmental Protection ("DEP") regarding an allegation of illegal dumping of refuse materials on Skorput's property. The DEP letter advised the BOH to take action. At the time, Scott Sawyer

was the Chair of the BOH and Earl Moffatt was the Health Agent.

84. An inspection by the BOH revealed that off-site refuse had been deposited on Skorput's property. The dumping site was found to possibly impact a semi-public water supply and several private water supply wells on adjoining properties.

85. On May 25, 2018, the BOH issued a letter to Skorput. Although the BOH had the authority to order Skorput to remove the material, it did not do so because of the "enormous financial burden" to Skorput. Instead, the BOH ordered Skorput obtain a plan of property delineating the affected area, prepared by a certified professional, and cause it to be filed as a deed restriction on Skorput's property. The letter was signed by Sawyer and Luci Leonard.

86. On June 18, 2018, the BOS acted on the Annual Officer Appointments. Skorput voted against reappointing:

- a. Moffatt as Health Agent;
- b. Moffatt as a member of the Historical Commission;
- c. Moffatt as a member of the Sewer and Water Commission; and
- d. Sawyer as a member of the Historical Commission.

87. Skorput did not file any disclosure regarding past issues between himself and Moffatt or Sawyer.

Conclusions of Law

88. By, as described above, participating as a selectman in matters regarding Sawyer and Moffatt shortly after the BOH issued a letter to him requiring him to take action concerning the dumping site on his property including filing a deed restriction on the property, Skorput, knowingly or with reason to know, acted in a manner which would cause a reasonable person, having knowledge of all the relevant circumstances, including Skorput's animosity towards Sawyer and Moffatt, to conclude that Skorput would be likely to act unfavorably towards Sawyer and Moffatt in the performance of his official duties as a selectman.

89. Skorput did not file a disclosure sufficient to dispel these appearances of undue influence and favoritism in his official actions.

90. In so acting, Skorput violated G.L. c. 268A, § 23(b)(3).

Conclusion

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

1. that Skorput 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, 20 and 23; and
2. that Skorput 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: March 2, 2020

^[1] In West Stockbridge, the Administrative Assistant performs duties similar to a town administrator.

^[2] West Stockbridge’s Fiscal Year 2014 began on June 30, 2013.

^[3] None of the exemptions applies.

^[4] “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)*.

^[5] “Particular matter” means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. *G.L. c. 268A, § 1(k)*.

^[6] “Immediate family” means the employee and his spouse, and their parents, children, brothers and sisters. *G.L. c. 268A, § 1(e)*.

^[7] “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. *EC-COI-84-98*. The interest can be either positive or negative. *EC-COI-84-96*.

^[8] In addition, because as a Selectman he was a member of the board that appoints the Fire Chief and because his appointment as Fire Chief was not first approved by the annual town meeting, Skorput was not eligible for appointment as Fire Chief under G. L. c. 268A, §21A.

^[9] The Commission has established a \$50.00 threshold to determine “substantial value.” *930 CMR 5.0*.

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

SUFFOLK, ss.

**COMMISSION
ADJUDICATORY
DOCKET NO. 20-0001**

**IN THE MATTER OF
JEANNE CARNEVALE**

DISPOSITION AGREEMENT

The State Ethics Commission (“Commission”) and Jeanne Carnevale 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 March 19, 2018, the Commission initiated a preliminary inquiry, pursuant to G.L. c. 268B, § 4(a), into possible violations of the conflict of interest law, G.L. c. 268A. On October 17, 2019, the Commission concluded its inquiry and found reasonable cause to believe that Jeanne Carnevale violated G.L. c. 268A, §§ 19 and 23(b)(2)(ii).

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

Findings of Fact

1. Jeanne Carnevale (“Carnevale”), a resident of Peabody, Massachusetts, was at all relevant times the City of Peabody (“City”) Treasurer.
2. As City Treasurer, Carnevale was responsible for initiating tax title foreclosure proceedings on properties with delinquent real estate taxes.
3. During the relevant time, Carnevale and real estate agent Janet Howcroft (“Howcroft”) were friends.
4. As of October 25, 2016, Carnevale’s daughter was trustee of Victory Realty Trust, a trust created to purchase and sell real property.
5. As of October 25, 2016, Carnevale’s husband, Richard Carnevale, was a beneficiary of Victory Realty Trust.
6. As of October 25, 2016, Howcroft’s husband, Richard Howcroft, was a beneficiary of Victory Realty Trust.
7. Melo’s Construction, LLC was at all relevant times a building contracting company in Peabody. Melo’s Construction performed private vinyl siding work on Carnevale’s private residence in or about 2013.

22 Catherine Drive

Facts

8. As of 2015, the property located at 22 Catherine Drive, Peabody, Massachusetts had an outstanding tax liability of approximately \$27,624. The property was owned by the Catherine Drive Estate.^[1]
9. The City’s Office of Inspectional Services deemed 22 Catherine Drive unsafe on May 20, 2015.
10. Carnevale as City Treasurer hired private attorney Paul Rabchenuk (“Rabchenuk”) to probate the Catherine Drive Estate so that 22 Catherine Drive could be sold.^[2]
11. In May 2015, the principal of Melo’s Construction and the administrator of the Catherine Drive Estate, who was also an heir, signed a purchase and sale agreement for Melo’s Construction to purchase 22 Catherine Drive for \$195,000.
12. The purchase and sale agreement identified Howcroft as the real estate broker. Her broker’s fee under the purchase and sale agreement was \$9,750.

13. According to the purchase and sale agreement, the closing on the sale of 22 Catherine Drive was scheduled for July 31, 2015.

14. The closing did not occur on July 31, 2015.

15. On or about August 4, 2015, Carnevale as City Treasurer sent a letter on City Treasurer letterhead to the administrator and heir of the Catherine Drive Estate noting that the City had expended resources to assist him with probating his parents’ estate and because the City had been unable to contact him, it would be moving forward with court actions including foreclosure proceedings on 22 Catherine Drive due to delinquent taxes.

16. On August 13, 2015, the administrator and heir of the Catherine Drive Estate went to Carnevale’s City Treasurer’s office to discuss 22 Catherine Drive with Carnevale. In an email to real estate agent Howcroft and attorney Rabchenuk sent using her City email account, Carnevale recounted her discussion with the administrator and heir as follows:

I informed him that we are still moving forward with the closing. . . . He said that it is the “best news.” I told him that he needed to call Paul [Rabchenuk] Monday and let him know that he is going to cooperate with him and participate in the closing. I also told him that foreclosure is the next step if he does not cooperate and that I expect him to contact me on Monday. I explained the seriousness of the situation and that he should be listening to me, Paul and Janet [Howcroft] and no one else. I am hopeful I got through to him.

17. The Essex County Probate and Family Court issued attorney Rabchenuk a license to sell 22 Catherine Drive on September 1, 2015.

18. The administrator and heir of the Catherine Drive Estate sold 22 Catherine Drive to Melo’s Construction on October 2, 2015 for \$195,000. At the time, the assessed value of the property was \$282,800.

19. Melo’s Construction secured a construction permit from the City to construct a garage addition with a kitchen and bath valued at \$90,000. Melo’s Construction resold 22 Catherine Drive for \$625,000 on June 1, 2016.

Conclusions of Law

20. 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.

21. As City Treasurer, Carnevale was a municipal employee as that term is defined in G.L. c. 268A, § 1(g).

22. The opportunity to purchase 22 Catherine Drive from the administrator and heir of the Catherine Drive Estate was a privilege.

23. This privilege was of substantial value. As a result of the purchase, Howcroft was able to receive a broker's fee of \$9,750 and Melo's Construction was able to realize a substantial profit on the June 1, 2016 sale of 22 Catherine Drive.

24. This privilege was unwarranted because it was secured through Carnevale's knowing use of her City Treasurer position and her foreclosure power to steer, direct and compel the administrator and heir to sell 22 Catherine Drive to Melo's Construction using her friend Howcroft as his real estate broker.

25. This privilege was not properly available to similarly situated individuals because no private buyer of real estate is entitled to benefit from the use of the official governmental power of a city treasurer to foreclose on property for nonpayment of taxes to steer, direct, coerce or otherwise compel the owner of the real estate to sell to them.

26. Therefore, by using her official City Treasurer position to steer, direct and compel the administrator and heir of the Catherine Drive Estate to sell property to Melo's Construction and to otherwise facilitate that sale, Carnevale knowingly used her City Treasurer position to secure for Howcroft and Melo's Construction an unwarranted privilege of substantial value not properly available to other similarly situated individuals. In so doing, Carnevale violated § 23(b)(2)(ii).

32 Columbia Boulevard

Facts

27. As of 2016, the property located at 32 Columbia Boulevard, Peabody, Massachusetts had an outstanding tax liability of approximately \$24,613. The property was owned by the Columbia Boulevard Estate.^[3]

28. At the time, the daughter of the deceased owner of 32 Columbia Boulevard (the "Decedent's Daughter") was

living at 32 Columbia Boulevard and unable to pay the real estate taxes.

29. In or about May 2016, Carnevale as City Treasurer hired attorney Rabchenuk to probate the Columbia Boulevard Estate so that 32 Columbia Boulevard could be sold. Attorney Rabchenuk charged \$733.36 for filing fees and advertising, which the City paid on July 6, 2016.

30. In order for her to move from 32 Columbia Boulevard upon its sale, the Decedent's Daughter required replacement housing. On or about July 12, 2016, Carnevale as City Treasurer sent a letter on City Treasurer letterhead to the Peabody Housing Authority requesting assistance in placing the Decedent's Daughter in "suitable housing."

31. On August 23, 2016, Carnevale as City Treasurer contacted the Peabody Housing Authority using her City email account to ask about the Decedent's Daughter's place on the public housing list. Carnevale advised that a "cash sale" for 32 Columbia Boulevard was ready to proceed. The "cash sale" was the sale of 32 Columbia Boulevard to Victory Realty Trust.

32. On September 16, 2016, Carnevale, using her City email, notified attorney Rabchenuk and real estate agent Howcroft that the Decedent's Daughter would soon have housing and that they needed to complete the "two trusts." The "two trusts" were the Decedent's Daughter's Trust^[4] and Victory Realty Trust.

33. The Decedent's Daughter's Trust was recorded with the Southern Essex District Registry of Deeds on September 20, 2016 along with a quitclaim deed to the trustee of the Decedent's Daughter's Trust.

34. On September 22, 2016, Carnevale as City Treasurer used her City email to request an invoice from attorney Rabchenuk for his legal work related to establishing the Decedent's Daughter's Trust. Attorney Rabchenuk submitted an invoice for \$5,710 for the Decedent's Daughter's Trust, which the City paid on September 29, 2016.

35. On September 29, 2016, Carnevale as City Treasurer again contacted the Peabody Housing Authority using her City email to ask when the Decedent's Daughter's apartment would be ready stating, "She is currently living with no heat/hot water in the house."

36. Richard Carnevale signed a check dated October 6, 2016, to attorney Rabchenuk from The Carnevale Group checking account in the amount of \$587.50 for drafting the

Victory Realty Trust. Richard Carnevale operates The Carnevale Group. Carnevale is a signatory on The Carnevale Group checking account and uses the company's email account.

37. On October 25, 2016, Victory Realty Trust was recorded at the Southern Essex District Registry of Deeds. Carnevale's daughter was trustee of Victory Realty Trust. Carnevale's husband, Richard Carnevale, and Howcroft's husband, Richard Howcroft, were beneficiaries.

38. On November 15, 2016, Carnevale as City Treasurer again contacted the Peabody Housing Authority using her City email inquiring as to the date when the Decedent's Daughter's public housing unit would be available. The Decedent's Daughter moved into public housing on November 21, 2016.

39. On November 22, 2016, the decedent's granddaughter, as trustee of the Decedent's Daughter's Trust, signed a purchase and sale agreement to sell 32 Columbia Boulevard to Carnevale's daughter, as trustee for Victory Realty Trust, for \$125,000. On the same date, Carnevale's daughter, as trustee for Victory Realty Trust, signed a purchase and sale agreement to sell 32 Columbia Boulevard to Melo's Construction for \$210,000.

40. At the time, the assessed value of 32 Columbia Boulevard was \$228,800.

41. On November 26, 2016, Victory Realty Trust issued a check for \$5000 payable to the decedent's granddaughter as trustee for Decedent's Daughter's Trust as an advance payment on the purchase of 32 Columbia Boulevard.

42. On December 6, 2016, two deposits of \$59,000 were made to the Victory Realty Trust checking account from lines of credit secured by Victory Realty Trust beneficiaries Richard Carnevale and Richard Howcroft.

43. On December 7, 2016, the trustee of the Decedent's Daughter's Trust sold 32 Columbia Boulevard to the trustee of Victory Realty Trust, Carnevale's daughter, for \$125,000. Under the terms of the sale, real estate agent Howcroft was to receive a broker's commission of \$4,000.

44. On December 12, 2016, the trustee of the Decedent's Daughter's Trust filed a confirmatory deed for the sale of 32 Columbia Boulevard to the trustee of Victory Realty Trust.

45. Also on December 12, 2016, the trustee of Victory Realty Trust, Carnevale's daughter, sold 32 Columbia Boulevard to Melo's Construction for \$210,000.

46. On December 12, 2016, a deposit of \$204,016.84 was made to the Victory Realty Trust checking account.

47. On December 15, 2016, Victory Realty Trust issued the following checks: Janet Howcroft, \$59,000.00; Richard Carnevale, \$59,000.00; The Carnevale Group, \$43,430.92; and Janet Howcroft \$43,430.92.

48. On December 15, 2016, an electronic funds transfer of \$21,594 was made from The Carnevale Group to Carnevale and her husband's joint savings account.

49. On December 15, 2016, an electronic funds transfer of \$1,050 was made from Carnevale and her husband's joint savings account to their joint checking account.

50. On December 15, 2016, Carnevale wrote a check for \$1,050 to her daughter for "trustee fees."

51. The City was not reimbursed from the sale of 32 Columbia Boulevard for any of the fees it paid to attorney Rabchenuk in connection with probating the Columbia Boulevard Estate and establishing Decedent's Daughter's Trust.

§ 19

52. Except as otherwise permitted,^[5] § 19 of G.L. c. 268A prohibits a municipal employee from participating^[6] as such an employee in a particular matter^[7] in which, to his knowledge, he or an immediate family member^[8] has a financial interest.^[9]

53. The particular matters in which Carnevale participated were the decisions to hire attorney Rabchenuk to probate the Columbia Boulevard Estate and create a trust to sell 32 Columbia Boulevard, and to expedite Decedent's Daughter's move into public housing. Carnevale participated as City Treasurer in these particular matters by: (1) hiring attorney Rabchenuk to probate the Columbia Boulevard Estate and create the trust, and repeatedly following up regarding this legal work with emails to attorney Rabchenuk copied to real estate agent Howcroft; and (2) sending the July 2016 letter on her City Treasurer letterhead to the Director of the Peabody Housing Authority and repeatedly following up using her City email to the housing authority in an effort to expedite Decedent's Daughter's move out of 32 Columbia Boulevard and into public housing.

54. Carnevale's daughter is a member of Carnevale's immediate family and trustee of Victory Realty Trust. Carnevale's husband is a member of Carnevale's

immediate family and a beneficiary of Victory Realty Trust.

55. Carnevale and her immediate family had a financial interest in the decisions to hire attorney Rabchenuk to probate the Columbia Boulevard Estate and create the Decedent's Daughter's Trust and to contact the Peabody Housing Authority in order to expedite the Decedent's Daughter's move into public housing, because these decisions, and the actions that were taken as a result, facilitated the sale of 32 Columbia Boulevard to Victory Realty Trust of which her daughter was trustee and her husband was a beneficiary.

56. When, as City Treasurer, Carnevale asked attorney Rabchenuk to draft the Decedent's Daughters Trust documents and notified the Peabody Housing Authority that the sale of 32 Columbia Boulevard was imminent in an effort to expedite the Decedent's Daughter's move into public housing, she knew that her immediate family members had a financial interest in these matters as they were necessary for the completion of the sale of 32 Columbia Boulevard to Victory Realty Trust.

57. Therefore, by as City Treasurer hiring attorney Rabchenuk to probate the Columbia Boulevard Estate and create the Decedent's Daughter's Trust, and by as City Treasurer repeatedly communicating with the Peabody Housing Authority to expedite the Decedent's Daughter's move to public housing, Carnevale violated § 19.

§ 23(b)(2)(ii)

Use of Public Funds to Probate a Private Estate

58. The use of public resources to pay attorney Rabchenuk to probate the Columbia Boulevard Estate and create the Decedent's Daughter's Trust was a privilege.

59. This privilege was unwarranted because Carnevale's use of public resources for these private purposes was not authorized by law except only where the City was fully reimbursed from the proceeds of sale of the estate's property.

60. The unwarranted privilege was of substantial value because attorney Rabchenuk's legal fees totaled \$6,443.36 and the creation of the trust made possible Victory Realty Trust's profitable acquisition of 32 Columbia Boulevard.

61. Carnevale secured this unwarranted privilege for herself and Victory Realty Trust and its beneficiaries. Attorney Rabchenuk's services on the Columbia Boulevard Estate and Decedent's Daughter's Trust enabled Victory Realty Trust to purchase 32 Columbia Boulevard.

62. The privilege of using City funds to pay to probate a private estate and create a private trust without full reimbursement of the City for the expenditure was not properly available to Carnevale, the Victory Realty Trust beneficiaries or any other similarly situated individuals seeking to purchase real estate in Peabody.

63. Therefore, by, as City Treasurer, using public resources for a private purpose without fully reimbursing the City for that use, Carnevale knowingly used her official position to secure an unwarranted privilege of substantial value for herself and Victory Realty Trust and its beneficiaries.

§ 23(b)(2)(ii)

Use of City Email and Letterhead to Expedite Public Housing Move

64. The Decedent's Daughter's expedited move into Peabody Housing Authority housing so that Victory Realty Trust could purchase 32 Columbia Boulevard was a privilege which Carnevale sought by repeatedly contacting the housing authority using her official title, office letterhead and City email.

65. This privilege was unwarranted because there was no legal basis or justification for Carnevale to use public resources, including her position as City Treasurer, to facilitate and expedite the Decedent's Daughter's move into public housing so that Victory Realty Trust could purchase 32 Columbia Boulevard.

66. This privilege was of substantial value because the Decedent's Daughter vacating the property enabled Carnevale's daughter, as trustee of Victory Realty Trust, to purchase the property for \$125,000, when the assessed value was \$228,800, and immediately sell the property for \$210,000, realizing a profit of \$85,000 for the beneficiaries of the Victory Realty Trust.

67. This unwarranted privilege was not properly available to Carnevale or any other similarly situated individual as no public employee may use his or her official position to help facilitate a private purchase of real estate with which the employee, the employee's family or the employee's friends are associated.

68. Therefore, by, as City Treasurer, using public resources to expedite the Daughter's move to public housing, Carnevale knowingly used her official position to secure for herself, her immediate family, and her friends an unwarranted privilege of substantial value that was not properly available to similarly situated individuals. Thus, Carnevale violated § 23(b)(2)(ii).

22 Lynnfield Street

Facts

69. As of 2015, the property located at 22 Lynnfield Street, Peabody, Massachusetts had an outstanding tax liability of approximately \$12,379. The property was held in Trust (“Lynnfield Trust”^[10]).

70. In September 2015, Carnevale as City Treasurer filed a complaint in Land Court to foreclose on the tax lien.

71. Between September 2015 and 2017, a trustee of the Lynnfield Trust was removed and replaced, and a private attorney was granted a mortgage on the property.

72. In or about 2017, Carnevale as City Treasurer asked a Peabody Building Commissioner whether the building on 22 Lynnfield Street was a two-family or a single-family dwelling because she was assisting the owners in selling the property.

73. The Building Commissioner advised Carnevale that he considered the building to be a two-family dwelling.

74. Victory Realty Trust required a mortgage to purchase the 22 Lynnfield Street property. An April 2, 2017 email to Century Bank, from Carnevale’s husband’s email account, advised that Victory Realty Trust planned to close on the purchase of 22 Lynnfield Street in mid-April.

75. In an April 12, 2017 email, Carnevale as City Treasurer advised the City’s Tax Title Attorney’s paralegal that the sale of 22 Lynnfield Street was scheduled for closing on April 20, 2017 and asked whether a redemption^[11] could be filed immediately following the closing.

76. In accordance with Carnevale’s request as City Treasurer, the City’s Tax Title Attorney’s paralegal prepared an Instrument of Redemption dated April 18, 2017.

77. On April 26, 2017, the trustee of Victory Realty Trust secured a mortgage for 22 Lynnfield Street through Century Bank in the amount of \$244,000.

78. On April 26, 2017, the trustee of the Lynnfield Trust sold 22 Lynnfield Street to the trustee of Victory Realty Trust for \$239,500.

79. Carnevale as City Treasurer signed the Instrument of Redemption and it was recorded with the Southern Essex Registry of Deeds on May 11, 2017.

Conclusions of Law

§ 19

80. The decisions to ask a City Building Commissioner to determine whether 22 Lynnfield Street was a two-family or a single-family dwelling, to direct the City’s tax title attorney to prepare an Instrument of Redemption in anticipation of the sale of 22 Lynnfield Street to Victory Realty Trust, and to sign the Instrument of Redemption, were particular matters. Carnevale participated as City Treasurer in each of these particular matters by making these decisions and taking these actions.

81. Carnevale’s immediate family had a financial interest in these particular matters because her decisions and actions as City Treasurer facilitated Victory Realty Trust’s purchase of 22 Lynnfield Street and cleared the tax lien. When she acted as City Treasurer on these particular matters, Carnevale knew of her immediate family’s financial interest in these particular matters resulting from their involvement in the Victory Realty Trust.

82. Therefore, by as City Treasurer taking actions she knew would facilitate the sale of 22 Lynnfield Street to the Victory Realty Trust, Carnevale participated officially in particular matters in which her immediate family had to her knowledge a financial interest. In so doing, Carnevale violated §19.

Resolution

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 Jeanne Carnevale:

(1) that Carnevale pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$50,000 as a civil penalty for violating G.L. c. 268A, §§ 19 and 23(b)(2)(ii); and,

(2) that Carnevale 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 16, 2020

^[1] A pseudonym.

^[2] The City paid Attorney Rabchenuk’s fees. The City was reimbursed upon the sale of 22 Catherine Drive.

^[3] A pseudonym.

^[4] A pseudonym.

^[5] None of the exemptions applies.

^[6] “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)*.

^[7] “Particular matter” means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. *G.L. c. 268A, § 1(k)*.

^[8] “Immediate family” means the employee and his spouse, and their parents, children, brothers and sisters. *G.L. c. 268A, § 1(e)*.

^[9] “Financial interest” means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. *See Graham v. McGrail*, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. *See EC-COI-84-98*. The interest can be affected in either a positive or negative way. *EC-COI-84-96*.

^[10] A pseudonym.

^[11] An Instrument of Redemption is a document signed by the City Treasurer indicating that the tax title taking, including costs, has been satisfied.

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

**IN THE MATTER OF
JAMES ATKINSON**

PUBLIC EDUCATION LETTER

April 30, 2020

James Atkinson

Dear Mr. Atkinson:

As you know, the State Ethics Commission conducted a preliminary inquiry into whether you, in your former capacity as a City of Methuen city councilor, violated the conflict of interest law by, in September 2017, voting to approve the Methuen Police Department (“MPD”) Superior Officers’ collective bargaining agreement covering the period from July 1, 2017 through June 30, 2020 (“Superior Officers’ CBA”). On December 19, 2019, the Commission voted to find reasonable cause to believe that your actions violated the state conflict of interest law, General Laws chapter 268A, and authorized adjudicatory proceedings.

Rather than initiating adjudicatory proceedings, however, the Commission chose to resolve this matter through the issuance of this Public Education Letter for the following reasons: (1) you relied in good faith on the advice of Methuen’s city solicitor in voting to approve the Superior Officers’ CBA; (2) prior to your votes in question, you had a practice of abstaining from participating as a city councilor in MPD matters; (3) you were not involved in negotiating or drafting the Superior Officers’ CBA; (4) the City Council unanimously approved the Superior Officers’ CBA and evidently would have approved it without your votes; and (5) you cooperated fully with the Commission’s investigation. The Commission believes that a public resolution of this matter is warranted given its importance to Methuen and its residents and the extent of the controversy and confusion concerning how the conflict of interest law applied to the City Council’s September 2017 approval of the Superior Officers’ CBA. The Commission believes further that this Public Education Letter will give you, other public employees and the public in general a clearer understanding of how the conflict of interest law applied in your situation in Methuen and applies in similar circumstances throughout the Commonwealth.

The Commission and you have agreed that this matter will be resolved publicly with this 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 Facts

On September 18, 2017, seven collective bargaining agreements, including the Superior Officers’ CBA,^[1] which had been negotiated by then Methuen Mayor Stephen N. Zanni,^[2] were before the City Council

at its regular meeting for approval. Except for the MPD Patrolmen's collective bargaining agreement,^[3] the Council, with nine members present, voted unanimously to approve each of the agreements.^[4] Also on September 18th, immediately following its regular meeting, the City Council held a special meeting in which it again voted on the seven collective bargaining agreements.^[5] The City Council again unanimously voted to approve the Superior Officers' CBA.^[6] At both meetings, the motion to approve the Superior Officers' CBA was made by Councilor George Kazanjian and seconded by Councilor Thomas Ciulla, and the Council's votes were voice votes without roll calls.

Both September 18, 2017 City Council meetings were chaired by you. In addition to the city councilors, Mayor Zanni, Methuen City Solicitor Richard J. D'Agostino and Methuen City Auditor Thomas Kelly were present at both meetings. There was no presentation, explanation or discussion whatsoever prior to the votes during either meeting of the terms, cost or financial impact of any of the collective bargaining agreements negotiated by Mayor Zanni and approved by the City Council. Not a single question was asked about the substance of the agreements prior to the votes at either meeting.^[7]

Prior to the September 18th votes, City Solicitor D'Agostino provided the City Council with a memorandum, dated September 18, 2017, in which he advised that the city councilors who normally abstained under the conflict of interest law from participating in Council discussions and votes on MPD-related issues could nonetheless do so under the so-called "Rule of Necessity" if without their participation the Council would lack a quorum to act on the issues.^[8] City Solicitor D'Agostino more specifically advised in the memorandum that all city councilors could vote on the MPD collective bargaining agreements at the September 18, 2017 Council meeting. Prior to receiving the city solicitor's September 18th memorandum, several city councilors, including you, had regularly abstained from participating in MPD-related matters due to conflict of interest concerns.^[9]

At the September 18, 2017 regular City Council meeting, City Solicitor D'Agostino, in response to questions from Councilor Jajuga, repeated his written advice that all city councilors could vote on the MPD collective bargaining agreements after the Rule of Necessity was invoked without "peril" under the conflict of interest law. After the Council's first votes to approve the seven collective bargaining agreements, the city solicitor gave further advice on the Rule of Necessity describing its invocation as "a last resort," but not explaining what that meant or how the invocation of the rule on September 18th was a last resort. Later that evening at the Council's special meeting,

when asked by Councilor Vidler just before the second votes on the two MPD collective bargaining agreements whether the Rule of Necessity need to be invoked again, City Solicitor D'Agostino replied "yes" and reaffirmed his advice concerning the rule.^[10]

After receiving the city solicitor's advice at both the regular and special City Council meetings that you could vote on the MPD collective bargaining agreements under the Rule of Necessity, you voted at both of those meetings to approve the agreements including the Superior Officers' CBA. At the time of your votes, you had an arrangement concerning prospective employment with the MPD.^[11]

You had not participated in drafting or negotiating the Superior Officers' CBA and testified under oath that then-Mayor Zanni told you, and that you believed, the agreement only offered "0/2/2" raises to officers (i.e., zero increase the first year, 2% the second, and 2% the third). The agreement itself, which is dated August 31, 2017,^[12] copies of which were apparently provided to you at or before the September 18th meeting, included on page 22, in Article XXIV – Compensation, the following language in bold font:

**The Superior Officers shall receive the following compensation,
The cost of living increases are as follows:
July 1, 2017 – zero percent increase
July 1, 2018 – two percent increase
July 1, 2019 – two percent increase**

The agreement, however, further provided on the same page "The preceding increases shall be implemented as follows:" and then set out nearly two pages of complex formulas for calculating the superior officers' compensation. These formulas were substantially different from those used in prior agreements and had the effect of dramatically increasing the superior officers' compensation.^[13] Prior to or at the time of your September 18, 2017 votes, you were not provided with, nor did you request, any comparison of the new Superior Officers' CBA's language and compensation formulas with those of the prior superior officers' collective bargaining agreement, nor with any estimate of the financial impact on the City of the new formulas and other terms of the new agreement.^[14]

The City did not cost-out the new Superior Officers' CBA until after former City Councilor and new Methuen Mayor Jajuga requested a financial analysis of the agreement shortly after his January 2018 inauguration. Estimates of salaries under the new Superior Officers' CBA varied due to the complexity of the agreement's compensation formulas, but all indicated that the superior officers would

be receiving exceptionally large pay increases. It was estimated that the salaries of captains, lieutenants, and sergeants would rise more than 180% to approximately \$440,000, \$270,000, and \$190,000, respectively, under the new Superior Officers' CBA, not including overtime or paid details. Reportedly, these salaries were never paid. In July 2018, the Mayor's office entered into a memorandum of understanding ("MOU") with the superior officers' union that reduced their pay increases to an average 18.7% increase. Under the MOU, captains' average base pay was to rise to about \$130,000, lieutenants' to about \$113,000, and sergeants' to about \$92,000 by fiscal year 2020.

On February 1, 2019, the Office of the Inspector General ("OIG") issued and made public a letter to then Mayor Jajuga and the City Council detailing and criticizing, among other things, the City's process for approving the Superior Officers' CBA. The OIG letter concluded that under the circumstances it was unlikely that the 2017 Superior Officers' CBA and the 2018 MOU were legally enforceable agreements and recommended that the City Council seek to rescind the CBA and MOU. Following the issuance of the OIG's letter, the Mayor's office reset superior officers' salaries to the levels provided for in the superior officers' collective bargaining agreement for 2014-2017. Arbitration between the City and the superior officers' union concerning the agreement is reportedly ongoing.

The Law

Section 19

As a Methuen City Councilor at the relevant time, you were a municipal employee subject to the restrictions of the conflict of interest law, G.L. c. 268A. Section 19 of the law prohibits a municipal employee from participating^[15] in his public capacity in a particular matter^[16] in which to his knowledge he or his immediate family^[17], or partner, or a business organization^[18] in which he is serving as an employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment has a financial interest. The financial interest may be positive or negative, large or small.

In this matter, the City Council's September 18, 2017 decision to approve the Superior Officers' CBA was a "particular matter" under § 19. The MPD, an organization^[19] with which you had an arrangement concerning prospective employment, had a financial interest in the collective bargaining agreement as its fiscal impact would directly affect the MPD's budget and you knew of this financial interest.^[20]

Accordingly, you were prohibited by § 19 from participating as a city councilor in the City Council's September 18, 2017 decision to approve the Superior Officers' CBA.^[21] Nonetheless, you participated in that decision as a city councilor by twice voting to approve the agreement after having been advised by the city solicitor that you were permitted to do so under the "Rule of Necessity."

The Rule of Necessity

In almost all circumstances, elected officials must abstain from participating in their official capacities in any particular matter as to which they have a conflict of interest under § 19.^[22] In rare instances, however, when: (1) an elected governmental body is legally required to act on a matter, and (2) no quorum can be obtained of non-conflicted members of the body, and (3) there is no other governmental body that can act on the matter, then, as a last resort, the members of the elected body may invoke the judicially-created "Rule of Necessity" and act on the matter. With respect to the City Council September 18, 2017 approval of the Superior Officers' CBA, the rare circumstances permitting the invocation of the Rule of Necessity did not exist.

First, the Rule of Necessity may only be invoked when it is legally necessary to act. Here, the City Council was not legally required to act at the time of the September 18, 2017 votes because the existing collective bargaining agreement for the superior officers contained an "evergreen clause" providing that the agreement would remain in effect "until the approval of a successor contract." Thus, the MPD superior officers would continue to be compensated pursuant to the existing collective bargaining agreement until such time as a new agreement was approved. Accordingly, although the prior agreement's stated term had expired on June 30, 2017, it nonetheless was still in full force and effect on September 18, 2017 and would have continued to be so beyond that date until the approval of a new agreement. (Indeed, the prior superior officers' agreement was signed in July 2015, more than one year into the July 2014 to June 2017 period it covered.) No law, rule or regulation required the City Council to replace the existing superior officers' collective bargaining agreement with a new one at the time of the 2017 vote. That Mayor Zanni's term was expiring and five city councilors were leaving the Council in December 2017 did not create a legal necessity to replace the existing agreement before 2018, let alone by September 18, 2017. Nor did the prohibition against raising municipal employees' salaries during the last three months of an election year create a legal necessity to approve the new agreement on

September 18, 2017. The approval of a new superior officers' agreement legally could have waited until after a new mayor and new city councilors were sworn in in January 2018.^[23] Accordingly, there was no legal necessity for the City Council to act on the Superior Officers' CBA on September 18, 2017.

Second, even when there is a legal necessity for an elected body to act, the Rule of Necessity may only be invoked when a quorum cannot be obtained of members who are not conflicted or whose conflicts of interest cannot be resolved through public disclosure or otherwise. Therefore, before a body may act under the Rule of Necessity, all members of the body must fully disclose their conflicts of interest with respect to the matter before the body. If members have conflicts of interest with respect to a matter before the body arising under § 23(b)(3)^[24] of the law rather than under § 19, they may still lawfully participate if they first publicly disclose their conflicts and then act fairly and impartially in the matter. If taken together there are enough unconflicted members and conflicted members who are able to resolve their conflicts through disclosure or otherwise for a quorum, the Rule of Necessity may not be used. Accordingly, in the present matter, rather than invoking the Rule of Necessity on the basis of the vaguely described conflicts of unidentified city councilors, as was done by the City Council on September 18, 2017, each city councilor's MPD-related conflict of interest should have been fully disclosed and separately considered to determine if the conflict was resolvable through public disclosure pursuant to § 23(b)(3) or an unresolvable conflict under § 19. Had this been done, it is apparent that the City Council could have obtained a quorum of councilors who were not conflicted under § 19 at the time of the September 18, 2017 votes. Specifically, had all of the city councilors fully and publicly disclosed their MPD-related conflicts of interest at the September 18, 2017 regular and special Council meetings prior to the votes on the MPD collective bargaining agreements, it would have been evident that, with respect to the Superior Officers' CBA, only your conflict and those of two other councilors were not resolvable by public disclosure and that, without the three of you, there were enough city councilors present who were eligible, or would become eligible through public disclosure under § 23(b)(3), to participate in the Council's action on the Superior Officers' CBA for a quorum. Accordingly, even had there been a legal necessity for the City Council to act on the Superior Officers' CBA on September 18, 2017, the Council could not properly have invoked the Rule of Necessity to do so and permit your participation because it had a quorum of members eligible (immediately or through disclosure) to act without you.

Given that the circumstances required to permit the City Council to invoke of the Rule of Necessity did not then exist,^[25] the Commission found that there is reasonable cause to believe that you violated § 19 of the conflict of interest law by voting as a city councilor to approve the Superior Officers' CBA on September 18, 2017.

Disposition

The Commission is authorized to resolve violations of G.L. c. 268A with adjudicatory proceedings and civil penalties. 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.

This matter is now closed.

Sincerely,

David A. Wilson
Executive Director

^[1] The Superior Officers' CBA is with the Methuen Police Officers Association, New England Police Benevolent Association, Local 17, which represents all Methuen police captains, lieutenants and sergeants, excluding intermittent and auxiliary police, and covers the period from July 1, 2017 through June 30, 2020. The 2017 Superior Officers' CBA succeeded a prior collective bargaining agreement between the same parties which was signed on July 9, 2015 and covered the period from July 1, 2014 through June 30, 2017.

^[2] Mayor Zanni left office at the end of 2017 when his term ended. In addition to Mayor Zanni, the City's negotiating team reportedly included City Solicitor Richard J. D'Agostino, MPD Chief Joseph Solomon and Human Resources Director Anne Randazzo.

^[3] The Patrolmen's CBA was approved with eight in favor, none opposed, and one (Fountain) abstaining.

^[4] The Council took separate votes approving each of the seven agreements in a total of about seven minutes.

^[5] City of Methuen ordinances required two separate meetings and votes for the City Council to approve

collective bargaining agreements. At the special meeting, the city solicitor stated that the second vote on the agreements was occurring in the special meeting rather than at the next regular Council meeting in October because the Council was prohibited by statute from voting to raise municipal employee salaries during the last three months of a year during which a municipal election is held. 2017 was an election year in Methuen.

^[6] One City Councilor (Ferry) was not present at the special meeting, which lasted a little over six minutes.

^[7] Toward the end of the regular meeting, after the votes on the collective bargaining agreements and during the discussion of the contract with the city council's employees, there was a brief exchange between City Councilor Jennifer Kannan and City Auditor Thomas Kelly in which Kannan stated of the mayor and the collective bargaining agreements he negotiated that "he put a 0, 2 and 2 for next year," and Kelly stated that the approved collective bargaining agreements "all go into fiscal year 2019 and 2020."

^[8] The City Council, a nine-member body, required at least five members present and voting to have a quorum to act on the collective bargaining agreements.

^[9] As of September 18, 2017, there were two city councilors with immediate family members who were MPD superior officers, one whose immediate family member was an MPD patrolman, one who was employed by the MPD as an intermittent police officer, and one (you) who had an arrangement for future employment with the MPD.

^[10] Based on the meeting minutes and videos, it is not clear that a city councilor rather than the city solicitor expressly invoked the rule at either meeting.

^[11] At the time of the vote, the City had offered you a position in the MPD as a junior accountant, contingent on the passage of a home rule petition authorizing the appointment. The petition was approved on December 13, 2017 and you began work in the MPD on December 27, 2017.

^[12] According to news media reports, however, the agreement may in fact not have been signed until September 6, 2017. The agreement was signed by Mayor Zanni and Gregory J. Gallant, President, NEPBA Local 17.

^[13] Most importantly, the Article XXIV paragraph A of the new agreement changed the definition of "base pay" to include additional payments that were not included in the

prior contract and changed the order in which the "base pay" is calculated to maximize the benefit for the superior officers, thus "Base pay and added base pay calculations are to be calculated in the following order and manner to arrive at base pay for all purposes: Base pay, then add cleaning allowance, subtotal, then calculate and add Holiday compensation under Article XII, then add calculated Protective Vest/Hazardous Duty and Technology Compensation percentage, calculate Quinn Bill/Education Incentive."

^[14] The new Superior Officers' CBA, like its 2015 predecessor, contained in its final article (Article XXXI – Duration of Agreement) a so-called "evergreen clause" stating that "[t]he provisions of this Contract shall remain in effect until the approval of a successor contract."

^[15] "Participate" means to participate in agency action or in a particular matter personally and substantially as public employee through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. *G.L. c. 268A, §1(j)*.

^[16] "Particular matter" includes any contract, claim, controversy, decision or determination. *G.L. c. 268A, §1(k)*.

^[17] "Immediate family" means the employee and spouse, their parents, children and brothers and sisters. *G.L. c. 268A, §1(e)*.

^[18] "Business organization" does not include municipalities. *EC-COI-06-03*.

^[19] The MPD, as a municipal agency, is an "organization" but not a "business organization" within the meaning of § 19.

^[20] Had you been on September 18, 2017 a current rather than prospective MPD employee, you would not have had a § 19 conflict, but instead a § 23(b)(3) conflict which you would have been able to resolve with a public disclosure.

^[21] For the same reason, § 19 also prohibited you from participating in the approval of the Patrolmen's CBA.

^[22] While appointed public employees may seek to obtain an exemption to this section through disclosure to and approval by their appointing authority, this option is not available to elected public officials.

^[23] You and Councilors Ferry, Ciulla, Marsan and Fountain were not eligible for reelection in November 2017 due to

term limits. Councilor Jajuga was seeking election as mayor.

^[24] Section 23(b)(3) 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 the public employee's favor in the performance of her official duties, or that she 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 provides, however, that "it shall be unreasonable to so conclude if such officer or 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."

^[25] A fuller explanation of the Rule of Necessity and its proper use, with examples, may be found at <https://www.mass.gov/advisory/advisory-05-05-the-rule-of-necessity>.

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

**IN THE MATTER OF
JAMES JAJUGA**

PUBLIC EDUCATION LETTER

April 30, 2020

James Jajuga
c/o William Chase, Esq.
Sheehan, Schiavoni, Jutras
and Magliocchetti, LLP
70 Bailey Boulevard
Haverhill, MA 01830

Dear Mr. Jajuga:

As you know, the State Ethics Commission conducted a preliminary inquiry into whether you, in your former capacity as a City of Methuen city councilor, violated the conflict of interest law by, in September 2017, voting to approve the Methuen Police Department ("MPD") Superior Officers' collective bargaining agreement covering the period from July 1, 2017 through June 30, 2020 ("Superior Officers' CBA"). On December 19, 2019, the Commission voted to find reasonable cause to believe that your actions violated the state conflict of interest law,

General Laws chapter 268A, and authorized adjudicatory proceedings.

Rather than initiating adjudicatory proceedings, however, the Commission chose to resolve this matter through the issuance of this Public Education Letter for the following reasons: (1) you relied in good faith on the advice of Methuen's city solicitor in voting to approve the Superior Officers' CBA; (2) prior to your votes in question, you had a practice of abstaining from participating as a city councilor in MPD matters; (3) you were not involved in negotiating or drafting the Superior Officers' CBA; (4) the City Council unanimously approved the Superior Officers' CBA and evidently would have approved it without your votes; and (5) you cooperated fully with the Commission's investigation. The Commission believes that the public resolution of this matter is warranted given its importance to Methuen and its residents and the extent of the controversy and confusion concerning how the conflict of interest law applied to the City Council's September 2017 approval of the Superior Officers' CBA. The Commission believes further that this Public Education Letter will give you, other public employees and the public in general a clearer understanding of how the conflict of interest law applied in your situation in Methuen and applies in similar circumstances throughout the Commonwealth.

The Commission and you have agreed that this matter will be resolved publicly with this 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 Facts

On September 18, 2017, seven collective bargaining agreements, including the Superior Officers' CBA,^[1] which had been negotiated by then Methuen Mayor Stephen N. Zanni,^[2] were before the City Council at its regular meeting for approval. Except for the MPD Patrolmen's collective bargaining agreement,^[3] the Council, with nine members present, voted unanimously to approve each of the agreements.^[4] Also on September 18th, immediately following its regular meeting, the City Council held a special meeting in which it again voted on the seven collective bargaining agreements.^[5] The City Council again unanimously voted to approve the Superior Officers' CBA.^[6] At both meetings, the motion to approve the Superior Officers' CBA was made by Councilor George Kazanjian and seconded by Councilor Thomas Ciulla, the Council's votes were voice votes without roll calls.

Both September 18, 2017 City Council meetings were chaired by Councilor Atkinson. In addition to the city councilors, Mayor Zanni, Methuen City Solicitor Richard

J. D'Agostino and Methuen City Auditor Thomas Kelly were present at both meetings. There was no presentation, explanation or discussion whatsoever prior to the votes during either meeting of the terms, cost or financial impact of any of the collective bargaining agreements negotiated by Mayor Zanni and approved by the City Council. Not a single question was asked about the substance of the agreements prior to the votes at either meeting.^[7]

Prior to the September 18th votes, City Solicitor D'Agostino provided the City Council with a memorandum, dated September 18, 2017, in which he advised that the city councilors who normally abstained under the conflict of interest law from participating in Council discussions and votes on MPD-related issues could nonetheless do so under the so-called "Rule of Necessity" if without their participation the Council would lack a quorum to act on the issues.^[8] City Solicitor D'Agostino more specifically advised in the memorandum that all city councilors could vote on the MPD collective bargaining agreements at the September 18, 2017 Council meeting. Prior to receiving the city solicitor's September 18th memorandum, several city councilors, including each of you, had regularly abstained from participating in MPD-related matters due to conflict of interest concerns.^[9]

At the September 18, 2017 regular City Council meeting, City Solicitor D'Agostino, in response to questions from you, repeated his written advice that all city councilors could vote on the MPD collective bargaining agreements under the Rule of Necessity without "peril" under the conflict of interest law. After the Council's first votes to approve the seven collective bargaining agreements, the city solicitor gave further advice on the Rule of Necessity describing its invocation as "a last resort," but not explaining what that meant or how the invocation of the rule on September 18th was a last resort. Later that evening at the Council's special meeting, when asked by Councilor Vidler just before the second votes on the two MPD collective bargaining agreements whether the Rule of Necessity needed to be invoked again, City Solicitor D'Agostino replied "yes" and reaffirmed his advice concerning the rule.^[10]

After receiving the city solicitor's advice at both the regular and special City Council meetings that you could vote on the MPD collective bargaining agreements under the Rule of Necessity, you voted at both of those meetings to approve the agreements including the Superior Officers' CBA. At the time of your votes, your son was a MPD superior officer and was to be compensated pursuant to the Superior Officers' CBA.

You had not participated in drafting or negotiating the Superior Officers' CBA and you testified under oath that

then-Mayor Zanni told you, and that you believed, the agreement only offered "0/2/2" raises to officers (i.e., zero increase the first year, 2% the second, and 2% the third). The agreement itself, which is dated August 31, 2017,^[11] copies of which were apparently provided to you at or before the September 18th meeting, included on page 22, in Article XXIV – Compensation, the following language in bold font:

The Superior Officers shall receive the following compensation,

The cost of living increases are as follows:

July 1, 2017 – zero percent increase

July 1, 2018 – two percent increase

July 1, 2019 – two percent increase

The agreement, however, further provided on the same page "The preceding increases shall be implemented as follows:" and then set out nearly two pages of complex formulas for calculating the superior officers' compensation. These formulas were substantially different from those used in prior agreements and had the effect of dramatically increasing the superior officers' compensation.^[12] Prior to or at the time of your September 18, 2017 votes, you were not provided with, nor did you request, any comparison of the new Superior Officers' CBA's language and compensation formulas with those of the prior superior officers' collective bargaining agreement, nor with any estimate of the financial impact on the City of the new formulas and other terms of the new agreement.^[13]

The City did not cost-out the new Superior Officers' CBA until after you as Methuen's new Mayor requested a financial analysis of the agreement shortly after your January 2018 inauguration. Estimates of salaries under the new Superior Officers' CBA varied due to the complexity of the agreement's compensation formulas, but all indicated that the superior officers would be receiving exceptionally large pay increases. It was estimated that the salaries of captains, lieutenants, and sergeants would rise more than 180% to approximately \$440,000, \$270,000, and \$190,000, respectively, under the new Superior Officers' CBA, not including overtime or paid details. Reportedly, these salaries were never paid. In July 2018, the Mayor's office entered into a memorandum of understanding ("the MOU") with the superior officers' union that reduced their pay increases to an average 18.7% increase. Under the MOU, captains' average base pay was to rise to about \$130,000, lieutenants' to about \$113,000, and sergeants' to about \$92,000 by fiscal year 2020.

On February 1, 2019, the Office of the Inspector General ("OIG") issued and made public a letter to you as Mayor and the City Council detailing and criticizing, among other

things, the City's process for approving the Superior Officers' CBA. The OIG letter concluded that under the circumstances it was unlikely that the 2017 Superior Officers' CBA and the 2018 MOU were legally enforceable agreements and recommended that the City Council seek to rescind the CBA and MOU. Following the issuance of the OIG's letter, the Mayor's office reset superior officers' salaries to the levels provided for in the superior officers' collective bargaining agreement for 2014-2017. Arbitration between the City and the superior officers' union concerning the agreement is reportedly ongoing.

The Law

Section 19

As a Methuen City Councilor at the relevant time, you were a municipal employee subject to the restrictions of the conflict of interest law, G.L. c. 268A. Section 19 of the law prohibits a municipal employee from participating^[14] in his public capacity in a particular matter^[15] in which to his knowledge he or his immediate family^[16], or partner, or a business organization^[17] in which he is serving as an employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment has a financial interest. The financial interest may be positive or negative, large or small.

In this matter, the City Council's September 18, 2017 decision to approve the Superior Officers' CBA was a "particular matter" under § 19. One's son is a member of one's "immediate family." As your son would be compensated pursuant to the Superior Officers' CBA, he had a financial interest in the contract of which you had knowledge.

Accordingly, you were prohibited by § 19 from participating as a city councilor in the City Council's September 18, 2017 decision to approve the Superior Officers' CBA.^[18] Nonetheless, you participated in that decision as a City Councilor by twice voting to approve the agreement after having been advised by the City Solicitor that you were permitted to do so under the "Rule of Necessity."

The Rule of Necessity

In almost all circumstances, elected officials must abstain from participating in their official capacities in any particular matter as to which they have a conflict of interest under § 19.^[19] In rare instances, however, when: (1) an elected governmental body is legally required to act on a matter, and (2) no quorum can be obtained of non-conflicted members of the body, and (3) there is no other governmental body that can act on the matter, then, as a last

resort, the members of the elected body may invoke the judicially-created "Rule of Necessity" and act on the matter. With respect to the City Council September 18, 2017 approval of the Superior Officers' CBA, the rare circumstances permitting the invocation of the Rule of Necessity did not exist.

First, the Rule of Necessity may only be invoked when it is legally necessary to act. Here, the City Council was not legally required to act at the time of the September 18, 2017 votes because the existing collective bargaining agreement for the superior officers contained an "evergreen clause" providing that the agreement would remain in effect "until the approval of a successor contract." Thus, the MPD superior officers would continue to be compensated pursuant to the existing collective bargaining agreement until such time as a new agreement was approved. Accordingly, although the prior agreement's stated term had expired on June 30, 2017, it nonetheless was still in full force and effect on September 18, 2017 and would have continued to be so beyond that date until the approval of a new agreement. (Indeed, the prior superior officers' agreement was signed in July 2015, more than one year into the July 2014 to June 2017 period it covered.) No law, rule or regulation required the City Council to replace the existing superior officers' collective bargaining agreement with a new one at the time of the 2017 vote. That Mayor Zanni's term was expiring and five city councilors were leaving the Council in December 2017 did not create a legal necessity to replace the existing agreement before 2018, let alone by September 18, 2017. Nor did the prohibition against raising municipal employees' salaries during the last three months of an election year create a necessity to approve the new agreement on September 18, 2017. The approval of a new superior officers' agreement legally could have waited until after a new mayor and new city councilors were sworn in in January 2018.^[20] Accordingly, there was no legal necessity for the City Council to act on the Superior Officers' CBA on September 18, 2017.

Second, even when there is a legal necessity for an elected body to act, the Rule of Necessity may only be invoked when a quorum cannot be obtained of members who are not conflicted or whose conflicts of interest cannot be resolved through public disclosure or otherwise. Therefore, before a body may act under the Rule of Necessity, all members of the body must fully disclose their conflicts of interest with respect to the matter before the body. If members have conflicts of interest with respect to the matter before the body arising under § 23(b)(3)^[21] of the law rather than under § 19, they may still lawfully participate in the matter if they first publicly disclose their conflicts and then act fairly and impartially in the matter. If, taken together, there are enough unconflicted members

and conflicted members who are able to resolve their conflicts through disclosure or otherwise for a quorum, the Rule of Necessity may not be used. Accordingly, in the present matter, rather than invoking the Rule of Necessity on the basis of the vaguely described conflicts of unidentified city councilors, as was done by the City Council on September 18, 2017, each city councilor's MPD-related conflict of interest should have been fully disclosed and separately considered to determine if the conflict was resolvable through public disclosure pursuant to § 23(b)(3) or an unresolvable conflict under § 19. Had this been done, it is apparent that the City Council could have obtained a quorum of councilors who were not conflicted under § 19 at the time of the September 18, 2017 votes. Specifically, had all of the city councilors fully and publicly disclosed their MPD-related conflicts of interests at the September 18, 2017 regular and special Council meetings prior to the votes on the MPD collective bargaining agreements, it would have been evident that with respect to the Superior Officers' CBA, only your conflict and those of two other councilors, were not resolvable by public disclosure under § 23(b)(3) and that, without the three of you, the City Council had sufficient members present who were eligible, or would become eligible through public disclosure under § 23(b)(3), to participate in the Council's action on the Superior Officers' CBA for a quorum. Accordingly, even had there been a legal necessity for the City Council to act on the Superior Officers' CBA on September 18, 2017, the Council could not properly have invoked the Rule of Necessity to do so with your participation because it had a quorum of members eligible (immediately or following disclosure) to act without you.

Given that the circumstances required to permit the City Council to invoke of the Rule of Necessity did not then exist,^[22] the Commission found that there is reasonable cause to believe that you violated § 19 of the conflict of interest law by voting as a city councilor to approve the Superior Officers' CBA on September 18, 2017.

Disposition

The Commission is authorized to resolve violations of G.L. c. 268A with adjudicatory proceedings and civil penalties. 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.

This matter is now closed.

Sincerely,

David A. Wilson
Executive Director

^[1] The Superior Officers' CBA is with the Methuen Police Officers Association, New England Police Benevolent Association, Local 17, which represents all Methuen police captains, lieutenants and sergeants, excluding intermittent and auxiliary police, and covers the period from July 1, 2017 through June 30, 2020. The 2017 Superior Officers' CBA succeeded a prior collective bargaining agreement between the same parties which was signed on July 9, 2015 and covered the period from July 1, 2014 through June 30, 2017.

^[2] Mayor Zanni left office at the end of 2017 when his term ended. In addition to Mayor Zanni, the City's negotiating team reportedly included City Solicitor Richard J. D'Agostino, MPD Chief Joseph Solomon and Human Resources Director Anne Randazzo.

^[3] The Patrolmen's CBA was approved with eight in favor, none opposed, and one (Fountain) abstaining.

^[4] The Council took separate votes approving each of the seven agreements in a total of about seven minutes.

^[5] City of Methuen ordinances required two separate meetings and votes for the City Council to approve collective bargaining agreements. At the special meeting, the city solicitor stated that the second vote on the agreements was occurring in the special meeting rather than at the next regular Council meeting in October because the Council was prohibited by statute from voting to raise municipal employee salaries during the last three months of a year during which a municipal election is held. 2017 was an election year in Methuen.

^[6] One City Councilor (Ferry) was not present at the special meeting, which lasted a little over six minutes.

^[7] Toward the end of the regular meeting, after the votes on the collective bargaining agreements and during the discussion of the contract with the city council's employees, there was a brief exchange between City Councilor Jennifer Kannan and City Auditor Kelly in which Kannan stated of Mayor Zanni and the collective bargaining agreements he negotiated that "he put a 0, 2 and 2 for next year," and Kelly stated that the approved collective bargaining agreements "all go into fiscal year 2019 and 2020."

^[8] The City Council, a nine-member body, required at least five members present and voting to have a quorum to act on the collective bargaining agreements.

^[9] As of September 18, 2017, there were two city councilors (including you) with immediate family members who were MPD superior officers, one who was employed at the MPD as a permanent intermittent police officer and one who had an arrangement for future employment with the MPD.

^[10] Based on the meeting minutes and videos, it is not clear that a city councilor rather than the city solicitor expressly invoked the rule at either meeting.

^[11] According to news media reports, however, the agreement may in fact not have been signed until September 6, 2017. The agreement was signed by Mayor Zanni and Gregory J. Gallant, President, NEPBA Local 17.

^[12] Most importantly, the Article XXIV paragraph A of the new agreement changed the definition of “base pay” to include additional payments that were not included in the prior contract and changed the order in which the “base pay” is calculated to maximize the benefit for the superior officers, thus “Base pay and added base pay calculations are to be calculated in the following order and manner to arrive at base pay for all purposes: Base pay, then add cleaning allowance, subtotal, then calculate and add Holiday compensation under Article XII, then add calculated Protective Vest/Hazardous Duty and Technology Compensation percentage, calculate Quinn Bill/Education Incentive.”

^[13] The new Superior Officers’ CBA, like its 2015 predecessor, contained in its final article (Article XXXI – Duration of Agreement) a so-called “evergreen clause” stating that “[t]he provisions of this Contract shall remain in effect until the approval of a successor contract.”

^[14] “Participate” means to participate in agency action or in a particular matter personally and substantially as public employee through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. *G.L. c. 268A, §1(j)*.

^[15] “Particular matter” includes any contract, claim, controversy, decision or determination. *G.L. c. 268A, §1(k)*.

^[16] “Immediate family” means the employee and spouse, their parents, children and brothers and sisters. *G.L. c. 268A, §1(e)*.

^[17] “Business organization” does not include municipalities. *EC-COI-06-03*. The MPD, as a municipal agency, is an “organization” but not a “business organization” within the meaning of § 19.

^[18] Given that the superior officers’ salaries were based under the Superior Officers’ CBA on the maximum patrolman’s salary, § 19 also prohibited you from participating in the approval of the Patrolman’s CBA.

^[19] While appointed public employees may seek to obtain an exemption to this section through disclosure to and approval by their appointing authority, this option is not available to elected public officials.

^[20] Councilors Atkinson, Ferry, Ciulla, Marsan and Fountain were not eligible for reelection in November 2017 due to term limits. You were seeking election as mayor.

^[21] Section 23(b)(3) 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 the public employee’s favor in the performance of her official duties, or that she 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 provides, however, that “it shall be unreasonable to so conclude if such officer or 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.”

^[22] A fuller explanation of the Rule of Necessity and its proper use, with examples, may be found at <https://www.mass.gov/advisory/advisory-05-05-the-rule-of-necessity>.

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

**IN THE MATTER OF
LYNN VIDLER**

PUBLIC EDUCATION LETTER

April 30, 2020

Lynn Vidler
c/o James Krasnoo, Esq.

Krasnoo, Klehm & Falkner
28 Andover Street, Suite 240
Andover, MA 01810

Dear Ms. Vidler:

As you know, the State Ethics Commission conducted a preliminary inquiry into whether you, in your former capacity as a City of Methuen city councilor, violated the conflict of interest law by, in September 2017, voting to approve the Methuen Police Department (“MPD”) Superior Officers’ collective bargaining agreement covering the period from July 1, 2017 through June 30, 2020 (“Superior Officers’ CBA”). On December 19, 2019, the Commission voted to find reasonable cause to believe that your actions violated the state conflict of interest law, General Laws chapter 268A, and authorized adjudicatory proceedings.

Rather than initiating adjudicatory proceedings, however, the Commission chose to resolve this matter through the issuance of this Public Education Letter for the following reasons: (1) you relied in good faith on the advice of Methuen’s city solicitor in voting to approve the Superior Officers’ CBA; (2) prior to your votes in question, you had a practice of abstaining from participating as a city councilor in MPD matters; (3) you were not involved in negotiating or drafting the Superior Officers’ CBA; (4) the City Council unanimously approved the Superior Officers’ CBA and evidently would have approved it without your votes; and (5) you cooperated fully with the Commission’s investigation. The Commission believes that a public resolution of this matter is warranted given its importance to Methuen and its residents and the extent of the controversy and confusion concerning how the conflict of interest law applied to the City Council’s September 2017 approval of the Superior Officers’ CBA. The Commission believes further that this Public Education Letter will give you, other public employees, and the public in general a clearer understanding of how the conflict of interest law applied in your situation in Methuen and applies in similar circumstances throughout the Commonwealth.

The Commission and you have agreed that this matter will be resolved publicly with this 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 Facts

On September 18, 2017, seven collective bargaining agreements, including the Superior Officers’ CBA,^[1] which had been negotiated by then Methuen Mayor Stephen N. Zanni,^[2] were before the City Council at its regular meeting for approval. Except for the MPD

Patrolmen’s collective bargaining agreement,^[3] the Council, with nine members present, voted unanimously to approve each of the agreements.^[4] Also on September 18th, immediately following its regular meeting, the City Council held a special meeting in which it again voted on the seven collective bargaining agreements.^[5] The City Council again unanimously voted to approve the Superior Officers’ CBA.^[6] At both meetings, the motion to approve the Superior Officers’ CBA was made by Councilor George Kazanjian and seconded by Councilor Thomas Ciulla, and the Council’s votes were voice votes without roll calls.

Both September 18, 2017 City Council meetings were chaired by Councilor Atkinson. In addition to the city councilors, Mayor Zanni, Methuen City Solicitor Richard J. D’Agostino and Methuen City Auditor Thomas Kelly were present at both meetings. There was no presentation, explanation or discussion whatsoever prior to the votes during either meeting of the terms, cost or financial impact of any of the collective bargaining agreements negotiated by Mayor Zanni and approved by the City Council. Not a single question was asked about the substance of the agreements prior to the votes at either meeting.^[7]

Prior to the September 18th votes, City Solicitor D’Agostino provided the City Council with a memorandum, dated September 18, 2017, in which he advised that the city councilors who normally abstained under the conflict of interest law from participating in Council discussions and votes on MPD-related issues could nonetheless do so under the so-called “Rule of Necessity” if without their participation the Council would lack a quorum to act on the issues.^[8] City Solicitor D’Agostino more specifically advised in the memorandum that all city councilors could vote on the MPD collective bargaining agreements at the September 18, 2017 Council meetings. Prior to receiving the city solicitor’s September 18th memorandum, several city councilors, including you, had regularly abstained from participating in MPD-related matters due to conflict of interest concerns.^[9]

At the September 18, 2017 regular City Council meeting, City Solicitor D’Agostino, in response to questions from Councilor Jajuga, repeated his written advice that all city councilors could vote on the MPD collective bargaining agreements under the Rule of Necessity without “peril” under the conflict of interest law. After the Council’s first votes to approve the seven collective bargaining agreements, the city solicitor gave further advice on the Rule of Necessity describing its invocation as “a last resort,” but not explaining what that meant or how the invocation of the rule on September 18th was a last resort. Later that evening at the Council’s special meeting, when asked by you just before the second votes on the MPD

collective bargaining agreements whether the Rule of Necessity needed to be invoked again, City Solicitor D'Agostino replied "yes" and reaffirmed his prior advice concerning the rule.^[10]

After receiving the city solicitor's advice at both the regular and special City Council meetings that you could vote on the MPD collective bargaining agreements under the Rule of Necessity, you voted at both of those meetings to approve the agreements including the Superior Officers' CBA. At the time of your votes, your husband was a MPD superior officer and was to be compensated pursuant to the Superior Officers' CBA.

You had not participated in drafting or negotiating the Superior Officers' CBA and you testified under oath that then-Mayor Zanni told you, and that you believed, the agreement only offered "0/2/2" raises to officers (i.e., zero increase the first year, 2% the second, and 2% the third). The agreement itself, which is dated August 31, 2017,^[11] copies of which were apparently provided to you at or before the September 18th meeting, included on page 22, in Article XXIV – Compensation, the following language in bold font:

The Superior Officers shall receive the following compensation,

The cost of living increases are as follows:

July 1, 2017 – zero percent increase

July 1, 2018 – two percent increase

July 1, 2019 – two percent increase

The agreement, however, further provided on the same page "The preceding increases shall be implemented as follows:" and then set out nearly two pages of complex formulas for calculating the superior officers' compensation. These formulas were substantially different from those used in prior agreements and had the effect of dramatically increasing the superior officers' compensation.^[12] Prior to or at the time of your September 18, 2017 votes, you were not provided with any comparison of the new Superior Officers' CBA's language and compensation formulas with those of the prior superior officers' collective bargaining agreement, nor with any estimate of the financial impact on the City of the new formulas and other terms of the new agreement.^[13]

The City did not cost-out the new Superior Officers' CBA until after former City Councilor and new Methuen Mayor Jajuga requested a financial analysis of the agreement shortly after his January 2018 inauguration. Estimates of salaries under the new Superior Officers' CBA varied due to the complexity of the agreement's compensation formulas, but all indicated that the superior officers would be receiving exceptionally large pay increases. It was

estimated that the salaries of captains, lieutenants, and sergeants would rise more than 180% to approximately \$440,000, \$270,000, and \$190,000, respectively, under the new Superior Officers' CBA, not including overtime or paid details. Reportedly, these salaries were never paid. In July 2018, the Mayor's office entered into a memorandum of understanding ("MOU") with the superior officers' union that reduced their pay increases to an average 18.7% increase. Under the MOU, captains' average base pay was to rise to about \$130,000, lieutenants' to about \$113,000, and sergeants' to about \$92,000 by fiscal year 2020.

On February 1, 2019, the Office of the Inspector General ("OIG") issued and made public a letter to then Mayor Jajuga and the City Council detailing and criticizing, among other things, the City's process for approving the Superior Officers' CBA. The OIG letter concluded that under the circumstances it was unlikely that the 2017 Superior Officers' CBA and the 2018 MOU were legally enforceable agreements and recommended that the City Council seek to rescind the CBA and MOU. Following the issuance of the OIG's letter, the Mayor's office reset superior officers' salaries to the levels provided for in the superior officers' collective bargaining agreement for 2014-2017. Arbitration between the City and the superior officers' union concerning the agreement is reportedly ongoing.

The Law

Section 19

As a Methuen City Councilor at the relevant time, you were a municipal employee subject to the restrictions of the conflict of interest law, G.L. c. 268A. Section 19 of the law prohibits a municipal employee from participating^[14] in his public capacity in a particular matter^[15] in which to his knowledge he or his immediate family^[16], or partner, or a business organization^[17] in which he is serving as an employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment has a financial interest. The financial interest may be positive or negative, large or small.

In this matter, the City Council's September 18, 2017 decision to approve the Superior Officers' CBA was a "particular matter" under § 19. One's husband is a member of one's "immediate family." As your husband would be compensated pursuant to the Superior Officers' CBA, he had a financial interest in the contract of which financial interest you had knowledge.

Accordingly, you were prohibited by § 19 from participating as a city councilor in the City Council's September 18, 2017 decision to approve the Superior

Officers' CBA.^[18] Nonetheless, you participated in that decision as a city councilor by twice voting to approve the agreement after having been advised by the city solicitor that you were permitted to do so under the "Rule of Necessity."

The Rule of Necessity

In almost all circumstances, elected officials must abstain from participating in their official capacities in any particular matter as to which they have a conflict of interest under § 19.^[19] In rare instances, however, when: (1) an elected governmental body is legally required to act on a matter, and (2) no quorum can be obtained of non-conflicted members of the body, and (3) there is no other governmental body that can act on the matter, then, as a last resort, the members of the elected body may invoke the judicially-created "Rule of Necessity" and act on the matter. With respect to the City Council September 18, 2017 approval of the Superior Officers' CBA, the rare circumstances permitting the invocation of the Rule of Necessity did not exist.

First, the Rule of Necessity may only be invoked when it is legally necessary to act. Here, the City Council was not legally required to act at the time of the September 18, 2017 votes because the existing collective bargaining agreement for the superior officers contained an "evergreen clause" providing that the agreement would remain in effect "until the approval of a successor contract." Thus, the MPD superior officers would continue to be compensated pursuant to the existing collective bargaining agreement until such time as a new agreement was approved. Accordingly, although the prior agreement's stated term had expired on June 30, 2017, it nonetheless was still in full force and effect on September 18, 2017 and would have continued to be so beyond that date until the approval of a new agreement. (Indeed, the prior superior officers' agreement was signed in July 2015, more than one year into the July 2014 to June 2017 period it covered.) No law, rule or regulation required the City Council to replace the existing superior officers' collective bargaining agreement with a new one at the time of the 2017 vote. That Mayor Zanni's term was expiring and five city councilors were leaving the Council in December 2017 did not create a legal necessity to replace the existing agreement before 2018, let alone by September 18, 2017. Nor did the prohibition against raising municipal employees' salaries during the last three months of an election year create a necessity to approve the new agreement on September 18, 2017. The approval of a new superior officers' agreement legally could have waited until after a new mayor and new city councilors were sworn in in January 2018.^[20] Accordingly, there was no legal necessity for the City Council to act on the Superior Officers' CBA on September 18, 2017.

Second, even when there is a legal necessity for an elected body to act, the Rule of Necessity may only be invoked when a quorum cannot be obtained of members who are not conflicted or whose conflicts of interest cannot be resolved through public disclosure or otherwise. Therefore, before a body may act under the Rule of Necessity, all members of the body must fully disclose their conflicts of interest with respect to the matter before the body. If members have conflicts of interest with respect to a matter before the body arising under § 23(b)(3)^[21] of the law rather than under § 19, they may still lawfully participate in the matter if they first publicly disclose their conflict and then act fairly and impartially in the matter. If taken together there are enough unconflicted members and conflicted members who are able to resolve their conflicts through disclosure or otherwise for a quorum, the Rule of Necessity may not be used. Accordingly, in the present matter, rather than invoking the Rule of Necessity on the basis of the vaguely described conflicts of unidentified city councilors, as was done by the City Council on September 18, 2017, each city councilor's MPD-related conflict of interest should have been fully disclosed and separately considered to determine if the conflict was resolvable through public disclosure pursuant to § 23(b)(3) or an unresolvable conflict under § 19. Had this been done, it is apparent that the City Council could have obtained a quorum of councilors who were not conflicted under § 19 at the time of the September 18, 2017 votes. Specifically, had all of the city councilors fully and publicly disclosed their MPD-related conflicts of interest at the September 18, 2018 regular and special Council meetings prior to the votes on the MPD collective bargaining agreements, it would have been evident that, with respect to the Superior Officers' CBA, only your conflict and those of two other city councilors were not resolvable by public disclosure and that, without the three of you, there were enough city councilors present who were eligible, or would become eligible through public disclosure under § 23(b)(3), to participate in the Council's action on the Superior Officers' CBA for a quorum. Accordingly, even had there been a legal necessity for the City Council to act on the Superior Officers' CBA on September 18, 2017, the Council could not properly have invoked the Rule of Necessity to do so with your participation because it had a quorum of members eligible (immediately or following disclosure) to act without you.

Given that the circumstances required to permit the City Council to invoke the Rule of Necessity did not then exist,^[22] the Commission found that there is reasonable cause to believe that you violated § 19 of the conflict of interest law by voting as a city councilor to approve the Superior Officers' CBA on September 18, 2017.

Disposition

The Commission is authorized to resolve violations of G.L. c. 268A with adjudicatory proceedings and civil penalties. 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.

This matter is now closed.

Sincerely,

David A. Wilson
Executive Director

^[1] The Superior Officers' CBA is with the Methuen Police Officers Association, New England Police Benevolent Association, Local 17, which represents all Methuen police captains, lieutenants and sergeants, excluding intermittent and auxiliary police, and covers the period from July 1, 2017 through June 30, 2020. The 2017 Superior Officers' CBA succeeded a prior collective bargaining agreement between the same parties which was signed on July 9, 2015 and covered the period from July 1, 2014 through June 30, 2017.

^[2] Mayor Zanni left office at the end of 2017 when his term ended. In addition to Mayor Zanni, the City's negotiating team reportedly included City Solicitor Richard J. D'Agostino, MPD Chief Joseph Solomon and Human Resources Director Anne Randazzo.

^[3] The Patrolmen's CBA was approved with eight in favor, none opposed, and one (Fountain) abstaining.

^[4] The Council took separate votes approving each of the seven agreements in a total of about seven minutes during the regularly scheduled Council meeting.

^[5] City of Methuen ordinances require two separate meetings and votes for the City Council to approve collective bargaining agreements. At the special meeting, the city solicitor stated that the second vote on the agreements was occurring in the special meeting rather than at the next regular Council meeting in October because the Council was prohibited by statute from voting to raise municipal employee salaries during the last three months of a year during which a municipal election is held. 2017 was an election year in Methuen.

^[6] One City Councilor (Ferry) was not present at the special meeting, which lasted a little over six minutes.

^[7] Toward the end of the regular meeting, after the votes on the collective bargaining agreements and during the discussion of the contract with the city council's employees, there was a brief exchange between City Councilor Jennifer Kannan and City Auditor Kelly in which Kannan stated of Mayor Zanni and the collective bargaining agreements he negotiated that "he put a 0, 2 and 2 for next year," and Kelly stated that the approved collective bargaining agreements "all go into fiscal year 2019 and 2020."

^[8] The City Council, a nine-member body, required at least five members present and voting to have a quorum to act on the collective bargaining agreements.

^[9] As of September 18, 2017, there were two city councilors (including you) with immediate family members who were MPD superior officers, one whose immediate family member was an MPD patrolman, one who was employed by the MPD as a permanent intermittent police officer, and one who had an arrangement for future employment with the MPD. While your practice was to abstain on matters involving the MPD, you also filed multiple public disclosures identifying your husband as a superior officer in connection with certain matters before the City Council. While such a disclosure does not avoid a violation of § 19 of the conflict of interest law, it would avoid a violation of § 23(b)(3). A more detailed discussion of these sections and how each applies to the Rule of Necessity is below.

^[10] Based on the meeting minutes and videos, it is not clear that a city councilor rather than the city solicitor expressly invoked the rule at either meeting.

^[11] According to news media reports, however, the agreement may in fact not have been signed until September 6, 2017. The agreement was signed by Mayor Zanni and Gregory J. Gallant, President, NEPBA Local 17.

^[12] Most importantly, the Article XXIV paragraph A of the new agreement changed the definition of "base pay" to include additional payments that were not included in the prior contract and changed the order in which the "base pay" is calculated to maximize the benefit for the superior officers, thus "Base pay and added base pay calculations are to be calculated in the following order and manner to arrive at base pay for all purposes: Base pay, then add cleaning allowance, subtotal, then calculate and add Holiday compensation under Article XII, then add calculated Protective Vest/Hazardous Duty and

Technology Compensation percentage, calculate Quinn Bill/Education Incentive.”

^[13] The new Superior Officers’ CBA, like its 2015 predecessor, contained in its final article (Article XXXI – Duration of Agreement) a so-called “evergreen clause” stating that “[t]he provisions of this Contract shall remain in effect until the approval of a successor contract.”

^[14] “Participate” means to participate in agency action or in a particular matter personally and substantially as public employee through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. *G.L. c. 268A, §1(j)*.

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^[17] “Business organization” does not include municipalities. *EC-COI-06-03*. The MPD, as a municipal agency, was an “organization” but not a “business organization” within the meaning of § 19.

^[18] Given that the superior officers’ salaries were based under the Superior Officers’ CBA on the maximum patrolman’s salary, § 19 also prohibited you from participating in the approval of the Patrolman’s CBA.

^[19] While appointed public employees may seek to obtain an exemption to this section through disclosure to and approval by their appointing authority, this option is not available to elected public officials.

^[20] Councilors Atkinson, Ferry, Ciulla, Marsan and Fountain were not eligible for reelection in November 2017 due to term limits. Councilor Jajuga was seeking election as mayor.

^[21] Section 23(b)(3) 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 the public employee’s favor in the performance of her official duties, or that she 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 provides, however, that “it shall be unreasonable to so conclude if such officer or 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.”

^[22] A fuller explanation of the Rule of Necessity and its proper use, with examples, may be found at <https://www.mass.gov/advisory/advisory-05-05-the-rule-of-necessity>.

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

**IN THE MATTER OF
BRIAN SHEETZ**

PUBLIC EDUCATION LETTER

June 23, 2020

Brian Scheetz

Dear Mr. Scheetz:

As you know, the State Ethics Commission conducted a preliminary inquiry into whether you, in your capacity as a former state employee of the State Auditor’s Office (SAO), violated the conflict of interest law by acting as agent for a private business, Riscovery with which you were associated.

On November 21, 2019, the Commission voted to find reasonable cause to believe that your actions, as described below, violated the state conflict of interest law, General Laws chapter 268A, more specifically that your actions violated section 5(a) of the law. Rather than initiating adjudicatory proceedings, however, the Commission chose to resolve this matter through the issuance of this Public Education Letter because: (1) the SAO investigated related allegations against you and, as a result, you were terminated; (2) you cooperated fully with the Commission’s investigation; and (3) the issuance of this public education letter will give other public employees in similar circumstances a clearer understanding of the conflict of interest law and how to comply with it.

The Commission and you have agreed that this matter will be resolved publicly with this 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 Facts

From October 2012 to December 2017, you were employed at the Massachusetts State Auditor's Office ("SAO"). You began as a staff analyst and then served as the assistant director for the data analytics unit from December 2014 until your termination on December 22, 2017.

In or about 2011, the SAO developed the Rules Based Risk Engine ("RBRE"), a data analytic tool. You were the lead developer for the RBRE. The RBRE, as intellectual property, was owned by the SAO.

While working at the SAO, you and two other SAO employees ("Employee 1" and "Employee 2"), formed a private business, named Riscovery. Riscovery's website claimed that it had designed solutions that helped to "identify, prevent, or recover hundreds of millions of dollars in improper payments in Medicaid, Transitional Assistance programs, State Transaction and Accounting Systems, and many other government programs and systems." In or about September 2014, Riscovery was incorporated in Delaware.

In or about November 2015, the SAO opened an audit of the Massachusetts Department of Children and Families ("DCF") to examine its process for reporting critical incidents and fatality investigations. You were a member of the audit team. Prior to the formal opening of the audit, you and members of the data analytic unit performed a speculative analysis of Medicaid Management Information System ("MMIS") data.

The SAO audit of DCF, which used the RBRE, reviewed MMIS data from January 2014 through December 2015 for incidents such as suicide attempts, injuries from firearms, serious burns, and other types of medical incidents. The SAO's team of auditors chose the types of medical incidents and procedure codes to be reviewed and you wrote SQL queries to extract these incidents from the MMIS data.

You told us that you acted as a liaison between the SAO and the Massachusetts Office of the Child Advocate ("OCA") regarding the SAO's audit of DCF. You met with the Child Advocate and other OCA staff regarding whether MMIS data appeared to demonstrate a critical incident that DCF had failed to report to OCA.

On December 7, 2017, the SAO released the results of its audit of DCF which found that DCF did not "effectively identify and investigate all occurrences of serious bodily injury to children in its care." The SAO recommended that DCF "establish policies and procedures that require its staff to routinely monitor MMIS data..." DCF's response, which was part of the audit report, claimed that it would

"...determine the feasibility of accessing MassHealth claims data in its MMIS system to identify medical treatment that may indicate a child was abused or neglected and should have been reported to DCF..." The audit also found that DCF failed to report all critical incidents affecting children in its care to the OCA.

When the SAO audit of DCF was released, Employee 1 contacted the OCA and arranged a meeting for Riscovery. Employee 1 also contacted DCF by email regarding Riscovery. On December 20, 2017, the SAO began to investigate Employee 1's communications on behalf of Riscovery with DCF.

On December 22, 2017, you were terminated from your SAO employment. On January 3, 2018, you made a presentation on behalf of Riscovery to the OCA. You made a PowerPoint presentation which was clearly marked "Riscovery" and titled "Identifying Children at Risk Through Data Analytics." The presentation described features of a program that would use both MMIS and DCF data to alert, in real time, caseworkers of children at risk. The purpose of the presentation was to show OCA what the members of Riscovery thought they could produce in the future.

Legal Discussion

Until the termination of your SAO employment, you were a state employee as defined by M.G.L. c. 268A, §1(q). Upon your termination, you became a former state employee.

Section 5(a) prohibits a former state employee from knowingly acting as agent or attorney for or receiving compensation directly or indirectly from anyone other than the Commonwealth or a state agency, in connection with any particular matter in which the Commonwealth or a state agency is a party or has a direct and substantial interest, and in which the former state employee participated while so employed.

You acted as agent for Riscovery when you participated in the meeting with the OCA in which Riscovery demonstrated to the OCA a program to monitor DCF's MMIS data. Riscovery's marketing of its software to OCA was in response to and, thus, in connection with the particular matter of SAO's determination that DCF should monitor the MMIS data.

As you wrote the SQL queries that extracted relevant information from the MMIS data that formed the basis for the SAO's determination that DCF should monitor MMIS data in your public role as the SAO's assistant director of analytics, and the Commonwealth had a direct and

substantial interest in the monitoring of the MMIS data, your actions at the OCA meeting on behalf of Riscovery were in connection with a particular matter in which you participated as an SAO employee. Although you were not involved in the actual data analysis, as a SAO employee you were integral to the collection of the raw material that led to SAO's recommendation that DCF monitor MMIS data. Therefore, the Commission found reasonable cause to believe that you violated §5(a).

Disposition

The Commission is authorized to resolve violations of G.L. c. 268A with adjudicatory proceedings and civil penalties. 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.

This matter is now closed.

Sincerely,

David A. Wilson
Executive Director

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

SUFFOLK, ss.

**COMMISSION
ADJUDICATORY
DOCKET NO. 19-0003**

**IN THE MATTER OF
STEPHEN COMTOIS**

Parties: Candies Pruitt, Esq.
Counsel for Petitioner

Thomas R. Kiley, Esq.
Counsel for Respondent

Commissioners: Maria J. Krokidas, Ch., Thomas J. Sartory, R. Marc Kantrowitz, Josefina Martinez and Wilbur P. Edwards, Jr.

Presiding Officer: Commissioner Thomas J. Sartory

DECISION AND ORDER

I. Background & Procedural History

This matter arises out of the purchase by Stephen Comtois in February 2017 of a 20,000 square foot parcel of undeveloped land located in the Town of Brookfield ("the Property"). At all relevant times, Comtois was the Chair of the Board of Selectmen in the Town and a member of the Town's Zoning Board of Appeals. In his personal capacity, Comtois owned and operated a Driving School and, on a part-time basis, was a builder. The seller was Beverly Granger, a former resident of the Town who, prior to Comtois' offer to purchase the Property, had proposed to donate it to the Town.

On April 11, 2019, Petitioner issued an Order to Show Cause against Comtois. The Order alleges that Comtois violated G.L. c. 268A, § 19 by participating as a Board member in the matter of the proposed donation to the Town at a time when he had a financial interest in the matter, § 23(b)(2)(ii) by improperly using his public position to purchase the Property personally, and § 23(b)(3) by improperly acting officially as to a Town resident who publicly confronted him about the purchase of that property. Comtois denies any violation.

An evidentiary hearing was held on November 22, 2019. Four witnesses testified: Alan Jones; Marita Tasse; Herbert Chaffee; and Comtois. Thirty-Two agreed-upon exhibits were admitted into evidence, including two video recordings. Two exhibits were admitted after the close of the hearing, over Petitioner's objection. The parties presented closing arguments to the Commission on February 27, 2020. In rendering this Decision and Order, each undersigned Commissioner has considered the testimony, the evidence in the public record and the arguments of the parties.

II. Findings of Fact

Events Involving the Property

In the summer of 2016, Granger no longer lived in the Town but continued to own the Property, which abutted land previously owned and occupied by her and her husband who had since passed away. Their joint title to the Property by adverse possession had been confirmed in 2011 in Land Court proceedings against a neighbor. Following her husband's death, Granger held title individually.

The zoning status of the Property was a subject of uncertainty and disagreement among people familiar with it and its history. It was assessed by the Town's Board of Assessors as a "buildable" lot and was taxed accordingly. Granger had twice requested a tax abatement

on the grounds that the determination that it was “buildable” under the Town’s zoning law was incorrect. Both requests were denied by the Board of Assessors. Granger did not challenge the abatement denials in court.

In 2015, Granger had an agreement to sell the Property to a local builder who subsequently withdrew from the transaction before closing because his attorney had advised him of problems in the description of the Property and that it was not “buildable” under the Town Zoning Code. In 2016, the Board of Assessors again treated the Property as “buildable,” and assessed its value at \$43,900. Having moved from the Town, Granger had no continuing use for the Property nor any desire to continue to pay the taxes, especially in light of the disparity between its assessed value and its apparent market value that resulted from the uncertainty of its zoning status.

On two occasions in July 2016, Granger met with Town representatives to discuss her situation. The first meeting was with Alan Jones, the Town’s Assistant Assessor. The second was with Jones and Philip Pierce, a member of the Town’s Board of Assessors. At the second meeting, Granger was accompanied by her long-time friend, Marita Tasse, a real estate broker in the Town who was familiar with the title and zoning issues and believed the determination by the Assessors that the lot was “buildable” was incorrect. At the meetings, Granger explained her circumstances and stated that she did not intend to pay the taxes. Jones and Pierce expressed agreement that the assessment on the Property was too high and that they would look into adjusting it “very soon.” They also discussed options for Granger, including marketing the parcel “to a local contractor” who might have a different use in mind, donating the Property to a local land conservancy trust (with its accompanying possible tax benefits), or donating it to the Town.

Jones sent a follow-up email to Tasse, copied to the Board of Assessors and Clarence Snyder, a Selectman, on the afternoon of the second meeting. The email confirmed the substance of the meeting and specifically asked Tasse to let Jones know if either of the “donation” options appealed to Granger. Granger subsequently notified Jones in writing that she “would like to donate” the property to the Town. Jones responded with advice to Tasse concerning the contents of a notice to the Board of Selectmen of Granger’s intentions. In a letter dated August 7, 2016, Granger notified the Board of her desire to donate the Property. It is unclear when Granger actually sent the letter, but its receipt was acknowledged by Jones in an email, on behalf of the Board on September 1, 2016, on which the three Board members were copied. Comtois first became aware of the Property when he read this email.

Over the next months, Town employees and others acting on the Town’s behalf took various steps regarding the proposed donation. Individual Selectmen, including Comtois, advised Jones that the proper procedure required them to vote to place the matter before Town Meeting for acceptance. Jones researched title and property description issues at the Registry of Deeds. He assembled documentation of his findings and obtained approval for and engaged the Town’s outside law firm to confirm the validity of Granger’s ownership, which it did. He obtained an estimate of the cost of clearing the defects in the description of the Property in the deed and to obtain a formal opinion which would be needed by the Town. He kept Tasse informed. The Board’s Administrative Assistant arranged for and published notice that the donation would be considered as an agenda item at its meeting on December 13, 2016.

At the Board meeting on December 13, 2016, Comtois said in substance that the matter had been discussed in the past and that while he generally approved of the concept of donations of property to the Town, the Property was burdened with legal issues that meant the Town would have to pay to get a free and clear title. He described himself as “here to be swayed” on the issue. In response, Jones generally recounted the history of the disputes over ownership and the zoning status of the Property, Granger’s history of paying taxes on the Property which was assessed as if it were “buildable,” and her adamant intention not to pay any more taxes, including those outstanding. All members of the Board, including Comtois, expressed sympathetic understanding for Granger’s situation. Jones explained that the title problem arose from a mistaken description of the Property in the deed (the metes and bounds actually described a different piece of property) and that everyone involved agreed that the actual parcel was owned by Granger. He re-stated the point that Granger’s determination not to pay the taxes meant the Property would wind up back with the Town one way or the other and the expense of clearing the title would be borne then. He said the Town’s outside attorneys had estimated the cost of clearing the title to be \$500, and expressed his personal belief that, having paid taxes for years based on what appeared to be a high assessment, Granger had done her part for the Town.

On motion suggested by Comtois, the Board unanimously decided to present the question whether to accept the donation of the Property to the Town for consideration at the next Town Meeting,^[1] with the understanding that, if the donation was accepted, the Town would then incur the cost of clearing the title.^[2] Jones asked that someone from the Board send a letter to Granger detailing the decision of the Board. Comtois, who had never met or spoken to Granger, responded that he would do so, but that he would

“rather call her.” No one objected to a call rather than a letter; and no one objected to Comtois making the call. Comtois asked Jones to provide him with contact information. After the meeting, Jones told Comtois that Tasse had been representing Granger and that he should call her. Comtois knew Tasse, having had some business dealings with her in the past, including working together on at least three real estate transactions.

On the morning of December 14, 2016, Comtois had an approximately five-minute phone call with Tasse. In his testimony, he characterized what he said to her as “straightforward.” Specifically, he told her: The issue had to “go to a town meeting which wasn’t scheduled;” the Town “did not have a warrant open for that;” there “was no article placed on it;” he personally would recommend that the Town Meeting not approve it; and, in substance, that the Board itself would not support the proposal. He did not tell her anything about the overall general tenor, expressed at the Board meeting, of sympathy for Granger’s situation.

Comtois then offered to purchase the Property.^[3] There was a discussion about “monetary compensation” in which Tasse said that Granger “would want her back taxes paid as well as the penalties and the interest that had accrued, and then the legal expenses.”

From the moment that Comtois offered to purchase the Property, all of his dealings with Tasse concerned his personal purchase of the Property and he never thereafter pursued the Town’s interest in receiving the Property as a gift. From December 13, 2016 through sometime in mid-January 2017, Jones had multiple communications with Comtois, by email, text, telephone and in person, concerning the status of his dealings with Tasse. Jones engaged in those communications believing that Comtois was at all times acting as the Town’s representative and conduit for communications with Tasse regarding Granger’s proposed donation of the Property to the Town. Comtois always responded evasively to Jones, causing Jones to believe that details of placing the matter of the donation before Town Meeting were progressing. At least on those occasions when he responded to Jones by email, he used his Town email account. Comtois never told Jones that he intended to purchase the Property himself; nor did he inform any Selectman that he was pursuing his personal interests rather than the Town’s, claiming that to have done so would have been a violation of the Open Meeting Law.

In early February 2017, Jones heard a rumor that the Property had been sold. In response, he began logging in on a daily basis to the Registry of Deeds looking for transactions involving property in the Town. Eventually, “it showed up” that the Property had been sold to Comtois.

Comtois paid \$200 for the Property and promised to pay “all expenses associated with the purchase.” When he purchased it, he considered using it to store vehicles for his Driving School. Prior to purchasing the Property, Comtois had advocated as Board Chair in at least one Board meeting for businesses to acquire distressed properties by “paying back taxes and fixing the problems.”^[4]

Events Involving Bruce Clarke

At a Board meeting on February 21, 2017, Bruce Clarke, a resident of the Town and Granger’s cousin, publicly confronted Comtois about his purchase of the Property and expressed his belief that Comtois doing so was unethical. Approximately three weeks later, during a snowstorm, the former Chief of the Town’s Police Department, Ross Ackerman, who was then Comtois’ friend and an employee of Comtois’ Driving School, called Comtois after observing Clarke operating a Town snowblower on the sidewalk. Ackerman expressed concerns that Clarke, a retired former employee of the Town, was not properly authorized to be doing that work, that he was concerned about the “ethics” of the hiring, and possible liability for the Town. All Town employees must have a wage authorization approved by the Board in order to work for the Town.

Comtois testified, and the Commission accepts as true, that he was concerned about liability for the Town if an unauthorized person was hurt while doing work for the Town. He immediately contacted the Administrative Assistant for the Board and inquired whether a wage authorization was on file for Clarke. She investigated, called back and informed him that there was not one on file for Clarke.

Comtois then called Herbert Chaffee, the Superintendent of the Town Highway Department and Clarke’s supervisor. Comtois informed Chaffee that Clarke should not be working until a wage authorization was approved and that he wanted him off the sidewalk machine.

Chaffee, who “doesn’t like Comtois very much,” did not act immediately in response to Comtois’ call. Clarke continued to work until Chaffee caught up with Clarke and told him what was going on. Clarke finished up what he was doing, and he went home.

This issue of approving a wage authorization for Clarke came up at a Board meeting on March 21, 2017. Comtois objected because the position had not been posted. The other Selectmen did not share Comtois’ concern and, after debate, all three members of the Board signed the authorization.

III. Decision

Petitioner must prove its case and each element of the three alleged violations by a preponderance of the evidence. 930 CMR 1.01(10)(o)2. The weight to be attached to any evidence in the record, including evidence concerning the credibility of the witnesses, rests in the sound discretion of the Commission. 930 CMR 1.01(10)(n)3. In deciding 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.

A. Comtois Violated § 19

Section 19 of G.L. c. 268A, prohibits elected municipal officials from personally and substantially participating in matters in which their existing or reasonably foreseeable financial interests might affect their judgment in ways personal and distinct to them as opposed to the populace in general. The purpose of § 19 is to assure the public that a public employee's official judgments and actions "will not be clouded by potentially competing private [financial] interests." *EC-COI-86-13*.

In order to establish a violation of § 19, Petitioner must prove that: (1) Comtois was a municipal employee; (2) he participated as a municipal employee in a particular matter; (3) in which to his knowledge he had a financial interest. *See In the Matter of Paul Pathiakis*, 2004 SEC 1167, 1174. For the reasons discussed below, we find that Petitioner has met its burden of proof as to each of these elements.

Comtois participated as a municipal employee in a particular matter

We find, and Comtois does not dispute, that the proposed donation of the Property was a particular matter and that his actions concerning the donation, up to and including the portion of his December 14 call to Tasse in which he purported to report the actions taken by the Board, were taken in his capacity as a Selectman and were personal and substantial. He contends, however, that after Tasse "recommended" that he purchase the Property he acted solely as a private individual and not as a Selectman. Further, he argues that his email exchanges and other communications with Jones regarding the status of the Property did not constitute personal and substantial participation.

We find that Comtois participated personally and substantially as a Selectman in the decision whether to submit the proposed donation of the Property to Town Meeting, by (1) participating in a substantive discussion regarding the Property at the December 13, 2016 Board

meeting, (2) stating that he would entertain a motion to "place the issue on a Town Meeting warrant to "accept [the] Property and then obtain clear title upon acceptance," (3) voting in favor of the motion, (4) volunteering to contact Granger about the Board's decision (5) contacting Tasse by telephone on December 14, 2016 on behalf of the Board, and (6) having multiple communications with Jones, by email on his Selectman's account, text, telephone and in person, concerning the status of his dealings with Tasse. *See, In the Matter of Randall Walker*, 2019 SEC ____ (Select Board member participated in a particular matter as Chair by discussing with his fellow Select Board members and the Treasurer/Tax Collector whether to auction town-owned land, and by voting to approve the auction at a Select Board meeting).

Comtois knew he had a financial interest in the Property

Section 19 encompasses any financial interest without regard to the size of that interest and whether the financial interest is positive or negative. The financial interest, however, must be direct and immediate or reasonably foreseeable. Financial interests that are remote, speculative or not sufficiently identifiable do not require disqualification under the conflict of interest law. *See, e.g., EC-COI-02-2*.

Petitioner asserts that Comtois developed a financial interest in the Property prior to the December 13, 2016 Board meeting, arguing that he offered to purchase the Property at some point prior to that meeting.^[5] Comtois argues that § 19 is to be interpreted to require "simultaneity," that is, that a person does not acquire a financial interest in property until the person actually owns the property. Comtois therefore argues that he did not have a financial interest in the Property until he purchased it in February 2017.

For the reasons discussed below, we find that Comtois' testimony as to when and whether he had a financial interest in the Property is not credible; and that he had a financial interest in the matter when (1) he participated in the December 13, 2016 Board meeting, (2) when he placed the call to Tasse on December 14, 2016, and (3) when he responded to Jones' inquiries regarding the status of the matter; and that he had knowledge of his financial interest.

Comtois was aware prior to the December 13, 2016 Board meeting of Granger's intent to donate the Property. He and the other Selectmen received a letter from Granger dated August 7, 2016, informing them of her intentions.^[6] There is no evidence of when Granger actually mailed the letter, but its receipt was acknowledged by Jones on behalf of the Board on September 1. Between August 7 and September

1, on August 23, Comtois publicly advocated in favor of private purchases of distressed properties in the Town by paying back taxes and fixing whatever other problems may exist.^[7] With hindsight, he was describing a blueprint for his later actions regarding the Property. If not actually foreshadowing his present intent regarding the Property, his comments, at the least reflect a mindset as to how such situations could or should be handled.

Comtois' characterization of what he told Tasse on December 14, 2016 was not "straightforward." In light of the video evidence of what actually occurred at the Board meeting, we find that his report to Tasse was anything but honest. His description contained statements that were demonstrably untrue, e.g., that the Board would not support the proposed donation, omitted facts that should have been mentioned to convey the discussions accurately, e.g., that the Board voted unanimously to submit the proposed donation to Town Meeting and that if accepted, the Town would pay to clear the title, and generally painted an unjustifiably negative picture about the prospects that Granger's proposal would be resolved in a timely and favorable way. We find that his misrepresentations and omissions during the call, as well as his disingenuous characterization of what he said to Tasse, support that he had a financial interest in the Property when he spoke with Tasse on December 14, 2016.

Comtois' testimony that Tasse recommended that he buy the Property himself is essential to his claim that he did not consider purchasing the Property until he spoke with her. Given its centrality to the case, corroboration of his testimony should have been offered if it existed. The best source of possible corroboration would have been Tasse herself, but Comtois' counsel never asked generally what she said during the December 14, 2016 call, or specifically whether she made such a recommendation during the call. Moreover, when asked by Petitioner, Tasse credibly denied having recommended to Comtois that he purchase the Property. Additionally, as explained below, we do not accept Comtois' legal argument that he did not have a financial interest in the Property until he purchased it.

Given that he had never met or spoken with Granger, Comtois' expressed preference to call her rather than send a letter to report the results of the meeting supports his intent to purchase the Property by attempting to talk her into selling the Property to him and not having a record of what was said.

Comtois both acted and failed to act after his conversation with Tasse on December 14, 2016 in ways designed to hide his efforts to buy the Property. For instance, he did not report to the Board, at any point, that less than 24 hours after voting to present the donation opportunity to Town

Meeting, he had begun negotiating to moot that opportunity by buying the Property himself. His purported reason, that it would have violated the Open Meeting Law for him to do so, is not credible because it could have been remedied by disclosure at a Board meeting. Further, we do not credit Comtois' self-serving testimony that he told the Board's Administrative Assistant. Additionally, although he claims he told Jones, Jones adamantly denies that he did. We credit Jones' denial because it is supported by: (a) emails in late December and early January asking for updates which Comtois answered, on his Town email account, evasively,^[8] (b) an email exchange on January 22-23, 2017 between him and the Town's outside lawyer in which the lawyer seeks an update on the status of the donation, to which Jones responds that it is "still in the hands of the Selectmen at this point,"^[9] and (c) the fact that Jones was invested in seeing the Property donated to the Town, as demonstrated by the substantial amount of work he performed in furtherance of that objective.

Comtois' argument that § 19 requires "simultaneity" is unpersuasive. The Commission has consistently interpreted the term "financial interest" as one which is direct and immediate or reasonably foreseeable. *See, e.g., EC-COI-86-25, EC-COI-84-96, EC-COI-82-34, In the Matter of Randall Walker*, 2019 SEC ____ (Select Board member had a financial interest in purchasing property at the time of his participation as a Board member); *See also In the Matter of Matthew Amorello*, 2009 SEC 2213, 2217. Comtois' legal argument is undercut by his incredible testimony that he first considered purchasing the Property when he spoke with Tasse on December 14, 2016.

B. Comtois Violated § 23(b)(2)(ii)

Section 23(b)(2)(ii) prohibits municipal employees from knowingly using their official positions to secure for themselves unwarranted privileges of substantial value which are not properly available to similarly situated individuals. In order to establish a violation, Petitioner must prove by a preponderance of the evidence that: (1) Comtois was a municipal employee; (2) who knowingly used his official position; (3) to secure an unwarranted privilege for himself; (4) which was of substantial value; and (5) which was not properly available to similarly situated individuals. *In the Matter of Edward McGovern*, 2016 SEC 2590.

Unwarranted Privilege

"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 (8th ed. 1999). An unwarranted privilege

is one that is “lacking adequate or official support” or “having no justification; groundless.” *EC-COI-98-2*. The use of one’s position for private gain may be an unwarranted privilege. *See In the Matter of Diego Nicolo*, 2007 SEC 2122, 2124 (use of position to obtain a job was an unwarranted privilege).

Comtois’ purchase of the Property secured for him an unwarranted privilege because, for his own selfish purposes, he used his position as Chair of the Board to “sabotage” Granger’s decision to donate the Property to the Town and the Townspeople’s opportunity to decide whether to accept it.^[10]

The unwarranted privilege was of substantial value

Substantial value for purposes of G.L. c. 268A is \$50 or more. 930 CMR 5.05. No evidence was presented regarding the Property’s fair market value at the time of Comtois’ purchase. Its assessed value of \$43,900 may have been excessive, but even Comtois’ purchase price of \$200 plus the payment of certain fees and expenses incurred by Granger far exceeded the statutory amount.

The unwarranted privilege was not available to similarly situated individuals

In August 2016, Jones presented Granger with a number of options for dealing with her desire to rid herself of the tax burden of the Property. She chose to donate the Property to the Town where she and her husband and family members had lived for many years. By December 14, the prospect of fulfilling her desires had advanced to where her intended gift was public knowledge and the Board had voted to place her donation before Town Meeting. Comtois’ dishonest report of the status of her donation derailed Granger’s plans and co-opted them for his private gain. Comtois deceptively created for himself the opportunity to purchase the Property. No one else was in a position to do that.

Comtois used his official position to secure the unwarranted privilege

Comtois contends that the principles set out in the Commission’s Advisory 14-1^[11] establish that he did not use his official position in connection with his purchase of the Property because Granger was not someone with whom he was having official dealings. The evidence shows just the opposite and that, in any event, Comtois’ actions did not meet the standards for officials’ permissible private business dealings with someone with whom they also have official dealings.

Comtois’ actions at the December 13, 2016 Board meeting were in discharge of his duties as a Selectman, his report to Tasse (Granger’s representative) was as a representative of the Board and the Town, as were his misleading reports to Jones. Moreover, Advisory 14-1’s permissible private business dealings must not have been initiated by the public employee and the public employee must disclose in writing the details of the dealings, including that it was initiated by the other party. The Commission accepted Tasse’s testimony that Comtois initiated the discussion of his private purchase; and Comtois does not even claim to have made the required written disclosure.

Comtois used his official position knowingly

The Commission finds that Comtois knowingly used his position to purchase the Property. As Chair, he volunteered to represent the Board in communicating its decision to place the donation before the Town Meeting and he did so, albeit misleadingly, in that capacity. Moreover, he responded to Jones, again misleadingly, in the same capacity, even using his Town email account to do so.

C. Comtois Did Not Violate § 23(b)(3)

Section 23(b)(3) prohibits a municipal employee from knowingly acting in a manner that would cause an informed person to reasonably believe that a third person could improperly influence the employee or unduly enjoy his favor in the performance of his official duties, or that the employee is likely to act or not act as a result of kinship, rank, position or undue influence by anyone. Importantly, a violation of the section requires the appearance of improper or undue influence by another person or actions by the employee likely resulting from the kinship, rank or position of another person.

Petitioner contends that Comtois’ actions on either or both of two occasions would have caused an informed person to reasonably believe that such improper influence could have occurred or demonstrated that Comtois is likely subject to influence as a result of the kinship, rank, position, or undue influence of a third person. The first occasion was Comtois contacting Chaffee and saying, in words or substance, that he wanted Chaffee to stop Clarke from working during the mid-March snowstorm. The second occasion was Comtois opposing a wage authorization for Clarke at a subsequent Board meeting.

The Commission finds that Petitioner did not meet its burden of proving that Comtois’ actions on these two occasions violated § 23(b)(3). It is undisputed that Clarke had publicly confronted Comtois about the purchase of the

Property and challenged the ethics of Comtois' actions. It is also undisputed that Comtois' actions against Clarke on the first occasion were initiated by the call from his then friend, who was also his then employee and the former Chief of Police, advising him that Clarke was then engaged in snowplowing a municipal sidewalk and expressing his concerns "about the ethics of the hiring, and possible liability for the Town" because Clarke had no wage authorization.

The Commission finds that Comtois too was concerned about liability to the Town and that his concern was understandable. The evidence showed that a wage authorization was required for the job Clarke was performing. An injury to Clarke in these circumstances might, for example, not have been covered by workers' compensation insurance or by the Town's liability insurance. Before taking any action to stop Clarke, Comtois confirmed that there was no such authorization on file for him.

There is no evidence that Ackerman's motives were anything other than what Comtois testified, and we find that no reasonable person would conclude that Comtois could have been "improperly" influenced by him, or that his influence was "undue" or the result of his status. The same can be said of the second occasion, which was, more remotely, also the result of the call.

IV. Conclusion

Petitioner has proven by a preponderance of the evidence that Comtois violated G.L. c. 268A, § 19 when, knowing he had a financial interest in the Property, he participated in the decision to submit the proposed donation of the Property to Town Meeting, when he undertook to report the Board's actions to Granger, when he misleadingly reported the Board's actions and when he misleadingly reported the status of the matter to Jones, and § 23(b)(2)(ii) when he used his position as a Selectman to purchase the Property personally. Petitioner has failed to prove by a preponderance of the evidence that Comtois violated G.L. c. 268A, § 23(b)(3).

V. Order

Having concluded that Respondent Stephen Comtois violated G.L. c. 268A, §§ 19 and 23(b)(2)(ii), and pursuant to the authority granted it by G.L. c. 268B, § 4(j), the State Ethics Commission hereby **ORDERS** Stephen Comtois to pay the following civil penalties: \$10,000 for his violation of G.L. c. 268A, § 19, and \$10,000 for his violation of G.L. c. 268A, § 23(b)(2)(ii), for a total civil penalty of \$20,000.

DATE AUTHORIZED: July 30, 2020

DATE ISSUED: August 18, 2020

^[1] According to the Town by-laws, annual Town Meetings were to be held on the first Monday in May.

^[2] The Minutes of the Board meeting describe the Board's action as "to place the issue on the upcoming Town Meeting's Warrant to accept the property and obtain a clear title upon acceptance." Petitioner's Exhibit (hereinafter "P. Ex.") 16.

^[3] Comtois described Tasse as "upset" upon hearing his report and, he claims, that she "recommended me purchasing it." Tasse denied that she recommended that Comtois purchase the Property. The Commission finds Tasse's testimony on this issue credible. Tasse was straightforward while testifying and she was emphatic on this point. Nothing in the evidence suggests any reason for her to testify falsely on the issue. By contrast, Comtois' conduct before and after the call supports the finding, and the Commission so finds, that he had already decided on a scheme to purchase the Property for himself and to raise the subject during the call to Tasse.

^[4] Respondent's Exhibit (hereinafter "R. Ex.") 9.

^[5] Petitioner cites an August 24, 2018 letter from Tasse to the Commission (P. Ex. 13) in support of its position that Comtois offered to purchase the Property before the December 13, 2016 Board meeting. We are not persuaded by Petitioner's interpretation of that letter. The letter states in pertinent part, referring to Granger, as follows: "Finally, she gave up and offered it to the [T]own to avoid paying taxes on a lot of no value to her. It was then (emphasis added) that Stephen Comtois learned of this situation and offered to buy it from her." Petitioner contends that the letter suggests that Comtois offered to purchase the Property around September 1, 2016, when Granger sent her letter to the Board expressing interest in donating the Property to the Town. We find that, in context, "then" could mean "at that time" (which would support Petitioner's contention that Comtois offered to purchase the Property in early September); or it could mean "after that" (which would not narrow the time frame and could include reference to the December 14, 2016 phone call). No evidence was introduced to clarify or support either interpretation, and we conclude that Petitioner has not met its burden to establish that the offer was made before the December 13, 2016 Board meeting.

^[6] P. Ex. 14.

[7] R. Ex. 9.

[8] P. Ex. 6.

[9] P. Ex. 17.

[10] The Commission has previously found the ability to purchase real estate to be a privilege. *See In the Matter of Joseph W. Daly*, 2008 SEC 2143, *In the Matter of Richard Bretschneider*, 2007 SEC 2082.

[11] *Public Employees' Private Business Relationships And Other Private Dealings With Those Over Whom They Have Official Authority Or With Whom They Have Official Dealings*.

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

SUFFOLK, ss.

**COMMISSION
ADJUDICATORY
DOCKET NO. 19-0005**

**IN THE MATTER OF
HELEN DONOHUE**

Appearances: Tracy Morong, Esq.
Counsel for Petitioner

Helen Donohue, Esq., *Pro Se*
Respondent

Commissioners: Maria J. Krokidas, Ch., Thomas J. Sartory, R. Marc Kantrowitz, Josefina Martinez, Wilbur P. Edwards, Jr.

Presiding Officer: Commissioner R. Marc Kantrowitz

DECISION AND ORDER

Petitioner filed an Order to Show Cause (“OTSC”) on June 17, 2019 against Respondent Helen Donohue (“Donohue”). The OTSC alleges that Donohue, a Selectman in the Town of Norwood, violated G.L. c. 268A, § 23(b)(3), by repeatedly participating as a Selectman in matters related to Eysie Plaza, without publicly disclosing that: (1) she had a contentious personal relationship with the owner of the plaza, Paul Eysie (“Eysie”), and/or (2) her daughters had a financial interest in nearby property.

An evidentiary hearing was held on January 27, 2020.^[1] At the hearing, the parties made opening statements and introduced evidence through witnesses and

exhibits.^[2] Both parties filed post-hearing briefs.^[3] On June 25, 2020, the parties presented closing arguments to the Commission via video conference.^[4] The Commission began deliberations in executive session on June 25, 2020 and continued the matter to July 30, 2020.^[5]

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. Donohue served as a member of the Town of Norwood (“Town”) Board of Selectmen (“BOS”) from 2001 to 2019.^[6]

2. Donohue has known Eysie for decades. Donohue and Eysie had an amicable relationship for many years. Their relationship became contentious in or around 2006, when Eysie bought property known as the former Barry Paper Mill (“the Mill”), located directly across the street from Donohue’s home.

3. The Mill was a dilapidated building that Eysie wanted to develop into affordable housing apartments. Eysie obtained approval from the Zoning Board of Appeals (“ZBA”) and worked with Town Officials to obtain \$835,000 in state funding to complete the project.

4. Donohue was not happy with the affordable housing project and she told Eysie that she would appeal the ZBA decision to Superior Court unless he agreed to certain “conditions.” The “conditions” included restrictions related to the height and size of the building, parking, trash removal, and the number of tenants who could reside in each unit.

5. Eysie and Donohue argued vehemently about the “conditions.” Eysie believed that if Donohue appealed to the ZBA, then he would lose the state funding and “be stuck with an empty building.” Although Eysie was unhappy with Donohue’s “conditions,” he ultimately agreed to them, obtained the necessary approval from the ZBA, and completed the affordable housing apartment project.

6. Eysie still owns the Mill property, which now contains six studio apartments. Donohue still lives across the street from the Mill property. Eysie and Donohue continued to have a contentious relationship after the Mill project was completed; they have had disputes related to the number of

tenants residing in each unit and the placement of the apartments' trash barrels.

7. Donohue's family has owned a vacant lot located at 1223 Washington Street in Norwood ("Lot") for 90 years. At all relevant times, the Lot was owned by the Olga Realty Trust ("Trust"). Donohue's three daughters were the sole beneficiaries of the Trust. Donohue believed that everyone in Town knew her family owned the Lot.

8. Eysie owns a strip mall ("Eysie Plaza") located 1237-1243 Washington Street in Norwood. Eysie Plaza is approximately 200 feet away from the Lot. Eysie Plaza is not a direct abutter to the Lot, nor is it an abutter to an abutter to the Lot. The two properties are separated by a public street and residential properties.

9. The Lot has been for sale for many years. At one point, Donohue asked Eysie to support the sale of the Lot to a developer; however, Eysie refused because, he felt that Donohue had "crucified" him "every time [he] . . . tried to do anything good."

10. The following three matters involving Eysie Plaza, or its tenant, Mina's Café,^[7] came before the BOS while Donohue was a Selectman:

- (1) June 14, 2016: Mina's Café's application for a wine and malt beverage license;
- (2) September 20, 2016: Eysie's request to place a warrant at a Special Town Meeting to rezone Eysie Plaza; and
- (3) February 21 and March 28, 2017: Mina's Café's application for an entertainment license.

11. The Town provided notice to the abutters of Eysie Plaza when each of these three matters came before the BOS. The Trust did not receive notice from the Town regarding any of these matters because the Lot does not abut Eysie Plaza.

12. On June 14, 2016, the BOS voted to allow Mina's Café's application for a wine and malt beverage license ("beverage license"). Donohue cast the sole vote against the application.

13. On September 20, 2016, the BOS voted to allow Eysie's request that a warrant be placed before the Special Town Meeting to rezone Eysie Plaza. Donohue cast the sole vote against Eysie's request. Eysie Plaza had been partially zoned for commercial use and partially zoned for

residential use; Eysie wanted the zoning to be changed to entirely commercial, which would reflect the Plaza's actual use.

14. On February 21, 2017, the BOS voted on whether to hold a public hearing on Mina's Café's application for an entertainment license. Donohue voted in favor of holding a public hearing.

15. On February 21, 2017, Donohue submitted a letter to the BOS asking the BOS to seek an opinion from Town Counsel before deciding whether to allow Mina's Café's application for an entertainment license. In the letterhead, Donohue listed her home address and telephone number, but also included her title as a member of the Board of Selectmen.

16. On March 28, 2017, the BOS held a public hearing on Mina's Café's application for an entertainment license. The minutes from the BOS meeting state that Donohue did not participate in the discussion or vote on Mina's Café's entertainment license.^[8] During the meeting, the BOS considered Donohue's February 21, 2017 letter as a written submission.

17. Eysie testified, and we accept, that it was well known by Town residents that he and Donohue had a hostile relationship. After watching a BOS meeting on television, Eysie's mother once asked Eysie why Donohue was "badgering" him.

18. Donohue did not make or file a disclosure of an appearance of a conflict of interest form pursuant to G.L. c. 268A, § 23(b)(3), relating to either: (1) the contentious personal relationship and ill will between herself and Eysie; or (2) her daughters' ownership interest in the Lot.

19. Donohue was aware that an appearance of a conflict of interest could raise an issue under the conflict of interest law. During the September 20, 2016 BOS meeting, Donohue questioned whether a fellow Selectman had an appearance of a conflict of interest. Donohue completed the Ethics Commission's online conflict of interest law training multiple times.

20. Donohue testified that beginning in November 2015 she underwent several surgical procedures, was hospitalized multiple times, cared for her ailing husband and sister, and as a result she was under significant emotional and physical strain for several years.

II. DISCUSSION

General Laws c. 268A, § 23(b)(3) provides that no municipal employee “shall knowingly, or with reason to know: . . . act 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.” Section 23(b)(3) contains a “safe harbor” disclosure provision. Under this “safe harbor,” an elected municipal employee may participate in a matter which raises an appearance of a conflict, if the employee discloses, in a public nature, the facts that would make it appear to a reasonable person that he might act in an unfair or biased manner. All disclosures made in accordance with the provisions of G.L. c. 268A, must be made in writing. *G.L. c. 268A, § 24.*

The purpose of § 23(b)(3) is to address appearances of impropriety and it is intended “to prevent giving the appearance of conflict as [much as] to suppress all tendency to wrongdoing.” *Scaccia v. State Ethics Commission*, 431 Mass. 351, 359 (2000) (quoting *Selectmen of Avon v. Linder*, 352 Mass. 581, 583 (1967) (internal quotation marks omitted)). “[S]ection 23(b)(3) is concerned with the appearance of a conflict of interest as viewed by the reasonable person, not whether preferential treatment was given.” *Id.* (quoting *In the Matter of Herbert*, 1996 SEC 800, 810). Section 23(b)(3) is implicated whenever a municipal employee has a private relationship with an individual and a matter involving that person comes before the employee. *In the Matter of Richard Kenney*, 2005 SEC 2006; see also *EC-COI-92-3*. Under § 23(b)(3), the appearance of impropriety can be avoided if a municipal employee discloses in writing in a public nature all of the relevant circumstances which would otherwise create the appearance of conflict.

In order to establish a violation of § 23(b)(3), Petitioner must prove by a preponderance of the evidence that:^[9] (1) Donohue was a municipal employee,^[10] (2) who knowingly or with reason to know acted in a manner; (3) which would cause a reasonable person having knowledge of the relevant facts to conclude that any person could improperly influence or unduly enjoy her favor in the performance of her official duties, or that she was likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person; and (4) that Donohue failed to disclose in a manner which is public in nature, the facts which would otherwise lead to such a conclusion. 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.^[11]

Donohue acted as a Selectman: (1) on June 14, 2016, when she voted against Mina’s Café’s application for a beverage license, (2) on September 20, 2016, when she voted against Eysie’s request for a warrant at the Special Town Meeting to rezone Eysie Plaza; and (3) on February 21, 2017, when she voted in favor of holding a public hearing on Mina’s Café’s application for an entertainment license.^[12]

A. Donohue’s acrimonious relationship with Eysie created an appearance of a conflict for Donohue when she participated as a Selectman in Eysie’s warrant request for a zoning change to Eysie Plaza.

We must first determine whether Donohue violated G.L. c. 268A, § 23(b)(3) by participating as a Selectman in matters related to Eysie Plaza and Mina’s Café.

Petitioner argues that Donohue harbored ill will toward Eysie in connection with the Mill property, and their history of animosity created the appearance that Donohue would be biased when participating as a Selectman in matters involving Eysie Plaza. Petitioner asserts that a reasonable person, who knew that Donohue had a private contentious relationship with Eysie, would conclude that Donohue might act in an unfair or biased manner toward Eysie when she participated in the BOS vote on Eysie’s warrant request and Mina’s Café’s license applications.

Donohue argues that she was not required to file a § 23(b)(3) disclosure because G.L. c. 268A, § 6A applied to her.^[13] Donohue also claims that she participated in matters involving Eysie Plaza because, as a Selectman, she had a duty to protect residents. Finally, Donohue argues that evidence related to the Mill Property is barred by the statute of limitations; as the Mill property project was completed approximately fourteen years ago, any evidence related to the Mill property is barred by G.L. c. 268B, § 4(c).^[14]

We find that Petitioner has established by a preponderance of the evidence that a reasonable person having knowledge of Eysie and Donohue’s history of significant personal conflict, would conclude that Donohue’s contentious relationship with Eysie could improperly influence Donohue in the performance of her official duties when she participated on September 20, 2016, in the BOS discussion and vote to approve Eysie’s warrant request.^[15] Donohue and Eysie’s personal conflict began in or around 2006, when Eysie purchased the Mill property and built affordable housing apartments directly across the street from Donohue’s home. Tension between Donohue and Eysie increased when Donohue threatened to appeal the ZBA decision approving the project to Superior Court, unless Eysie agreed to Donohue’s “conditions.” Even after

Eysie completed the affordable housing project, his relationship with Donohue remained contentious, and they continued to argue about Eysie's tenants and trash barrels. A reasonable person who knew of Donohue and Eysie's history of conflict, and that Donohue lived across the street from an affordable housing apartment building Eysie owned, would conclude that Donohue might be improperly influenced in the performance of her official duties, when she participated on September 20, 2016, in the BOS discussion and vote on whether to approve Eysie's warrant request to rezone Eysie Plaza.

We note that, under § 23(b)(3), Donohue could have participated in the September 20, 2016 BOS discussion and vote on Eysie's warrant request if, before participating, she had filed a written disclosure with the Town Clerk, disclosing her relationship with Eysie. However, at no time did Donohue ever file a written disclosure, nor did she make any verbal disclosure of her relationship with Eysie. The fact that Donohue and Eysie's contentious relationship was well known among residents did not exempt or excuse Donohue from filing a written § 23(b)(3) disclosure. The § 23(b)(3) advance written disclosure requirement to dispel the appearance of a conflict of interest is important. The § 23(b)(3) disclosure provision serves several purposes; it requires a public employee to pause and reflect upon the appearance issue and decide whether to abstain or, notwithstanding the appearance issue, to participate after making a timely written disclosure; the disclosure is also a public record, which assists in avoiding later disputes of whether an arrangement was disclosed, and it subjects the arrangement to public view. *In the Matter of Walter R. McGrath*, 2004 SEC 708; *In the Matter of Stephen V. Shiraka*, 2004 SEC 1163; *see also Advisory 05-01: Standards of Conduct*.

B. Donohue's daughters' ownership of a vacant lot near Eysie Plaza did not create an appearance of a conflict for Donohue when she participated as a Selectman in matters regarding Eysie Plaza and Mina's Cafe.

Next, we must determine whether Donohue violated G.L. c. 268A, § 23(b)(3) when she participated as a Selectman in matters regarding Eysie Plaza and Mina's Café when her daughters had a financial interest in nearby property.

Petitioner argues that Donohue's daughters' ownership interest in the Lot created an appearance of a conflict of interest for Donohue when she participated in matters involving Eysie Plaza. Petitioner maintains that the close proximity between the Lot and Eysie Plaza created an appearance that a change to Eysie Plaza's zoning, or a change to the use of Mina's Café (i.e. whether Mina's Café obtained an entertainment or beverage license) would

affect the value of the Lot, which was for sale at all relevant times.^[16] Petitioner asserts that a reasonable person who knew that Donohue's daughters had an ownership interest in a vacant lot located across the street and approximately 200 feet from Eysie Plaza, might conclude that Donohue would act favorably towards her daughters' interest in the Lot, when Donohue participated as a Selectman in matters involving Eysie Plaza and Mina's Café.

Donohue argues that she was not required to file a § 23(b)(3) disclosure before she participated as a Selectman in matters involving Eysie Plaza, because the Trust did not receive notice from the Town regarding Eysie Plaza's warrant request or Mina's Café's license applications. Donohue claims that because the Trust is not on the "Town Abutters List" (i.e., a list of properties, maintained by the Town, which the Town uses to provide abutters with notice about matters involving Eysie Plaza), and because there is a public street between the Lot and Eysie Plaza, the fact that her daughters own the Lot, did not create an appearance of a conflict when she participated in Eysie's warrant request, or in Mina's Café's license applications.

Although it is a close question, we find, based on all of the evidence in the record, that Petitioner has not met its burden.

III. Order

We have concluded that Donohue violated G.L. c. 268A, § 23(b)(3) when she participated as a Selectman in the discussion and vote on Eysie's warrant request to rezone Eysie Plaza. There is sufficient evidence in the record that Donohue understood that an appearance of a conflict could raise an issue under the conflict of interest law. Donohue completed the Ethics Commission's online conflict of interest law training multiple times, and she explained to a fellow Selectman that merely the appearance of a conflict could raise an issue under the conflict of interest law. Donohue, a longtime Selectman and attorney, should have understood her obligation to file a § 23(b)(3) disclosure before participating as a Selectman in matters involving Eysie Plaza. However, on balance, considering the totality of the circumstances, in this particular case, we find a civil penalty of \$50 is appropriate for the following reasons.

First, we are mindful that when Donohue participated as a Selectman in matters involving Eysie Plaza, she was under significant physical and emotional strain. Donohue underwent several surgical procedures, was hospitalized multiple times, and was caring for her ailing husband and sister. Second, there is no evidence that Donohue intentionally tried to conceal her relationship with Eysie,

or that she did not file a disclosure because she did not want to reveal the nature of her relationship with him. To the contrary, it was well known among Town residents that Donohue and Eysie had a hostile relationship, which essentially satisfied the safe harbor provision of 23(b)(3).^[17]

Finally, because Donohue was recently re-elected to the BOS and this type of violation may be likely to recur in the future, if a matter comes before Donohue as a Selectman involving an individual or an entity with whom she has a private relationship, which would cause a reasonable person having knowledge of the relevant facts to conclude that any person could improperly influence or unduly enjoy her favor in the performance of her official duties, or that she is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person, then she must either abstain from the matter as a Selectman, or file a § 23(b)(3) disclosure with the Town Clerk before she participates in the matter.

Additionally, if any matter comes before Donohue on the BOS involving Paul Eysie, Eysie Plaza, Mina's Café, or any tenant of Eysie Plaza or Paul Eysie, to comply with § 23(b)(3), Donohue is well advised to either: (1) abstain from participating in the matter as a Selectman,^[18] or (2) file a written § 23(b)(3) disclosure with the Town Clerk before she participates. Further, if she participates in a matter that raises an appearance of a conflict, pursuant to G.L. c. 268A, § 23(b)(2), she must take care to be fair and impartial in her participation, and she may not use her Selectman position to provide any individual or entity with an unwarranted benefit or privilege of substantial value that is not available to similarly situated individuals. We encourage Donohue to contact the Commission for advice if she has any questions about how the conflict of interest law applies.

Having concluded that Respondent Helen Donohue violated G.L. c. 268A, § 23(b)(3) and pursuant to the authority granted it by G.L. c. 268B, § 4(j), the State Ethics Commission hereby **ORDERS** Respondent Helen Donohue to pay a civil penalty of \$50.

DATE AUTHORIZED: July 30, 2020

DATE ISSUED: August 19, 2020

^[1] 930 CMR 1.01(10)(b). Donohue, who is an attorney, appeared *pro se*.

^[2] Donohue and Eysie were the only witnesses who testified at the adjudicatory hearing.

^[3] 930 CMR 1.01(10)(m).

^[4] The parties agreed to present their closing arguments to the full Commission remotely, via Zoom video conference, pursuant to the Governor's Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, § 20, dated March 12, 2020. *See also* 930 CMR 1.01(10)(f).

^[5] G.L. c. 268B, § 4(i); 930 CMR 1.01(10)(o)(1).

^[6] Donohue was elected to the BOS again on June 8, 2020.

^[7] Mina's Café leases space from Eysie to operate a restaurant in Eysie Plaza. Eysie does not own Mina's Café.

^[8] Eysie, who did not represent Mina's Café, but attended the meeting as a member of the public, testified that although Donohue did not vote, she was "very much involved in that discussion" because she sat at the table, made gestures and passed notes. The Commission credits the minutes from the BOS meeting and finds that Donohue did not participate in the discussion or vote on Mina's Café's entertainment license as a Selectman.

^[9] 930 CMR 1.01(o)(2).

^[10] It is not disputed that at all relevant times Donohue was a municipal employee.

^[11] 930 CMR 1.01(10)(n)(3).

^[12] Petitioner asserts that Donohue acted as a Selectman when she submitted a letter to the BOS on February 21, 2017 regarding Mina's Café's application for an entertainment license. Whether Donohue submitted the letter as a private citizen or in her capacity as a Selectman is a close question. However, as Donohue participated in other matters related to Eysie Plaza, we need not reach this issue.

^[13] Donohue's argument that G.L. c. 268A, § 6A applies to her is without merit. Section 6A applies only to individuals who have been nominated at a *state primary* or *chosen at a state election*. G.L. c. 268A, § 6A; G.L. c. 268B, § 1 (see definitions of "Public official" and "Public office"). Donohue was a municipal employee and, as such, G.L. c. 268A, § 6A does not apply to her.

^[14] The Commission rejects Donohue's statute of limitations argument. Pursuant to G.L. c. 268B, § 4(c), the Commission "shall initiate such an adjudicatory proceeding within 5 years from the date the commission

learns of the alleged violation, but not more than 6 years from the date of the last conduct relating to the alleged violation.” The OTSC, issued on June 17, 2019, alleges that Donohue violated G.L. c. 268A, § 23(b)(3) when she participated as a Selectman in matters involving Eysie Plaza and Mina’s Café. The conduct related to Donohue’s alleged § 23(b)(3) violation relates to matters Donohue participated in as a Selectman on: (1) June 14, 2016, (2) September 20, 2016, and (3) February 21, 2017. Accordingly, Donohue’s conduct related to the alleged § 23(b)(3) violations occurred within the statute of limitations set forth in G.L. c. 268B, § 4(c). As for the acts outside of the limitations period, they were admitted as relevant to the history of personal conflict.

^[15] Whether Donohue also violated G.L. c. 268A, § 23(b)(3) when she participated as a member of the BOS on Mina’s Café’s beverage and entertainment license applications is a closer question. Although there is ample evidence in the record that Donohue had an acrimonious relationship with Eysie, who owned Eysie Plaza and was Mina’s Café’s landlord, there is no evidence that Donohue had a personal relationship with Mina’s Café and/or its owners. We have determined that Donohue violated G.L. c. 268A, § 23(b)(3) when she participated as a Selectman in Eysie’s warrant request to rezone Eysie Plaza, and therefore we need not decide whether Donohue also violated § 23(b)(3) when she participated in Mina’s Café’s license applications.

^[16] There is not sufficient evidence in the record that the value of the Lot would have been affected by the BOS decisions regarding Eysie Plaza and Mina’s Café. Donohue would have been prohibited from participating in these matters under G.L. c. 268A, § 19, if it had been reasonably foreseeable that the value of the Lot would increase/decrease as a result of these matters. Section 19 prohibits a municipal employee from participating in a particular matter in which her immediate family members have a financial interest. The Commission has previously found that a property owner is presumed to have a financial interest in matters involving abutting or nearby property based on certain factors. *See Advisory 05-02: Voting on Matters Affecting Abutting or Nearby Property*. For example, a property owner is presumed to have a financial interest in matters involving property that is directly opposite a street, or where she is an abutter to an abutter within 300 feet of the property line. Accordingly, if the Lot was located directly across the street from Eysie Plaza, or if it was an abutter to an abutter within 300 feet of Eysie Plaza, then it would have been presumed that Donohue’s daughters had a financial interest in matters involving Eysie Plaza, and Donohue would have been prohibited, under § 19, from participating as a Selectman in matters involving Eysie Plaza. However, Eysie Plaza is not located directly across

the street from the Lot, nor is it an abutter to an abutter of the Lot, and there was no allegation in the OTSC that Donohue violated G.L. c. 268A, § 19.

^[17] This is not to intimate that a well-known reputation will shield one from liability under § 23(b)(3). Indeed, we take this opportunity to emphasize that a written disclosure should be filed.

^[18] If Donohue chooses to abstain from participating in a matter as a Selectman, the best practice, although not required, is for her to state for the minutes that she is abstaining and then leave the room while the Board deliberates and votes on the matter.

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

SUFFOLK, ss.

**COMMISSION
ADJUDICATORY
DOCKET NO. 20-0009**

**IN THE MATTER OF
KIRK MOSCHETTI**

DISPOSITION AGREEMENT

The State Ethics Commission (“Commission”) and Kirk Moschetti (“Moschetti”) 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 20, 2019, 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 19, 2019, the Commission concluded its inquiry and found reasonable cause to believe that Moschetti violated G.L. c. 268A, § 19.

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

Findings of Fact

1. Moschetti, a resident of the Town of Templeton (“Town”), has served as an elected member of the seven-member Town Planning Board (“Planning Board” or “Board”) for approximately fifteen years. Moschetti has been the Chair of the Planning Board for the past fourteen years.

2. During the relevant period, the population of Templeton was approximately 8,013.

3. Moschetti owns, and at all times here relevant has owned, residential property on Rice Road in Templeton which is in a residential zone.

4. Moschetti's father also owns, and at all times here relevant has owned, property on Rice Road in Templeton. Moschetti's father's property includes his residence and his septic installation, pumping, and repair business. Although Moschetti's father's property is in a residential zone, his septic business has preexisting non-conforming commercial use status. As such, Moschetti's father's business use of his Rice Road property is limited to those related to the original business of operating a septic business.

5. On October 12, 2017, Moschetti purchased an automobile storage business property on Baldwinville Road in Templeton. Although the property is in a residential zone, it has preexisting non-conforming commercial use status. As such, Moschetti's commercial use of the property is limited to those related to the original business of automobile storage.

6. At a Planning Board meeting on July 11, 2017, the Board discussed proposing to Town Meeting warrant articles rezoning certain areas of Town, including an area of Patriots Road/Route 2A and an area of Baldwinville Road, to increase the Town's commercial property tax base. Some Board members stated at the meeting that the Patriots Road/Route 2A area and Baldwinville Road areas had a significant number of preexisting non-conforming businesses operating in residential zones.

7. Moschetti participated as a Planning Board member in the July 11, 2017 rezoning discussion by suggesting the Board consider proposing additional commercial zoning and advocating to rezone both areas.

8. During the July 11, 2017 Planning Board meeting, Moschetti stated that he "had a conflict" with the rezoning proposal because he "owned property." As Planning Board Chair, Moschetti stated that any Board members who owned property in the relevant areas could participate in the discussion provided they disclosed their property ownership.

9. At the July 11, 2017 Planning Board meeting, the Board discussed proposing the rezoning of fifty-three properties in the area of Patriots Road/Route 2A, including Moschetti's and his father's Rice Road properties. At all relevant times, Moschetti knew that the area proposed for

rezoning included his and his father's Rice Road properties.

10. At the July 11, 2017 Planning Board meeting, the Board also discussed proposing the rezoning of fifteen properties on Baldwinville Road, including Moschetti's automobile storage business property. At all relevant times, Moschetti knew that the area proposed for rezoning included the Baldwinville Road property he was interested in purchasing and subsequently purchased.

11. On September 19, 2017, the Planning Board held a public hearing on the two rezoning proposals. Moschetti participated as a Planning Board member in the September 19, 2017 public hearing by assuring a concerned resident of the Baldwinville Road area that construction would not create water issues in the resident's yard. Following the public hearing, Moschetti voted "yes" on a motion to change the zoning of certain parcels on Patriots Road/Route 2A from "Residential" to "Highway Business."¹ At the time of the vote, Moschetti stated that he owned property in the relevant area.

12. Following the vote on the motion to change the zoning of certain parcels on Patriots Road/Route 2A, the Planning Board voted on a motion to change the zoning of certain parcels on Baldwinville Road from "Residential" to "Highway Business."^[1] According to the meeting minutes, Moschetti abstained from the vote due to "potential financial investment." In a sworn interview, Moschetti testified that he abstained because he knew he was interested in purchasing the Baldwinville Road business property, and that he announced he might be purchasing the property.

13. In a sworn interview, Moschetti testified that he believed he could vote on the proposed rezoning of the Patriots Road/Route 2A area because his residence already existed, but that he should abstain on the proposed rezoning of the Baldwinville Road area where he intended to purchase the business.

14. The two proposed rezoning warrant articles were put on the agenda for the Town Meeting held on November 14, 2017.

15. Moschetti participated as a Planning Board member at the November 14, 2017 Town Meeting by advocating for the two rezoning articles on behalf of the Planning Board. Moschetti stated that the proposal would not affect residents and would allow the Town to increase its commercial property tax base. Moschetti stated that he owned property in both areas proposed to be rezoned, but that his businesses would not be affected by the proposed changes.

16. The rezoning articles did not pass at the 2017 Town Meeting.

17. On November 13, 2018, the Planning Board held a public meeting to discuss submitting to the spring 2019 Town Meeting warrant articles rezoning the same areas of Patriots Road/Route 2A and Baldwinville Road that the Board had unsuccessfully proposed be rezoned in 2017.

18. During the November 13, 2018 Planning Board meeting, Moschetti read aloud from a Town resident's letter to the Board that questioned certain Board members, including Moschetti, owning property in the areas to be rezoned. A second resident, present at the meeting, questioned the Board's repeated attempts to rezone areas where certain members of the Board owned property.

19. Moschetti participated as Planning Board Chair in the November 13, 2018 public hearing by stating in reply to the residents' questions, that "Ethics was not up for discussion." Moschetti stated further that Board members had "done a full disclosure" and claimed that the Board was trying to encourage business. Moschetti insisted that public comment be limited to zoning suggestions.

20. After many Patriots Road/Route 2A-area residents expressed their opposition to rezoning at the November 13, 2018 Board meeting, the Planning Board discussed not including the Patriots Road/Route 2A area in a rezoning recommendation to Town Meeting.

21. Following the November 13, 2018 discussion, the Board voted to schedule a public hearing on rezoning only the proposed section of Baldwinville Road. Moschetti stated that he owned property in the Baldwinville Road area proposed for rezoning and abstained from the vote to proceed only as to the Baldwinville Road rezoning proposal.

22. On December 11, 2018, the Board held a public hearing on rezoning the proposed section of Baldwinville Road. Moschetti participated as a Planning Board member by stating that residential homes in the area would not be impacted by the change because the area is already busy from a nearby school. Moschetti stated that he owned "the biggest parcel" in the area proposed for rezoning, but that the property was "already grandfathered commercial, so it's really irrelevant." Moschetti abstained from the Board's vote to change the zoning of certain parcels on Baldwinville Road from "Residential" to "Commercial/Industrial B."

23. Immediately following the Board's December 13, 2018 vote, with Moschetti abstaining, to change the zoning

of certain parcels on Baldwinville Road from "Residential" to "Commercial/Industrial B," the Board voted to substitute "Commercial/Industrial A" zoning in its recommendation because "Commercial/Industrial B" zoning would have allowed for adult entertainment, which the Board had not intended. Moschetti voted in favor of the substitution.

24. The proposed rezoning warrant article was put on the agenda for the Town Meeting held on May 16, 2019.

25. Moschetti participated as a Planning Board Chair at the May 16, 2019 Town Meeting by answering residents' questions about the impact of a zoning change on residential homes. The rezoning warrant article passed.

Conclusions of Law

Section 19

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

27. As a member of the Planning Board, Moschetti is a municipal employee as that term is defined in G.L. c. 268A, § 1(g).

28. The Planning Board's decisions in 2017 and 2018 to submit to Town Meeting warrant articles rezoning portions of Patriots Road/Route 2A and Baldwinville Road were particular matters.

29. Moschetti participated in the rezoning particular matters as Planning Board Chair by discussing the rezoning proposals, voting to recommend to Town Meeting the warrant article to rezone a portion of Patriots Road/Route 2A on September 19, 2017, and advocating for the rezoning warrant articles at Town Meetings on November 14, 2017, and May 16, 2019.

30. Moschetti's father is his immediate family member.

31. At the time of his participation as a Planning Board member in the rezoning particular matters, Moschetti and his immediate family had to his knowledge a financial interest in the matters because the proposed Patriots Road/Route 2A and Baldwinville Road area zoning changes would allow greater development opportunities on his Baldwinville Road property and on his and his fathers' Rice Road properties. The ability to commercially develop the properties with fewer restrictions would have increased their value for Moschetti and his father and any potential

purchasers of the property. As a matter of law, Moschetti and his father had a financial interest in the zoning changes affecting the use of their properties.^[6]

32. The exemption to § 19 stated in § 19(b)(3)^[7] did not apply because Moschetti’s financial interest in the rezoning proposals, and that of his father, was not shared with a substantial segment of the population of Templeton.^[8]

33. Therefore, Moschetti violated § 19 by participating as Planning Board Chair in the Board’s decisions whether to submit warrant articles rezoning portions of Patriots Road/Route 2A and Baldwinville Road.

Resolution

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

- (1) that Moschetti 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
- (2) that Moschetti 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: September 17, 2020

^[1] Because the Planning Board did not have the authority to itself change the zoning bylaw, these votes were effectively to submit the rezoning warrant articles to Town Meeting.

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

^[3] “Particular matter” means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts

for special laws related to their governmental organizations, powers, duties, finances and property. *G.L. c. 268A, § 1(k)*.

^[4] “Immediate family” means the employee and his spouse, and their parents, children, brothers and sisters. *G.L. c. 268A, § 1(e)*.

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

^[6] *See Commission Advisory No. 05-02: "Voting on Matters Affecting Abutting or Nearby Property,"* which states: "Under the conflict of interest law, a property owner is presumed to have a financial interest when...the matter would otherwise alter her property value, rights or use. For example, a property owner is presumed to have a financial interest in zoning changes, variances, nearby subdivision or development approvals, and roadway, sewerage or safety improvements."

^[7] Section 19(b)(3) of G.L. c. 268A provides that § 19 is not violated if the particular matter involves a determination of general policy and the interest of the municipal employee or members of his immediate family is shared with a substantial segment of the population of the municipality.

^[8] Under Commission precedent, a “substantial segment” is ten percent or more of the population. *See EC-COI-93-20; EC-COI-92-34*. Because fewer than ten percent of Templeton’s population owned property in the areas of Patriots Road/Route 2A and Baldwinville Road to be rezoned, Moschetti’s financial interest in the rezoning proposal, and that of his father, was not shared with a substantial segment of the Town’s population.

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

SUFFOLK, ss.

**COMMISSION
ADJUDICATORY
DOCKET NO. 20-0010**

**IN THE MATTER OF
JOHN BUCKLEY**

DISPOSITION AGREEMENT

The State Ethics Commission (“Commission”) and John Buckley (“Buckley”) 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 20, 2019, 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 19, 2019, the Commission concluded its inquiry and found reasonable cause to believe that Buckley violated G.L. c. 268A, § 19.

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

Findings of Fact

1. Buckley, a resident of the Town of Templeton (“Town”), has served as an elected member of the seven-member Town Planning Board (“Planning Board” or “Board”) for approximately seven years.
2. During the relevant period, the population of Templeton was approximately 8,013.
3. Buckley and his wife own a campground at 2 Peaceful Pines, Templeton. Also, Buckley owns one and his wife the other of two residential properties at 3 and 4 Peaceful Pines. Although all three properties are located in a residential zone, the campground has preexisting non-conforming commercial status. As such, Buckley’s use of the campground property is limited to those related to the original business of a campground.
4. At a Planning Board meeting on July 11, 2017, the Board discussed proposing to Town Meeting warrant articles rezoning certain areas of Town, including rezoning an area of Patriots Road/Route 2A and an area of Baldwinville Road to increase the Town’s commercial tax base. Some Board members stated at the meeting that the Patriots Road/Route 2A area and Baldwinville Road area had a significant number of preexisting non-conforming businesses operating in residential zones.
5. At the July 11, 2017 Planning Board meeting, the Board proposed the rezoning of fifty-three properties, including Buckley’s Peaceful Pines properties, in the area of Patriots Road/Route 2A. At all relevant times, Buckley knew that the area proposed for rezoning included his Peaceful Pines campground and residential properties.
6. Buckley stated at the July 11, 2017 Board meeting that he owned property in the Patriots Road/Route 2A area proposed for rezoning.
7. Buckley participated as a Planning Board member in the July 11, 2017, rezoning discussion by stating that he supported the proposed rezoning and suggesting that the Board consider proposing “mixed use” zoning as opposed to “highway business” zoning where Patriots Road/Route 2A has some residential homes.
8. The Planning Board held a public hearing on the proposed rezoning on September 19, 2017. Following the public hearing, Buckley moved to change the zoning of certain parcels on Patriots Road/Route 2A from “Residential” to “Highway Business.” According to the meeting minutes, Buckley voted “yes” on the motion. At the time of the vote, Buckley stated that he owned property in the relevant area. Buckley testified in a sworn interview that he believed he could participate if he disclosed his property ownership.
9. The proposed rezoning warrant article was put on the agenda for the Town Meeting held on November 14, 2017. The rezoning warrant article did not pass.
10. On November 13, 2018, the Planning Board held a public meeting to discuss submitting to the spring 2019 Town Meeting warrant articles rezoning the same areas of Patriots Road/Route 2A and Baldwinville Road.
11. Buckley participated as a Planning Board member in the Board’s discussion of the re-submission of the Patriots Road/Route 2A and Baldwinville Road areas rezoning warrant articles to Town Meeting. Buckley proposed that the Board focus on rezoning major arteries with easy access to Route 2 to encourage current and new business.
12. During the November 13, 2018 Planning Board meeting, the Board Chair read aloud from a Town resident’s letter to the Board that questioned certain Board members, including Buckley, owning property in the areas to be rezoned. A second resident, present at the meeting, questioned the Board’s repeated attempts to rezone areas where certain members of the Board owned property.
13. After many Patriots Road/Route 2A-area residents expressed their opposition to rezoning at the November 13, 2018 Board meeting, the Planning Board discussed not including the Patriots Road/Route 2A area in a rezoning recommendation to Town Meeting. The Board then voted to schedule a public hearing on rezoning only the proposed section of Baldwinville Road. Buckley voted in favor of

proceeding only as to the Baldwinville Road rezoning proposal.

Conclusions of Law

Section 19

14. Section 19 of G.L. c. 268A prohibits a municipal employee from participating^[1] as such an employee in a particular matter^[2] in which, to his knowledge, he or an immediate family member^[3] has a financial interest^[4].

15. As a member of the Planning Board, Buckley is a municipal employee as that term is defined in G.L. c. 268A, § 1(g).

16. The Planning Board's decisions whether to submit warrant articles rezoning portions of Patriots Road/Route 2A in 2017 and 2018 were particular matters.

17. Buckley participated in the rezoning particular matters as a Planning Board member by discussing and voting on the proposals.

18. Buckley's wife is his immediate family member.

19. At the time of his participation as a Planning Board member in the rezoning particular matters, Buckley and his immediate family had to his knowledge a financial interest in the matters because the proposed zoning change would have given him the option to develop his and his wife's Peaceful Pines properties without being limited to the original business of a campground. Nor would a future purchaser of the properties be limited to development related to the original business of a campground. Therefore, the proposed zoning change would have affected the value of the properties. As a matter of law, Buckley and his wife had a financial interest in zoning changes affecting the use of their properties.^[5]

20. The exemption to § 19 stated in § 19(b)(3)^[6] did not apply because Buckley's and his wife's financial interest in the rezoning proposal was not shared with a substantial segment of the population of Templeton.^[7] Therefore, Buckley violated § 19 by participating as a Planning Board member in the Board's decisions whether to submit warrant articles rezoning portions of Patriots Road/Route 2A.

Resolution

In view of the foregoing violations of G.L. c. 268A by Buckley, the Commission has determined that the public

interest would be served by the disposition of this matter without further enforcement proceedings, on the following terms and conditions agreed to by Buckley:

- (1) that Buckley pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$2,000 as a civil penalty for violating G.L. c. 268A, § 19; and
- (2) that Buckley 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: September 17, 2020

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

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

^[3] "Immediate family" means the employee and his spouse, and their parents, children, brothers and sisters. *G.L. c. 268A, § 1(e)*.

^[4] "Financial interest" means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. *See Graham v. McGrail*, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. *See EC-COI-84-98*. The interest can be affected in either a positive or negative way. *EC-COI-84-96*.

^[5] *See Commission Advisory No. 05-02: "Voting on Matters Affecting Abutting or Nearby Property,"* which states: "Under the conflict of interest law, a property owner is presumed to have a financial interest when...the matter would otherwise alter her property value, rights or use. For example, a property owner is presumed to have a financial interest in zoning changes, variances, nearby subdivision

or development approvals, and roadway, sewerage or safety improvements.

^[6] Section 19(b)(3) of G.L. c. 268A provides that § 19 is not violated if the particular matter involves a determination of general policy and the interest of the municipal employee or members of his immediate family is shared with a substantial segment of the population of the municipality.

^[7] Under Commission precedent, a “substantial segment” is ten percent or more of the population. *See EC-COI-93-20; EC-COI-92-34*. Because fewer than ten percent of Templeton’s population owned property in the area of Patriots Road/Route 2A to be rezoned, Buckley’s and his wife’s financial interest in the rezoning proposal was not shared with a substantial segment of the Town’s population.

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

SUFFOLK, ss.

**COMMISSION
ADJUDICATORY
DOCKET NO. 20-0011**

**IN THE MATTER OF
FRANK MOSCHETTI**

DISPOSITION AGREEMENT

The State Ethics Commission (“Commission”) and Frank Moschetti (“Moschetti”) 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 20, 2019, 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 19, 2019, the Commission concluded its inquiry and found reasonable cause to believe that Moschetti violated G.L. c. 268A, § 19.

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

Findings of Fact

1. Moschetti, a resident of the Town of Templeton (“Town”), has served as an elected member of the seven-

member Town Planning Board (“Planning Board” or “Board”) for over twenty-five years.

2. During the relevant period, the population of Templeton was approximately 8,013.

3. Moschetti owns, and at all times here relevant has owned, property on Rice Road in Templeton. The property includes Moschetti’s residence and his septic installation, pumping, and repair business. Although the property is in a residential zone, Moschetti’s septic business has preexisting non-conforming commercial use status. As such, Moschetti’s commercial use of his Rice Road property is limited to those related to the original business of operating a septic company.

4. Moschetti’s son also owns, and at all times here relevant owned, property on Rice Road in Templeton which is in a residential area.

5. On October 12, 2017, Moschetti’s son purchased an automobile storage business property on Baldwinville Road in Templeton. Although the property is in a residential zone, it has preexisting non-conforming commercial use status. As such, Moschetti’s son’s commercial use of his Baldwinville Road property is limited to those related to the original business of automobile storage.

6. At a Planning Board meeting on July 11, 2017, the Board discussed proposing to Town Meeting warrant articles rezoning certain areas of Town, including an area of Patriots Road/Route 2A and an area of Baldwinville Road to increase the Town’s commercial property tax base. Some Board members stated at the meeting that the Patriots Road/Route 2A area and Baldwinville Road area had a significant number of preexisting non-conforming businesses operating in residential zones.

7. At the July 11, 2017 Planning Board meeting, the Board discussed proposing the rezoning of fifty-three properties, including Moschetti’s and his son’s Rice Road properties, in the area of Patriots Road/Route 2A. At all relevant times, Moschetti knew that the area proposed for rezoning included his and his son’s Rice Road properties.

8. At the July 11, 2017 Planning Board meeting, the Board also discussed proposing the rezoning of fifteen properties, including Moschetti’s son’s automobile storage business property, on Baldwinville Road. At all relevant times, Moschetti knew that the area proposed for rezoning included the Baldwinville Road business property that his son was interested in purchasing and subsequently purchased.

9. Moschetti participated as a Planning Board member in the Board's July 11, 2017, rezoning discussion by stating he did not believe that the proposal would encourage additional business because the Town did not enforce zoning laws.

10. On September 19, 2017, the Planning Board held a public hearing on the two rezoning proposals. Following the public hearing, Moschetti voted "yes" on a motion to change the zoning of certain parcels on Patriots Road/Route 2A from "Residential" to "Highway Business." At the time of the vote, Moschetti stated that he owned property in the relevant area.

11. Following the Board's vote on the motion to change the zoning of certain parcels on Patriots Road/Route 2A, the Planning Board voted on a motion to change the zoning of certain parcels on Baldwinville Road from "Residential" to "Highway Business."^[1] Moschetti voted "yes" on the motion.

12. The two proposed rezoning warrant articles were put on the agenda for the Town Meeting held on November 14, 2017. The rezoning warrant articles did not pass.

13. On November 13, 2018, the Planning Board held a public meeting to discuss submitting to the spring 2019 Town Meeting warrant articles rezoning the same areas of Patriots Road/Route 2A and Baldwinville Road.

14. During the November 13, 2018 Planning Board meeting, the Board Chair read aloud from a Town resident's letter to the Board that questioned certain Board members, including Moschetti, owning property in the areas to be rezoned. A second resident, present at the meeting, questioned the Board's repeated attempts to rezone areas where certain members of the Board owned property.

15. After many Patriots Road/Route 2A-area residents expressed their opposition to rezoning at the November 13, 2018 Board meeting, the Planning Board discussed not including the Patriots Road/Route 2A area in a rezoning recommendation to Town Meeting.

16. Moschetti participated in the November 13, 2018 discussion by stating to the Board that residents had already voted down the proposal to rezone part of Patriots Road/Route 2A.

17. Following the November 13, 2018 discussion, the Board voted to schedule a public hearing on rezoning only the proposed section of Baldwinville Road. Moschetti

voted in favor of proceeding only as to the Baldwinville Road rezoning proposal.

18. On December 11, 2018, the Board held a public hearing on rezoning the proposed section of Baldwinville Road. Following the public hearing, Moschetti voted in favor of changing the zoning of certain parcels on Baldwinville Road from "Residential" to "Commercial/Industrial."

19. The proposed rezoning warrant article was put on the agenda for the Town Meeting held on May 16, 2019. The warrant article passed.

20. Moschetti testified in a sworn interview that he believed he could participate if he disclosed his property ownership.

Conclusions of Law

Section 19

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

22. As a member of the Planning Board, Moschetti is a municipal employee as that term is defined in G.L. c. 268A, § 1(g).

23. The Planning Board's decisions whether to submit warrant articles rezoning portions of Patriots Road/Route 2A and Baldwinville Road in 2017 and 2018 were particular matters.

24. Moschetti participated in the rezoning particular matters as a Planning Board member by discussing and voting on the proposals.

25. Moschetti's son is his immediate family member.

26. At the time of his participation as a Planning Board member in the rezoning particular matters, Moschetti and his immediate family had to his knowledge a financial interest in the matters because the proposed Patriots Road/Route 2A and Baldwinville Road area zoning changes would allow greater development opportunities on his and his son's Rice Road properties and on his son's Baldwinville Road property. The ability to commercially develop the properties with fewer restrictions would have increased their value for Moschetti and his son and any potential purchasers of the property. As a matter of law,

Moschetti and his son had a financial interest in the zoning changes affecting the use of their properties.^[6]

27. The exemption to § 19 stated in § 19(b)(3)^[7] did not apply because Moschetti’s financial interest in the rezoning proposals, and that of his son, was not shared with a substantial segment of the population of Templeton.^[8]

28. Therefore, Moschetti violated § 19 by participating as a Planning Board member in the Board’s decisions whether to submit warrant articles rezoning portions of Patriots Road/Route 2A and Baldwinville Road.

Resolution

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

- (1) that Moschetti pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$2,000 as a civil penalty for violating G.L. c. 268A, § 19; and
- (2) that Moschetti 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: September 17, 2020

^[1] Because the Planning Board did not have the authority to itself change the zoning bylaw, these votes were effectively to submit the rezoning warrant articles to Town Meeting.

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

^[3] “Particular matter” means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental

organizations, powers, duties, finances and property. G.L. c. 268A, § 1(k).

^[4] “Immediate family” means the employee and his spouse, and their parents, children, brothers and sisters. G.L. c. 268A, § 1(e).

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

^[6] See *Commission Advisory No. 05-02: "Voting on Matters Affecting Abutting or Nearby Property,"* which states: "Under the conflict of interest law, a property owner is presumed to have a financial interest when...the matter would otherwise alter her property value, rights or use. For example, a property owner is presumed to have a financial interest in zoning changes, variances, nearby subdivision or development approvals, and roadway, sewerage or safety improvements."

^[7] Section 19(b)(3) of G.L. c. 268A provides that § 19 is not violated if the particular matter involves a determination of general policy and the interest of the municipal employee or members of his immediate family is shared with a substantial segment of the population of the municipality.

^[8] Under Commission precedent, a “substantial segment” is ten percent or more of the population. See *EC-COI-93-20*; *EC-COI-92-34*. Because fewer than ten percent of Templeton’s population owned property in the areas of Patriots Road/Route 2A and Baldwinville Road to be rezoned, Moschetti’s financial interest in the rezoning proposal, and that of his son, was not shared with a substantial segment of the Town’s population.

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

SUFFOLK, ss.

**COMMISSION
ADJUDICATORY
DOCKET NO. 20-0007**

**IN THE MATTER OF
CHRISTOPHER HICKS**

Parties: Candies Pruitt, Esq.
Counsel for Petitioner

Christopher Hicks
Respondent

Commissioners: Maria J. Krokidas, Ch., Thomas J. Sartory, R. Marc Kantrowitz, Josefina Martinez and Wilbur P. Edwards, Jr.

Presiding Officer: Commissioner Wilbur P. Edwards, Jr.

**DECISION AND ORDER ON PETITIONER'S
MOTION FOR SUMMARY DECISION**

On August 19, 2020, Petitioner filed a Motion for Summary Decision ("Motion") pursuant to 930 CMR 1.01(6)(e)2 on the grounds that Respondent Christopher Hicks had failed to file an Answer to the Order to Show Cause ("OTSC"). Finding that Respondent has still filed no Answer and otherwise has failed to appear at conferences or hearings, the Commission allows the Motion. The amount of the civil penalty for the conduct alleged in the OTSC and an ORDER regarding it are discussed below.

ALLEGATIONS AND FACTS

The Order to Show Cause in this case alleges that Respondent failed to complete the State Ethics Commission's online training and to sign an acknowledgment of having received a summary of the conflict of interest law within 30 days after joining the Planning Board in Berkley in May 2018 in accordance with G.L. c. 268A, § 27 and § 28. It further alleges that the Town Clerk advised Respondent about the requirements and the Commission's Public Education Division staff repeatedly sought his compliance. Respondent nonetheless allegedly failed to comply in 2018 and 2019 or by July 22, 2020 when the OTSC was filed.

LAW

With regard to a municipal employee's obligation, § 27 of the conflict of interest law states:

...Every state, county, and municipal employee shall, within 30 days of becoming such an employee, and on an annual basis thereafter, be furnished with a summary of this chapter prepared by the commission and sign a written acknowledgement that he has been provided with the summary. Municipal employees shall be furnished with the summary by, and file an acknowledgement with, the city or town clerk....

Section 28 states:

...Every state, county, and municipal employee shall, within 30 days after becoming such an employee, and every 2 years thereafter, complete the online training program. Upon completion of the online training program, the employee shall provide notice of such completion to be retained for 6 years by the appropriate employer....

When a municipal employee completes the online training program, the program produces a Certificate showing the date of completion, and the employee is required to submit it to the employer.

ADJUDICATORY HEARING

The OTSC was filed on July 22, 2020. Notices scheduling a Pre-Hearing Conference on August 25, 2020 and an Adjudicatory Hearing on October 20, 2020 were sent to the parties.

Respondent has been representing himself throughout this proceeding. An Answer was to be filed by Respondent in accordance with 930 CMR 1.01(5)(c) by August 12, 2020. Respondent did not file an Answer.

On August 19, 2020, Petitioner filed a Motion for Summary Decision pursuant to 930 CMR 1.01(6)(e)2, which states:

2. When the record discloses the failure of the Respondent to file documents required by 930 CMR 1.00, to respond to notices or correspondence, or to comply with orders of the Commission or Presiding Officer, or otherwise indicates a substantial failure to cooperate with the Adjudicatory Proceeding, the Presiding Officer may issue an order requiring that the Respondent show cause why a Summary Decision should not be entered against him or her. If the Respondent fails to show such cause, a Summary Decision may be entered in favor of the Petitioner. Any such Summary Decision shall be granted only by the Commission, shall be a Final Decision, and shall be made in writing as provided in 930 CMR 1.01(10)(o).

The grounds for the Motion are that Respondent had failed to file an Answer, a document required by 930 CMR 1.00.

A Pre-Hearing Conference was held on August 25, 2020 at 9:30. Respondent did not attend.

At 10:13 that day, Respondent e-mailed Petitioner a Certificate indicating that he completed the State Ethics

Commission's online training on August 2, 2020 and an Acknowledgement of Receipt indicating that he acknowledged receiving a summary of the conflict of interest law on August 2, 2020. He also stated that he "took the test and resigned" and that he works 80 hours a week running "a paving company for a widow and ... can't take time off for the meeting."

On August 27, 2020, the Presiding Officer issued an Order After Pre-Hearing Conference. The Order stated that the documents sent by Respondent on August 25, 2020 did not resolve the case as they did not address his alleged failure to meet legal requirements during the relevant time period. Noting that a response to the Motion for Summary Decision was due by September 2, 2020, the Order explained that Hicks also could file an Answer to resolve the Motion. In addition, the Order stated that the Presiding Officer has the authority to issue an order requiring that the Respondent show cause why Summary Decision should not be entered against him.

Respondent did not file a response to the Motion on September 2, 2020 or file an Answer. On September 3, 2020, the Presiding Officer issued an Order to Respondent to Show Cause Why Summary Decision Should Not Be Entered and scheduled a hearing for September 16, 2020.

The hearing was held on September 16, 2020. Respondent did not appear.

Later on September 16, Petitioner filed Petitioner's Civil Penalty Recommendation. It states, "While the Commission is authorized to impose a penalty of \$10,000 for each violation of §§ 27 and 28, the Petitioner recommends a civil penalty of \$5,000 per violation." The recommendation is for a \$10,000 penalty.

As provided in 930 CMR 1.01(6)(e)2, a Presiding Officer may deny a motion for summary decision, but only the full Commission may allow it. A hearing on the Motion was held on October 15, 2020 before the full Commission. Respondent did not appear.

MOTION FOR SUMMARY DECISION

Since the outset of this adjudicatory process, Respondent has not cooperated with or engaged in it. Even taking into account that he is representing himself, he has received notices and orders which informed him of next steps, and it is his responsibility to defend the case and appear before this agency when required to do so. He failed to file an Answer and did not attend a Pre-Hearing Conference, a hearing on the Order to Respondent to Show Cause Why Summary Decision Should Not Be Entered, or the recent hearing before the full Commission on the Motion for Summary Decision.

The single exception was that Respondent sent his e-mail on August 25, 2020 attaching the Certificate and Acknowledgement, each dated August 2, 2020. While he has followed the rules in G.L. c. 268A, §§ 27 and 28 at long last, his compliance in August 2020 does not excuse his failure to comply with the training requirements during the relevant time period, April 2018 to July 22, 2020 when Petitioner filed the OTSC.

Accordingly, the Commission finds that the record discloses that Respondent has failed to file an Answer as required by 930 CMR 1.00. In addition, Respondent has failed to respond to notices and appear at a conference and two hearings, and otherwise has engaged in a substantial failure to cooperate with the Adjudicatory Proceeding. For these reasons, Petitioner's Motion for Summary Decision is **ALLOWED**.

PENALTY FOR VIOLATIONS OF G.L. c. 268A, §§ 27 and 28

Having allowed the Motion, our next task is to set a civil penalty for the violations alleged in the OTSC. By analogy with cases in which courts set penalties after a defendant has defaulted, we accept the factual allegations in the OTSC as true for purposes of establishing liability, but we retain some discretion about seeking evidence with regard to the amount of penalties to be assessed. *See, e.g., Rodriguez v. Parks and Woolson Machine Co, Inc., Worcester ss. Civil Action 1997-0831 (Agnes, J., July 9, 2007).*

Failure to comply with the statutory training requirements in the conflict of interest law is the same sort of conduct as Respondent's failure to engage in the adjudicatory proceeding – disrespect of our agency's process. Our training requirements serve an important educational purpose. State, municipal and county employees in Massachusetts are required to learn about their obligations under the conflict of interest law in order to reduce instances of corruption in government. We cannot allow public employees to thumb their noses at these requirements. In addition, as alleged in the OTSC, Respondent's conduct has caused both the local municipality and the State Ethics Commission staff to use time and resources that they should not have had to spend persuading Respondent to do what he legally was required to do. Assessing only a minor penalty for Respondent's conduct would not appropriately reflect the importance of compliance with the statutory training requirements and would defeat our agency's purposes.

This is the Commission's first case alleging a failure to comply with statutory training requirements. It is not possible to compare it to other, similar cases with regard either to facts or any penalty assessed. The closest

comparison may be cases regarding the failure to file a Statement of Financial Interests (“SFI”) in a timely manner in accordance with G.L. c. 268B, § 5. The Commission has a schedule of penalties for filing an SFI late. In 2009, the Commission increased the maximum penalty from \$2,000 to \$10,000. The more days late the SFI is, the higher the penalty is. The first penalty for filing 1 -10 days late is \$100. The penalty for filing between 11-120 days late and the date when an OTSC is issued is \$1,250. The penalty for filing after the date of an Order to Show Cause, but before a Decision and Order, is \$ 2,500. If no SFI is filed on or after the date of a Decision and Order, the penalty may be up to \$10,000.

Actual penalties for SFI cases have run in the \$1,000 to \$2,000 range. On occasion, the Commission has assessed penalties lower than those in the schedule of penalties in instances where Respondents have demonstrated that there were mitigating circumstances.^[1]

By comparison, failure to comply with the statutory training requirements is not as serious as some of the egregious violations of the conflict of interest law, such as violations under § 19 for using government to serve a personal financial interest or violations under § 23(b)(2) for misuse of official position, for which the Commission has assessed significant civil penalties between \$5,000 and \$10,000 per violation. *See, e.g., In re Nichols*, 2015 SEC 2070; *In re McGovern*, 2016 SEC 2590, *aff’d*, *McGovern v. State Ethics Commission*, Hampden Superior Court, No. 1679-cv-00082 (Goodwin, J. May 2, 2018), *aff’d*, 96 Mass. App. Ct. 221 (2019), *further appellate review denied*, 483 Mass. 1108 (2019); *In re Comtois*, Commission Docket No. 19-0003, Decision and Order, August 18, 2020. For this reason, the Commission has concluded that Petitioner’s recommendation of a penalty of \$5,000 per violation is too high.

The Commission assesses a penalty of \$2,000 for the violations of G.L. c. 268A, §§ 27 and 28 -- \$1,000 for failing to comply with the statutory training requirements in 2018, and \$1,000 for continuing to fail to comply in 2019.

We hereby **ORDER** that Respondent has two weeks from the date of this Decision and Order to provide any facts that would justify mitigation of this penalty, i.e., facts to show that the penalty should be less severe. Our starting point is that the violations have occurred, and our current focus is only on whether the penalty for the violations is appropriate. Within one week of such a submission by Respondent, Petitioner may submit a response to the facts that Respondent has provided. In the event that Respondent fails to provide any mitigating facts, the penalty of \$2,000 will stand. The Commission will revisit

the question about the penalty at its next meeting on November 18, 2020.

DATE AUTHORIZED: October 15, 2020

DATE ISSUED: October 20, 2020

^[1] Examples of such mitigating circumstances include the following:

- 1) The Respondent was unable to comply due to a documentable physical or mental condition, either temporary or permanent; or
- 2) Given the total circumstances, the Respondent made a serious, good faith effort to comply as expeditiously and fully as possible after being put on notice of the filing requirement; or
- 3) The Respondent demonstrated an inability to pay the penalty.

See, e.g., In re Nelson, 2016 SEC 2595, *In re Cole*, 2010 SEC 2339, *In re Chilik*, 1983 SEC 130.

**COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION**

SUFFOLK, ss.

**COMMISSION
ADJUDICATORY
DOCKET NO. 20-0007**

**IN THE MATTER OF
CHRISTOPHER HICKS**

Parties: Candies Pruitt, Esq.
Counsel for Petitioner

Christopher Hicks
Respondent

Commissioners: Maria J. Krokidas, Ch., Thomas J. Sartory, R. Marc Kantrowitz, Josefina Martinez and Wilbur P. Edwards, Jr.

Presiding Officer: Commissioner Wilbur P. Edwards, Jr.

FINAL DECISION AND ORDER

The Order to Show Cause (“OTSC”) in this case alleges that Respondent Christopher Hicks violated G.L. c. 268A, §§ 27 and 28 because he failed to provide the Town Clerk in Berkley an acknowledgment of having received a summary of the conflict of interest law and failed to

complete the State Ethics Commission's online training within 30 days after joining the Planning Board in Berkley in May 2018 or thereafter.

On August 19, 2020, Petitioner filed a Motion for Summary Decision ("Motion") pursuant to 930 CMR 1.01(6)(e)2 on the grounds that Respondent had failed to file an Answer to the OTSC. In a Decision and Order issued on October 20, 2020, the Commission allowed the Motion.

The Commission also determined that a civil penalty of \$2,000 should be assessed against Respondent. Respondent was given two weeks from the date of the Decision and Order to provide any facts that would justify mitigation of this penalty. If Respondent provided such facts, Petitioner was given one week from the date of Respondent's submission to file a response. The Order informed the parties that, in the event that Respondent failed to provide any mitigating facts, the penalty of \$2,000 will stand.

Having received no response from Respondent, we order Respondent, Christopher Hicks, to pay a civil penalty of \$2,000. Reasons for the allowance of Petitioner's Motion for Summary Decision and for the amount of the civil penalty are reiterated below.

PROCEDURAL HISTORY

The OTSC was filed on July 22, 2020. Notices scheduling a Pre-Hearing Conference on August 25, 2020 and an Adjudicatory Hearing on October 20, 2020 were sent to the parties.

Respondent has been representing himself throughout this proceeding. An Answer was to be filed by Respondent in accordance with 930 CMR 1.01(5)(c) by August 12, 2020. Respondent did not file an Answer.

On August 19, 2020, Petitioner filed a Motion for Summary Decision pursuant to 930 CMR 1.01(6)(e)2, which states:

2. When the record discloses the failure of the Respondent to file documents required by 930 CMR 1.00, to respond to notices or correspondence, or to comply with orders of the Commission or Presiding Officer, or otherwise indicates a substantial failure to cooperate with the Adjudicatory Proceeding, the Presiding Officer may issue an order requiring that the Respondent show cause why a Summary Decision should not be entered against him or her. If the Respondent fails to show such cause, a Summary

Decision may be entered in favor of the Petitioner. Any such Summary Decision shall be granted only by the Commission, shall be a Final Decision, and shall be made in writing as provided in 930 CMR 1.01(10)(o).

The grounds for the Motion are that Respondent had failed to file an Answer, a document required by 930 CMR 1.00.

A Pre-Hearing Conference was held on August 25, 2020 at 9:30 a.m. Respondent did not attend.

At 10:13 a.m. that day, Respondent e-mailed Petitioner a Certificate indicating that he completed the State Ethics Commission's online training on August 2, 2020 and an Acknowledgement of Receipt indicating that he acknowledged receiving a summary of the conflict of interest law on August 2, 2020. He also stated that he "took the test and resigned" and that he works 80 hours a week running "a paving company for a widow and ... can't take time off for the meeting."

On August 27, 2020, the Presiding Officer issued an Order After Pre-Hearing Conference. The Order stated that the documents sent by Respondent on August 25, 2020 did not resolve the case as they did not address his alleged failure to meet legal requirements during the relevant time period. Noting that a response to the Motion for Summary Decision was due by September 2, 2020, the Order explained that Hicks also could file an Answer to resolve the Motion. In addition, the Order stated that the Presiding Officer has the authority to issue an order requiring that the Respondent show cause why Summary Decision should not be entered against him.

Respondent did not file a response to the Motion on September 2, 2020 or file an Answer. On September 3, 2020, the Presiding Officer issued an Order to Respondent to Show Cause Why Summary Decision Should Not Be Entered and scheduled a hearing for September 16, 2020.

The hearing was held on September 16, 2020. Respondent did not appear.

Later on September 16, Petitioner filed Petitioner's Civil Penalty Recommendation. It states, "While the Commission is authorized to impose a penalty of \$10,000 for each violation of §§ 27 and 28, the Petitioner recommends a civil penalty of \$5,000 per violation." The recommendation is for a \$10,000 penalty.

As provided in 930 CMR 1.01(6)(e)2, a Presiding Officer may deny a motion for summary decision, but only the full Commission may allow it. After notice, a hearing on the

Motion was held on October 15, 2020 before the full Commission. Respondent did not appear.

MOTION FOR SUMMARY DECISION

The Commission allowed the Motion in a Decision and Order issued on October 20, 2020. The Motion was allowed because, as of that date, Respondent still had not filed an Answer, and he also had failed to respond to notices and appear at a Pre-Hearing Conference on August 25, 2020, a hearing before the Presiding Officer on the Order to Respondent to Show Cause Why Summary Decision Should Not Be Entered on September 16, 2020, and the hearing before the full Commission on the Motion for Summary Decision on October 15, 2020.

Respondent has engaged in this adjudicatory proceeding only once, when he sent his e-mail on August 25, 2020 attaching the Certificate of having completed the online training and the Acknowledgement of having received the summary of the conflict of interest law, each dated August 2, 2020. This compliance more than two years after he joined the Planning Board does not excuse his failure to satisfy the training requirements during the relevant time period, April 2018 to July 22, 2020, and it did not excuse him from filing an Answer or appearing before this agency when required to do so.

VIOLATIONS OF G.L. c. 268A, §§ 27 and 28

Law

Section 27 of the conflict of interest law states:

...Every state, county, and municipal employee shall, within 30 days of becoming such an employee, and on an annual basis thereafter, be furnished with a summary of this chapter prepared by the commission and sign a written acknowledgement that he has been provided with the summary. Municipal employees shall be furnished with the summary by, and file an acknowledgement with, the city or town clerk....

Section 28 states:

...Every state, county, and municipal employee shall, within 30 days after becoming such an employee, and every 2 years thereafter, complete the online training program. Upon completion of the online training program, the employee shall provide notice of such completion to be retained for 6 years by the appropriate employer....

When a municipal employee completes the online training program, the program produces a Certificate showing the

date of completion, and the employee is required to submit it to the employer.

Allegations

By analogy with cases in which courts set penalties after a defendant has defaulted, we accept the factual allegations in the OTSC as true for purposes of establishing liability. See, e.g., *Rodriguez v. Parks and Woolson Machine Co, Inc.*, Worcester Superior Court No. 1997-CV-0831 (Agnes, J. July 9, 2007).

The following factual allegations in the OTSC are accepted as true: Respondent was elected to the Berkley Planning Board in May 2018. Consequently, he was a municipal employee for purposes of the conflict of interest law, G.L. c. 268A. The Berkley Town Clerk provided Respondent with a packet of materials, including a summary of the conflict of interest law, at Respondent's swearing-in as a Planning Board member. The Town Clerk also notified Respondent that he was required to acknowledge receipt of a summary of the conflict of interest law and to take the State Ethics Commission's online training program.

Respondent failed both to acknowledge receipt of the summary of conflict of interest law and to take the online training after being advised by the Town Clerk of the statutory requirements. The Commission's Public Education Division repeatedly sought Respondent's compliance with the statutory requirements in June, August and October of 2019. As of the date of the OTSC, July 22, 2020, Respondent still had not acknowledged receipt of the summary of the conflict of interest law or taken the online training program.

On the facts as alleged, the Commission finds that Respondent was a municipal employee as a member of the Berkley Planning Board for purposes of the conflict of interest law, and that he failed to acknowledge receipt of a summary of the conflict of interest law within 30 days of joining the Berkley Planning Board in May 2018 or at any time thereafter through July 22, 2020, and therefore violated G.L. c. 268A, § 27.

The Commission also finds that Respondent failed to take the State Ethics Commission's online training within 30 days of joining the Berkley Planning Board in May 2018 or at any time thereafter through July 22, 2020, and that he therefore violated G.L. c. 268A, § 28.

PENALTY FOR VIOLATIONS OF G.L. c. 268A, §§ 27 and 28

The purpose of the two statutory training requirements in G.L. c. 268A, §§ 27 and 28, is to ensure that state,

municipal and county employees are made aware of their obligations under the conflict of interest law. The vital goal is to prevent self-dealing and other instances of corruption by employees while serving government. Disregard of our agency's educational requirements undermines our mission of preserving integrity in public service. We cannot allow public employees to thumb their noses at these requirements. We also note that Respondent's continuing recalcitrance needlessly caused State Ethics Commission staff to spend agency time and resources persuading him to do what he was legally required to do.

With regard to both the violations and a penalty, this is a case of first impression. We acknowledge that, while serious, violation of the training requirements is not as concerning as egregious violations of the public trust, such as violations under § 19 for using government to serve a personal financial interest or violations under § 23(b)(2) for misuse of official position, for which the Commission has assessed penalties between \$5,000 and \$10,000. *See, e.g., In the Matter of Robert Nichols*, 2015 SEC 2570; *In the Matter of Edward McGovern*, 2016 SEC 2590, *aff'd*, *McGovern v. State Ethics Commission*, Hampden Superior Court No. 1679-CV-00082 (Goodwin, J. May 2, 2018), *aff'd*, 96 Mass. App. Ct. 221 (2019), further appellate review denied, 483 Mass. 1108 (2019); *In the Matter of Stephen Comtois*, Commission Docket No. 19-0003, Decision and Order, August 18, 2020. The Commission has concluded that, in the current case, a penalty of \$5,000 per violation would be excessive.

The closest analogy to the current case is cases regarding the failure to file a Statement of Financial Interests ("SFI") in a timely manner in accordance with G.L. c. 268B, § 5. In 2009, the Commission increased the maximum penalty for such violations from \$2,000 to \$10,000. Penalties increase as more time passes after a Formal Notice of Lateness has been received. A schedule of penalties sets the increases. The first penalty for filing 1 - 10 days late is \$100. The penalty for filing between 11 - 120 days late and the date when an OTSC is issued is \$1,250. The penalty for filing after the date of an Order to Show Cause, but before a Decision and Order, is \$ 2,500. If no SFI is filed on or after the date of a Decision and Order, the penalty may be up to \$10,000. Actual penalties have been in the range of \$1,000 to \$2,000. The Commission has assessed penalties lower than those in the schedule of penalties in instances where Respondents have demonstrated that there were mitigating circumstances.

Respondent's failure to comply with the statutory training requirements extended for more than two years before the OTSC was filed, despite the repeated efforts by State Ethics Commission staff to remind him of his duties. Although he was given an opportunity to do so, he

has not made the Commission aware of any circumstances justifying mitigation.

We hereby **ORDER** Respondent, Christopher Hicks, to pay a penalty of \$2,000 for the violations of G.L. c. 268A, §§ 27 and 28 -- \$1,000 for failing to comply with the statutory training requirements in 2018, and \$1,000 for continuing to fail to comply in 2019.

DATE AUTHORIZED: November 18, 2020

DATE ISSUED: December 2, 2020

ADVICE



EDUCATION



DISCLOSURE



ENFORCEMENT



COMMISSION MEMBERS

Maria J. Krokidas, Chair
Thomas J. Sartory, Vice Chair*
Hon. R. Marc Kantrowitz (ret.)
Josefina Martinez
Hon. Wilbur P. Edwards, Jr. (ret.)
Eron Hackshaw**

*term ended 2020
** term began 2020

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