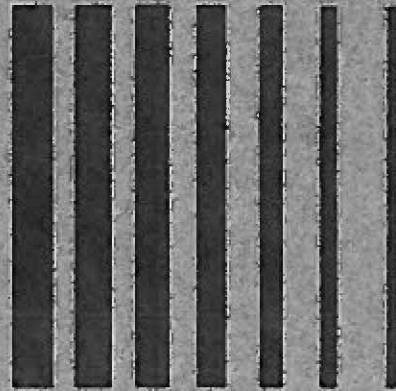


STATE
ETHICS
COMMISSION



MASSACHUSETTS

ANNUAL REPORT • FISCAL YEAR 1992

STATE ETHICS COMMISSION ANNUAL REPORT FISCAL YEAR 1992

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STATE ETHICS COMMISSION

This Report covers the activities of the Massachusetts State Ethics Commission during FY92. It is issued pursuant to the mandate of Section 2 (l) 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 FY92. Copies of the Annual Report provided to the Governor and General Court include a breakdown of the Commission's expenditures over the fiscal year.

INTRODUCTION TO THE COMMISSION

History

In 1978, the Massachusetts Legislature passed, and Governor Michael S. Dukakis signed, landmark legislation creating the State Ethics Commission. The enabling statute, Chapter 210 of the Acts and Resolves of 1978, revised and strengthened the existing conflict of interest law. In addition, it created a second law to provide for annual disclosure of private business associations and financial interests by certain public officials and employees. The new, independent Commission was empowered to interpret these two laws and to enforce them with civil penalties and sanctions.

General Laws c. 268A, the Massachusetts conflict of interest law, has regulated the conduct of public officials and employees in the Bay State since 1963. The law limits what public employees may do on the job, what they may do after hours or "on the side," and what they may do after they leave public service and return to the private sector. The conflict law also sets the standards of conduct required of all state, county and municipal employees in Massachusetts, articulating the premise that public employees owe undivided loyalty to the government they serve, and must act in the public interest rather than for private gain.

Until 1978, the conflict law was only enforced on the criminal level, under the jurisdiction of the Attorney General and District Attorneys. The Ethics Commission was established to serve as the primary civil enforcement agency for the conflict of interest and financial disclosure laws. The non-partisan Commission also provides education, advice and information to public officials and employees regarding these laws, and administers the financial disclosure process, 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.

The Commission consists of five members appointed to staggered, five-year terms. Three of the commissioners are selected by the Governor, one by the Secretary of State and one by the Attorney General. No more than two of the gubernatorial appointments, and no more than three members in all, may be from the same political party. The commissioners serve part-time, are paid on a per diem basis, and employ a full-time staff.

The Commission staff is made up of four separate divisions: Legal, Statements of Financial Interest (SFI), Public Education and Enforcement.

The Legal Division provides free, confidential legal advice regarding the conflict law, and issues both formal and informal opinions on how the law would apply to actual and specific future actions being considered by public employees. The Legal Division also represents the Commission in court. The SFI Division administers the financial disclosure law and inspects SFIs filed with the agency. The Public Education Division conducts free educational seminars for public employees and issues explanatory materials and other publications detailing the Commission's activities. The Enforcement Division investigates alleged breaches of the laws, and represents the state at Commission hearings involving individuals charged with conflict violations.

Annual Overview

In Fiscal Year 1992 (FY92), the Ethics Commission faced the challenge of meeting continued -- and in some cases vastly *increased* -- demands for its services despite continuing staff shortages and limited resources. Each of the agency's four divisions saw increased activity in FY92, and each division succeeded in responding to the expanded workload. However, staff and funding limitations prevented the Commission from accomplishing certain goals, particularly in terms of the agency's efforts to provide quicker responses to complaints and legal opinion requests.

Although the Legal Division saw a 13 percent decrease in the number of requests for legal opinions it received, there was a 12 percent *increase* in the number of opinion requests that needed to be answered with a formal Advisory Opinion. This jump in the need for formal advice indicates that public officials and employees in Massachusetts are asking more complicated legal questions about the Conflict of Interest and Financial Disclosure Laws. In addition, although the Division reviewed only a few more town counsel/city solicitor opinions concerning the conflict law in FY92 than in FY91, there was a substantially higher percentage of those municipal opinions (44% in FY92 compared to 28% in FY91) that the Legal Division either overturned or answered with additional comments because municipal counsel's answer was incomplete. Clearly continued diligence in terms of the Commission's review of municipal opinions is essential to ensure better understanding of the conflict law.

The Statements of Financial Interests Division spent its third fiscal year in a row with only half of its staff positions filled. Nevertheless, the staff managed to conduct a limited review of some of the statements for accuracy and completeness, resulting in a more than six-fold increase in the number of Enforcement Division investigations begun from SFI examination. In addition, substantially fewer individuals missed the SFI filing deadlines in FY92. The Division was not able to reinstate its former practice of reviewing every SFI, however, and errors that would otherwise have been resolved through an amendment notification by the SFI Division were instead either left uncorrected or discovered by members of the public reviewing SFIs.

The Public Education Division presented 70 educational seminars on the conflict law in FY92 -- an 89 percent leap from the 37 seminars conducted in FY91. The Division also more than doubled the number of publications it distributed to officials, public employees and citizens in the course of the year. The Public Education Division also created a new, 44-page booklet entitled "A Practical Guide to the Conflict of Interest and Financial Disclosure Laws for Elected Officials," which provides a "plain English" guide to the laws for candidates and anyone holding elected office in Massachusetts, and distributed an updated version of the Commission's Advisory on "Political Activity." Resource limitations continued to hamper the Division's ability to provide the quantities of educational materials requested by public officials and employees, and also limited the new or updated materials the Division was able to produce.

The Enforcement Division saw a 14 percent increase in the number of complaints it received in FY92, handling a total of 880 cases. There was also evidence that complainants are becoming more knowledgeable about the law -- the number of complaints that led to formal investigations more than doubled in FY92. By placing priority on cases that were already in progress, the Enforcement Division completed 39 percent more formal investigations in FY92 than in the previous fiscal year. But because of staff shortages the Division was therefore unable to pursue some of the more recent complaints, and by the end of FY92 there was a significant rise in the number of complaints that had not been acted upon during the year compared to FY91.

MEMBERSHIP

During FY92 the members of the Commission were:

Edward F. Hennessey, Chair
Former Chief Justice
Supreme Judicial Court
Boston, MA

Constance Doty
Administrator
Rent Equity Board
Boston, MA

Archie Epps
Dean of Students
Harvard College
Cambridge, MA

Herbert Gleason
Counsel
Smith, McNulty & Kearney
Boston, MA

Rev. F. Washington Jarvis
Headmaster
Roxbury Latin School
Boston, MA

Marilyn Lyng O'Connell
Assistant to the Vice President for
Government, Community & Public
Affairs
Harvard College
Cambridge, MA

ADVISORY OPINIONS

Introduction

Individuals covered by the conflict of interest and financial disclosure laws are entitled to receive advice about whether their proposed activities are permissible under G.L. c. 268A or G.L. c. 268B. State, county and municipal employees may submit a written request to the Commission for an advisory opinion. Most requests will be answered fully within two 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 publishes summaries of advisory opinions and prepares public versions of the opinions with identifying information deleted. Copies of these opinions are available from the Commission.

Summary of FY92 Opinions

The Commission received 858 formal requests for advisory opinions during FY92. This represents approximately a 13 percent decrease from the 983 formal requests received in FY91. Twenty-six of the FY92 requests were answered with formal Commission advisory opinions; the remaining requests were handled through informal letters issued by the Commission's Legal Division. Among the topics addressed by the Commission's formal advisory opinions during FY92 were the following:

1. Public employees' solicitation of something of substantial value, including private business relationships, from those they oversee (See EC-COI-92-2, 92-5, 92-7, 92-7, 92-12, 92-23).
2. Outside private employment by present and former public employees (See EC-COI-91-14, 92-92-3, 92-4, 92-13, 92-17, 92-18).
3. The circumstances under which the conflict law applies to present and former public employees (See 92-1, 92-9, 92-11, 92-16, 92-20).

Municipal Advisory Opinion Regulations

A Commission regulation requires all conflict of interest opinions issued by city solicitors or town counsels to be filed with the Commission for review. The regulation is intended to insure that opinions issued to municipal employees and officials are consistent with Commission precedent. The rule requires the Commission to be bound by all municipal opinions, unless the Commission notifies the city or town counsel within 30 days of any objections to the opinion.

The opinion will be binding on the Commission in any subsequent proceedings only with respect to the person who requested the opinion and those upon whose behalf he or she requested the opinion. The Commission will not be bound by municipal opinions if material facts were omitted or misstated by the person or if the person acted in bad faith in securing the opinions.

In FY92 the Commission reviewed 172 municipal opinions. The Commission staff concurred with 93 of the opinions, concurred with additional comments on 57 municipal opinions, and informed municipal lawyers in 19 instances that their advice was inconsistent with Commission decisions, and therefore, would not be binding on the Commission. Five other opinions were moot.

FINANCIAL DISCLOSURE

Introduction

Massachusetts G.L. c. 268B requires annual disclosure of interests and associations that might result in conflict or the appearance of conflict between a person's public duties and private interests. The law covers all elected state and county officials, candidates and certain "designated" state and county employees. Municipal officials and employees are not covered by the disclosure requirements of 268B.

Designations and Action Toward Compliance

In order to determine which state and county employees are required to file SFIs, the Commission requests that by the first of each year, the administrative heads of each state and county agency submit a "designation list" of individuals holding major policy-making positions within their departments. By January 1, 1992, the Commission had received lists from approximately 200 agencies requiring SFI filing by a total of 4665 employees and officials. In FY92, the Commission imposed fines on 15 people for failure to file their SFIs in a timely fashion. Eight of the 15 filers submitted their SFIs and were fined a total of \$550, while six other filers submitted their forms but still have Preliminary Inquiries pending. One of the 15 filers had not submitted an SFI to date, and faces up to \$2,000 in fines.

Failure to file on time, or to amend a deficient or incomplete Statement within 10 days of receipt of a Formal Notice of Delinquency, is a violation of G.L. c. 268B. The Commission may levy fines of up to \$2,000 for each violation, and may also levy additional fines, withhold pay or seek criminal penalties for filing a false Statement.

In FY92, 349 of the 4,665 designated public employees and elected officials (approximately 7%) failed to file their SFIs on time. This is a substantial improvement from FY91, when 679 of the 4,676 designated filers (approximately 14.4%) missed the deadlines. This increase in on-time filers is believed to be the result of a better understanding of filing requirements on the part of public employees and workers, many of whom have now been through the filing procedure more than once.

This year, formal Notices of Delinquency were mailed to 200 individuals who missed the May filing deadlines. Of these 200 filers, 15 individuals failed to file in a timely manner after receiving notice of delinquency. (This is another improvement from FY91, when 40 people failed to file after formal notice.) Of the individuals who failed to file within 10 days of receipt of a Formal Notice:

1. The Commission authorized seven preliminary inquiries that are in the process of being resolved.
2. Eight individuals filed shortly after an 8-10-day grace period, incurring fines of \$100 or less.

Public Inspection of SFI Forms, Commission Assistance and Review

Chapter 268B provides that any individual who submits a written request to the Commission may inspect and obtain a copy of any Statement filed with the Commission. In FY92, the Commission honored such requests from 259 sources, including private citizens, the media and law enforcement agencies. The statements of 805 filers were reviewed through this public inspection process in FY92, an eight percent drop from the 880 filers whose SFIs were inspected in FY91. The decrease was largely due to the fact that there were no major elections held in FY92. Certain filers had more than one requestor view their SFIs; a total of 1,749 statements were provided to requestors in FY92.

During the year, the Commission staff is available to assist filers in completing their SFIs. Staff shortages have made it impossible to review all statements for accuracy and completeness.

PUBLIC EDUCATION

Introduction

The Public Education Division provides public employees, the media, concerned citizens and the communities of the Commonwealth with educational materials and a forum in which to learn about the Ethics Commission and the laws the Commission enforces and interprets.

Seminars

The Public Education Division conducts seminars for public employees and officials to help them avoid conflicts between their private interests and public duties, to make them aware of the resources available to them for answering questions regarding the laws, and for reporting alleged violations. The Division also provides seminars to private groups or associations (such as the League of Women voters or newspaper staffs) to help them better understand the conflict law and the Commission's purpose. The seminars are given on an as-requested basis.

The Public Education Division conducted 70 seminars during FY92, with 2,848 people attending. This represents an 89 percent increase from the 37 seminars given in FY91. This dramatic increase in the number of seminars conducted is attributed to increasing awareness of the availability of the program, and a renewed willingness on the part of public employees to sponsor seminars on the conflict law.

The seminars conducted in FY92 were sponsored by:

21 state agencies	27 municipalities
9 municipal associations	10 private interest groups or associations
3 county associations	

Publications

The Commission writes, publishes, and distributes educational materials that explain various provisions of the conflict law and keep constituents informed of recent Commission rulings. The Division also writes and distributes the Commission's newsletter to an estimated 3,000 subscribers.

In FY92, approximately 25,957 publications/educational materials were distributed as follows:

- 3,900 On average ten callers (including reporters) per day request information and five "walk-ins" take information from the lobby
- 5,137 Educational materials were provided to seminar sponsors and copied for 2,848 seminar attendees
- 8,504 Educational materials sent to individuals as part of Commission legal opinions, enforcement actions, or written requests for information
- 7,916 The Bulletin
- 400 The Annual Report
- 100 Rulings

In FY92, the Public Education Division published a "Practical Guide to the Conflict of Interest and Financial Disclosure Laws for Elected Officials," and a substantially revised "Advisory No. 4 -- Political Activity." The Division also revised four of its existing "Fact Sheets" (dealing with: abutters, rule of necessity, avoiding appearances of conflict of interest, and liquor licenses and the conflict law), and plans additional updates of the Commission's existing publications for FY93.

INVESTIGATION AND ENFORCEMENT

Introduction

The Commission may initiate a confidential inquiry into any alleged violation of the conflict of interest or financial disclosure law. Anyone may call, write or visit the Commission to make a complaint. Complaints that do not suggest problems within the Commission's jurisdiction or that are clearly not worth pursuing are closed without delay. The remaining complaints are reviewed by the staff in an informal review process. Many complaints involve situations which raise concerns under the conflict law, but formal investigation and enforcement is not considered appropriate because of the nature of the violation or mitigating circumstances. In these cases, a private educational letter providing information to ensure future compliance with the law is sent to the subject of the complaint.

After the informal staff review, if the staff determines a case should be investigated further, authorization is sought from the appointed Commissioners to conduct a formal investigation called a "Preliminary Inquiry." 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 the Conflict of Interest Law (G.L. c. 268A) or Financial Disclosure Law (268B) has been violated, the Commission terminates the inquiry confidentially. On the other hand, if "reasonable cause" is found, the case proceeds in one of the following ways:

1. The Commission may authorize the issuance of an Order to Show Cause. The Order serves as a formal complaint and initiates an adjudicatory hearing to determine whether a violation of the law has occurred. After the hearing is held, the Commission issues a Decision and Order deciding the case.
2. The Commission may agree to enter into a Disposition Agreement. A Disposition Agreement is a negotiated document in which the subject admits to having violated the law and agrees to pay a civil fine. The Commission has the authority to impose up to a \$2,000 fine for each violation of either G.L. c. 268A or 268B.
3. The Commission may authorize the issuance of a Public Enforcement Letter, with the subject's consent. A Public Enforcement Letter lays out the facts of the case and violations of law. The subject, however, does not have to admit to having violated the law or pay a civil fine.
4. The Commission may sue in Superior Court to recover any economic advantage gained by individuals or businesses in violations of the conflict law and may seek to recover up to three times that amount in additional damages.
5. The Commission may refer any matter to the Attorney General, a district attorney 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. The issuance of a compliance letter is limited to situations which do not involve willful misconduct, significant economic advantage or gain by the subject, significant economic loss to the commonwealth, the use of undue influence or confidential information for personal gain, or the potential for serious impact on public confidence in government.

REVIEW OF FY92 ACTIVITIES

Complaints

In FY92, 814 complaints were brought to the Commission for investigation, a 14 percent increase from the 715 complaints filed in FY91. There were 42 complaints from FY91 that were not opened until FY92, and 24 complaints led to additional cases; therefore, a total of 880 complaints were before the Enforcement Division during FY92.

580 (about 66%) of the 880 complaints made to the Commission's Enforcement Division in FY92 alleged violations by municipal officials or employees. Another 171 (about 19%) involved individuals who work for the Commonwealth, 33 complaints were made regarding county officials, 22 involved private individuals or corporations, and 8 complaints involved allegations against combinations of the above-mentioned groups.

Of the 880 complaints, 550 came from private citizens or public officials; 31 were referrals from law enforcement or other state, county or municipal agencies or officials; 35 were internally generated by Commission staff members from reports in the media or other sources; 22 were "self-reports" made by public employees regarding their own conduct; 32 resulted from staff review of financial disclosure forms and 134 were anonymous.

The Commission addressed the 880 complaints received or pending in FY92 as follows:

- 503 complaints were closed because the allegations made in the complaint did not suggest sufficient facts within the Commission's jurisdiction;
- 231 cases were assigned to an attorney/investigator team in the Commission's Enforcement Division for informal review;
- 67 complaints were consolidated with existing cases;
- 68 complaints had not yet been acted upon as of June 30, 1992;
- 5 complaints were closed after the subject sought an opinion from the Commission's Legal Division;
- 3 complaints were referred to other agencies for review;
- 2 complaints were closed with educational letters sent to the subjects of the complaints;
- 1 complaint was referred to the Commission's SFI Division.

Informal Reviews

In FY92 the staff closed 196 cases following informal staff reviews. Another 52 reviews led to formal investigations. These reviews were based on complaints received during FY92 and previous years. As of June 30, 1992, there were 65 ongoing reviews.

Of the 196 cases closed after informal review:

- 60 cases were closed because the staff determined there clearly was no violation of the conflict law, or that there was so little likelihood of a violation that the matter was not worth pursuing further;
- 134 cases were closed because the situation was one in which a private educational letter was appropriate;
- 2 cases were dismissed, consolidated with existing cases or referred to other agencies.

Formal Investigations

The Commission authorized a total of 54 formal inquiries in FY92. These inquiries were based on complaints received during FY92 and previous years.

Of those 54 inquiries:

- 32 involved alleged violations of the financial disclosure law by:
27 state officials or employees 5 county officials or employees
- 22 involved alleged violations of the conflict of interest law by:
15 municipal officials or employees 2 private sector individuals/entities
5 state officials or employees

The Enforcement Division staff completed 50 formal inquiries during FY92. These inquiries included investigations initiated during FY92 and previous years.

These 50 cases resulted in the following findings:

- 36 "reasonable cause" findings that the law was violated (18 conflict law, 18 financial disclosure law);
- 4 Confidential Compliance Letters were approved (all conflict law);
- 1 Public Enforcement Letter was issued in lieu of finding "reasonable cause";
- 5 "no reasonable cause" findings that the law was violated (all financial disclosure law);
- 4 cases were terminated without findings (2 conflict law, 2 financial disclosure law)

Public Resolutions

In FY92, 37 "reasonable cause" findings from FY92 and previous years resulted in:

- 4 Decision and Orders
- 13 Disposition Agreements involving violations of the conflict law;
- 20 Disposition Agreements involving violations of the financial disclosure law;

As of June 30, 1992, there was one public proceeding pending for which an Order to Show Cause had been issued after a reasonable cause finding. There were 11 additional cases where reasonable cause had been found, but formal Commission action was still pending as of June 30, 1992.

Penalties

In FY92 the Commission received and deposited civil penalties totaling \$44,434.69 from 50 individuals and public entities found to have violated the conflict of interest or the financial disclosure law.

FY92 ENFORCEMENT ACTIONS

In the Matter of Mark Breen (July 2, 1991)

The State Ethics Commission's Enforcement Division charged Mark Breen, a staff attorney for the Massachusetts Housing Finance Agency (MHFA), with violating the Massachusetts Conflict of Interest Law by taking a \$2500 check from a family of Irish immigrants in return for attempting to help them get an MHFA mortgage.

In an Order to Show Cause, the Enforcement Division alleged that Breen's conduct violated Sections 3, 4(a), 4(c), 23(b)(2) and 23(b)(3) of G.L. c.268A. A hearing was held, but before the Commission issued a Decision and Order, Breen signed a Disposition Agreement in which he admitted to violating Sections 4(c) and 23(b)(3) of the law, and in which he agreed to pay a \$4,000 fine for the violations.

Section 4(c) of the Conflict of Interest law prohibits state employees from acting as agent or attorney for anyone other than the Commonwealth or a state agency in matters in which the state has a direct and substantial interest. Section 23(b)(3) of the conflict law prohibits public employees from using their official position to secure substantial unwarranted privileges for themselves or anyone else, and from acting in a manner that would cause an objective observer to conclude that they would unduly favor anyone in their official capacity.

In the Matter of Michele Esposito (September 6, 1991)

The Ethics Commission fined former Department of Revenue (DOR) employee Michele Esposito \$500 for violating the Conflict of Interest Law by negotiating future employment with a technical consulting firm, Maximus Inc., while she was co-contract administrator for a \$4.8 million contract Maximus had with DOR.

In a Disposition Agreement reached with the Commission, Esposito admitted that her actions violated Section 6 of G.L. c. 268A, the conflict law, and agreed to pay the fine. Section 6 of the conflict statute prohibits state employees from participating in their official capacity in any particular matter that could affect their financial interests.

In the Matter of Peter Y. Flynn (September 20, 1991)

The State Ethics Commission fined Plymouth County Sheriff Peter Y. Flynn \$2000 for violating the Massachusetts Conflict of Interest Law by charging \$1,249.13 in personal expenses to a "company" credit card he received from a corporation formed to support his civil process-serving deputies. Flynn was also required to repay Deputies, Inc. for the personal charges.

Flynn admitted in a Disposition Agreement that his actions with regard to the personal expenses charged to the "company" card violated Section 23 of the conflict law, and also that his use of the card for "business-related" expenses violated Section 3 of the Conflict of Interest statute. No additional fine was imposed for the use of the card for business related expenses.

Section 23 prohibits public employees from using their official positions to secure substantial unwarranted privileges for themselves or anyone else; Section 23 also prohibits public employees from acting in a manner that would cause an objective observer to conclude the employees would act with bias in their official capacity.

Section 3 prohibits public employees from accepting anything of substantial value (\$50 or more) that is given to them for or because of their official position.

In or about April, 1985, Deputies, Inc., the corporation through which civil process is served in Plymouth County, gave Flynn an American Express card opened in the corporation's name, the Disposition Agreement said. Flynn understood the card was to be used for "business-related purposes," meaning anything that could be said to promote Deputies, Inc.'s interests. Such expenses could include expenses incurred in an activity intended to promote the interests of the Plymouth County Sheriff's Department generally.

Between September 1985 and April 1989, when he stopped using the card, Flynn charged items or expenses to the Deputies, Inc. credit card on 275 occasions for a total of \$12,761.43 in charges. Flynn asserted he never intentionally used the card except for business purposes; however, the Commission found Flynn's characterization of certain meals as "business expenses" to be erroneous, and thus found four charges totalling \$461.69 to be personal charges.

In addition, there were \$787.44 in charges that Flynn stated he recalled as being business expenses, but for which he declined to identify any third parties present. Based on Flynn's refusal to identify the third parties involved in the credit card charges totalling \$787.44, the Commission found the charges to be predominantly personal in nature, the Disposition Agreement said. Flynn was therefore required to reimburse Deputies, Inc., a total of \$1,249.13, for personal charges made on the company credit card, the Agreement said.

In the Matter of Stephen Malcolm
(September 27, 1991)

The Ethics Commission fined former Hull Board of Assessors member Stephen Malcolm the maximum \$2,000 penalty for violating the Conflict of Interest Law by giving false information to his subordinate that resulted in a substantial property tax increase for Malcolm's ex-girlfriend.

In a Summary Decision, the Commission ruled that Malcolm's conduct violated G.L. c. 268A, §23(b)(3), which prohibits public employees from acting in a manner that would cause an objective observer to conclude the employee would act with bias in carrying out his official duties.

Malcolm failed to defend or otherwise respond to charges set forth in an Order to Show Cause issued by the Commission's Enforcement Division in December, 1990. The Order to Show Cause alleged Malcolm's conduct as an assessor in connection with his former girlfriend's property violated Section 23(b)(3) of the conflict law. Under such circumstances, the Commission may enter a summary decision in the matter.

"(Malcolm's) failure to defend or otherwise respond to these allegations constrains us to conclude that he violated G.L. c. 268A, Section 23(b)(3)," the Commission said in the Summary Decision. "In light of the seriousness with which we view this violation, we conclude that a maximum statutory fine of \$2,000 is appropriate."

In the Matter of Michael Powers
(October 31, 1991)

The State Ethics Commission, citing its statute of limitations, issued a Decision and Order dismissing conflict of interest charges against Michael Powers, a former attorney for the city of Boston.

The Commission's Enforcement Division issued an Order to Show Cause against Powers last December, alleging he had violated Section 18(a) of the Massachusetts Conflict of Interest Law in 1987 by acting as attorney for the Massachusetts Police Chiefs Association (MPCA) in connection with a federal lawsuit he had previously worked on for the city. Section 18(a) of the conflict law prohibits former municipal employees from representing anyone other than the city or town they used to work for in connection with matters they dealt with as municipal employees.

Under the Commission's statute of limitations regulation, an individual charged with violating the conflict law may assert a statute of limitations defense if he shows that the relevant events were a matter of general knowledge in the community more than three years before an Order to Show Cause was issued. The Commission declined to separately consider whether Powers' actions after December 5, 1987, violated the conflict law, since such allegations were not presented in the Enforcement Division's original Order to Show Cause, the Decision said.

In the Matter of James Smith
(November 26, 1991)

Former Woods Hole, Martha's Vineyard and Nantucket Steamship Authority member James Smith was fined \$4,000 for violating the Conflict of Interest Law by participating in a Steamship Authority land acquisition that substantially benefitted a business of which Smith was an officer and director.

In a Disposition Agreement reached with the Ethics Commission, Smith admitted that his actions violated Sections 6 and 23(b)(3) of G.L. c. 268A, the Conflict of Interest Law, and agreed to pay the fine. Section 6 of the conflict law prohibits state employees from knowingly participating in their official capacity in any particular matter that affects the financial interests of an organization in which the public employee is serving as a director or an officer. Section 23(b)(3) prohibits public employees from acting in a manner that would cause an objective observer to conclude they would act with bias in their official capacity.

In the Matters of Christopher Look, Jr. and Michael McCormack
(December 3, 1991)

The State Ethics Commission fined Dukes County Sheriff Christopher Look, Jr. \$1000 for violating the "nepotism" section of the Massachusetts Conflict of Interest Law, and fined Michael McCormack, Deputy Superintendent of the Dukes County Jail, \$6000 for scheduling himself to work as a paid per diem court officer on days he was also being paid for working at the jail.

In a Disposition Agreement with the Commission, Look admitted to violating Sections 13 and 23(b)(3) of G.L. c. 268A, the conflict law, by re-appointing his brother and two of his sons as deputy sheriffs and by recruiting one of his sons to work as a paid member of the Norton Beach patrol. Look agreed to pay the fine, and also agreed to either secure the resignations of his sons as deputy sheriffs, or to restrict their service to prohibit them from working paid details as long as Look remains Dukes County Sheriff. Look's brother had already resigned as a deputy sheriff.

Section 13 prohibits a county employee from participating in his official capacity in any particular matter that affects the financial interests of a member of his immediate family. Section 23(b)(3) prohibits a public employee from acting in a manner that would cause an objective observer to conclude the employee could be unduly influenced in the performance of his official duties.

In a separate Disposition Agreement with the Commission, McCormack admitted to violating Sections 13 and 23(b)(2) of the conflict law by scheduling himself to work as a paid per diem court officer and by getting paid by both the state and county for some of the same hours.

Section 23(b)(2) of the conflict law prohibits public employees from using their official positions to secure substantial unwarranted privileges for themselves or anyone else.

In the Matters of Kevin Fitzgerald and Patricia McDermott
(December 9, 1991)

The Massachusetts State Ethics Commission concluded its investigation of Representative Kevin Fitzgerald (D-Boston) and his administrative assistant, Patricia McDermott by issuing Public Enforcement Letters which state that the Commission found reasonable cause to believe Fitzgerald and McDermott violated the Conflict of Interest Law by accepting bequests totalling close to \$400,000 from Mary Guzelian, a so-called "bag lady" who had sought their assistance in the early 1980s.

The Commission's findings of reasonable cause involved Sections 3 and 23(b)(3) of G.L. c. 268A, the Conflict of Interest Law. Section 3 of the Conflict of Interest Law prohibits public employees from accepting anything of substantial value that is given to them for or because of any act within their official responsibility. Section 23(b)(3) prohibits public employees from acting in a manner that would cause a reasonable person to conclude that anyone can improperly influence them or unduly enjoy their favor in the performance of their official duties.

Public Enforcement Letters do not require the subjects to pay a fine or admit to violating the law, although the subjects must waive their right to a hearing and consent to publication of the Letter. The Commission stated that it chose to resolve the matter with a Public Enforcement Letter for three reasons: (a) the case involved events that occurred, for the most part, a decade ago, and many of the activities discussed in the Public Enforcement Letter were beyond the Commission's statute of limitations and outside the Commission's jurisdiction; (b) there was no legal precedent which would put legislators on notice that they may not accept bequests from constituents or others with whom they have had official dealings; and (c) the Commission uncovered no direct evidence that Fitzgerald or McDermott coerced or induced Mary Guzelian into making them beneficiaries of her will.

The Commission added that it was referring all materials from its investigation to the Attorney General and the U.S. Attorney for any action they deemed appropriate.

In the Matter of John L. Griffith
(March 3, 1992)

The State Ethics Commission fined John L. Griffith, an environmental engineer with the Department of Environmental Management (DEM), \$1,000 for violating the Massachusetts conflict law by participating in a review of an Environmental Impact Report submitted by Clean Harbors, Inc., while he was simultaneously negotiating with the company for prospective employment.

Griffith admitted in a Disposition Agreement that his actions violated Section 6 of G.L. c. 268A, the conflict law, and agreed to pay the fine. Section 6 prohibits state employees from participating in their official capacity in any particular matter in which a business with which they are negotiating for employment has a financial interest.

In the Matter of Richard Burgess
(March 24, 1992)

Richard Burgess, a real estate agent and Swansea Planning Board member, was sanctioned \$500 by the Ethics Commission for violating the Massachusetts Conflict of Interest Law by acting as a planning board member on plans for properties that were ultimately sold by Burgess or his private sector employer. The Ethics Commission's Enforcement Division had charged Burgess with violating the conflict law in an Order to Show Cause issued in June of 1991.

In a Disposition Agreement reached with the Commission, Burgess admitted that his actions violated Section 19 of the conflict law and agreed to pay the civil penalty. Section 19 prohibits municipal employees from participating in particular matters in which they, or a business organization with which they are associated, have a financial interest.

According to the Disposition Agreement, Burgess violated the conflict law on at least three occasions when he acted as a planning board member regarding certain plans that came before the board. Those plans involved lots under purchase and sale agreement by either Burgess himself or by his employer, M.J. McNally and Associates of Fall River.

However, with regard to Burgess' participation in two of the matters -- developments known respectively as the Cheryl Drive and Warhurst Park subdivisions -- the Commission found Burgess' violations of the law to be unintentional, and therefore considered the relatively small sanction to be appropriate.

In the Matter of Joao Dias
(March 31, 1992)

The Ethics Commission fined Ludlow Planning Board member Joao Dias \$1000 for violating the Conflict of Interest Law by representing clients of his private practice law firm before the planning board.

In a Disposition Agreement reached with the Commission, Dias admitted that his actions violated Section 17 of G.L. c. 268A and agreed to pay the fine. Section 17 prohibits municipal employees from representing third parties before any municipal board in matters that are of direct and substantial interest to their city or town.

In the Matter of Norman McMann
(April 23, 1992)

The Massachusetts Appeals Court upheld a State Ethics Commission finding against former Bristol-Plymouth Regional School District member Norman McMann, determining that regional school districts are municipal agencies and their committee members are municipal employees for the purposes of the Conflict of Interest Law.

McMann was appealing a \$10,000 fine levied against him by the Ethics Commission in 1988. The Commission found McMann violated Sections 20 and 19 of M. G.L. c. 268A by continuing to sell doughnuts to a district school after he was elected to the regional school committee, and by approving pay warrants as a school committee member to the "straw" company he had set up to circumvent the law. McMann had previously been advised by the School District's attorney that having both the School Committee position and the doughnut contract with the school district would violate the conflict law.

In appealing the Ethics Commission finding against him, McMann argued that the school district was not within the definition of "municipal agency" found in the conflict law, and that he was therefore not a "municipal employee" and so was not subject to the restrictions of the law. The Appeals Court firmly rejected this argument.

"(The Conflict of Interest Law) was enacted as part of 'comprehensive legislation ... (to) strike at corruption in public office, inequality of treatment of citizens and the use of public office for private gain,'" the Appeals Court decision said. "We hold that, taking into account the ordinary and approved usage of the statutory language, the nature and function of the entity, and the purpose of the law, a regional school district is an instrumentality of each of its member municipalities and that, therefore (McMann) was at the relevant times a municipal employee for purposes of the Conflict of Interest Law."

In the Matter of Cynthia Cobb and Elliot Burlingame
(April 27, 1992)

Cynthia Cobb, the former health agent for the town of Charlton, was fined \$5,000 for violating the Massachusetts Conflict of Interest Law by accepting a house at a below-market price from her former town employer, developer and former Charlton Board of Health Chair Elliot Burlingame. Burlingame was fined \$2,000 for violations of the same law.

In separate Disposition Agreements reached with the Ethics Commission, both Cobb and Burlingame admitted that their actions violated Section 23(b)(3) of Massachusetts G.L. c.268A, the conflict law, and agreed to pay the fines. Section 23(b)(3) prohibits public employees from acting in a manner that would cause an objective observer to conclude they would act with bias or be unduly influenced by anyone in connection with carrying out their official duties.

Both Cobb and Burlingame, by entering into the agreement to transfer the property and land to Cobb at a below-market price while Cobb was health agent and Burlingame was a private developer subject to her official authority, acted in a way that would cause an objective observer to conclude that either or both of them could be unduly influenced by the other in the performance of their official duties, and/or that either or both of them could unduly enjoy the other's favor in their official capacities, thereby violating Section 23 of the Conflict of Interest Law, the Disposition Agreements said.

In addition, by continuing to act as health agent on numerous matters concerning Burlingame as a private developer after she had entered into the understanding with him regarding the property, Cobb repeatedly violated Section 23 of the conflict law, the Disposition Agreements said.

In the Matter of State Street Bank and Trust Co.
(April 30, 1992)

The Ethics Commission fined State Street Bank and Trust Company (State Street) \$2,000 for violating the Massachusetts Conflict of Interest Law by paying for meals, accommodations and entertainment expenses for the former Auditor of the City of Boston during two State Street client conferences in Arizona.

In a Disposition Agreement reached with the Commission, State Street, through its Senior Vice President and General Counsel, admitted that its actions violated Section 3 of M.G.L. c. 268A, the conflict law, and agreed to pay the fine. Section 3 prohibits anyone from giving a public employee anything of substantial value (\$50 or more) for or because of their official position, or for or because of anything they could do in their official capacity.

Leon Stamps, the former City of Boston Auditor, was fined \$1,500 in May of 1991 for accepting the meals, accommodations and entertainment from State Street. An Order to Show Cause alleging State Street had also violated the law was issued by the Ethics Commission at the same time.

The City of Boston Retirement Board (retirement board) is a State Street client, according to the Disposition Agreement. The retirement board invests the approximately \$800 million in funds contributed by city workers toward their pensions. State Street's Trust Department serves as the custodian of those funds. In fiscal years 1987 and 1988, State Street received \$198,817.00 and \$367,194.00, respectively, in custodian fees from the City of Boston, the Agreement said.

In the Matter of Kevin Mullen
(May 11, 1992)

Former Department of Public Utilities (DPU) inspector Kevin Mullen was fined \$2,000 for violating the conflict law through a scheme in which he "sold" the preparation and filing services of a third person to five businesses required to file tariff schedules with the DPU, then prepared and filed the tariff schedules himself. Mullen was also required to forfeit to the state the \$500 he made through the scheme.

Mullen admitted in a Disposition Agreement with the Ethics Commission that his actions violated Section 4(a) of G.L. c. 268A, the conflict law, and agreed to pay the fine and the forfeiture. Section 4(a) prohibits state employees from receiving compensation from anyone other than the Commonwealth in connection with matters in which the Commonwealth has a direct and substantial interest.

According to the Agreement, Mullen worked as an inspector for DPU's Commercial Motor Vehicle Division, which is largely responsible for regulating "common carriers" in Massachusetts. Common carriers are businesses that transport property via motor vehicle for compensation. State law requires all such common carriers to file with the DPU written tariff schedules showing their current prices for their services.

In 1989, Mullen, whose duties as a DPU inspector included the periodic inspection of records of common carriers for compliance with applicable state laws and regulations, prepared and filed tariff schedules for five common carriers for \$100 each. In every instance, the Disposition Agreement said, Mullen suggested to a representative of the carrier that he could arrange to have James Gould Jr., a person Mullen represented to be a former DPU employee, prepare the carrier's tariff certificate for \$100.

Mullen accepted checks payable to James Gould Jr., and deposited the checks in a joint account he shared with Gould, the Disposition Agreement said. Mullen and Gould split the proceeds from the checks, and Mullen prepared and filed the tariff schedules, the Agreement said.

In the Matter of David Crossman
(May 22, 1992)

The State Ethics Commission fined David Crossman, a former member and chair of the Hudson Conservation Commission, \$2,000 for numerous violations of the Massachusetts Conflict of Interest Law resulting from Crossman's private consulting work in connection with the state's Wetlands Protection Act.

In a Disposition Agreement reached with the Commission, Crossman admitted that his actions violated Sections 17(a), 18(a), 19, and 23(b)(3) of G.L. c. 268A, the conflict law, and agreed to pay the fine.

According to the Disposition Agreement, Crossman served on the Hudson Conservation Commission (ConCom) from 1984 until 1989. The ConCom post was a part-time, unpaid position, and was designated as a "special municipal employee" position. Crossman was also self-employed as an engineer and was the president and owner of the environmental consulting firm B&C Associates (B&C) in Hudson from 1985 through his remaining tenure on the ConCom, the Agreement said. Ninety percent of B&C's clients hire the company to do work relating to the Wetlands Protection Act, the Disposition Agreement said.

Section 19 prohibits municipal employees from participating in their official capacity in any particular matter in which they or a business organization in which they serve as officer, director or employee has a financial interest. Section 17(a) prohibits municipal employees -- including "special" municipal employees -- from directly or indirectly requesting or receiving compensation from someone other than the municipality in connection with a particular matter that is of direct and substantial interest to that municipality and in which public employees have participated in their official capacity. Section 18(a) prohibits the same conduct for former municipal employees. Section 23(b)(3) prohibits public employees from acting in a manner that would cause an objective observer to conclude they would be improperly influenced in the performance of their official duties.



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