

ANNUAL REPORT ON COMMISSION ACTIVITIES
FISCAL YEAR 1984

Massachusetts State Ethics Commission

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This Report covers the activities of the Massachusetts State Ethics Commission during FY84. It is issued pursuant to the mandate of Section 2(1) of Chapter 268B and is intended to serve as a guide to the responsibilities of the Commission and as a record of its major activities and decisions during FY84. 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 FY84.

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INTRODUCTION TO THE COMMISSION

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

Chapter 268A has regulated the conduct of public officials and employees in Massachusetts since 1963. The law limits:

- 1) what public employees may do "on the job";
- 2) what they may do "on the side"; and
- 3) what they may do after leaving public sector employment.

It also sets the standards of conduct required of all individuals serving state, county and municipal government. The law articulates a basic premise -- public employees owe undivided loyalty to the government which they serve. Public officials and employees should not act, nor should they be in the position to act for the government when their private interests are involved.

MAJOR RESPONSIBILITIES

The Commission is an independent, non-partisan agency which was established to:

Render written advisory opinions upon request to individuals covered by Chapters 268A and 268B;

Administer the financial disclosure law, which covers some 5,000 candidates, elected officials, and employees holding major policy making positions in the legislative, executive and judicial branches of state and county government;

Provide advice and information to public officials and employees; and

Serve as the primary civil enforcement agency for the conflict of interest and financial disclosure laws.

MEMBERSHIP

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 from 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.

In FY84, the members of the Commission were:

James Vorenberg, Dean of Harvard Law School,
Chairman (term ended during FY84).

Colin S. Diver, Administrative Law Professor,
Boston University School of Law, Chairman.

David Brickman, Publisher and Editor-in-Chief
of the Malden Evening News, Medford Daily
Mercury, and Melrose Evening News.

Frances M. Burns, Supervisor, Student Prosecutor
Program, Boston University School of Law.

Reverend Bernard P. McLaughlin, Chaplain at Logan
International Airport, Vice-Chairman.

Joseph I. Mulligan, City of Boston Corporation
Counsel.

INVESTIGATION AND ENFORCEMENT

INTRODUCTION

Chapter 268B authorizes the State Ethics Commission to initiate a confidential Preliminary Inquiry into any alleged violation of Chapter 268A or 268B upon receipt of a complaint or other evidence which is deemed sufficient by the Commission to merit investigation. Anyone may call, write or visit the Commission to make a complaint. Complaints are initially reviewed by the staff in a screening process to assess whether the facts alleged, if proved, would constitute a violation of law within the Commission's jurisdiction. After screening, those which can be corroborated by some independent evidence are submitted to the Commission for authorization to begin a Preliminary Inquiry. Those complaints which do not suggest problems within the Commission's jurisdiction are closed at screening. A third category involves situations which raise issues under the conflict law but where investigation and enforcement is not considered appropriate because of the nature of the violation or mitigating circumstances. In those cases, letters are written during screening to provide information to ensure future compliance with the law. (There were 113 such letters sent in FY84.)

When a Preliminary Inquiry is authorized, the staff investigates the matter and prepares a report of its findings for the Commission to consider. If the 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 "reasonable cause" is found, the Commission has a number of enforcement options:

1. The Commission may, upon a majority vote, authorize the issuance of an Order to Show Cause. The Order serves as a formal complaint and initiates an adjudicatory hearing to determine whether such a violation has occurred. (Adjudicatory hearings are governed by Rules of Adjudicatory Procedure, promulgated by the Commission - 930 CMR 1.00.) All Orders to Show Cause and materials filed in connection with Commission adjudicatory hearings are public records and are available from the Commission on request.

2. The Commission may, in its discretion, enter into a Disposition Agreement with the subject of the reasonable cause finding. Disposition Agreements set forth the findings of fact and law, as well as the violations and sanctions agreed to by both parties. (General Laws Chapter 268B empowers the Commission to impose fines of up to \$2,000 per violation of either Chapter 268A or 2668B.) All such Agreements are public records and available from the Commission.

3. The Commission may sue in Superior Court to recover for the Commonwealth, a county or a municipality, any economic advantage gained by individuals or businesses in violation of the conflict of interest law and may seek to recover up to three times that amount in additional damages.

4. The Commission may refer any matter to the Attorney General, District Attorneys or the United States Attorney for criminal investigation and prosecution.

Short of finding reasonable cause, and in lieu thereof, the Commission may issue a confidential Compliance Letter to advise an individual of violations and to explain the consequences of future misconduct of the same nature. The issuance of Compliance Letters is limited to situations which do not involve willful misconduct, significant economic advantage or gain, the use of undue influence or confidential information, significant economic loss to the Commonwealth, or the potential for serious impact on public confidence in government.

REVIEW OF FY84 ACTIVITIES

In FY84, 537 matters were brought to the Commission for investigation. This represents a 12% increase over the number of complaints filed in FY83. Three hundred seventy-three (about 70%) of these complaints alleged violations by municipal officials or employees; another 128 involved people who work for the commonwealth. Of the 537 complaints, 416 came from private citizens, 27 were referrals from law enforcement or other state agencies, 15 were generated by Commission staff members, 42 were drawn from information reported by the media and 37 were generated from staff review of Statements of Financial Interests.

The Commission responded as follows to the 537 complaints:

- 136 matters were closed because the complainant did not suggest facts within the Commission's jurisdiction.
- 121 matters were closed either because the staff was unable to uncover independent information to corroborate the facts set forth in the complaint or because the situation was one in which an advisory letter seemed more appropriate than enforcement action, public disposition and penalty based on the substance of the alleged facts.
- 6 matters were referred to other law enforcement agencies.
- 2 matters were referred to the Commission's Legal Division to be handled through the advisory opinion process.
- 193 matters remain in screening.
- 40 matters were merged with other cases already opened because they allege the same or additional violations by the same subject.

498 Total

The remaining 39 complaints received in FY84 resulted in the initiation of Preliminary Inquiries. Another 66 Preliminary Inquiries were conducted based on complaints received in prior fiscal years. Thus, the Commission conducted a total of 105 Preliminary Inquiries in FY84.

Forty of these 105 Inquiries involved alleged violations of the financial disclosure law. The subjects of these Inquiries would necessarily be state or county employees because the law did not cover municipal employees during the FY84 filing season. The remaining 65 conflict of interest related inquiries involved:

- 35 municipal officials or employees
- 19 state officials or employees
- 4 county officials or employees
- 7 private businesses or individuals

The Commission completed 92 Preliminary Inquiries during the year. Thirteen were terminated with findings of "no reasonable cause to believe" that the law had been violated. The Commission found "reasonable cause to believe" that either chapter 268A or chapter 268B had been violated in 57 Inquiries. In 22 cases the Commission issued confidential compliance letters in lieu of finding reasonable cause.

The Commission assessed civil penalties totalling \$33,478 from 61 individuals who were found to have violated the conflict of interest law, the financial disclosure law, or both.

Addressing for the first time the conduct of former state employees acting as legislative agents engaged in direct or indirect lobbying before the General Court, the Commission entered into Disposition Agreements with two persons who violated §5(e) of the conflict law. In each instance, §5(e) was violated because a former state employee served as a lobbyist for someone other than the Commonwealth before that part of state government for which he formerly worked within one year of his resignation from state government. Taking into consideration the different facts and circumstances of each case, the Commission imposed a \$500 civil penalty in one instance; a \$1,000 penalty in the other.

The former director of a state agency which serves to attract foreign business to the Commonwealth was fined \$500 in connection with his request and receipt of reimbursement from that agency for expenses to which he was not entitled. The Commission found that the individual billed and received about \$3900 in connection with the use of his automobile for one year even though he kept no records to show for what purposes his car was used. He also billed and collected for a one-year, \$900,000 air travel insurance policy, a policy not ordinarily provided to agency staff. By seeking and receiving excessive reimbursement and by failing to keep appropriate records, the former director violated §23(2)(2). In settling with the individual, the Commission felt that a \$400 penalty was appropriate, given the fact that the former director had already reimbursed the agency \$2,100 on his own initiative.

The acting supervisor of the Division of Elevator Inspections in the Department of Public Safety admitted he violated §6 of G.L. c. 268A by inspecting several hundred elevators either built or maintained by companies which were employing him privately. Section 6 of the conflict law prohibits a state employee from participating as such in particular matters in which his private employer has a financial interest. In connection with his admission, the state employee was assessed a civil penalty of \$6,500.

The chairman of a state licensing board was assessed a \$2,000 civil penalty in connection with his admission that he violated §6 of the conflict law. In particular, that individual acknowledged that in the winter of 1982-83, he took a licensing exam, the answers to which he, as a board member, had helped to establish. After completing the exam, he graded his own paper and issued himself a license. By so doing, he participated in a particular matter in which he himself had a financial interest, in violation of §6.

The former president of the state's Community Development Finance Corporation (CDFC) was found to have violated §5 of the conflict law because after he left state service he received compensation from a private company in connection with matters in which he had participated while he was a state employee. According to the Commission's Decision and Order, the state employee had had substantial involvement in a CDFC decision to invest CDFC funds in a Lawrence-based sheet metal company. Soon after this individual left state service, he went to work for that company and received compensation from it in connection with the investment agreement he had proposed while he was president of CDFC. In connection with its decision, the Commission imposed a \$1,000 civil penalty.

ADVISORY OPINIONS

INTRODUCTION

Individuals covered by the conflict of interest law and financial disclosure law are entitled to receive advice about whether their current or proposed activities are permissible under G.L. c. 268A or G.L. c. 268B. State and county employees may submit a written request to the Commission setting forth their material facts. Since municipal employees may seek formal advisory opinions from their city solicitor or town counsel, the Commission renders advice to local officials only in exceptional circumstances. Most requests will be answered fully within three weeks, and all formal opinions of the Commission serve as a legal defense in subsequent proceedings concerning the requesting employee's conduct, unless the request omits or misstates material facts.

Although advisory opinions issued by the Commission are confidential, the Commission periodically publishes summaries of recent advisory opinions and prepares public versions of the opinions with identifying information deleted. Copies of these opinions are available from the Commission.

SUMMARY OF FY84 OPINIONS

The Commission rendered 160 formal advisory opinions during FY 1984. Most of these were rendered to state employees. Eight were issued to county employees, 32 to municipal employees, and 3 to persons or entities which were found not subject to G.L. c. 268A. Twenty-three elected officials received advisory opinions, as did twenty-eight attorneys. Additionally, the commission staff issued 205 informational letters to individuals whose advisory opinion requests raised legal questions which had already been addressed in prior rulings.

Among the topics addressed in the Commissions FY84 advisory opinions were the following:

* Conditions under which state employees may purchase bonds offered by state agencies. EC-COI-83-113; 83-147.

* Restrictions on the receipt of gifts from entities with which a public employee has official dealings. EC-COI-83-122.

* Conditions under which the financial interest of a state employee's spouse in a state contract will be imputed to the state employee. EC-COI-83-123; 83-127.

* Determinations of whether a former government employee would be working on the same particular matter in which he or she previously participated as a government employee. EC-COI-84-14; 84-21; 84-31.

* Clarification of the scope of chapter 409 of the acts of 1983 which requires municipal clerks to provide copies of G.L. c. 268A, §23 to certain municipal employees. EC-COI-84-75.

* Restrictions on officials appointing family members to public positions. EC-COI-83-174.

* Application of G.L. c. 268A to employees on unpaid leave of absence and unpaid vacation leave. EC-COI-84-17; 84-46; 83-164; 83-84.

* Clarification of status under G.L. c. 268A of special boards and task forces. EC-COI-84-55; 84-66.

FY84 COMMISSION ADVISORIES

In FY84, the Commission published four Advisories. Advisories respond to questions that might have come up in the context of a request for an advisory opinion or complaint on specific facts and circumstances, but have the potential for broad range application. The Advisories are reprinted in the BULLETIN, distributed to some 1700 subscribers.

In Advisory No. 2, the Commission explained the application of the conflict of interest law to state legislators when they receive expenses and/or fees for outside speaking engagements.

In Advisory No. 3, the Commission clarified section 21A of the conflict law which restricts eligibility of municipal employees for appointment to local positions.

In Advisory No. 4, the Commission addressed inquiries regarding the political activities of public employees.

In Advisory No. 5, the Commission interpreted the application of chapter 268A to employees and officials of independent municipal agencies.

FY84 COURT ACTION

The Supreme Judicial Court reviewed two State Ethics Commission decisions in fiscal year 1984. In both Craven v. State Ethics Commission and Edgartown v. State Ethics Commission, the Commission's conclusions were affirmed.

Pursuant to G.L. c. 30A, Representative Craven sought judicial review of a Commission finding that he had violated §§ 6 and 23(d) of the conflict of interest law and ordering him to pay a civil penalty of \$1,000. The Commission had ruled that Representative Craven had violated these sections by participating in a state agency grant to a local foundation when he knew that his immediate family member stood to benefit financially from that award, and by engaging in "intense efforts" to secure that agency grant while a matter of considerable importance to the agency was simultaneously awaiting action by the House Ways and Means Committee, of which he was a member. The Superior Court affirmed this decision in July of 1981. Representative Craven sought further judicial review on procedural issues and the merits from the Appeals Court, which was bypassed when the Supreme Court took the case on its own motion. On September 20, 1983, the SJC rendered its opinion in Craven v. State Ethics Commission, 390 Mass. 191 (1983):

- (1) affirming the Commission's 1980 Decision and upholding the \$1,000 civil penalty;
- (2) upholding the Commission procedures as not violative of Representative Craven's due process rights.

In Edgartown v. State Ethics Commission, 391 Mass. 83 (1984), the SJC affirmed the Commission's ruling that §17 of G.L. c. 268A prohibits a lawyer who is representing a municipal defendant in a lawsuit from representing other government entities and private parties who are also defendants in the same suit. In April of 1982, the Commission issued advisory opinion EC-COI-82-46 ruling that the attorney's representation of private landowners and Dukes County in addition to the Town of Edgartown in an Indian land claim case would violate §17 even if the parties' interests in the common liability issue were not adverse. The attorney brought an action for, and a Superior court judge entered, a declaratory judgment under G.L. c. 231A, stating that §17 would be violated only if the interests were adverse. On the Commission's appeal, the SJC reversed the judgment of the Superior Court, ruling that the Legislature could easily have inserted the word "adverse" into §17 had it intended such a reading of the statute. The SJC concluded that the multiple representation at issue was prohibited by the unambiguous language of the statute.

FINANCIAL DISCLOSURE

I. INTRODUCTION

When the financial disclosure law, General Laws chapter 268B, was enacted in 1978, Massachusetts became the 41st state to require certain public employees and elected officials to disclose certain of their private financial interests. Chapter 268B requires annual disclosure of interests and associations which might give rise to conflict or the appearance of conflict between a person's public responsibilities and his private interests. The law covers all elected officials, all candidates and certain designated employees of state and county government. Municipal officials and employees are not included among those covered by the disclosure requirements of chapter 268B, although certain employees and officials of the city of Marlboro are now required to file as a result of the enactment of H. 5916, a home rule petition passed in 1983.

II. SFI FILINGS FOR FY84

1. Designations

Every candidate for state or county office, and every elected state or county official, must file an annual Statement of Financial Interests (SFI) for the preceding calendar year with the State Ethics Commission. In addition, certain state and county employees who hold "major policy making positions" must file. In order to determine who of the latter group shall be required to file, each year, by the first of the year, the administrative head of each state and county agency submits a "designation list" of individuals holding major policy making positions within his or her department. By January 1, 1984, the Commission had received lists from 57 heads of state and county agencies requiring SFI filing by a total of 4800 public employees and elected officials. (This is 335 more than the 4,465 people who were designated to file for FY83.) In addition to the 4800 Forms and Instructions mailed to these individuals, another 392 Forms and Instructions were distributed to non-incumbent candidates for elective office.

2. Education and Assistance

Each year the Commission receives hundreds of telephone and walk-in inquiries from filers seeking assistance to complete their Statements. Most inquiries come from first-time filers, i.e., new appointments and non-incumbent candidates for elective

office. Consistent with its commitment to explain the law and to provide prompt assistance to all persons subject to it, during the FY84 filing season several staff members were available to respond to inquiries and to provide technical information. In addition, the Commission's 1983 pamphlet which outlines the basic requirements of the financial disclosure law was distributed as needed to address questions of a more general nature. Finally, the January-March 1984 edition of the BULLETIN focused in part on responses to the most frequently asked questions from SFI filers in preparation for the FY84 filing season.

As we move into FY85, the Commission will be working to further streamline the SFI filing process by reexamining and redrafting, if necessary, both the Instructions for completing the Form and the Form itself.

3. Staff Inspection of SFI's - Action Toward Compliance

Failure to file on time, or to amend a deficient or incomplete Statement within ten days of receipt of a Formal of Notice of Delinquency, is a violation of chapter 268B. The Commission may levy penalties, including fines of up to \$2,000 for each violation. The statute also provides criminal penalties of fine and imprisonment for filing a false Statement.

During and just following the May SFI filing season, Commission staff reconciles received Statements with the designation lists to ensure timely compliance with the filing deadlines. In FY84, all but 268 of the 4800 individuals (over 94%) required to file, filed on time. (This is about the same as last year, when 254 of 4500 designated filers missed the deadline.) This high rate of compliance may be attributed to: 1) the Commission's efforts to update mailing information; 2) the practice, begun in FY83, of sending postcard reminders to persons who had not yet filed by mid-April and 3) the Commission's record of imposing stiff civil penalties on those who, in the past, failed to file on time. (In FY83, 27 people were penalized a total of \$8,480.)

This year, formal Notices of Delinquency were mailed to the 254 individuals who missed the May deadline. These people were warned to file within 10 days of receipt of that Notice. Failure to do so, they were told, would result in the imposition of civil penalties. Of the 254, only 32 individuals failed to so file. Preliminary inquiries have been initiated with respect to the remaining 32 delinquents; some of which have been settled; others await settlement; and still others await litigation.

III. Public Access to Statements of Financial Interests

Chapter 268B provides that any individual who submits a written request to the Commission may inspect and purchase a copy of any Statement filed with the Commission. In FY84, the Commission honored requests from 124 different sources, including requests from private citizens, journalists and representatives of law enforcement agencies. In all, Statements of 418 filers were reviewed by persons making such requests, the bulk of them in May and June just following the Commission's receipt of Statements filed for 1983.

LEGISLATION

Two amendments to the conflict of interest law were signed into law during FY84.

1. Chapter 481: An Act Further Regulating the
Conduct of Certain Municipal Employees

On November 10, 1983, the Governor signed Chapter 481 of the Acts and Resolves of 1983. The law went into effect on February 10, 1984. Chapter 481 amended Section 20 of the conflict law (c. 268A) to allow municipal employees to serve in a part-time, call or volunteer capacity with the police, fire, rescue or ambulance department of a town or any city with a population of less than 35,000 inhabitants provided that:

1) the head of the contracting agency files with the clerk of the city or town a written certification that no employee of the agency is available to perform such services as part of his regular duties; and

2) the city council, board of selectmen or board of aldermen approve the exemption of his interest from section 20.

2. Chapter 409. An Act Providing That Certain Municipal
Officers or Employees Shall Be Furnished
With a Copy of the Law Relative to the
Standards of Conduct Required of Them

Chapter 409 of the Acts and Resolves of 1983 went into effect on January 7, 1984. It requires that the city or town clerk provide each newly-elected or appointed municipal official with a copy of § 23 of chapter 268A. Each official must sign a written acknowledgement upon receipt of the copy.

To assist town and city clerks, the Commission prepared a one-page statement encompassing the text of § 23 along with a two-page summary of the other provisions of the conflict law. These materials were mailed to all town and city clerks for photocopying and distribution to new public employees.

PUBLIC EDUCATION

INTRODUCTION

The Commission views its obligation to explain the conflict of interest and financial disclosure laws to those covered by them and, in addition, to keep public employees up to date on Commission activities as important responsibilities which merit attention and commitment. The goal has always been to enable those who want to comply with the laws to do so. To that end, the Commission drafts, publishes and distributes a host of publications and also sponsors conferences and workshops on the conflict of interest law.

PUBLICATIONS

During FY84, the Commission prepared a Special Report to the Legislature which reviewed its efforts over the first five years of its existence. In addition, the Commission continued to distribute its other publications geared for varied interests and needs, including:

The 1983 Revised Guide to the Conflict of Interest Law;

The Guide to the Conflict of Interest Law for Municipal Employees;

The Annotated Guide to the Conflict of Interest Law;

Enforcement Actions and Advisory Opinions;

Pamphlets introducing a) the Commission, b) financial disclosure and c) conflict of interest at the state, county and municipal levels of government; and

The Commission's quarterly BULLETIN.

SPEAKING ENGAGEMENTS

In response to requests from public employees and others, the Commission conducts workshops and seminars to explain the conflict of interest law and the goals and procedures of the agency. Twenty-two such workshops were held during FY84. While these are geared to the specific interests of the participants, most include an in-depth discussion of chapter 268A along with examples of how the law has been applied in the past.

During FY84, the staff held four sessions for print and broadcast journalists, nine for employees of the Departments of Revenue and Education and nine others for municipal employees and elected officials.

