

(1995)

MASSACHUSETTS GENERAL LAWS

CHAPTER 268A (Section 1)

THE CONFLICT OF INTEREST LA W

268A: 1 Definitions:

Section 1. In this chapter the following words, unless a different meaning is required by the context or is specifically prescribed shall have the following meanings:

- (a) "Compensation", any money, thing of value or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.
- (b) "Competitive bidding", all bidding, where the same may be prescribed by applicable sections of the General Laws or otherwise, given and tendered to a state, county or municipal agency in response to an open solicitation of bids from the general public by public announcement or public advertising where the contract is awarded to the lowest responsible bidder.
- (c) "County agency", any department or office of county government and any division, board, bureau, commission, institution, tribunal or other instrumentality thereof or thereunder.
- (d) "County employee", a person performing services for or holding an office, position, employment, or membership in a county agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis.
- (e) "Immediate family", the employee and his spouse, and their parents, children, brothers and sisters.
- (f) "Municipal agency", any department or office of a city or town government and any council, division, board, bureau, commission, institution, tribunal or other instrumentality thereof or thereunder.
- (g) "Municipal employee", a person performing services for or holding an office, position, employment or membership in a municipal agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis, but excluding (1) elected members of a town meeting and (2) members of a charter commission established under Article LXXXIX of the Amendments to the Constitution.

- (h) "Official act", any decision or action in a particular matter or in the enactment of legislation.
- (i) "Official responsibility", the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and whether personal or through subordinates, to approve, disapprove or otherwise direct agency action.
- (j) "Participate", participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering advice, investigation or otherwise.
- (k) "Particular matter", any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties. finances and property.
- (l) "Person who has been selected", any person who has been nominated or appointed to be a state, county or municipal employee or has been officially informed that he will be so nominated or appointed
- (m) "Special municipal employee", a municipal employee who is not a mayor, a member of a board of aldermen, a member of a city council or a selectman in a town with a population in excess of ten thousand persons, and whose position or employment has been expressly classified by the city council, or board of aldermen if there is no city council, or the board of selectmen as that of a special employee under the terms and provisions of this chapter. All employees who hold equivalent offices, positions, employment or membership in the same municipal agency shall have the same classification; provided, however, no municipal employee shall be classified as a "special municipal employee" unless he occupies a position for which no compensation is provided or which, by its classification in the municipal agency involved or by the terms of the contract or conditions of employment, permits personal or private employment during normal working hours, or unless he in fact does not earn compensation as a municipal employee for an aggregate of more than 800 hours during the preceding 365 days. For this purpose compensation by the day shall be considered as equivalent to compensation for 7 hours per day. A special municipal employee shall be in such status on days for which he is not compensated as well as on days on which he earns compensation. All employees of any city or town wherein no such classification has been made shall be deemed to be "municipal employees" and shall be subject to all the provisions of this chapter with respect thereto without exception.

GENERAL LAWS, CHAPTER 268A, SECTION 23
STANDARDS OF CONDUCT

Section 23. Supplemental provisions; standards of conduct

(a) In addition to the other provisions of this chapter, and in supplement thereto, standards of conduct, as hereinafter set forth, are hereby established for all state, county and municipal employees.

(b) No current officer or employee of a state, county or municipal agency shall knowingly, or with reason to know:

(1) accept other employment involving compensation of substantial value, the responsibilities of which are inherently incompatible with the responsibilities of his public office;

(2) use or attempt to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals;

(3) act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, disclose in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

(c) No current or former office employee of a state, county or municipal agency shall knowingly, or with reason to know:

(1) accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority;

(2) improperly disclose material or data within the exemptions to the definition of public records as defined by section seven of chapter four, and were

acquired by him in the course of his official duties nor use such information to further his personal interest.

(d) Any activity specifically exempted from any of the prohibitions in any other section of this chapter shall also be exempt from the provisions of this section. The State Ethics Commission, established by Chapter 268B, shall not enforce the provisions of this section with respect to any such exempted activity.

(e) Where a current employee is found to have violated the provisions of this section, appropriate administrative action as is warranted may also be taken by the appropriate constitutional officer, by the head of a state, county or municipal agency. Nothing in this section shall preclude any such constitutional officer or head of such agency from establishing and enforcing additional standards of conduct.

(f) Upon qualification for office following an appointment or election to a municipal agency, such appointed or elected person shall be furnished by the city or town clerk with a copy of this section. Each such person shall sign a written acknowledgment that he has been provided with such copy.

SUMMARY OF THE CONFLICT OF INTEREST LAW
FOR MUNICIPAL EMPLOYEES

The Conflict of Interest Law (Chapter 268A of the General Laws) covers all municipal employees, whether elected or appointed, full or part-time, paid or unpaid. The law also regulates the activities of former employees and partners of current and former employees.

"Special Municipal Employee" Designation

Some municipal employees can be designated as special municipal employees by the City Council, Board of Selectmen, or Board of Aldermen. For these individuals, the law applies less restrictively.

You may be designated as a special municipal employee if you are not a mayor, an alderman, a city councilor, or a selectman in a town with a population in excess of 5,000, provided:

- you are not paid; or
- you hold a part-time position which allows you to engage in other employment during normal working hours; or
- you were not paid by the municipality for more than 800 hours during the preceding 365 days

All employees holding the same office or position must be treated equally -- having the same classification as "special municipal employee".

ACTIVITIES RESTRICTED OR PROHIBITED BY THE CONFLICT LAW

ACTIONS ON THE JOB (Section 19)

The law recognizes that your financial interest and those of your partners or close relatives could influence the way you do your job. To discourage "self-dealing", the law prohibits you from participating in a particular matter in which you or any of the following have a financial interest: your immediate family; your partner(s); a business organization in which you serve as an officer, director, trustee, partner, or employee (including a non-profit organization); and any person or organization with whom you are negotiating or have any arrangement concerning prospective employment.

A "particular matter" is defined as an activity involving decision making or judgment and refers to specific projects and proceedings rather than general issues. If such a matter comes up, you would be allowed to participate in it only if your appointing official makes a written determination that your interest is not so substantial as to affect the integrity of your services. This exemption is not available to elected officials.

MUNICIPAL CONTRACTS (Section 20)

Section 20 prevents you from using your position to benefit from municipal contracts and to avoid the public perception that municipal employees have an "inside track" on municipal contracts. In general, as a municipal employee, you are prohibited from having a direct or indirect financial interest in a contract made by any agency of your same municipality. This section of the law also prohibits an employee from holding more than one paid position in the same town or city.

However, there are a number of exceptions to this general prohibition which you can take advantage of as long as certain specific conditions set out in the statute are met; there are also exceptions for special municipal employees. We suggest you call the Commission or contact your city solicitor or town counsel for specific advice on Section 20.

ACCEPTING GIFTS (Section 3)

Extra payments, gifts or privileges offered because of (but not necessarily to influence) your official - actions are prohibited. In other words, it is illegal to accept anything-of "substantial value" beyond your salary in return for performing work that you were hired or elected to perform, even if given by a private party simply out of gratitude for a job well done. The courts and the Commission have deemed "substantial value" to be \$50 or more, in most cases.

In addition, Section 2 of the conflict law prohibits the most obvious kinds of corruption: cases where you are offered payment to perform official duties (or not to perform them) in a certain way. The law imposes civil and criminal penalties, not only on employees who seek or receive payoffs or kickbacks, but also on private parties who offer or pay them.

OUTSIDE ACTIVITIES (Section 17)

The law limits what you may do for someone other than the municipality which employs you -- in other words what you may do on the side. This section is designed to protect the municipal employee and municipality from the problems resulting when people "serve two masters".

While you are a municipal employee, you cannot be compensated by anyone else in relation to any "particular matter" in which any agency of the same municipality is a party or has a direct and substantial interest. Similarly, you cannot act as agent or attorney for anyone in such matters, even if you are not paid. (This section of the law also applies less restrictively to special municipal employees.)

STANDARDS OF CONDUCT (Section 23)

The Standards provide a general code of ethics for all public employees. Essentially, the conflict law prohibits you from using or attempting to use your official position to secure an unwarranted privilege or from giving a reasonable basis for the impression that you can be improperly influenced in the performance of your official duties. The law also prohibits you from disclosing confidential information obtained on the job and from accepting outside employment which will impair your independence of judgment in the exercise of your official duties.

FORMER MUNICIPAL EMPLOYEES (Section 18)

The conflict law aims to prevent the "revolving door syndrome." It prohibits former employees from deriving unfair advantages by improperly using friendships and associations formed or confidential information obtained while serving the government. The law is not designed to prevent you from using general expertise developed while a municipal employee. Rather, it focuses on particular matters you worked on while a municipal employee.

If you participated in a particular matter as a municipal employee, you can never become involved in that same particular matter after you leave municipal service, except on behalf of the municipality. (This same restriction applies to the partners of former municipal employees for one year.)

If you had official responsibility for a particular matter in your municipal position even if you did not actually participate in it, you may not appear personally before any municipal agency on behalf of a private party in connection with that matter for one year after leaving government.

The law also restricts the activities of partners of current municipal employees. Partners may not act as agent or attorney for anyone other than the city or town in connection with particular matters in which the municipal employee participates or has official responsibility for.

Advisory Opinions

This summary presents a brief overview of the conflict law and suggests activities which you, as a municipal employee, must avoid. It is not a comprehensive review. You may call the State Ethics Commission's Legal Division at 727 -0060 for individualized advice on the conflict law, as well as seek an advisory opinion from your city solicitor or town counsel. If you have a question about your own activities, we urge you to request an opinion from your local counsel or directly from the Commission prior to engaging in the activity in question.