

1979 ANNUAL REPORT

Massachusetts State Ethics Commission

COMMISSION MEMBERS
James Vorenberg (Chairman)
Marver Bernstein
David Brickman
Linda H. Kistler
Rev. Bernard P. McLaughlin



Scott Harshbarger
General Counsel
James Gutensohn
Executive Director

One Ashburton Place
Room 1413
Boston, Massachusetts 02108
(617) 727-0060

Massachusetts State Ethics Commission

This Report covers the activities of the Massachusetts State Ethics Commission from its creation on October 20, 1978 through 1979. It is intended to serve as

- * A guide to the duties and responsibilities of the Commission;
- * A record of the Commission's major activities and decisions in its first year;
- * A basis for assessing the extent to which the agency achieved its initial goals and objectives; and
- * An outline of the Commission's priorities for 1980.

TABLE OF CONTENTS

INTRODUCTION TO THE COMMISSION

Major Responsibilities..... 1
Membership and Organization..... 2

FINANCIAL DISCLOSURE

Coverage Under the Financial
Disclosure law..... 4
Requirements Under the
Financial Disclosure law..... 5
Penalties..... 5
Administration and Enforcement
of the Financial Disclosure law..... 6
Information Reported in 1979..... 7
Inspection of Statements Filed in 1979..... 8
Public Access to Statements
of Financial Interests..... 8
Financial Disclosure in 1980..... 9
Financial Disclosure
for Municipal Officials..... 9

CONFLICT OF INTEREST

Conflict of Interest Opinions.....11
Provisions of the Conflict
of Interest Statute.....12
Offering or accepting anything of
value in return for official action,
omission or fraud.....12
Divided loyalties, use of "insider
information" and assisting
outsiders dealing with government.....13

CONFLICT OF INTEREST (continued)

Financial interests of state
employees, relatives or associates.....15

Financial interests in state
agency contracts.....16

Former state employees.....17

Standards of Conduct.....18

INVESTIGATION AND ENFORCEMENT -

Review of major actions in 1979.....20

PUBLIC EDUCATION AND INFORMATION

Review of major actions in 1979.....22

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

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

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

MAJOR RESPONSIBILITIES

The State Ethics Commission is an independent, bipartisan agency established to:

- * Administer the Conflict of Interest statute, Chapter 268A, which was previously under the jurisdiction of the Attorney General;
- * Administer the Financial Disclosure law, Chapter 268B, covering approximately 3,600 candidates, elected officials, and employees holding major policy making positions in the legislative, executive and judicial branches of state and county government;
- * Investigate alleged violations of, and serve as the primary civil enforcement agency for, the Conflict of Interest and Financial Disclosure laws; and
- * Provide advice and information to public officials and employees to help them avoid possible conflicts, and meet their responsibilities under the Conflict of Interest and Financial Disclosure laws.

MEMBERSHIP AND ORGANIZATION

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

The first appointments to the Commission were staggered for one to five years with one seat becoming available each year. Former Governor Michael Dukakis appointed:

- * James Vorenberg, Professor of Law at Harvard Law School, to a five year term as Chairman;
- * Linda Kistler, Professor of Accounting at the University of Lowell, to a three year term; and
- * Jessie Doyle Deely, an attorney in private practice in Lee, to a one year term.

Attorney General Francis X. Bellotti appointed:

- * David Brickman, Publisher and Editor-in-Chief of the Malden Evening News, Medford Daily Mercury, and Melrose Evening News, to a two year term.

Former Secretary of State Paul Guzzi named:

- * Marver Bernstein, President of Brandeis University, to a four year term.

Governor Edward J. King, when Jessie Doyle Deely's one year term expired, appointed:

- * Reverend Bernard P. McLaughlin, former teacher of Philosophical Ethics at St. John's Seminary and present Chaplain at Logan International Airport, to a five year term in December, 1979.

In 1979, the Commission met in formal session twenty-three times; sessions averaged a half-day each.

To head the initial staff of fourteen, the Commission, in December, 1978, appointed Scott Harshbarger its first General Counsel and James Gutensohn its first Executive Director. Mr. Harshbarger was formerly Chief of the Public Protection Bureau in the Department of the Attorney General and Mr. Gutensohn was then Undersecretary in the Executive Office of Transportation and Construction.

An original appropriation of \$201,500 from the Governor's Emergency Reserve served as start-up funding for the Commission's first six months. For the Commission's first full fiscal year, 1979/80, the Legislature appropriated \$580,000 to support the Commission's work. This budget provided for a staff of twenty-three, including six attorneys, three special investigators and a Director of Investigations, two analysts, two accountants and a variety of other professional and support personnel.*

* * *

A report on the Commission's first year is a report on progress towards a lofty goal: that government works for the governed and public officials serve the public interest rather than their own private, financial interests. It is also a report on two complex, important statutes and how they were interpreted, administered and enforced in Massachusetts. Specific, practical tools -- conflict of interest opinions, financial disclosure statements, individual enforcement actions -- were afforded the Commission in its efforts to accomplish a goal that is difficult to define and impossible to measure in any tangible way.

In an effort to provide a context for citizens to review the Commission's work in its first year, this Report provides a detailed review of actions in each area of the Commission's work: conflict of interest, financial disclosure, investigation/enforcement, and public information and education.

* Copies of this Report provided to the Governor and General Court include names, salaries and duties of all individuals in the Commission's employ as well as money disbursed by the Commission in 1979.

F I N A N C I A L D I S C L O S U R E

With the enactment of the new Financial Disclosure law in 1978, Massachusetts joined forty other states and the federal government in requiring public officials and employees to disclose certain financial interests. The Massachusetts law, Chapter 268B, requires public disclosure of interests and associations which may create a potential for conflict between an individual's official responsibilities and private interests.

COVERAGE UNDER THE FINANCIAL DISCLOSURE LAW

Chapter 268B requires the following individuals serving in state and county government to file annual Statements of Financial Interests with the State Ethics Commission:

- * Every candidate for elected office,
- * Every elected official, and
- * Certain public employees who hold "major policy making positions".

Public employees are designated as holding "major policy making positions" by the head of their agency according to criteria set forth in Chapter 268B and regulations issued by the Commission. Specifically included are:

- * The executive or administrative head or heads of any governmental body;
- * All members of the judiciary;
- * Any employee who reports directly to the executive or administrative head of a governmental body and whose salary equals or exceeds that of a state employee classified in Step One of Job Group XXV (\$21,762 as of January 1, 1979);
- * The head of each division, bureau, or other major administrative unit within such governmental body and
- * Any person who exercises similar authority.

In 1979, over 3,000 individuals were required to file Statements of Financial Interests, and virtually 100% met their responsibilities under the law.*

REQUIREMENTS UNDER THE FINANCIAL DISCLOSURE LAW

In general, the statute requires individuals to report certain information concerning themselves and family members residing in their households. They must disclose business associations; identify securities and investments worth over \$1,000; list real property in Massachusetts and certain types of debts over \$1,000 and disclose gifts, honoraria and reimbursements from sources with a direct interest in legislation, legislative action, or matters before governmental bodies.

Also required for reporting persons, but not for family members, is information regarding income from business associations and securities of the Commonwealth. Income is reported only if it exceeds \$1,000, and then only by category of value, not in exact amounts.

Information is reported annually on forms which the Commission prepares, distributes to reporting persons, checks for accuracy and completeness, then maintains as a public record for six years, pursuant to the requirements of the statute.

PENALTIES

Failure to file, or to amend a deficient or incomplete Statement within ten days of receiving a Formal Notice of Delinquency, is a violation of the law. The Commission may levy penalties, including fines of up to \$1,000, for each violation. Public employees may not continue to serve or to receive a salary unless a complete and accurate Statement of Financial Interests is filed with the Commission. The Secretary of State will not certify the nomination papers of a candidate for public office unless the candidate has complied with the Financial Disclosure law. Further, the statute provides criminal penalties of fine and imprisonment for filing a false Statement.

* A breakdown of reporting persons indicates that only 13% were women; and about 6% held county, as opposed to state, offices. Members of advisory boards and commissions accounted for approximately 10% of the Statements filed in 1979.

ADMINISTRATION AND ENFORCEMENT OF THE FINANCIAL DISCLOSURE LAW

Under Chapter 268B, the Commission's mandate is to interpret, administer, and enforce the state's financial disclosure system. Specifically, the Commission is charged to:

- * Act as the primary civil enforcement agency for violations of the law;
- * Inspect all Statements of Financial Interests to determine whether any reporting person has failed to file such a Statement or has filed a deficient Statement. If, upon inspection, the Commission finds that a reporting person has failed to file, or has filed a Statement which fails to conform with the requirements of the law, then the Commission must notify the delinquent and state in detail the deficiency and the penalties for failure to file a Statement of Financial Interests;
- * Initiate a preliminary inquiry into any alleged violation of the law upon receipt of a sworn complaint or of evidence deemed sufficient by the Commission;
- * Render advisory opinions on the requirements of the law to any person who is, or may be, subject to its provisions;
- * Initiate and administer the designation process whereby heads of state and county agencies designate major policy making positions within their jurisdiction;
- * Prepare and publish, after giving the public an opportunity to comment, forms for the Statements of Financial Interests and make forms available to persons required to file;
- * Make Statements filed with the Commission available upon the written request of any individual for public inspection and copying and forward a copy of the request to the individual whose Statement has been examined and
- * Compile and maintain an index of all Statements filed with the Commission to facilitate access to them; and preserve all Statements for six years.

In 1979, the Commission's goals were to interpret and explain the statute so that officials and employees understood what was required of them; to assist all reporting persons in meeting their new responsibilities under the law; and to initiate enforcement actions wherever necessary to ensure full compliance with the new statute.

In its first months, the Commission's top priority was to implement the new financial disclosure system. Mindful of the initial uncertainty that accompanies any new law, the Commission made every attempt to work in cooperation with affected individuals. In its interpretations of the reporting requirements, the Commission sought to balance the "public's right to know" relevant information about public officials with an official's right to privacy in matters unrelated to potential conflicts of interest.

Before drafting the Statements of Financial Interests, the Commission solicited and incorporated comments from individuals covered by the new law. Commission staff answered over 2,000 telephone requests for information in a major effort to provide clear and timely assistance to persons filing Statements with the Commission. Written Procedures for Inspection and Review of Statements were developed and promulgated following a public hearing in May. Formal hearings were conducted to afford individuals contesting their obligation to file an opportunity to make their case to the Commission. Every person who was required to file and failed to do so was contacted by the Commission staff, first by telephone and then by formal letter pursuant to the statute.

INFORMATION REPORTED IN 1979

According to Statements filed in 1979, the majority of public officials and employees had few outside interests and associations to report. Sixty percent of those reporting indicated that they had no business associations which were required to be disclosed and seventy percent had no associations to report for members of their immediate families. Only thirty-six percent reported any securities and fourteen percent listed other investments which were required to be disclosed. Three out of four reporting persons had no source of income other than their government positions.

Very few officials and employees reported on the Statements that they had received reportable gifts, honoraria, reimbursements or leaves of absence. Only ten gifts, thirteen honoraria, and twelve reimbursements were reported. Twelve individuals reported leaves of absence.

Overall, the composite review of Statements filed in 1979 indicates that most officials and employees had little to report other than one piece of real property in Massachusetts (fifty-five percent) and one or two creditors (fifty percent). Almost seventy-five percent reported that they had a spouse but only thirty percent indicated that their spouse had business associations which were required to be reported.

INSPECTION OF STATEMENTS FILED IN 1979

Commission staff inspected every Statement filed in 1979 to ensure that, on its face, it complied with the requirements of the law. Over 200 reporting persons submitted incorrect or incomplete Statements and were contacted by the Commission's staff. All then submitted correct Statements. Ninety-five Formal Notices of Delinquency were sent. Specific criteria were developed and applied to identify potential conflicts of interest, apparent inconsistencies on an individual's form and the appearance of intent to withhold required information. Approximately seventy individuals had submitted Statements which fell into one of these categories for further review: one-third had valid explanations for the apparent problems; one-third subsequently amended their Statements; and one-third were referred to the Commission's enforcement unit for review.*

PUBLIC ACCESS TO STATEMENTS OF FINANCIAL INTERESTS

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

In 1979, the Commission received and honored 1,725 inspection requests. Reporters from Boston's two largest newspapers made one-third of the requests. Reporters from other papers around

* Several of the Commission's enforcement actions in 1979 involved violations of Chapter 268B. As indicated above, individual enforcement cases are not discussed in this report, but all documents filed in the Commission's proceedings are public records available upon request.

the state initiated one-quarter of the requests. Government officials made seventeen percent of the requests. Radio and television stations, private citizens, and representatives of universities made the remaining inspections of Statements filed with the Commission.

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

The vast majority of Statements, however, were not inspected by anyone other than the Commission staff in the course of their regular review required by law.

FINANCIAL DISCLOSURE IN 1980

In preparation for the second year of financial disclosure, the Commission has promulgated Regulations Governing the Designation of Public Employees to ensure uniform designation of those who must file throughout state and county government. Forms and Instructions for filing Statements of Financial Interests were revised for calendar year 1979 and mailed to over 3,800 reporting persons.

In 1980, the Commission's goal will be to achieve total compliance with the requirements of the Financial Disclosure law. The Commission will continue to provide advice and assistance to help reporting persons understand and meet their responsibilities under Chapter 268B. Appropriate steps will be taken to enforce the requirements of the law whenever necessary.

FINANCIAL DISCLOSURE FOR MUNICIPAL OFFICIALS

The financial disclosure requirements of Chapter 268B apply only to state and county government in Massachusetts. Chapter 210 directed the Commission to propose legislation establishing financial disclosure requirements for officials and employees of cities, towns and special districts of the Commonwealth. In response to that directive, the Commission submitted the proposed Chapter 268C, an Act Requiring certain Officials and Employees of Cities, Towns and Special Districts in the Commonwealth to file Statements of Interests, and an accompanying Report to the Legislature in December, 1979. The proposal will be considered during the

1980 session of the Legislature.*

The Commission's goal was to prepare legislation which furthers the basic purpose of financial disclosure -- to assure that public office is not used for private gain -- while minimizing the burden on those who file and administer financial disclosure at the local level.

In addressing its mandate, the Commission reviewed municipal disclosure requirements in other states, drew upon its experience interpreting and administering Chapter 268B and sought comments from a wide range of local officials and others with expertise in the structure and workings of local government. The Commission developed its proposal after holding six public hearings across the state, soliciting written comments from over 500 local officials and employees and meeting with over thirty groups of local officials.

The legislation, if enacted, would become effective in 1981. In general, the proposed statute would require key elected and appointed officials in municipal government to report business associations, gifts, honoraria and reimbursements from sources doing business with their city or town, interests in local real estate and certain debts owed to, or forgiven by, those doing business with their city or town.

In its proposal, the Commission attempted to strike a balance between the public's right to know and the official's right to privacy. Chapter 268C, if enacted, would require a "conflict-related" disclosure which makes public only that limited information directly related to the potential for conflicts between an official's public and private interests.

Under the proposed Chapter 268C, the municipal clerk would play the major role in administering the disclosure requirements. Municipal officials would face the same sanctions and penalties for violations that Chapter 268B imposes on state and county officials. The Ethics Commission would issue rules and regulations, prepare forms and instructions, provide advice and assistance to municipal officials and serve as the major enforcement agency.

* As of May 15, 1980, no action has been taken on the proposed Chapter 268C.

C O N F L I C T O F I N T E R E S T

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

Chapter 268A consolidates the crimes of bribery and extortion with a series of prohibitions designed to prevent certain forms of assistance to third parties by public employees and their partners; prohibits participation as a state employee in matters in which employees -- or those with whom they are associated -- have a financial interest; and limits the interests of public employees in public contracts.

To supplement the prohibitions, the law sets forth "Standards of Conduct" in Section 23 which are designed to prevent not only actual conflicts of interest but also conduct which would give the public reason to question a public employees' exclusive commitment to his or her public trust.

C O N F L I C T O F I N T E R E S T O P I N I O N S

Any individual covered by Chapter 268A is entitled to request an advisory opinion regarding his or her duties under the law in a given situation. Chapter 210 transferred responsibility for issuing conflict of interest opinions from the Attorney General to the State Ethics Commission. An opinion rendered by the Commission serves as a defense in a criminal action brought under Chapter 268A. It also binds the Commission in subsequent proceedings concerning an employee who requested an opinion and acted in good faith, unless the opinion request omitted or misstated material facts.

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

In rendering conflict of interest opinions in 1979, the Commission generally followed the procedures established by the Attorneys General. Consequently, opinions were issued only to persons who are or may be subject to the requirements of the statute and only in response to specific questions regarding an existing or imminent conflict situation. The Commission also continued the Attorney General's policy of declining to render opinions to municipal employees and directing them to seek the opinion of their municipal counsel because Chapter 210 did not amend the section of Chapter 268A which entitles municipal employees to the opinion of their city solicitor or town counsel regarding their responsibilities under Chapter 268A.

In 1979, the Commission issued and published 132 opinions interpreting Chapter 268A. The Commission also established the policy of monitoring and, when necessary, taking steps to enforce compliance with each of the opinions it issues.

PROVISIONS OF THE CONFLICT OF INTEREST STATUTE

The conflict statute applies to all officials and employees in the service of state, county and municipal government, with some variations geared to the unique features of each level of government. Individuals are covered whether they serve by election, appointment or contract on a full time, part time or consultant basis. The following outlines the provisions of Chapter 268A, as amended by Chapter 210, and some of the major issues the Commission addressed in 1979.

Offering or accepting anything of value in return for official action, omission or fraud: Sections 2 and 3 prohibit public employees from soliciting, requesting, receiving or accepting anything of value in return for:

1. Being influenced in the performance of any act within their official responsibility;
2. Being influenced to commit, allow, or make the opportunity for the commission of any fraud upon the government;
3. Being induced to do or omit to do any act in violation of official duty; or
4. Any official act performed or to be performed.

The same prohibitions extend to private individuals who offer or give something of value to a public employee for any of the above purposes.

No opinion requested or issued in 1979 required an analysis of Section 2 or 3, although Section 2 was the subject of one enforcement action by the Commission.*

Divided loyalties, use of "insider information" and assisting outsiders dealing with government: Based on the principle that state employees owe primary loyalty and allegiance to the state, Section 4 limits the circumstances in which state employees may "divide loyalties" between their public position and private interests. It is directly counter to the purposes of the statute for state employees to represent private parties in matters of importance to the state or to use information, influence or status gained as a state employee to benefit outsiders dealing with the Commonwealth.

Section 4 therefore prohibits a state employee from receiving compensation from, or acting as agent or attorney for, anyone other than the Commonwealth or a state agency in relation to any particular matter in which the Commonwealth is a party or has a direct and substantial interest.

In Section 4, the prohibitions are broad, the terms are clearly defined and the exceptions are limited to specific exemptions for legislators and special state employees. The majority of questions brought to the Commission, consequently, turned on how the general terms of the statute applied to specific circumstances set forth in an employee's request for an opinion.

In 1979, the Commission rendered 63 opinions which interpreted Section 4 as it applied to legislators, special state employees, members of part time boards and commissions, and employees seeking to work in private companies, represent private clients before the state, or serve in other levels of government.

Chapter 210 amended Section 4 to exempt members of the General Court from the prohibitions against receiving compensation from, or acting as agent or attorney for, anyone other than the Commonwealth on particular matters of direct and substantial interest to the Commonwealth. The Commission applied these provisions to legislators serving on state advisory boards, as private consultants, and in various public and private agencies.**

* Specific enforcement cases are not detailed in this Report. Charges and Findings of the Commission in enforcement matters are, however, set forth in Orders to Show Cause and Disposition Agreements which are public records and available from the Commission upon request.

** Citations to specific opinions are provided in an INDEX to the 1979 Opinions, which is available from the Commission.

Legislators were informed that they could serve and be compensated in other positions if they did not appear personally for compensation other than their legislative salary before any state agency except in connection with ministerial matters, court appearances, or quasi-judicial proceedings. Legislators were also advised that the law does not apply these restrictions to uncompensated service.

The Commission informed a number of consultants, and uncompensated board members that, as special state employees, they were subject to the prohibitions of Section 4 only in relation to particular matters in which they had participated or over which they had official responsibility as a special state employee or which were pending in the state agency they served. State employees were advised that they could serve without compensation on boards of state agencies because they would be representing the Commonwealth in both capacities.

For purposes of Chapter 268A, municipal government had always been considered "other than the Commonwealth". It has, accordingly, always been included among the interests which state employees were prohibited from representing in relation to particular matters of direct and substantial interest to the Commonwealth. In response to a number of requests, the Commission advised state employees that:

- * Holding a municipal position was not automatically a violation of Section 4;
- * The existence of a conflict depends not on their duties as a state employee but rather on the nature of their local responsibilities and the relationship of those responsibilities to particular matters of direct and substantial interest to the Commonwealth;
- * Attorneys General previously had ruled that Section 4 prohibited state employees from serving in a variety of local positions, including those responsible for liquor licensing, assessing practices and contracts or grants in which the Commonwealth was a party.

The interpretation of municipal government as "other than the Commonwealth", although clearly supported by the law, and followed since its passage, led to rulings that seemed, in many cases, to restrict employees' opportunities to serve their communities in circumstances where such service was not incompatible with their duties and responsibilities to the state.

Consequently, the Legislature, with the support of the Commission, enacted Chapter 10 of the Acts and Resolves of 1980 in February, 1980. Chapter 10 amended Section 4 to allow state employees to hold, perform the duties of, and receive compensation provided for, municipal offices. Under Chapter 10, however, state employees who hold municipal offices may not act or vote in their municipal capacities on any matters within the purview of the state or county agency which employs them, or over which they have official responsibility.

Financial interests of state employees, relatives or associates:
State employees may not participate in particular matters in which they, their families, or businesses with which they are or may be associated, have a financial interest.

Commonly termed the prohibitions against "self-dealing" or "feathering one's own nest" while a state employee, the requirements of Section 6 are intended to prevent public employees from using their state position to further their purely personal interests.

The prohibitions of Section 6 are not absolute. Amendments inserted by Chapter 210 set forth procedures to be followed by state employees whose duties would otherwise require them to participate in such prohibited matters: they must advise the official responsible for their appointment and the State Ethics Commission of the nature and circumstances of the particular matter and make full disclosure of their financial interest. Their appointing officials may then assign the matter to another employee, assume responsibility for the matter, or make and file a written determination with the Commission that the interest is not so substantial as to be likely to affect the integrity of the employee's services to the state. In the last case, the employee is allowed to participate in the matter.

The Commission interpreted Section 6 in 32 opinions. Legislators were informed of the distinction between enactment of general and special legislation for purposes of Section 6. Members of advisory boards were advised when their financial interests required disqualification from board actions. State employees were alerted to the restrictions on acting in matters in which members of their families and business associates had financial interests, and special state employees were advised that they face the same restrictions under Section 6 as any other employee of the Commonwealth.

Financial interests in state agency contracts: In Section 7, the conflict law places certain restrictions on business dealings and contracts between state employees and the state.

Section 7 prohibits any state employee from having a direct or indirect financial interest in a contract made by a state agency. Exemptions are provided for state employees:

- * Whose financial interest consists of ownership of less than one percent of the stock of a corporation involved in the contract, or
- * Who learn of an actual or potential violation and in good faith within thirty days make full disclosure to the contracting agency and terminate the financial interest, or
- * Who do not participate in, or have official responsibility for, any of the activities of the contracting agency, if the contract is competitively bid and the aggregate financial interest of the employee and immediate family is less than ten percent.

Section 7 also does not apply to "special state employees" who do not participate in, or have official responsibility for, any activities of the contracting agency and file a statement with the Commission making full disclosure of their financial interest in the contract, or who file with the Commission a full disclosure of their financial interest and receive an express exemption from the Governor.

In 1979, the Commission issued 21 opinions advising state employees that Section 7 prohibited, among other things, their lease of building space to a state agency and entry into consultant or other contracts with private organizations funded by the state.

The major issue the Commission was asked to address concerning Section 7 was whether its prohibitions extended to second contracts of employment or "personal services" contracts. Every Attorney General had considered this "dual employment" issue, and a range of interpretations had preceded that which was finally adopted in 1977, when Attorney General Bellotti applied Section 7 to all contracts, including employment or personal services contracts. Having twice introduced legislation to amend Section 7 to exclude personal services contracts and "dual employment" situations, the Attorney General felt constrained to apply the prohibitions even to individuals holding a second contract to provide personal services on their own time.

Enforcement of this interpretation would affect hundreds of state employees in a wide range of situations. The Commission, in light of the complexity of the issue and the number of individuals affected, undertook a major review of the "dual employment" question in 1979. Following an extensive fact-gathering review of state agencies and a public hearing in October, the Commission decided not to enforce Section 7 in "dual employment" situations pending the development of clear guidelines to distinguish arrangements which should and should not be prohibited under Section 7. By year's end, the Commission had reached no final decision on the interpretation of Section 7. A bill had been filed for consideration during the 1980 legislative session which would resolve the issue by enabling the Commission, in certain circumstances, to grant exemptions to Sections 4 through 7 of Chapter 268A.*

Former state employees: In Section 5, the conflict law limits the activities of former state employees and their partners in dealing with the state. Section 5 imposes a permanent restriction on former state employees' participation on behalf of anyone other than the Commonwealth in matters in which they had been personally involved on behalf of the state while in public service. No former state employee may ever act as agent or attorney for, or receive compensation directly or indirectly from, anyone other than the Commonwealth in connection with any particular matter of direct and substantial interest to the Commonwealth, in which he participated as a state employee. Partners of former state employees are also banned from such activities for one year following the former employee's public service.

Section 5 also imposes a one year post-employment ban on appearances before any state agency or court as agent or attorney for anyone other than the Commonwealth, in connection with any particular matter in which the Commonwealth has a direct and substantial interest and which was under a former employee's official responsibility within the last two years of government employment.

In 1979, the Commission issued 41 opinions interpreting Section 5 for current and former state employees. The Commission advised state employees that they could terminate their present employment and enter into a consultant contract with their agency if the agency's decision to hire a consultant was reached by their supervisors without their participation. The Commission also advised employees

* As of May 15, 1980, no action had been taken on this proposed legislation.

that they could leave their state position and contract with their former agency, or any other state agency, to represent the Commonwealth in a matter under their official responsibility as a state employee. Since the former state employee rendered assistance to, and received compensation from, the Commonwealth rather than an outside party, there would be no violation of Section 5.

A number of opinions interpreted "participation", "official responsibility" and other key terms. The Commission advised an employee, for example, that awareness and tacit approval of subordinates' work constitutes "participation" for purposes of Section 5.

STANDARDS OF CONDUCT

To supplement the criminal provisions of the statute, Chapter 268A sets forth Standards of Conduct designed to prevent not only actual conflicts of interest but also the appearance of conflicts. Although not the subject of criminal penalties, the Standards are interpreted by the Commission and enforced under the civil enforcement powers vested in it by Chapter 268B. Set forth in Section 23, the Standards of Conduct apply to all individuals in the service of state, county and municipal government.

Under Section 23, public officials and employees may not:

- * Accept other employment which will impair independence of judgment in the exercise of their official duties.
- * Accept employment or engage in any business or professional activity which will require disclosure of confidential information gained by reason of their official position or authority.
- * Improperly disclose confidential information acquired in the course of their official duties or use such information to further personal interests.
- * Use or attempt to use their official position to secure unwarranted privileges or exemptions for themselves or others.

- * Give, by their conduct, reasonable basis for the impression that any person can improperly influence or unduly enjoy their favor in the performance of their official duties, or that they are unduly affected by the kinship, rank, position, or influence of any party or person.
- * Act in their official capacity in a way that would raise suspicions among the public that they are likely to be engaged in acts that are in violation of their trust.

In 1979, the Commission issued five opinions advising state employees that their conduct violated Section 23 because of the clear and direct relationship between their public positions and proposed private employment. In interpreting Section 23, the Commission ruled, for example, that an employee is prohibited from establishing a private consulting service to advise customers on the same policies, procedures, and applications which he reviews, in his official capacity, for compliance with state laws. The Commission also advised a state employee that Section 23 prohibits him from teaching a private course to prepare students for a licensing examination for which he serves as examiner in his official capacity, even if he does not examine his own students.

In August, the Commission wrote to over 200 heads of state and county agencies to advise them of the Commission's policy and actions regarding Section 23. The Commission indicated that it intends to investigate conduct which is alleged to violate Section 23 and to initiate enforcement actions whenever appropriate. It also seeks to provide notice to public employees, not only of the provisions of Section 23, but also of the kinds of situations the Commission believes clearly violate those Standards of Conduct. During 1980, one of the Commission's major priorities will be to work in cooperation with individual state agencies to address problems and issues specific to their agency and within the ambit of the Standards of Conduct.

I N V E S T I G A T I O N A N D E N F O R C E M E N T

The State Ethics Commission is the primary civil enforcement agency for Chapters 268A and 268B. It is required by law to investigate alleged violations and to enforce the provisions of the Conflict of Interest and Financial Disclosure statutes. To make the provisions of both statutes effective and enforceable, Chapter 210 empowered the Commission to impose a range of civil penalties, including fines of up to \$1,000 per violation of either law.

In addition to imposing civil penalties, the Commission may refer any matter to the Attorney General and bring suit to rescind any agency's action influenced by a conflict of interest and to recover any economic advantage gained by such conflict.

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

If the Commission finds "reasonable cause to believe" that either law has been violated, it may, upon a majority vote, initiate a full investigation and formal adjudicatory proceedings to determine whether such a violation had occurred. The adjudicatory process is initiated when the Commission authorizes the issuance of an Order to Show Cause. This Order serves as the formal complaint and is the Commission's first public statement relating to any matter being investigated.

After the issuance of the Order to Show Cause, the Commission conducts a public adjudicatory hearing on the complaint unless the matter is resolved by Agreement. All Disposition Agreements of the Commission are matters of public record. They set forth the findings of fact and law, as well as the violations and sanctions agreed to by the Commission and the subject of the inquiry.

In 1979, the Commission's primary goal was to use its investigative and civil enforcement powers to enforce not only the new disclosure requirements but also the provisions of Chapter 268A which had been in existence since 1963. Towards that end, the Commission's first effort was to prepare and publish comprehensive Procedures Covering its Investigative and Enforcement Activities. Adopted after a public hearing in May, the Procedures are intended to protect the rights and reputations of public employees and officials, and to ensure that the Commission conducts its inquiries, investigations and proceedings in a fair and professional manner.

Pursuant to Section 4 of Chapter 268B, and in accordance with its Procedures, the Commission reviewed nearly 100 potential violations of Chapter 268A and 268B during 1979. The Commission voted to initiate preliminary inquiries in 40 of these matters. The inquiries concerned a wide range of potential violations of the disclosure requirements as well as each section of Chapter 268A, including the Standards of Conduct in Section 23 of Chapter 268A. In six of the 40 preliminary inquiries, the Commission found no "reasonable cause to believe" that violations had occurred, and terminated the inquiries.

In sixteen instances, the preliminary inquiries indicated "reasonable cause to believe" that the law had been violated, and the Commission initiated appropriate enforcement actions in each case.

By the end of the year, the Commission had entered into Disposition Agreements* with the subjects of five inquiries, including current and former state employees who admitted that they had failed to comply with conflict opinions issued by the Commission, filed a deficient Statement of Financial Interests, and violated various provisions, including the Standards of Conduct, of the Conflict of Interest law.

In thirteen cases, the Commission issued Orders to Show Cause which formally charged the subjects of inquiries with violations that the Commission had found "reasonable cause to believe" had occurred.

Two cases proceeded to public adjudicatory hearings, but final decisions had not been reached in either by the end of 1979. The remaining cases were still pending, and a number of other matters were under review prior to determination of whether to initiate a preliminary inquiry.

Building on its experience in its first year, the Commission's overriding objective in 1980 will be to conduct the kind of fair, professional and effective enforcement effort which will begin to turn its mandate into reality.

* All Disposition Agreements, Orders to Show Cause and materials filed in the Commission's adjudicatory proceedings are public records and available from the Commission upon request.

PUBLIC EDUCATION AND INFORMATION

The State Ethics Commission's responsibility is not limited to administration and enforcement but includes an obligation to provide information and advice to assist public officials and employees in meeting their responsibilities under the Conflict of Interest and Financial Disclosure laws.

To this end, the Commission initiated and issued a series of publications in 1979. The quarterly BULLETIN reports on important decisions, policies and practices of the Commission. Mailed to over 3,000 public officials and employees, public interest groups and interested citizens, the BULLETIN provides a regular review and analysis of the Commission's actions and rulings. The Commission's Handbook serves as a general introduction to the Commission's major responsibilities under the Conflict of Interest and Financial Disclosure laws. Public versions and summaries of the Commission's advisory opinions are prepared and sent to approximately 100 public officials, state and county agencies, law firms and law libraries. They are published, as well, in the Massachusetts Register.

The Commission also administers an active public information program designed to inform private citizens and public servants alike about the responsibilities and actions of the Commission. In 1979, the Commission held nine public hearings across the state on the draft Statements of Financial Interest, Investigative and Enforcement Procedures, the prohibitions of Section 7 of Chapter 268A, and disclosure requirements for municipal officials. In addition, the Commission invited over 500 local officials and employees to comment on the proposed municipal disclosure law and spoke to over fifty groups to explain the workings of the Commission and the requirements of the Conflict and Disclosure laws.

In 1980, the Commission plans to expand its regular publications, publish a comprehensive Guide to the Conflict of Interest law, and work in cooperation with agencies to develop Standards of Conduct appropriate to individual agencies of state and county government.

