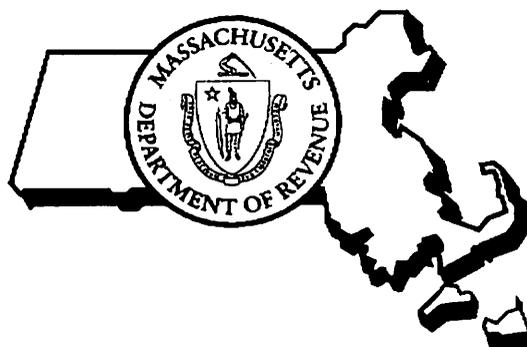


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**Massachusetts Department of Revenue  
Division of Local Services**

**LOCAL EMPLOYEES**

**Wearing Multiple Hats**



**2014**

**Workshop C**

**Amy A. Pitter, Commissioner  
Robert G. Nunes, Deputy Commissioner**

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# LOCAL EMPLOYEES

## Wearing Multiple Hats

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## Municipal Finance Law Conflict Questions

1. May a town board of selectmen appoint one of the town assessors as temporary treasurer to serve for the remaining 3 months of a retiring elected treasurer's term of office?  
See MGL c. 41, §24[p.4] & Email 2012-1200[p.16]
2. May a finance director be appointed assistant treasurer for purposes of issuing paychecks and paying other bills in the absence of the treasurer?  
See MGL c. 43C, §11(a)[p.5]; MGL c. 41, §55[p.4]; Email Response 2010-1039[p.17]; Opinion 96-37[p.19]
3. A board of assessors has just appointed one of its members to the position of assistant assessor when that position became vacant. As an elected assessor the member receives a stipend of \$5,000 set and appropriated by the town at its annual town meeting. The assistant assessor's salary is appropriated in the personal services line of the board's annual budget, which is used to pay the assistant and the part-time assessor's clerk pursuant to amounts established in a collective bargaining agreement. Currently that amount is \$50,000 for the assistant. Is the appointment permitted under the municipal finance law and the conflict of interest law? Assuming the appointment is permitted, may the assessor/assistant receive the \$50,000 salary provided in the collective bargaining agreement for the assistant as well as the \$5,000 stipend as assessor?  
See MGL c. 41, §4A[p.4]; MGL c. 268A, §21A[p.12]; Opinions 2002-529[p.20] & 95-550[p.22], as well as MGL c. 268A, §20[p.10]
4. May a member of the finance committee be elected or appointed to the office of tax collector? treasurer? assessor? May such member be appointed to the position of town accountant? See MGL c. 41, §55[p.4]; Opinion 94-984[p.25]
5. A city treasurer is on the board of directors of a local cooperative bank. Can the treasurer deposit town funds into that cooperative bank if the relationship is disclosed to the mayor and city council?  
See MGL c. 44, §55[p.6]; MGL c. 268A, §19[p.9]; MGL c. 268A, §23[p.13]
6. The city auditor is on the local contributory retirement board which has by special act of the legislature been granted investment authority over the city's OPEB fund, under the custody of the city treasurer. May the retirement board direct the treasurer to invest substantial OPEB funds in certificates of deposit in a local bank where the auditor is a member of the board?  
See MGL c. 44, §55[p.6]; MGL c. 268A, §19[p.9]; MGL c. 268A, §23[p.13]
7. May a town collector in town A be appointed town accountant in town B?  
See MGL c. 41, §55[p.4]

8. May an elected collector in town A be appointed assistant assessor in town B?  
See MGL c. 41, §25A[p.4]; Chapter 107 of the Acts of 1968[p.26] & Chapter 447 of the Acts of 1969[p.26]
9. May a tax collector appoint employees of a collection firm as deputy collectors under MGL c. 60, §92[p.7] if the tax collector has a financial interest in the firm? See MGL c. 268A, §19[p.9]
10. May a tax collector enter into a collection service agreement under MGL c. 60, §2B [p.6] with a firm in which the collector has a financial interest, but is not a managing officer?  
See MGL c. 268A, §19[p.9]

### State Ethics Law Conflict Questions:

1. The Town of Oakbury's full-time assistant assessor is an appointed constable in the same town, who collects fees for service of court papers to private residents of the Town. Does the state conflict of interest law, G.L. c. 268A, s. 1, et. seq., or any other law, allow you to serve in both positions?  
See MGL c. 41, §39[p.4]; MGL c. 268A, §20[p.10]; SEC Opinion EC-COI-86-10[p.28]
2. An appointed assistant assessor in the City of Chilbridge is considering running in the next city election for a seat on the Board of Assessors. Can she hold both positions?  
See MGL c. 268A, §20[p.10]; MGL c. 268A, §21A[p.12]; Opinion 97-536[p.30]
3. The Town of Scarborough, Massachusetts at its last election did not vote in favor of a proposed Proposition 2 ½ override. The Town is now left with a shortfall that must be resolved through employee layoffs. The Selectboard (Board) is considering consolidating departments. The Board is faced with laying off two clerks from the following positions: the Town Clerk's clerk, the Assessors' clerk, the Treasurer's clerk, and the Collector's clerk. May the Treasurer's clerk and the Collector's clerk work in the Assessor's office? Conflicts?  
See MGL c. 268A, §20[p.10]; MGL c. 41, §24[p.4]; Email 2009-518[p.31]
4. The Town Accountant of the Town of Portlandale is seeking advice on whether she may take a paid position as School Business Manager for the School Department. The hours for performing both positions would not conflict. May she serve in both roles?  
See MGL c. 41, §55[p.4]; MGL c. 268A, §20[p.10]; MGL c. 71, §37M; Opinion 2000-327[p.32]

5. The Town of Camberville's three-member Board of Assessors has a pending abatement application. One board member is the son-in-law of the abatement applicant, while another Board member is the father-in-law of the applicant. May all members vote on the application?  
See MGL c. 268A, §19[p.9]; Opinion 99-108[p.33]; SEC Advisory - Rule of Necessity[p.34]
6. The Town Accountant of the Town of Sweetwater received an extra stipend of \$3,000 to administer the Town's Retirement Board for years. Three years ago the Retirement Board, on which the Town Accountant is an ex-officio member, created and funded the new position of Executive Director of the Retirement Board, at a salary of \$12,000. The Board then voted, with the Town Accountant abstaining, to appoint the Town Accountant to the position of Executive Director. The Town Accountant served as both the paid Town Accountant and paid Retirement Board Executive Director for three years before he retired. Should he have kept both positions?  
See MGL c. 268A, §20[p.10]; SEC Disposition Agreement[p.37]
7. Two families, members of which served in numerous paid and volunteer positions with the Town of Muenster, population 298, resign from the Town positions and retire to Florida. The loss of the two families leaves a number of unfilled positions in the Town, preventing quorums in the Board of Assessors, the Zoning Board of Appeals and other boards, as well as a vacancy in the office of Town Treasurer. The only potential, qualified replacements already serve in Town positions. What issues must the Board of Selectmen consider in replacing the vacant positions?  
See MGL c. 268A, §20[p.10]; MGL c. 41, §24[p.4]; MGL c. 41, §55[p.4]; MGL c. 44, §55[p.6]; SEC Advisory[p.38]
8. A Surf City Council member is the finalist for a financial management position with the Surf City Housing Authority. The member contends that the Housing Authority is not a municipal agency because it is funded by the Commonwealth of Massachusetts. May she take the position?  
See MGL c. 268A, §20[p.10]; MGL c. 268A, §23[p.13]; MGL c. 121B; SEC Decision and Order[p.42]

Multiple Office Holding and Conflict of Interest  
Statutes Related to Municipal Finance Officers

MGL c. 41, § 4A

Except as otherwise expressly provided, a district board, if authorized by vote of the district at an annual district meeting, or a town board may, if authorized by vote of the town at an annual town meeting, appoint any member thereof to another town or district office or position for the term provided by law, if any, otherwise for a term not exceeding one year. The salary of such appointee shall be fixed by vote of the town or district, notwithstanding the provisions of section one hundred and eight. In this section, the word “town” shall not include city.

MGL c. 41, § 24

There shall be one, three, five, seven or nine assessors in every city and one, three or five assessors in every town. The assessors in every city and town shall be elected or appointed as otherwise provided by law; but as nearly one third of their number as may be shall be elected or appointed annually, each to hold office for three years and thereafter until his successor is duly elected or appointed. As soon as may be after such annual election or appointment, the assessors of every city and town shall organize by choosing one of their number as chairman and another as secretary or clerk of their board. None of the foregoing provisions shall apply to the city of Boston. In no city or town, including Boston, shall an assessor hold the office of collector of taxes or deputy collector of taxes, whether said deputy is appointed under the provisions of section thirty-seven of this chapter or section ninety-two of chapter sixty.

MGL c. 41, § 25A

The assessors may appoint as assistant assessors such number of suitable citizens as they deem necessary, and may remove them. Such assistant assessors shall perform such duties as the assessors may require for such time as they may determine and shall receive compensation only for duties performed as so required. Every such assistant assessor shall hold office for the period of one year from the date of his appointment, unless sooner removed; provided, that, in the case the assessors fail to appoint a successor to any such assistant assessor during the month preceding the expiration of his term, he shall continue to serve during the following period of one year, unless sooner removed. This section shall apply in all cities and towns, except Boston, notwithstanding any provision of special law.

MGL c. 41, § 39

If a person appointed to collect taxes in a town refuses to serve, or if no person is elected or appointed a collector of taxes, the constables of the town shall be the collectors of taxes.

MGL c. 41, § 55

Any town may authorize the selectmen to appoint a town accountant, who shall perform the duties and possess the powers of town auditors as defined in sections fifty to fifty-three,

inclusive. In towns so authorizing the appointment of a town accountant the office of town auditor may, if the town so vote, be abolished. In towns which have accepted chapter thirty-one or corresponding provisions of earlier laws, the appointment of the town accountant shall be subject to the civil service rules. The town accountant shall be sworn to the faithful performance of his duties, shall hold no other town office involving the receipt or disbursement of money, shall hold office for three years and until a successor is qualified; provided, however, that at the discretion of the appointing authority, a person may be appointed to the position of town accountant for a term of not more than five years and until a successor is qualified. The town clerk, if he holds no other office involving the receipt or disbursement of money, may be appointed to the position of town accountant.

## MGL c. 43C, § 11

(a) The following shall be the summary inserted in the petition described in section five:

“Section eleven of chapter forty-three C of the General Laws authorizes the legislative body to provide, by ordinance or by law, for a consolidated department of municipal finance which may include the offices of accountant, auditor or comptroller, treasurer, collector and assessors.”

Notwithstanding any provision of law to the contrary, in any city or town which accepts the provisions of this section by vote of the people, the legislative body, subject to all applicable provisions of the city or town charter, shall have the authority to adopt an ordinance or by-law providing for a consolidated department of municipal finance.

Any ordinance or by-law adopted pursuant to the provisions of this section shall provide for (i) a director of municipal finance who shall be appointed by and shall be responsible to the chief executive officer or to the chief administrative officer of the city or town as the ordinance or by-law shall specify, (ii) the director of municipal finance to serve, ex-officio, as the accountant, auditor, comptroller, treasurer, collector or treasurer-collector of the city or town; provided, however, that no director of municipal finance shall serve, ex-officio, as both accountant, auditor or comptroller and treasurer, collector or treasurer-collector and (iii), the term of the office of the director of municipal finance which shall not be less than three nor more than five years, subject to removal as may be otherwise provided in the charter of such city or town.

Any ordinance or by-law adopted pursuant to the provisions of this section may include, but need not be limited to, the following: (i) coordination of all financial services and activities, (ii) maintenance of all accounting records and other financial statements, (iii) payment of all obligations, (iv) receipt of all funds due, (v) assistance to all other city or town departments and offices in any matter related to financial affairs, (vi) monitoring of the expenditure of all funds, including periodic reporting to appropriate agencies on the status of accounts, (vii) supervision of all purchases of goods, materials and supplies and maintenance of inventory controls, (viii) supervision of all data processing facilities and, (ix) any other matter relating to municipal finance as may be determined necessary or desirable in such ordinance or by-law.

Any ordinance or by-law adopted pursuant to the provisions of this section shall provide for the appointment of all other personnel necessary to staff the department as constituted in the ordinance or by-law. Unless some other provision is made in the city or town charter for the

appointment of officers and employees the director of municipal finance shall appoint all personnel under his direction and control subject to the approval of the appointing authority as provided for his office.

#### MGL c. 44, § 55

A city, town, or district or regional school district shall not at any one time have on deposit in a bank or trust company or banking company an amount exceeding sixty per cent of the capital and surplus of such bank or trust company or banking company, unless satisfactory security is given to it by such bank or trust company or banking company for such excess. The treasurer of any city, town, district or regional school district shall not deposit funds for which he is accountable in any bank, trust company or banking company with which such treasurer is associated as an officer or employee or has been associated as an officer or employee at any time during the three years immediately preceding the date of any such deposit. ...

#### MGL c. 60, § 2B

For the purposes of collecting municipal taxes, the collector is authorized to enter into agreements with one or more private persons, companies, associations or corporations doing business in the commonwealth to provide collection services with respect to unpaid municipal taxes, other than taxes for real property, for which a demand has already been made. In the event the local tax collector chooses to utilize the services of a collection agency or company, no such agreement shall be entered into unless proposals for the same have been invited by public notice published in at least one newspaper of local circulation once a week for at least two consecutive weeks, the last such publication to be at least one week prior to the time specified for the opening of said proposals. All such proposals shall be opened in public. The collector may reject any or all such proposals and may not accept an offer other than the lowest responsible bid unless the collector specifies the reasons therefor in writing. Any such agreement may provide, in the discretion of the collector, the manner in which the compensation for such services will be paid, which compensation cannot exceed the fees which would otherwise be due the collector under section fifteen, or one-third of the taxes collected on each tax due, exclusive of interest and charges, whichever is the greater. Such compensation which is greater than the amount of fees which are otherwise due the collector shall be added to the amount due and collected as a part thereof by the collection agency.

All amounts collected during the previous week by the collection agency shall be turned over to the collector together with an itemized statement of the taxes, interest and charges collected and so turned over.

Notwithstanding clause (13) of section twenty-one of chapter forty, or any ordinance or by-law to the contrary, the collector may authorize the treasurer to pay the compensation of the collection agent pursuant to the agreement with the collector, without further appropriation of the town; provided, however, that no such payment shall be made for any particular tax collection until the checks, if any, in payment therefor, have been honored.

The collector shall, on or before August first of each year, submit to the commissioner a report which lists all private persons, companies, associations or corporations with whom the collector has had agreements during the preceding fiscal year and an accounting of the amount of taxes collected by and the compensation paid to each such person, company, association or corporation. The commissioner may make, and from time to time revise, such rules, regulations and guidelines necessary to carry out the provisions of this section. The collection agency as a legal entity shall be bonded for the faithful performance of duty in the manner required of deputy collectors under section ninety-two, and such bond shall be deemed to include all agents or employees of said collection agency. This section shall be in addition to and separate from the process of appointing deputy collectors under section ninety-two, except that the collection agency shall be subject to the same limitations as collectors and deputy collectors and the same remedies for collection.

### MGL c. 60, § 92

Any officer authorized to collect taxes may appoint and remove such deputies as such officer deems expedient. Each deputy so appointed shall keep a cash book, in which such deputy shall enter all sums so collected, specifying the total amount of each tax collected, all interest, charges and fees received, the name and address of each party from whom money was received and the date of each such receipt. They shall prepare a report to the collector of all uncollected warrants issued to the deputy at least once a month. Such deputies shall give bond for the faithful performance of their duties, in such sum and in such form, and subject to such conditions, as the commissioner may prescribe, and shall have all the powers of collectors. Any such deputy shall, at least weekly, either turn over sums collected to the collector, or deposit said funds into an account which is separate from any other account of that community, or any other community, for the purpose of clearing checks and earning interest on deposits. The deputy shall have no authority to withdraw amounts from this deputy deposit account except the deputy's fees due under section fifteen. The collector shall transfer funds which have cleared from such account to the town treasury at least once a week along with any interest earned and may retain any fees of the collector and deputy and pay over such fees to the collector or deputy, unless such fees belong to the municipality.

### MGL c. 268A, § 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.

...

(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.

...

(n) "Special municipal employee", a municipal employee who is not a mayor, a member of the board of aldermen, a member of the city council, or a selectman in a town with a population in excess of ten thousand persons and whose position has been expressly classified by the city council, or board of aldermen if there is no city council, or board of selectmen, as that of a special employee under the terms and provisions of this chapter; provided, however, that a selectman in a town with a population of ten thousand or fewer persons shall be a special municipal employee without being expressly so classified. 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 eight hundred hours during the preceding three hundred and sixty-five days. For this purpose compensation by the day shall be considered as equivalent to compensation for seven 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.

...

#### MGL c. 268A, § 17

(a) No municipal employee shall, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receive or request compensation from anyone other than the city or town or municipal agency in relation to any particular matter in which the same city or town is a party or has a direct and substantial interest.

(b) No person shall knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly give, promise or offer such compensation.

(c) No municipal employee shall, otherwise than in the proper discharge of his official duties, act as agent or attorney for anyone other than the city or town or municipal agency in prosecuting any claim against the same city or town, or as agent or attorney for anyone in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest.

Whoever violates any provision of this section shall be punished by a fine of not more than \$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or both.

A special municipal employee shall be subject to paragraphs (a) and (c) only in relation to a particular matter (a) in which he has at any time participated as a municipal employee, or (b) which is or within one year has been a subject of his official responsibility, or (c) which is pending in the municipal agency in which he is serving. Clause (c) of the preceding sentence shall not apply in the case of a special municipal employee who serves on no more than sixty days during any period of three hundred and sixty-five consecutive days.

This section shall not prevent a municipal employee from taking uncompensated action, not inconsistent with the faithful performance of his duties, to aid or assist any person who is the subject of disciplinary or other personnel administration proceedings with respect to those proceedings.

This section shall not prevent a municipal employee, including a special employee, from acting, with or without compensation, as agent or attorney for or otherwise aiding or assisting members of his immediate family or any person for whom he is serving as guardian, executor, administrator, trustee or other personal fiduciary except in those matters in which he has participated or which are the subject of his official responsibility; provided, that the official responsible for appointment to his position approves.

This section shall not prevent a present or former special municipal employee from aiding or assisting another person for compensation in the performance of work under a contract with or for the benefit of the city or town; provided, that the head of the special municipal employee's department or agency has certified in writing that the interest of the city or town requires such aid or assistance and the certification has been filed with the clerk of the city or town. The certification shall be open to public inspection.

This section shall not prevent a municipal employee from giving testimony under oath or making statements required to be made under penalty for perjury or contempt.

This section shall not prevent a municipal employee from applying on behalf of anyone for a building, electrical, wiring, plumbing, gas fitting or septic system permit, nor from receiving compensation in relation to any such permit, unless such employee is employed by or provides services to the permit-granting agency or an agency that regulates the activities of the permit-granting agency.

## MGL c. 268A, § 19

(a) Except as permitted by paragraph (b), a municipal employee who participates as such an employee in a particular matter in which to his knowledge he, his immediate family or partner, a business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest, shall be punished by a fine of not more than

\$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or both.

(b) It shall not be a violation of this section (1) if the municipal employee first advises the official responsible for appointment to his position of the nature and circumstances of the particular matter and makes full disclosure of such financial interest, and receives in advance a written determination made by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee, or (2) if, in the case of an elected municipal official making demand bank deposits of municipal funds, said official first files, with the clerk of the city or town, a statement making full disclosure of such financial interest, or (3) if the particular matter involves a determination of general policy and the interest of the municipal employee or members of his immediate family is shared with a substantial segment of the population of the municipality.

### MGL c. 268A, § 20

(a) A municipal employee who has a financial interest, directly or indirectly, in a contract made by a municipal agency of the same city or town, in which the city or town is an interested party of which financial interest he has knowledge or has reason to know, shall be punished by a fine of not more than \$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or both.

This section shall not apply if such financial interest consists of the ownership of less than one per cent of the stock of a corporation.

This section shall not apply (a) to a municipal employee who in good faith and within thirty days after he learns of an actual or prospective violation of this section makes full disclosure of his financial interest to the contracting agency and terminates or disposes of the interest, or (b) to a municipal employee who is not employed by the contracting agency or an agency which regulates the activities of the contracting agency and who does not participate in or have official responsibility for any of the activities of the contracting agency, if the contract is made after public notice or where applicable, through competitive bidding, and if the municipal employee files with the clerk of the city or town a statement making full disclosure of his interest and the interest of his immediate family, and if in the case of a contract for personal services (1) the services will be provided outside the normal working hours of the municipal employee, (2) the services are not required as part of the municipal employee's regular duties, the employee is compensated for not more than five hundred hours during a calendar year, (3) the head of the contracting agency makes and files with the clerk of the city or town a written certification that no employee of that agency is available to perform those services as part of their regular duties, and (4) the city council, board of selectmen or board of aldermen approve the exemption of his interest from this section, or (c) to a special municipal employee who does not participate in or have official responsibility for any of the activities of the contracting agency and who files with the clerk of the city or town a statement making full disclosure of his interest and the interests of his immediate family in the contract, or (d) to a special municipal employee who files with the clerk of the city, town or district a statement making full disclosure of his interest and the interests of his immediate family in the contract, if the city council or board of aldermen, if there is no city council, board of selectmen or the district prudential committee, approve the exemption

of his interest from this section, or (e) to a municipal employee who receives benefits from programs funded by the United States or any other source in connection with the rental, improvement, or rehabilitation of his residence to the extent permitted by the funding agency, or (f) to a municipal employee if the contract is for personal services in a part time, call or volunteer capacity with the police, fire, rescue or ambulance department of a fire district, town or any city with a population of less than thirty-five thousand inhabitants; provided, however, that the head of the contracting agency makes and files with the clerk of the city, district or town a written certification that no employee of said agency is available to perform such services as part of his regular duties, and the city council, board of selectmen, board of aldermen or district prudential committee approve the exemption of his interest from this section or (g) to a municipal employee who has applied in the usual course and is otherwise eligible for a housing subsidy program administered by a local housing authority, unless the employee is employed by the local housing authority in a capacity in which he has responsibility for the administration of such subsidy programs or (h) to a municipal employee who is the owner of residential rental property and rents such property to a tenant receiving a rental subsidy administered by a local housing authority, unless such employee is employed by such local housing authority in a capacity in which he has responsibility for the administration of such subsidy programs.

This section shall not prohibit an employee or an official of a town from holding the position of selectman in such town nor in any way prohibit such employee from performing the duties of or receiving the compensation provided for such office; provided, however, that such selectman shall not, except as hereinafter provided, receive compensation for more than one office or position held in a town, but shall have the right to choose which compensation he shall receive; provided, further, that no such selectman may vote or act on any matter which is within the purview of the agency by which he is employed or over which he has official responsibility; and, provided further, that no such selectman shall be eligible for appointment to any such additional position while he is still a member of the board of selectmen or for six months thereafter. Any violation of the provisions of this paragraph which has substantially influenced the action taken by any municipal agency in any matter shall be grounds for avoiding, rescinding or cancelling the action on such terms as the interest of the municipality and innocent third parties may require.

This section shall not prohibit any elected official in a town, whether compensated or uncompensated for such elected position, from holding one or more additional elected positions, in such town, whether such additional elected positions are compensated or uncompensated.

This section shall not prohibit an employee of a municipality with a city or town council form of government from holding the elected office of councillor in such municipality, nor in any way prohibit such an employee from performing the duties of or receiving the compensation provided for such office; provided, however, that no such councillor may vote or act on any matter which is within the purview of the agency by which he is employed or over which he has official responsibility; and provided, further, that no councillor shall be eligible for appointment to such additional position while a member of said council or for six months thereafter. Any violation of the provisions of this paragraph which has substantially influenced the action taken by a municipal agency in any matter shall be grounds for avoiding, rescinding or cancelling such action on such terms as the interest of the municipality and innocent third parties require. No such elected councillor shall receive compensation for more than one office or position held in a municipality, but shall have the right to choose which compensation he shall receive.

This section shall not prohibit an employee of a housing authority in a municipality from holding any elective office, other than the office of mayor, in such municipality nor in any way prohibit such employee from performing the duties of or receiving the compensation provided for such office; provided, however, that such elected officer shall not, except as otherwise expressly provided, receive compensation for more than one office or position held in a municipality, but shall have the right to choose which compensation he shall receive; provided further that no such elected official may vote or act on any matter which is within the purview of the housing authority by which he is employed; and provided further that no such elected official shall be eligible for appointment to any such additional position while he is still serving in such elective office or for six months thereafter. Any violation of the provisions of this paragraph which has substantially influenced the action taken by the housing authority in any matter shall be grounds for avoiding, rescinding, or cancelling the action on such terms as the interest of the municipality and innocent third parties may require.

This section shall not prohibit an employee in a town having a population of less than three thousand five hundred persons from holding more than one appointed position with said town, provided that the board of selectmen approves the exemption of his interest from this section.

[There is no subsection (b)]

#### MGL c. 268A, § 21A

Except as hereinafter provided, no member of a municipal commission or board shall be eligible for appointment or election by the members of such commission or board to any office or position under the supervision of such commission or board. No former member of such commission or board shall be so eligible until the expiration of thirty days from the termination of his service as a member of such commission or board.

The provisions of this section shall not apply to a member of a town commission or board, if such appointment or election has first been approved at an annual town meeting of the town.

#### MGL c. 268A, § 22

Any municipal employee shall be entitled to the opinion of the corporation counsel, city solicitor or town counsel upon any question arising under this chapter relating to the duties, responsibilities and interests of such employee. All requests for such opinions by a subordinate municipal employee shall be made in confidence directly to the chief officer of the municipal agency in which he is employed, who shall in turn request in confidence such opinion of the corporation counsel, city solicitor or town counsel on behalf of such subordinate municipal employee, and all constitutional officers and chief officers or heads of municipal agencies may make direct confidential requests for such opinions on their own account. The town counsel or city solicitor shall file such opinion in writing with the city or town clerk and such opinion shall be a matter of public record; however, no opinion will be rendered by the town counsel or city solicitor except upon the submission of detailed existing facts which raise a question of actual or prospective violation of any provision of this chapter.

MGL c. 268A, § 23

(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) (i) solicit or receive anything of substantial value for such officer or employee, which is not otherwise authorized by statute or regulation, for or because of the officer or employee's official position; or (ii) use or attempt to use such official position to secure for such officer, employee 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, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion; or

(4) present a false or fraudulent claim to his employer for any payment or benefit of substantial value.

(c) No current or former officer or 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 materials 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 two hundred and sixty-eight B, 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) The state ethics commission shall adopt regulations: (i) defining substantial value; provided, however, that substantial value shall not be less than \$50; (ii) establishing exclusions for ceremonial privileges and exemptions; (iii) establishing exclusions for privileges and exemptions given solely because of family or friendship; and (iv) establishing additional exclusions for other situations that do not present a genuine risk of a conflict or the appearance of a conflict of interest.

Massachusetts State Ethics Commission

930 Code of Massachusetts Regulations

§ 1.03: Advisory Opinions to Municipal Employees

(1) Upon written request by any municipal employee, including an employee of a municipal district, a regional municipal entity, a former municipal employee or a prospective municipal employee, the Commission shall issue a formal advisory opinion under M.G.L. c. 268B, § 3(g). Copies of any such opinions, excepting the name of the requesting person and any other identifying information, shall be forwarded to any city corporation counsel, city solicitor or town counsel who has subscribed with the Commission to receive the opinions. The Commission may decline to issue an opinion if the employee has requested an opinion on the same matter from the city corporation counsel, city solicitor or town counsel and a copy of the opinion has been filed with the Commission as provided in 930 CMR 1.03(3).

(2) An advisory opinion issued by the Commission under M.G.L. c. 268B, § 3(g) is binding on the Commission in any subsequent proceedings only with respect to the person who requested the opinion and to those upon whose behalf he requested the opinion. The Commission is not bound by an opinion whose material facts were omitted or misstated by the person in the request for the opinion, or who otherwise acted in bad faith in securing the opinion.

(3) Any city corporation counsel, city solicitor or town counsel who files with his respective municipal clerk an advisory opinion issued under M.G.L. c. 268A, § 22 shall also file a copy of the opinion with the Commission. Following receipt of the opinion, the Commission, acting through the Executive Director, shall notify the city corporation counsel, city solicitor or town counsel of any legal conclusions in the opinion which are inconsistent with Commission conclusions on similar issues under M.G.L. c. 268A or are otherwise, in the Commission's judgment, incorrect, incomplete or misleading. If no such notification is sent by the Commission within 30 days of receipt of the opinion, the opinion will be binding upon the Commission to the extent and in the manner stated in 930 CMR 1.03(2). An advisory opinion issued by a corporation counsel, city solicitor or town counsel under M.G.L. c. 268A, § 22, a copy of which is not filed with the Commission, is not binding upon the Commission.

**From:** Blau, Gary on behalf of DOR DLS Law  
**Sent:** Thursday, October 25, 2012 1:24 PM  
**To:** 'Templeton Assessors Office'  
**Cc:** Blake, Zachary  
**Subject:** 2012-1200 - Templeton - treasurer/assessor

Susan:

Generally there are only a few provisions under the municipal finance law with respect to conflicts of interest with respect to multiple office holding. For example, MGL c. 41, §55 provides that a town accountant may not also hold an office, other than town clerk, which involves the receipt of town funds. Thus, the accountant may not be the treasurer or collector as well as accountant. More pertinently, MGL c. 41, §24 provides that no assessor may hold the office of collector or deputy collector of taxes, but is silent on an assessor also holding the office of treasurer. We are not aware of any law which specifically precludes an assessor from also holding the office of treasurer. Presumably MGL c. 41, §24 is aimed at the direct relationship between the board of assessors and the collector, wherein the board may issue collection warrants directly to the collector, which could have the potential for collusion. The potential for collusion also appears to be the rationale for the prohibition in MGL c. 41, §55 with respect to the offices of accountant and treasurer or accountant and collector. The example of the board authorizing an abatement or exemption certificate to the treasurer to issue a refund check could also involve a potential for collusion, under the same rationale, but there is no explicit statutory prohibition in the municipal finance law against holding both positions. Also, as a practical matter, a board of assessors must act by a majority of a quorum, which would act as a check and balance on any potential collusion with one of the board members as collector or treasurer. Thus, at least with respect to the municipal finance law, we cannot say that it is legally impermissible for an assessor to hold the office of town treasurer, at least so long as that office is not combined with that of the collector. The State Ethics Commission and town counsel are specifically authorized to interpret the state ethics law on conflicts that may arise thereunder, and we offer no opinion on the application of that law.

That being said, it is readily apparent that appointing a member of the board of assessors as town treasurer may provide the potential for municipal finance risks, especially if the board may have to act on a warrant or abatement while an assessing position is vacant or an assessor is absent from a meeting, allowing a reduced number of assessors to act. I also note that the 2009 Financial Management Review performed by the Technical Assistance Bureau of our Division recommended that the town enact a bylaw prohibiting the appointment of an elected official to any other Templeton town office, similar to other by-laws the town had enacted in the same vein for other specific positions. See the report of the review on page 6 at <http://www.mass.gov/dor/docs/dls/mdmstuf/technical-assistance/finmgtrrev/templetonoctober09.pdf>.

I recommend that this issue be presented to town counsel with respect to whether any current town by-laws would legally prohibit this appointment, or the application of the state ethics law to this situation.

I hope this addresses your concerns.

Gary A. Blau, Tax Counsel  
Bureau of Municipal Finance Law  
PO Box 9569  
Boston, MA 02114-9569  
617-626-2400  
[blau@dor.state.ma.us](mailto:blau@dor.state.ma.us)

This e-mail response is intended to provide general information about the application of municipal tax and finance laws and Department of Revenue policies and procedures. It is not a public written statement, as defined in 830 CMR 62C.3.1, and does not state the official position of the Department on the interpretation of the laws pertaining to local taxes and finance. It should be considered informational only.

**From:** Templeton Assessors Office [<mailto:assessors@templeton1.org>]  
**Sent:** Thursday, October 25, 2012 8:15 AM  
**To:** DOR DLS Law  
**Subject:** treasurer/assessor

Good Morning

One of my elected members of the Templeton Board of Assessors (not a paid position this year due to budget constrains) applied for and got the job as Templeton Town Treasurer. Ethics has told him that he just cannot take pay from both positions. The remaining two members of the Board of Assessors are concerned that the two jobs will conflict, i.e. signing commitments to the Tax Collector to turn monies over to him as the Treasurer, signing vendor warrants that he will be signing the checks for, signing abatements/exemptions applications for which he would be signing refund check to taxpayers etc.

Would you kindly give us a legal opinion on this.

Thank you

*Sue*

Susan Byrne, MAA  
Deputy Assessor  
Templeton  
978-939-2793

**From:** Mitchell, Mary on behalf of DOR DLS Law  
**Sent:** Tuesday, August 31, 2010 2:29 PM  
**To:** 'Nancy Vail'  
**Subject:** RE: 2010-1039 Wellfleet Request for informal opinion

No, the town accountant's office should not take tax payments. G.L. c. 41, §55 prohibits the town accountant from holding any other elective or appointive office provided in the general laws that specifically requires actual receipt and disbursement of cash, checks or other monies, such as the town or tax collector and town treasurer. Like G.L. c. 41, §24 (mentioned in prior e-mail), it is intended to prohibit the same individual from performing the official duties of offices that provide a check and balance for the municipality, which could put the retention of town funds at risk.

*Mary C. Mitchell, Tax Counsel*  
Bureau of Municipal Finance Law  
Division of Local Services  
Massachusetts Department of Revenue  
(617) 626-2400  
[DLSLAW@dor.state.ma.us](mailto:DLSLAW@dor.state.ma.us)

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**From:** Nancy Vail [mailto:nancy.vail@wellfleet-ma.gov]  
**Sent:** Tuesday, August 31, 2010 1:36 PM  
**To:** DOR DLS Law  
**Subject:** RE: 2010 Wellfleet Request for informal opinion

Hate to bother you again, but one last question. Can the Town Accountant's office take tax payments?

Nancy Vail  
Assessor  
Town of Wellfleet  
300 Main Street  
Wellfleet, MA 02667  
508.349.0304  
508.349.0317 [fax]  
[nancy.vail@wellfleet-ma.gov](mailto:nancy.vail@wellfleet-ma.gov)  
[www.wellfleet-ma.gov](http://www.wellfleet-ma.gov)

---

**From:** Mitchell, Mary [mailto:mitchellm@dor.state.ma.us] **On Behalf Of** DOR DLS Law  
**Sent:** Tuesday, August 31, 2010 1:02 PM  
**To:** 'Nancy Vail'  
**Subject:** 2010 Wellfleet Request for informal opinion

G.L. c. 41, §24, which prohibits the assessor from holding the position of collector, is intended to prohibit the same individual from performing the official duties of offices that provide a check and balance for the municipality, which could put the retention of town funds at risk. Town clerks often serve as town treasurer. So, no, it is not wrong for your clerk/treasurer to receive tax payments. Town clerks are bonded because they typically receive money directly from the public.

*Mary C. Mitchell, Tax Counsel*  
Bureau of Municipal Finance Law  
Division of Local Services  
Massachusetts Department of Revenue  
(617) 626-2400  
[DLSLAW@dor.state.ma.us](mailto:DLSLAW@dor.state.ma.us)

*This e-mail response is intended to provide general information about the application of municipal tax and finance laws and Department of Revenue policies and procedures. It is not a public written statement, as defined in 830 CMR 62C.3.1, and does not state the official position of the Department on the interpretation of*

*the laws pertaining to local taxes and finance. You should recognize that responses provided by this e-mail means are akin to ordinary telephone or face-to-face conversations and do not reflect the level of factual or legal inquiry or analysis which would be applied in the case of a formal legal statement or opinion. A formal statement or opinion could reach a different result.*

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**From:** Nancy Vail [mailto:nancy.vail@wellfleet-ma.gov]  
**Sent:** Tuesday, August 31, 2010 10:56 AM  
**To:** DOR DLS Law  
**Subject:** Request for informal opinion

I recently attended Course 200 at the Assessor's School at UMass Amherst. Our instructor was appalled to learn that most of us assessing department staff accepted tax payments in the tax collector's absence. She said this was absolutely illegal because of bonding issues and because of the "checks and balances" system of municipal finance. In Wellfleet, the town clerk/treasurer's office also accepts tax payments. Are we wrong? Thank you very much for your opinion.

Sincerely,

Nancy Vail

Assessor  
Town of Wellfleet  
300 Main Street  
Wellfleet, MA 02667  
508.349.0304  
508.349.0317 [fax]

MASSACHUSETTS DEPARTMENT OF REVENUE  
DIVISION OF LOCAL SERVICES  
P.O. Box 9655 (6 17) 626-2300  
Boston, MA 02 1 14 FAX (617) 626-2330

MITCHELL ADAMS Commissioner  
ROBERT H. MARSH Deputy Commissioner

January 24, 1996

Jim Mourey  
Town Accountant  
Town Hall  
Groveland, MA

Re: Clerk/Collector as Acting Treasurer  
Our File No. 96-37

Dear Mr. Mourey:

You have requested an opinion concerning the legality of the appointment of the town

clerk/collector as acting treasurer "on an interim basis", but with the town accountant "doing much of the day to day work of the Treasurer, except for the signing of checks and other official documents." Under the municipal finance laws there is no prohibition for a clerk or a collector from performing duties of the treasurer during an interim appointment. However, with respect to the accountant, G.L. Ch. 41, §55 provides that the town accountant "shall hold no other town office involving the receipt or disbursement of money" except that of town clerk. This prohibition would, in our opinion, prohibit even the temporary appointment of a town accountant to a town treasurer position. This provision would also appear to preclude a town accountant from performing any function of the treasurer concerning the receipt and disbursement of money, including keeping records thereof, even if the accountant was not appointed to such other office, and even though the duties would only be performed on a temporary basis.

We also point out that this temporary appointment, either of the clerk/collector or of the town accountant, to the acting treasurer position may be subject to the conflict of interest law, **Chapter 268A**, especially if additional compensation is involved. If you have any questions concerning whether the above law would prohibit such appointments or would impose additional procedures and approvals, town counsel and the state ethics commission have authority to answer such questions.

Please do not hesitate to contact us again if we may be of further assistance.

Very truly yours,

Harry M. Grossman,  
Chief, Property Tax Bureau

**Massachusetts Department of Revenue Division of Local Services**  
*Alan LeBovidge, Commissioner     Joseph J. Chessey, Jr., Deputy Commissioner*

November 19, 2002

Susan I, Koziara  
Board of Assessors  
Newton Memorial Town Hall  
Lanesborough, MA 01237

Re: Assistant Assessor  
Our File No. 2002-529

Dear Ms. Koziara:

You asked for comments on the creation of an assistant assessor position for fiscal year 2004. You state the town currently has a three member elected board of assessors. All of the members appear to be considered part-time, although one member does work more hours.

Assuming no special acts or charter provisions apply, the position could be accomplished merely by appropriation votes in the next year's annual budget, *i.e.*, by voting a separate line item for an assistant assessor, or if the town uses a single line item format for all salaries within each department, by including the extra monies in the salary item. The actual salary would be fixed by the assessors within the appropriation, unless town meeting is required to fix the salary under G.L. Ch. 41 §1A as explained below. The power to appoint an individual to the new position belongs exclusively to the board of assessors. G.L. Ch. 41 §25A. The reason is that assistant assessors are specifically authorized to assist the assessors in their statutory valuation responsibilities. G.L. Ch. 41 §28.

You also asked if it was possible for a board member to be appointed to the position. Both the conflict of interest law and municipal finance law govern appointments by municipal boards of members to other positions within their departments. You should seek the advice of your town counsel or the state ethics commission with respect to the conflict of interest law requirements, but it appears the assessors would have to be designated as "special municipal employees" and various votes and disclosures would need to be made. The affected member could not vote on the matter.

In addition, G.L. Ch. 41 §4A applies. Under that statute, the board of assessors may appoint a member to a position under its authority for a one-year term if authorized by annual town meeting to do so. The annual salary of any such appointee must also be "fixed" by annual town meeting vote at a specified amount. Generally, this would be done by a separate vote similar to that usually taken to fix the annual salaries of elected officials. G.L. Ch. 41 §108. An appropriation to fund the appointee's annual salary as fixed by town meeting would also have to be made as discussed above.

If you have any further questions, please do not hesitate to contact me again.

Very truly yours,

Daniel J. Murphy  
Chief, Property Tax Bureau

MASSACHUSETTS DEPARTMENT OF REVENUE  
DIVISION OF LOCAL SERVICES

P.O. BOX 9655 (6 17) 626-2300  
Boston, MA 02114 FAX (617) 626-2330

MITCHELL ADAMS  
Commissioner  
LESLIE A. KIRWAN  
Deputy Commissioner

September 27, 1995

June M. Poland  
P.O. Box 57  
Berlin, MA 01503-0057

Re: Compensation for Multiple Positions  
Our File No. 95-550

Dear Ms. Poland:

You have asked several questions concerning the ability to pay certain municipal officers/employees from different line items in the budget. Your first question concerns the propriety of paying an elected assessor a salary for such position, as well as a salary as assistant assessor and a separate hourly wage for revaluation work. Payment of this employee comes from line item 12 141 Assessors, Salary, line item 13 Assistant, Salary and line item 16 142 Revaluation, all under the control of the Board of Assessors. Your second question concerns the propriety of paying other town officers, elected and appointed, from more than one line item, for separate jobs in the town.

Under G.L. Ch. 41, §4A and G.L. Ch. 268A, §21A a board of assessors may appoint one of their members to the position of assistant assessor or other position under its authority for a one year term, if annual town meeting authorizes such appointment(s) and the salary of such appointee is fixed by vote of the town. In addition, the State Ethics Commission has determined in the case of an elected part-time assessor in another town that under G.L. Ch. 268A, §20 the assessor would have to be designated a special municipal employee by the board of selectmen and file a financial disclosure with the town clerk of his interest in the assistant assessor employment contract in order to hold that second position.

Although the specific requirements in that ethics commission opinion do not apply to Berlin, a town which has less than 3500 inhabitants, the board of selectmen must nevertheless approve the exemption of the employee's job interest from Section 20. We are informed that some form of written disclosure of the employee's financial interest in the employment must nevertheless still be made to the board of selectmen. The ethics commission opinion did state, however, that if the town were to merge the duties of Assistant Assessor into one of the Assessor's positions and pay the person on a single paycheck, it could fix that Assessor's

compensation at a higher amount without running afoul of these statutory provisions. See also Teed v. Randolph, 347 Mass. 652 (1964).

In a written opinion Berlin town counsel reached the conclusion that the assistant assessor could be elected as an assessor under the ethics laws, but could not participate in any reappointment to the assistant position. Town counsel was not asked about the procedure once the position of assistant assessor came up for reappointment. In our opinion, compliance with G.L. Ch. 41, §4A and G.L. Ch. 268A, §§20 & 21A would then appear to be required.

On the issue of whether the assessor can receive an hourly wage performing revaluation work, we have serious doubts about the legal authority to do so. Generally, elected officers receive a salary "fixed" by annual town meeting under G.L. Ch. 41, §108. We have interpreted this statute as prohibiting the receipt of an indefinite hourly wage by an elected assessor for work performed as assessor. Assuming the revaluation work were performed in a separate position, the receipt by the assessor of payment from the revaluation account on an hourly basis would also appear to be prohibited by G.L. Ch. 41, §4A. Under that section "the salary of such appointee shall be fixed by vote of the town ..." (emphasis added).

The most apparent reason that an hourly rate is not permitted by the statute is that allowing such a rate with the number of hours subject to the discretion of the appointing body could put the appointed member in constant conflict with other members over his or her own compensation. Although the revaluation account, being a generic salary/expense account, could be used to pay salary or wages for such employment, we do not think that it could be used to pay hourly wages to an assessor performing revaluation work. We also think the other assessor performing clerk or revaluation duties and paid from other accounts must also comply with G.L. Ch. 41, §4A and G.L. Ch. 268A, §§ 20 & 21A. Thus, any additional salary for such positions would have to be fixed by annual town meeting vote.

The treasurer, accountant and fire chief require different analyses, however, as each situation is unique. We first lay out the factual issues concerning these three situations. You have indicated that the elected treasurer and appointed accountant recommended increases in their salaries in FY96 to cover the additional work they would have to do in cooperating with an audit, which had a separate appropriation. Some \$1100 for each was requested in addition to the salaries voted. However, it appears that the board of selectmen or finance committee was concerned that if these amounts were added to the salaries, but no audit actually occurred, then the employees would be receiving the extra income without performing the additional work. They therefor separated those amounts out and placed them in a single item in the treasurer's budget entitled Audit, Salary (Item #19). The appointed fire chief has apparently for years received a fixed salary as chief but has also been paid an hourly wage when he responds as a call firefighter, from a separate wage line item.

With respect to the elected treasurer, we believe compensation is limited to a fixed salary set by town meeting for performing the duties of treasurer, under G.L. Ch. 41, §108. No additional amounts may be paid on an hourly basis while acting as treasurer. In addition, line item #19 in the treasurer's budget appears to provide a "salary" for the "audit" work, not hourly wages.

Whether authorizing a salary or wage, however, this line item certainly implies that the treasurer has authority to contract with someone to perform those "audit" duties as a separate employment. If the treasurer performed those duties she would have to appoint herself to the position under her own supervision. This does not fit within **G.L. Ch. 41, §4A** or **G.L. Ch. 268A, §21A** which only applies to appointments of board members to positions by the board or under the supervision of the board in which they are members. Any such employment clearly raises a conflict of interest question, either at common law or under **G.L. Ch. 268A**.

The difficulty with this situation is that it appears that only the treasurer [or perhaps someone in the treasurer's department] can perform the duties contemplated by this "Audit, Salary" line item. The compensation intended is for work providing auditors with necessary documentation and information about the operation of the department, which only the treasurer may know. This would appear to be within the incidental duties of the treasurer. To the extent these are such duties, they should be built into the treasurer's salary established by town meeting, in our opinion.

The town accountant presents a slightly different case. First, the accountant position is appointed and thus the salary need not be fixed by town meeting under **G.L. Ch. 41, §108**. The board of selectmen presumably may fix the compensation of the accountant under that statute, subject to the appropriation voted at town meeting. See also **G.L. Ch. 44, §31**. Nor is this a case of an officer appointing herself to another position. Since line item #19 is in the treasurer's budget, presumably the treasurer may decide who to employ in the endeavor. The accountant presumably must comply with **G.L. Ch. 268A, §20** and get an exemption from that section from the board of selectmen, after notice to the board of her interest. There is also the problem associated with whether this appropriation, as a salary item, permits an hourly wage. We think it more appropriate to treat it as salary only, given the distinction in other line items between salary and wage accounts.

These issues with respect to the town accountant would all be irrelevant, if, as we believe, the work contemplated by that item is actually an incidental responsibility of the town accountant. As such the compensation therefor should be included in the town accountant's salary by the appointing authority after town meeting appropriation, under **G.L. Ch. 41, §108**.

Finally, we turn to the issue of the fire chief, as an appointed officer and department head, authorizing payment of additional wages to himself when he responds to fires as a call firefighter. This situation would seem to involve conflict of interest concerns best addressed by town counsel or the state ethics commission.

We do not call into question the good faith of all parties concerned in providing a payment mechanism that provides for salary of the fire chief for his chief's duties not directly associated with fighting fires and additional compensation for call firefighter work. Nevertheless, there may be occasions when the chief may be expected to appear at a fire in his capacity as chief, rather than as a call firefighter. Indeed, it may be expected that the chief appear regularly at fires in his capacity as chief, making the distinction between the duties as chief and as call firefighter particularly blurred. Even if the payment method were deemed

June M. Poland  
Page 4

not to violate the conflict of interest laws, it would seem more appropriate to provide a single salary for the chief who is expected to use his professional judgment about which fire calls require his attendance, if no specific town policy on that issue has been adopted.

We hope this addresses your concerns. If you have any further inquiry, please do not hesitate to contact us again.

Very truly yours,  
Harry M. Grossman  
Chief, Property Tax Bureau

MASSACHUSETTS DEPARTMENT OF REVENUE  
DIVISION OF LOCAL SERVICES

P.O. BOX 9655 (6 17) 727-2300  
Boston, MA 02 1 14 (FAX) (617) 727-6432

MITCHELL ADAMS  
Commissioner  
LESLIE A. KIRWAN  
Deputy Commissioner

November 18, 1994

Christopher F. Martin  
Montague Town Accountant  
One Avenue A  
Turners Falls, MA 01376

Re: Town Accountant Serving As A Member of the Finance Committee  
Our File No.94-984

Dear Mr. Martin:

This is in reply to your letter asking whether there were any statutory prohibition against a town accountant's serving as a member of the finance committee.

The only statutory prohibition relating specifically to town accountants' holding other positions is found in G.L. Ch. 41 §55. That section provides that a town accountant cannot hold any position (except town clerk) that involves the receipt of money, a prohibition that is inapplicable to finance committee membership. Because membership on the committee is unpaid and the committee does not supervise the accountant, we see no obstacle in the conflict of interest law (G.L. Ch.268A) to a town accountant's being a member of the finance committee. We note, however, that the interpretation of the conflict of interest law is within the province of the town counsel or the state ethics commission, and we urge you to confirm with either of them the propriety of your joining the finance committee.

Please do not hesitate to contact us again if we may be of further assistance.

Very truly yours,  
Harry M. Grossman, Chief  
Property Tax Bureau

**Chap. 107 of the Acts of 1968. AN ACT AUTHORIZING THE APPOINTMENT OF ASSISTANT ASSESSORS AT ANY TIME DURING THE YEAR.**

*Be it enacted, etc., as follows:*

Chapter 41 of the General Laws is hereby amended by striking out section 25A, as most recently amended by chapter 77 of the acts of 1951, and inserting in place thereof the following section: —

*Section 25A.* The assessors shall appoint as assistant assessors such number of suitable citizens of the town as they deem necessary, and may remove them. Such assistant assessors shall perform such duties as the assessors may require for such time as they may determine and shall receive compensation only for duties performed as so required. Every such assistant assessor shall hold office for the period of one year from the date of his appointment, unless sooner removed; provided, that, in the case the assessors fail to appoint a successor to any such assistant assessor during the month preceding the expiration of his term, he shall continue to serve during the following period of one year, unless sooner removed. This section shall apply in all cities and towns, except Boston, notwithstanding any provision of special law.

*Approved March 30, 1968.*

**Chap. 447 of the Acts of 1969. AN ACT AUTHORIZING ASSESSORS TO APPOINT ASSISTANT ASSESSORS WHO ARE NONRESIDENTS OF THE CITY OR TOWN IN WHICH THEY ARE TO SERVE.**

*Be it enacted, etc., as follows:*

Section 25A of chapter 41 of the General Laws, as most recently amended by chapter 107 of the acts of 1968, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence: — The assessors may appoint as assistant assessors such number of suitable citizens as they deem necessary, and may remove them.

*Approved June 24, 1969.*

THE COMMONWEALTH OF MASSACHUSETTS,  
EXECUTIVE DEPARTMENT, STATE HOUSE,  
BOSTON, June 24, 1969.

The Honorable JOHN F. X. DAVOREN, *Secretary of the Commonwealth, State House,  
Boston, Massachusetts.*

DEAR MR. SECRETARY:— I, Francis W. Sargent, pursuant to the provisions of Article XLVIII of the Amendments to the Constitution, the Referendum II, Emergency Measures, hereby declare in my opinion the immediate preservation of the public convenience requires that the law being Chapter 447 of the Acts of 1969, entitled " A N ACT AUTHORIZING ASSESSORS TO APPOINT ASSISTANT ASSESSORS WHO ARE NONRESIDENTS

OF THE CITY OR TOWN IN WHICH THEY ARE TO SERVE." and the enactment of which received my approval on June 24, 1969, should take effect forthwith.

I further declare that in my opinion said law is an emergency law and the facts constituting the emergency are as follows:

Because of the intensive revaluation of real estate that is going on in many cities and towns in the Commonwealth, these cities and towns have a great need for competent assessors. In many cases these communities cannot find qualified assessors within their own community. Delay in the availability of non-residents to serve as assessors would result in many communities losing the benefit of qualified assistance.

Sincerely,

FRANCIS W. SARGENT,  
*Acting Governor of the Commonwealth.*

OFFICE OF THE SECRETARY, BOSTON, June 25, 1969.

I, John F. X. Davoren, Secretary of the Commonwealth, hereby certify that the accompanying statement was filed in this office by His Excellency the Acting Governor of the Commonwealth of Massachusetts at eleven o'clock and fifty-five minutes, A.M., on the above date, and in accordance with Article Forty-eight of the Amendments to the Constitution said chapter takes effect forthwith, being chapter four hundred and forty-seven of the acts of nineteen hundred and sixty-nine.

JOHN F. X. DAVOREN,  
*Secretary of the Commonwealth.*

The Official Website of the State Ethics Commission

**State Ethics Commission**

☛ Home Opinions & Rulings Advisory Opinions Holding a 2nd Public Position EC-COI-86-10

**EC-COI-86-10**

May 20, 1986

All identifying information has been deleted from this opinion as required by Chapter 268B, section 3(g).

**FACTS:**

You are both the full-time police chief and an appointed constable in the same town.

**QUESTION:**

Does the state's conflict of interest law, G.L. c. 268A, permit you to serve in both positions?

**ANSWER:**

No.

**DISCUSSION:**

As a police chief, you are considered a municipal employee for purposes of the conflict of interest law, and are consequently subject to the provisions of that law. G.L. c. 268A, s. 1 et seq. Section 20 prohibits a municipal employee from having a financial interest, directly or indirectly, in a contract made by the same municipality. You clearly have a financial interest in your constable appointment since you receive fees for performing constable duties. The issue remaining is whether serving as a constable results in a contract between the appointee and the town within the meaning of G.L. c. 268A, s. 20.

The Commission recently decided a similar "issue at the state level. See *In the Matter of Robert J. Quinn*, 1986 Ethics Commission. The issue in Quinn was whether serving as a bail commissioner resulted in a contract between the appointee and the Superior Court [the appointing authority] within the meaning of G.L. c. 268A, s. 7 [the state equivalent to s. 20]. In *Quinn*, the Commission concluded, *inter alia*, that serving as a bail commissioner results in a contract between the state and the bail commissioner as the word "contract" (which is undefined in G.L. c. 268A) is used in traditional contract law of offer, acceptance, and consideration.<sup>1/</sup> "The state offers the opportunity to be appointed and to serve as bail commissioner subject to regulation and supervision by the Superior Court. Acceptance occurs on each occasion a bail commissioner agrees to perform those services subject to applicable regulation."<sup>2/</sup>

In analyzing the "contract" in *Quinn*, the Commission considered six standards, including whether:

- (1) the appointment confers upon the appointee the powers normally associated with public office;
  - (2) the duties are similar or identical to the duties performed by public employees;
  - (3) there is any choice in who will receive his services;
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- (4) the place for provision of the services is on public property;
  - (5) the procedures and work product of the appointee are substantially regulated by a public agency or by law;
  - (6) compensation for providing the services is specifically and substantially regulated by a public agency or by law.

In a given fact pattern, some of these standards may be given more or less weight. Each factual situation must also be viewed in light of the purpose of the conflict of interest law. One of the underlying policies of section 20 is to prevent municipal employees from using their positions to obtain contractual benefits or additional appointments from the municipality and to avoid any public perception that municipal employees have an "inside track" on such opportunities. See *generally Buss, The Massachusetts Conflict of Interest Statute: An Analysis*, 45 B.U.L. Rev. 299 (1965). On the basis of the above standards, particularly standards (1), (2), (5) and (6), the Commission concludes that your serving as an appointed constable in exchange for fees results in a contract within the meaning of G.L. c. 268A, §20 between you and the Town.

Constables in your town are appointed by the Board of Selectmen as "town officers." See G.L. c. 41, § 1; G.L. c. 41, §91A. While most constables spend the substantial majority of their time serving process in civil and criminal cases pursuant to G.L. c. 41, §94, appointment to the position of constable confers upon them a broad range of statutory powers normally associated with public office. For instance, constables "have the powers of sheriffs to require aid in the execution of their duties." G.L. c. 41, s. 94. If no one is elected or appointed as tax collector, or if the appointee refuses to serve, constables serve in that capacity on behalf of the town. G.L. c. 41, s. 39. Constables also possess the power of arrest without a warrant under a number of circumstances, including: violation of the election laws (G.L. c. 56, s. 57); illegal manufacture, sale or transport of alcohol (G.L. c. 138, s. 56); trespassing, after notice, upon a house, building, boat, wharf, etc. (G.L. c. 266, s. 120); playing

games in a public place for money or other property (G.L. c. 271, s. 2); and keeping a house, room or place for prostitution. (G.L. c. 272, s. 10). Other instances in which constables have the statutory power of arrest include breaches of the peace and health law violations. The breadth of constabulary powers of arrest is evidenced by the fact that both the local and state police derive much of their power from constables: "... [police officers] shall have all the powers and duties of constable except serving and executing civil process." G.L. c. 41, s. 98. See also G.L. c. 22, s. 9A. In summary, the Commission finds that among the statutory powers available to a constable upon appointment are powers and duties similar or identical to those of other public employees.

The fees constables may charge for their services are specifically set out by statute. G.L. c. 262, s. 8. Constables are also required to make an annual accounting of the fees they collect. *Id.* Thus, while constables secure their own clients and have discretion as to what services within their authority they will provide, their duties and compensation are regulated by statute. The Commission concludes that you have a contract with the town each time you perform services as a constable, because you carry the statutory authority to perform governmental functions such as arrest and your fee schedule is regulated by statute. Your financial interest in such a contract, i.e., your receipt of fees for performing constable services, violates s. 20.

The sole exemption under s. 20 available to a full-time municipal employee with a financial interest in a contract made by the same municipality is s. 20(b), which exempts:

a municipal employee who is not employed by the contracting agency or an agency which regulates the activities of the contracting agency and who does not participate in or have official responsibility for any of the activities of the contracting agency, if the contract is made after public notice or where applicable, through competitive bidding, and if the municipal employee files with the clerk of the city or town a statement making full disclosure of his interest and the interest of his immediate family; and if in the case of a contract for personal services:

- (1) the services will be provided outside the normal working hours of the municipal employee,
- (2) the services are not required as part of the municipal employee's regular duties, the employee is compensated for not more than five hundred hours during a calendar year,
- (3) the head of the contracting agency makes and files with the clerk of the city or town a written certification that no employee of that agency is available to perform those services as part of their regular duties, and
- (4) the city council, board of selectmen or board of aldermen approve the exemption of his interest from this section.

You do not qualify for this exemption. In previous opinions, the Commission has considered the nature of both a police chief's and a fire chief's duties in a municipality. See *ECCOI-85-64; 85-65; 85-83*. The Commission concluded that the general supervisory responsibilities such individuals possess over department matters require that they be on call twenty four hours a day.

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Because your position as chief of police is considered a 24-hour a day job, you are rendered incapable of meeting the requirement that your constabulary services be provided outside your normal working hours.

DATE AUTHORIZED: May 20, 1986

1/ The fact that a bail commissioner receives fees from someone other than the state was held to be irrelevant. "Section 7 prohibits a financial interest in a contract made by a state agency, not in one funded by the state. It is the existence of compensation, not the identity of its source, that is the issue." *Quinn, supra*. The opportunity to earn compensation from third persons is sufficient to support a contract. *Id. (cites omitted)*.

2/ See footnote 5 in *Quinn, supra*.

3/ Because your receipt of fees for performing constable services violates s. 20, the Commission does not reach the issue of whether your police chief salary would qualify for a s. 20 exemption if the position of constable was expressly classified as a "special municipal employee" position by the Board of Selectmen.

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End of Opinion



Mitchell Adams  
Commissioner

October 22, 1997

Charles E. Demers, Chairman  
Board of Assessors  
Town Hall  
Somerset, MA 02726

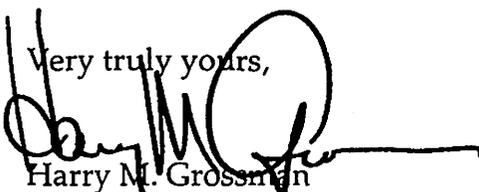
Re: Clerk/Board Member  
Our File No. 97-536

Dear Mr. Demers:

You have asked for a legal opinion concerning a perceived conflict of interest by a clerical employee under the supervision of a manager appointed by the board. This clerical employee has run for election to the board on at least two occasions but has not yet been elected. Nevertheless, the board is concerned about the potential conflict if this employee were to win election and attempt to retain her paid clerical position.

This question is primarily one to be answered by officers with the jurisdiction over conflict of interest issues, the State Ethics Commission or town counsel. Any request for an opinion on this issue should be directed to those officers. The only statute on such conflicts which appears in the municipal finance laws is G.L. Ch. 41, §4A, which permits a board of assessors to appoint one of their members to a position under its authority for a one year term, if annual town meeting authorizes such appointment and fixes the salary. The statute does not address the issue of a person who is employed by the board and runs for election to the office of assessor. See also G.L. Ch. 268A, §21A which is similar. If the person is so elected and comes up for reappointment, we believe that the provisions of G.L. Ch. 41, §4A would apply at that time.

To the extent we were able to respond, we hope this addresses your concerns. Please do not hesitate to contact us again.

Very truly yours,  
  
Harry M. Grossman  
Chief, Property Tax Bureau

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**Division of Local Services**

**Joseph J. Chessey Jr., Deputy Commissioner**

Post Office Box 9655, Boston, MA 02114-9655 Tel: 617-626-2300 Fax: 617-6262330  
<http://www.state.ma.us/dls>

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**From:** Hinchey, Christopher M on behalf of DOR DLS Law

**Sent:** Wednesday, April 15, 2009 3:07 PM

**To:** 'Lisa Berg'

**Subject:** 2009-518 RE: Conflict

Any conflict of interest issues under Ch.268A would have to be resolved by the ethics commission or the town counsel.

So far as the municipal finance laws are concerned, Ch.41 §24 prohibits an assessor from serving as a collector or deputy collector, but we know of no similar prohibition relating to assessors' and collectors' clerical staff. Assessors' clerks can't abate tax bills; they may assemble the relevant documentation and make recommendations, but legally, only the assessors can actually abate a tax.

Chris Hinchey Tax Counsel  
Bureau of Municipal Finance Law  
PO Box 9569  
Boston, MA 02114-9569  
617-626-2400  
[dlslaw@dor.state.ma.us](mailto:dlslaw@dor.state.ma.us)

This e-mail response is intended to provide general information about the application of municipal tax and finance laws and Department of Revenue policies and procedures. It is not a public written statement, as defined in 830 CMR 62C.3.1, and does not state the official position of the Department on the interpretation of the laws pertaining to local taxes and finance. It should be considered informational only.

**From:** Lisa Berg [<mailto:lisab@dudleyma.gov>]

**Sent:** Tuesday, April 14, 2009 2:42 PM

**To:** DOR DLS Law

**Subject:** Conflict

Hi,

As with many other towns, the Town of Dudley is in the proces of consolidating departments. They want to lay off two (2) of the following clerks, the town Clerk's Clerk, Assessors Clerk, Treasurer's Clerk & the Collector's Clerk. The two clerks that will remain, will cover all four offices. My question is, can an assessors clerk who abates bills work in the collector & treasurer's office, as well as the treasurer Clerk & Collector's clerk working in the Assessors Office? If you do not know, could you please direct me to someone that I can contact.

Thank you for your help.

Lisa L. Berg, MAA  
Principal Assessor  
Town of Dudley  
[lisab@dudleyma.gov](mailto:lisab@dudleyma.gov)  
508-949-8006  
508-949-2223 (fax)



June 13, 2000

Lorraine A. Garrant  
Town Accountant  
242 Church Street  
Clinton, MA 01510

Re: Conflict of Interest - Holding Two Town Positions  
Our File No. 2000-327

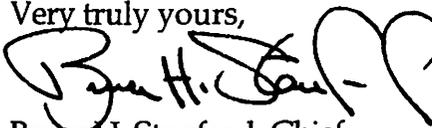
Dear Ms. Garrant:

You have asked whether you would have a conflict of interest as town accountant if you were to take a part-time position as Coordinator of Financial Affairs in the School Department. That position would include many of the duties normally associated with a school business manager or administrator. We are not aware of any provision of municipal finance law that would make serving in such a dual capacity a prohibited practice, provided the hours of performing each service do not conflict. In fact, if the school committee and the town agree and the town accepts G.L. c. 71, §37M, the financial functions of the schools and the town could be consolidated. [Note that while the school committee has authority to provide a special benefit contract for its business administrator for up to six years, the board of selectmen may enter into such a contract with the town accountant for a term up to five years. See G.L. c. 71, §41, G.L. c. 41, §§55 & 108N.]

The only statutory prohibition relating specifically to town accountants holding other positions is found in G.L. c. 41, §55. That section provides that a town accountant cannot hold any position (except town clerk) that involves the receipt of money. Based on the job description submitted, the Coordinator of Financial Affairs does not appear to receive or disburse funds. If, however, you would be required to receive any funds in that position, such as grants, fees or gifts, you would not be able to hold both positions.

Other statutory provisions and agencies, however, might determine that a conflict exists under other law. For example, the State Ethics Commission enforces the conflict of interest statute. See G.L. c. 268A. In addition, town counsel is authorized to issue opinions to employees who believe they may have a potential conflict. Finally, in some towns local by-laws may restrict multiple holding of positions. Again, town counsel is in a better position to answer such a question.

If we may be of further assistance, please do not hesitate to contact us again.

Very truly yours,  
  
Bruce H. Stanford, Chief  
Property Tax Bureau



September 7, 1999

Daniel H. Zdonek, Jr.  
Assistant Assessor  
Town Offices  
100 Middle Street  
Hadley, MA 01035

Re: Abatement Procedures – Conflicts of Interest  
Our File No. 99-108

Dear Mr. Zdonek:

This is in reply to your letter requesting information as to the proper procedure for addressing an application for abatement where two of the three elected assessors must abstain from voting thereon. In the situation presented, one board member is the son-in-law of the applicant, while another board member is a brother-in-law of the applicant. These relationships leave only a single assessor available to act upon the abatement request.

As this issue relates to the Conflict of Interest law, G.L. Chapter 268A, we contacted the State Ethics Commission (617-727-0060) for guidance and were referred to a Guideline of their office explaining the "Rule of Necessity", which appears applicable in the circumstances presented. I have enclosed a copy of this information for your perusal. If applicable, the rule would allow all board members to participate in the action provided the Board complies with all necessary procedures.

I hope this information proves helpful. If I may be of any additional assistance in this or any other matter, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink that reads "Bruce H. Stanford". The signature is written in a cursive style with a large, stylized "S" at the beginning.

Bruce H. Stanford  
Chief, Property Tax Bureau

BHS/jeb  
Enclosure

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## State Ethics Commission

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### Advisory 05-05: The Rule of Necessity

If an elected member of a town or city board has a conflict of interest with respect to a matter before the board that involves his own financial interest or that of a partner, an immediate family member, a business organization with which the board member has certain affiliations, or a person or organization with whom the board member is negotiating or has any arrangement concerning future employment, that member will be disqualified from participating as a board member in that matter.— In some cases, especially when more than one member is disqualified, a board cannot act because it does not have a quorum or some other number of members required to take a valid affirmative vote. (If the number for a quorum is not set by law, a quorum is generally a majority of the board members.) In these circumstances, the board may be able to use the rule of necessity to permit the participation of the disqualified member(s) in order to allow the board to act. Individual elected officials, such as the mayor of a municipality or a constitutional officer, also may be able to use the rule of necessity in order to carry out legally-required actions that would otherwise be barred by the conflict of interest law.

The rule of necessity is not a law written and passed by the Legislature. Rather, the rule of necessity was developed by judges who applied it in their court decisions. The rule of necessity may only be used as a last resort. The rule should be used only upon prior written advice from town or city counsel because improper use of the rule could result in a violation of the conflict of interest law.

The rule of necessity works as follows:

1. When used by an elected board member, the rule of necessity may be used only when an elected board is legally required to act on a matter and it lacks enough members to take valid official action solely due to board members being disqualified by conflicts of interest from participating in the matter.

**Example:** A five-member elected board has a meeting and all members are present. Three of the five members have conflicts in a matter before the board in which the board is legally required to act. Three members are the quorum necessary for a decision. The two members without conflicts do not constitute a quorum. The board cannot act. The rule of necessity will permit all members to participate in that matter.

**Example:** A five-member elected board has a meeting involving a matter in which the board is legally required to act and four members are present (one member is sick at home). Two of the four present members have conflicts. A quorum is three. The one member who is sick at home does not have a conflict. The rule of necessity may not be used because, even though a quorum of the board which is able to act is not present at that particular meeting, there is a quorum of the board which is able to act. The absence of one member does not permit the use of the rule of necessity.

**Example:** A five-member elected board has a meeting involving a matter in which the board is legally required to act and all members are present. One member has a conflict and is unable to participate. The vote is a two-to-two tie. The rule of necessity may not be used to break the tie. In general, a tie vote defeats the issue being voted on. (Stated differently, a tie vote will maintain the status quo.)

**Example:** A five-member elected board has a meeting and all members are present. A quorum is three. However, one agenda item, on which board action is legally required, needs four votes, rather than the usual simple majority, for an affirmative decision. Two of the board members have conflicts. Although a quorum is available, the required four votes needed for this particular matter cannot be obtained without the participation of one or both of the members who have conflicts. The rule of necessity may be invoked and all five of the board members could participate.

If one or more members of an elected board have "appearances" of conflicts of interest that can be dispelled by making a written disclosure, the rule of necessity may not be invoked. Section 23(b)(3) of the conflict of interest law prohibits a public official from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that the public official is likely to act or fail to act as a result of kinship, rank or position. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his or her appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

**Example:** One member of a three-member elected board has a daughter who is a candidate for a police officer position. That board member cannot participate in the board's hiring decision because his daughter is an immediate family member and she has a financial interest in the matter. A second member has a niece who is a candidate for the same position. Because a niece is not "immediate family," the second member can make a disclosure about his niece to dispel the appearance of a conflict of interest and may then participate in the matter. Thus, the three-member board has a quorum and is able to act and the rule of necessity may not be invoked.

2. Before invoking the rule of necessity, every effort must be made to find another board or other authority in the municipality with the legal power to act in place of the board that could not obtain a quorum due to conflicts of

interest. (Municipal counsel should be consulted to identify another municipal board or authority to act.)

3. While the absence of one or more board members is generally not sufficient cause to invoke the rule of necessity, when a board is legally required to take action by a certain time and is unable to do so because of the lack of a quorum, the rule of necessity may be invoked.

**Example:** A statute requires selectmen to approve payroll warrants on a weekly basis. One selectman of a three-member board is absent and the board cannot otherwise obtain a quorum due to the disqualification of one selectman whose immediate family member works for the town. The rule of necessity may be invoked.

4. The rule of necessity should be invoked by one or more of the otherwise disqualified members, upon advice from town or city counsel or the State Ethics Commission.

5. If it is proper for the rule of necessity to be used, it should be clearly indicated in the minutes of the meeting that as a result of disqualification of members due to conflicts of interests, the board lacked a sufficient number of members necessary to take a valid vote and, as a last resort, that all those disqualified may now participate under the rule of necessity. Each disqualified member who wishes to participate under the rule of necessity first must disclose publicly the facts that created the conflict.

**Example:** Two members of a three-member elected board have conflicts of interest that prohibit them from participating in a matter involving property owned by a private school for which they serve as trustees. No other board exists which can act on the matter before the board. After consulting with town counsel, one of the board members with a conflict should invoke the rule of necessity and direct that it be included in the minutes. Both of the board members who had been prohibited from participating may then do so. Prior to such participation, however, each must disclose the fact that they serve as trustees and may then participate in the matter.

It should be noted that invoking the rule of necessity does not require all previously disqualified members to participate; it merely permits their participation.

While the rule of necessity is most commonly invoked by elected multi-member boards, it is also applicable to individual elected officials, such as the mayor of a municipality, or a constitutional officer. For an individual elected official to be able to use the rule of necessity, the same requirements explained above apply: the official must be legally required to act on a matter in which he is disqualified by a conflict of interest from acting, and there is no one else legally qualified to act in that matter. In that situation, the individual elected official may invoke the rule of necessity to the minimum extent necessary to allow him to take the required actions otherwise barred by the conflict of interest law. If the legal duty to act permits the official to delegate that duty, then the official may invoke the rule of necessity for the limited purpose of designating another person to carry out the required action. If he delegates, he cannot otherwise participate in the matter. However, if the legal duty to act is non-delegable, then the individual elected official may invoke the rule of necessity to take all actions required legally of him. Any such invocation of the rule should be documented by the elected official in a writing filed publicly with the municipal clerk, or, if the elected official holds a state or county office, with the State Ethics Commission.

**Example:** The General Laws confer upon a Mayor the sole power to act as her City's bargaining representative for purposes of negotiating a collective bargaining agreement with the City's firefighters, but permit the Mayor to select a "designated representative" to negotiate such an agreement in her place. The Mayor's spouse is a firefighter who has a financial interest in his union's collective bargaining agreement with the City. Section 19 of the conflict of interest law would prohibit the Mayor from participating in the firefighters' collective bargaining agreement. The Mayor may invoke the rule of necessity to designate an alternate to serve as the City's collective bargaining representative with the firefighter's union. If she does so, the Mayor cannot otherwise participate in the matter.

**Example:** The General Laws require a Mayor to take a variety of actions with respect to making changes to the health insurance coverage that the City offers to its subscribers, and do not contain any provision authorizing anyone to act in the place of the Mayor or permitting the Mayor to delegate those duties. The Mayor himself is a subscriber to his City's health insurance coverage, and would be disqualified by Section 19 of the conflict of interest law from participating in matters relating to the City's coverage, because he has a financial interest in those matters. The Mayor may invoke the rule of necessity to permit him to take all actions required legally of him in his official capacity under the General Laws with respect to changes to the City's health insurance coverage.

• • •

For more information about the state conflict of interest and financial disclosure laws (G.L. c. 268A & c. 268B), including the subjects discussed in this Advisory, please contact:

State Ethics Commission  
One Ashburton Place, Room 619  
Boston, MA 02108  
(617) 371-9500

ISSUED: March 1987  
REVISED: January 1991  
REVISED: February 1993  
REVISED: December 2005 [as an Advisory]

REVISED: October 17, 2013

**FOOTNOTE**

Public employees who cannot participate in matters because of a conflict of interest should contact the Ethics Commission for advice regarding the rule of necessity.

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# STATE ETHICS COMMISSION

## In The Matter of Harry Gannon

Date: October 13, 2006  
DISPOSITION AGREEMENT

The State Ethics Commission and Harry Gannon enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, s. 4(j).

On July 25, 2006, the Commission initiated, pursuant to G.L. c. 268B, s. 4 (a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Gannon. The Commission has concluded its inquiry and, on September 13, 2006, found reasonable cause to believe that Gannon violated G.L. c. 268A.

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

### Findings of Fact

1. In 1985, Gannon became the paid, appointed Maynard town accountant.
2. Prior to 1999, the town accountant administered the Maynard Retirement Board's ('Board') functions and received an extra \$3,000 annually for the services.
3. In 1999, the Board, with Gannon serving ex officio as town accountant, created and funded a new position of executive director of the retirement board.
4. Gannon participated in the Board's actions to create and fund the position. The salary was set at \$12,000 per year. When Gannon so participated he knew he would likely be appointed to fill this position.
5. The Board then voted, with Gannon abstaining, to appoint the town accountant (Gannon) as the executive director, a position he continues to serve in currently. In effect, this action by the Board resulted in an annual salary increase for Gannon of \$9,000.
6. Gannon then served as both the paid town accountant and paid retirement board executive director from September 2000 until December 31, 2002, when he retired as town accountant.

### Conclusions of Law

7. As the Maynard town accountant, Gannon was a municipal employee as defined by G.L. c. 268A, s. 1.
8. Except as otherwise permitted, s. 20 of G.L. c. 268A prohibits a municipal employee from having a financial interest, directly or indirectly, in a contract made by a municipal agency of the same city or town, in which the same city or town is an interested party of which financial interest the employee has knowledge or reason to know.
9. Gannon's paid appointment as executive director of the retirement board in September 2000, while he was already serving as the paid town accountant gave him an ongoing prohibited financial interest in a contract made by the town of Maynard in which the town was an interested party.
10. Gannon knew or had reason to know of his financial interest in that contract.
11. Thus, by serving as the paid retirement board executive director while being the town accountant, Gannon repeatedly violated s. 20.[1]

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

- (1) that Gannon pay to the Commission the sum of five thousand dollars (\$5,000.00) as a civil penalty for repeatedly violating G. L. c. 268A s. 20;
- (2) that Gannon pay to the Commission the sum of twenty thousand dollars (\$20,000) as a civil forfeiture of the compensation that he received in violation of s. 20; and
- (3) that Gannon waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

### STATE ETHICS COMMISSION

By:  
/s/ Peter Sturges, Executive Director  
November 14, 2006

/s/ Harry Gannon  
October 13, 2006

I, Harry Gannon, have personally read the above Disposition Agreement. I understand that it is a public document and that by signing it, I will have agreed to all of the terms and conditions therein including payment of twenty five thousand dollars (\$25,000) to the State Ethics Commission.

/s/ Harry Gannon

October 13, 2006

[1] The Commission's statute of limitations (930CMR 1.02 (10)) prevents the Commission from proceeding on Gannon's participation in 1999 in the creation of the retirement board executive director position.

End Of Decision

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### Special Municipal Employees

The conflict of interest law, G.L. c. 268A, covers all municipal officials and employees, whether elected or appointed, paid or unpaid, full-time or part-time. However, two sections of the conflict law apply less restrictively to those part-time or unpaid municipal officials who have been designated as "special municipal employees."

"Special municipal employee" status can be assigned to certain municipal positions by a vote of the board of selectmen, board of aldermen, town council or city council. Several specific municipal positions are automatically designated as "special" under the law. Your position is eligible to be designated as a "special municipal employee" position provided that:

- you are not paid; or
- you hold a part-time position which allows you to work at another job during normal working hours; or
- you were not paid by the city or town for more than 800 working hours (approximately 20 weeks full-time) during the preceding 365 days.

It is the municipal position that is designated as having "special" status, not the individual. Therefore, all employees holding the same office or position must have the same classification as "special municipal employees." For instance, one member of a school committee cannot be classified as a "special" unless all members are similarly classified.

The designation may be made by a formal vote of the board of selectmen, board of aldermen, town council or city council at any time. Votes should be taken individually for each board or position being designated, expressly naming the positions being designated. Once a position is designated as having "special" status, it remains a "special municipal employee" position unless and until the classification is rescinded. A list of all the "special municipal employee" positions should be on file at the town or city clerk's office. This list should also be filed with the Ethics Commission.

Under no circumstances may a mayor, city councilor, town councilor, alderman, or selectman in a town with a population of more than 10,000 be designated as a "special." However, in towns of 10,000 or less, selectmen are automatically considered "special" employees. Other municipal positions in towns with a population of less than 10,000 must still be designated as "special municipal employee" positions by the selectmen.

The Legislature may also designate certain positions to have "special municipal employee" status. For example, board members and part-time employees of local housing and redevelopment authorities are defined by law as "special municipal employees" and do not need to have local authorities approve their designation as "specials." (See G.L. c. 121B, section 7.)

#### THE CONFLICT LAW IS LESS RESTRICTIVE FOR "SPECIALS"

Only two sections of the conflict of interest law apply less restrictively to "specials", §§ 17 and 20. All other sections of the conflict law that govern regular municipal employees apply to "special municipal employees" in exactly the same way. See the Summary of the Conflict Law for Municipal Managers or the Practical Guide to the Conflict Law for Municipal Employees for information on your responsibilities under the law (these publications are available from the State Ethics Commission). Remember that even if you serve on an unpaid part-time board or commission, you are still considered a regular municipal employee, unless your position has been expressly designated as having "special municipal employee" status.

#### Section 17 - Acting on Behalf of Others

Section 17 generally prohibits municipal employees from representing a private party before municipal boards or departments. It also prohibits municipal employees from acting as agent (or attorney) for a private party in connection with any matter of direct and substantial interest to their city or town. Finally, it prohibits municipal employees from accepting pay or other compensation in connection with any matter of direct and substantial interest to their municipality.

However, if you are a "special municipal employee," you may:

- represent private parties before municipal boards other than your own, provided that you have not officially participated in the matter and the matter is not now (and was not within the past year) within your official responsibility;
- act as agent for private parties in connection with a matter of interest to your city or town, provided that you have not participated in the matters as a municipal official, and that the matter is not (and has not been, during the past year) within your official responsibility; and
- receive pay or other compensation in connection with matters involving your city or town, provided that you have not officially participated in the matters and they are not (and have not been, within the past year) within your official responsibility.

**Example:** You are a Conservation Commissioner. The Commission has been given "special municipal employee" status. You are also an engineer in private practice in town.

- You may be hired as site engineer and represent a private development company at a Planning Board hearing, as long as the hearing does not in any way involve Conservation Commission matter.
- However, if the hearing is about a wetlands dispute, you could not represent the developer before the Planning Board because the matter is under your official responsibility as Conservation Commissioner.
- Also, if you prepare site plans, blueprints, structural analyses or other professional documents, you may not allow the developer to submit those materials to the Conservation Commission (or to any other municipal boards, in connection with matters under the Conservation Commission's responsibility).
- Also, you may not be paid for giving the developer advice about how to get his project approved by the Conservation Commission, or for any other activity related to the Conservation Commission review process.

Note that the prohibition against "acting as agent" covers any type of activity that involves representing someone other than your city or town. Activities which can be considered "acting as agent" include: serving as someone's spokesperson; making phone calls or writing letters; acting as a liaison; affixing professional seals or signing supporting documentation; and participating as an electrician, plumber or other contractor during municipal building inspections. For more information about section 17, request Advisory No. 13: Municipal Employees Acting as Agent from the State Ethics Commission.

## **Section 20 -- Restrictions on Having an Interest in Contracts with your City or Town**

Section 20 generally prohibits municipal employees from having a direct or indirect financial interest in a contract with their city or town. However, there are many exemptions in this section of the law. For instance, a municipal employee may own less than 1% of the stock of a company that does business with the municipality.

Also, a municipal employee may have a financial interest in a contract with a municipal department which is completely independent of the one where he works, provided that the contract has been publicly advertised or competitively bid, and the employee has filed a disclosure of his interest in the contract with the city or town clerk. Note that there are additional requirements for personal services contracts: contact your town counsel or city solicitor or the State Ethics Commission's Legal Division for more information.

However, if you are a "special municipal employee," you have two additional exemptions to section 20:

As a "special municipal employee," you may have a financial interest in a contract with a department which is completely independent of the one where you work, provided that you file a disclosure of your interest in the contract with the city or town clerk (there is no "public notice" or "competitive bid" requirement for this "special municipal employee" exemption).

As a "special municipal employee", you may even have a financial interest in a contract with your own department (or with a department which has overlapping jurisdiction with your department), provided that you file a disclosure of your interest in the contract with the city or town clerk and the board of selectmen, board of aldermen, town council or city council vote to grant you an exemption to section 20.

**Example:** You are a member of the School Committee, which has been given "special municipal employee" status. You also own a hardware store in town.

- You may sell light bulbs to the town's Department of Public Works, because Public Works is not under the jurisdiction of School Committee; however, you must file a disclosure of your interest in the lightbulb sales with the Town Clerk.
- You also may sell light bulbs to the School Department (which is under the School Committee's jurisdiction), but only if you file a disclosure of your interest in the lightbulb sales with the Town Clerk and the Board of Selectmen vote to exempt your lightbulb sales from the restrictions of section 20.

For more information about restrictions on holding an interest in municipal contracts, contact your city solicitor or town counsel or the Legal Division of the State Ethics Commission.

## Section 20 -- Restrictions on Holding Multiple Municipal Positions

Because the restrictions of section 20 also apply to employment contracts, municipal employees are generally prohibited from holding more than one municipal position. However, there are many exemptions to this general prohibition. If you are a municipal employee -- regular or "special", you may:

- hold any number of unpaid positions, because you do not have a financial interest in any of the positions (however, if you hold even one paid appointed position, you must look for other exemptions);
- hold any number of elected positions, whether paid or unpaid, because you serve in those positions by virtue of your election, rather than because of an appointment or employment contract (however, if you hold even one paid appointed position, you must look for other exemptions); and
- in some instances, you may hold more than one paid appointed position, provided that the jobs are in separate departments (which do not have overlapping responsibilities) and all paid jobs have been publicly advertised. However, your board of selectmen, board of aldermen, town council or city council must vote to exempt you from section 20, and there are also other requirements you must meet. For more information, see Advisory No. 7: Multiple Office Holding from the State Ethics Commission, or contact your town counsel or city solicitor or the State Ethics Commission's Legal Division.
- If you serve in a town with a population of less than 3,500, you may hold more than one position with the town if the board of selectmen formally approves the additional appointments.

If you are a "special municipal employee", you may also:

- hold any number of other "special municipal employee" positions, provided that the positions are with totally independent departments and you file a disclosure of your financial interest in all the positions with the city or town clerk;
- hold any number of other "special municipal employee" positions, even if the departments' jurisdictions overlap, provided that you file a disclosure of your financial interest in all the positions with the city or town clerk, and the board of selectmen, board of aldermen, town council or city council vote to exempt you from section 20.

**Example:** As a Cemetery Commissioner, you are a "special municipal employee."

- You may also hold "special municipal employee" positions on the Board of Library Trustees and on the Waterways Commission, because the three positions are completely independent of each other. However, you must file a disclosure of your financial interest (e.g., stipends, per diem payments, salary) in the positions with the Town Clerk.

If you wish to hold a "special municipal employee" position with the Department of Public Works (which maintains buildings on the cemetery grounds) or as the town's Tree Warden (who cares for the trees on the cemetery grounds), you must file a disclosure of your financial interest in the positions with the Town Clerk, and the Board of Selectmen must vote to exempt you from section 20.

For more information about holding more than one municipal position, request Advisory No. 7: Multiple Office Holding from the State Ethics Commission, or contact your town counsel or city solicitor or the State Ethics Commission's Legal Division.

...

The definition of "special municipal employee" can be found in section 1(n) of the conflict of interest law (G.L. c. 268A). Note that town councils are empowered by G.L. c. 39, section 1 to exercise all duties and powers of boards of aldermen.

...

Commission Fact Sheets are prepared and issued by the Public Education Division of the State Ethics Commission. They are intended to provide guidance to public officials and employees concerning practical applications of the conflict law. For further information, contact your town counsel or city solicitor, or the Legal Division of the State Ethics Commission.

ISSUED: May 1987

REVISED: March 1990

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## STATE ETHICS COMMISSION

Hickson, Paul T., Docket No. 316  
Docket No. 316  
In the Matter of Paul T. Hickson  
June 25, 1987  
Decision and Order  
Appearing:

Robert A. Levite, Counsel for Petitioner  
State Ethics Commission

Anthony C. Bonavita, Counsel for Respondent  
Paul T. Hickson

Commissioners:  
Diver, Ch., Basile, Burns, Epps, Gargiulo

### DECISION AND ORDER

#### I. Procedural History

The Petitioner filed an Order to Show Cause on December 29, 1986 alleging that the Respondent, Paul T. Hickson, was in violation of G.L. c. 268A, s.20[1] by serving as an elected city councillor for the City of Westfield (City) and as a maintenance worker for the Westfield Housing Authority (WHA). In lieu of an adjudicatory hearing, the Petitioner and Respondent stipulated to the relevant facts, submitted briefs, and orally argued before the full Commission on June 8, 1987. Based upon a review of the evidence and arguments presented by the parties, the Commission makes the following findings and conclusions.

#### II. Findings

##### A. Jurisdiction

The parties have stipulated that the Respondent, in his capacity as an elected city councillor, is a municipal employee within the meaning of G.L. c. 268A, s.1(g).[2]

##### B. Findings of Fact

1. The Respondent has been employed as a WHA maintenance worker for approximately four years and is paid \$20,000 annually.
2. The Respondent has also served as an elected city councillor in the City for approximately three years and is paid \$4,000 annually.
3. On September 10, 1985 the Westfield City Solicitor rendered an opinion stating that there is "no express prohibition or inherent wrong in a maintenance employee of the Housing Authority being a member of the City Council..." Opinion of the City Solicitor, September 10, 1985.
4. On July 22, 1986, the Commission advised the Respondent through a compliance letter,[3] that as an elected city councillor and a maintenance worker for the WHA, he had a prohibited financial interest in

a contract made by a municipal agency of the same city, in which the city is an interested party. The Commission noted that the city solicitor's advice was incorrect under s.20 of the conflict of interest law. The Commission informed the Respondent that the violation could be cured if he resigned one of his municipal positions within thirty days.

5. Notwithstanding receipt of the Commission's compliance letter, the Respondent has continued to maintain both positions.

### III. Decision

The Respondent, as a municipal employee, is prohibited by G.L. c. 268A, s.20 from having a financial interest, directly or indirectly, in a contract made by a municipal agency of the same city in which the city is an interested party. The Respondent stipulates that he is a municipal employee in his capacity as city councillor. He also has a financial interest in his employment contract with the WHA, a municipal agency, since he is compensated to work pursuant to that contract. The WHA's municipal agency status is plainly articulated in its enabling statute, G.L. c. 121B, s.7. Consequently, the Respondent has a prohibited financial interest in his employment contract with the WHA, a municipal agency. By maintaining his position as a maintenance worker for the WHA while also serving as a city councillor for the City, we conclude that the Respondent has violated and continues to violate G.L. c. 268A, s.20.[4]

This result is consistent with the Commission's conclusion in a nearly identical case, In the Matter of Kenneth R. Strong, 1984 SEC 195, in which an elected common councillor violated s.20 by also serving as a maintenance worker for the city housing authority.[5]

The Respondent makes five arguments in support of his contention that he has not violated G.L. c. 268A: 1) WHA is not a municipal agency because it is funded by the state; 2) the Respondent does not knowingly have a financial interest in his employment contract with a municipal agency; 3) the City is not an interested party in any contract he may have with the WHA; 4) the Commission's application of G.L. c. 268A, s.20 deprives him of his right to be elected under Part I, Art. 9 of the Massachusetts Constitution thus depriving him of equal protection of the law; and 5) that the Order to Show Cause contains various procedural and constitutional defects. For the following reasons, none of the contentions set forth above persuades us to overrule the principles which we articulated in Strong and reaffirm today.

1. The enabling statute which establishes housing authorities, G.L. c. 121B, provides that: For the purposes of chapter two hundred and sixty-eight A, each housing and redevelopment authority shall be considered a municipal agency ... Prior to the enactment of G.L. c. 121B and before the creation of the State Ethics Commission, the Attorney General ruled that housing authorities are municipal agencies for the purposes of G.L. c. 268A. Attorney General Conflict Op.25 (April 16,1963). G.L. c. 121B codified this conclusion. The plain language of G.L. c. 121B is conclusive as a matter of law that the WHA is a municipal agency. The Respondent's assertion that the source of the funding for his DHA salary is federal and state money does not alter this conclusion. The Legislature enacted G.L. c. 121B with the presumed knowledge that housing authorities received funds from various sources, including the state and federal government. Respondent's argument that the source of funding for his WHA salary renders the WHA something other than a municipal agency is an argument the Respondent has with c. 121B, not with the application of the conflict law.

2. The Respondent is employed by the WHA, a municipal agency, and is paid \$20,000 annually. To the extent that the Respondent claims that he had no knowledge of his financial interest in a municipal contract, this question was definitively resolved when the Commission notified him in July of 1986 that he was in violation of G.L. c. 268A, s.20. To the extent that he claims he did not have knowledge because his employment was not a contract made by a municipal agency, we have previously addressed this question in 1.[6]

3. In the Strong decision, we held that the City is also an interested party to contracts the [housing authority] enters into with Respondent, a municipal employee of the City. The nature of the establishment and operation of a housing authority demonstrate that the City is an interested party in the activities of the (housing authority). Its enabling statute provides that no housing authority may transact business or exercise its powers until a need for the authority has been determined by city officials. Four of the five housing authority members are appointed by the mayor. G.L. c. 121B, s.5. The City's status as an interested party is also reflected in its statutory responsibility to provide safe and sanitary dwellings for families or elderly persons of low income. See G.L. c. 121B, s.3. Strong at 196. This conclusion applies equally here. The Respondent has offered no argument which rebuts this reasoning nor are we aware of any facts in this case which would warrant a different conclusion.

4. The Respondent also challenges the application of G.L. c. 268A on constitutional grounds, arguing that Chapter 268A, s.20 deprives the Respondent of his right to hold elective office under Part 1, Art. 9 of the Mass. Constitution. This argument was addressed and definitively resolved in Strong. In Strong, we noted that the right "to be elected" is not absolute. See, Opinion of the Justices, 375 Mass. 805,811(1978). The conflict of interest law does not interfere with Hickson's right to be elected. Rather, it requires that, if elected, the City Councillor "refrain from contracting with an agency of the same municipality." Conley v. Ipswich, 352 Mass. 201, 205(1967). Strong, supra at 196-197.

5. The Respondent has raised certain constitutional claims and argues various procedural defects in the Commission's Order to Show Cause, although he neither pursued these claims in his brief nor in oral argument. These contentions are addressed briefly. The Respondent argues that the Order to Show Cause is barred by the statute of limitations.[7] Irrespective of the Respondent's argument, the statute does not bar enforcement actions against ongoing violations of the law. Hickson presently is violating the law, and the petitioner's case against Hickson is based on these continuing violations.[8]

#### IV. Penalty

Following a finding of a violation of G.L. c. 268A, the Commission is authorized by G.L. c. 268B, s.4(j) to issue an order requiring the violator to cease and desist from such violation and requiring the violator to pay a civil penalty of not more than \$2,000 for each violation of G.L. c. 268A. The Respondent has been aware since July 22,1986 of the consequences under s.20 of his retaining his position as a city councillor in the City and as maintenance worker for the WHA. The Respondent has been collecting two paychecks, one of which he was not entitled to and by which he has profited in violation of the law. In addition, the Commission has precedent squarely on point, In the Matter of Kenneth R. Strong, 1984 SEC 195, which definitively concluded that an individual may not be paid simultaneously to be a city councillor and housing authority employee. However, the Respondent did rely, at least up until July, 1986, on incorrect legal advice and, therefore, the Commission will not levy a maximum penalty. Nonetheless, the Commission orders the following sanctions to reflect the seriousness with which it views the Respondent's continuing violation of the statute, in light of the ample notice given to the Respondent, and in consideration of the city solicitor's earlier opinion.

## V. Order

Pursuant to its authority under G.L. c. 268B, s.4(j), the Commission orders the Respondent to:

1. Cease and desist from violating G.L. c. 268A, s.20 by either resigning as a city councillor or terminating his financial interest in his employment contract as a maintenance worker for WHA within thirty (30) day's of the date of this Decision and Order; and
2. pay five hundred dollars (\$500) to the Commission as a civil penalty for violating G.L. c. 268A, s.20.

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[1] G.L.c. 268A, s.20 prohibits a municipal employee from having a financial interest, directly or indirectly, in a contract made by a municipal agency of the same city in which the city is an interested party of which financial interest the employee has knowledge or reason to know.

[2] "Municipal employee" is defined as 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. G.L. c. 268A. s.1(g).

[3] A compliance letter is issued in certain cases in which the Commission concludes that there are sufficient facts to warrant a finding of reasonable cause to believe the law has been violated but in which a formal adjudicatory proceeding may not be appropriate at that time. The letter notifies the individual that any further acts in violation of the law may be pursued in the context of a formal proceeding. See State Ethics Commission Enforcement Procedures, s.12 Compliance letters.

[4] None of the exemptions provided by G.L. c. 268A, s.20 to special municipal employees is available to the Respondent. Specifically, G.L. c. 268A s.1(n) expressly prohibits a member of a city council from being designated a special municipal employee.

[5] This conclusion was affirmed by the Superior Court. *Strong v. State Ethics Commission*, Suffolk Superior Court Civil Action No. 72374 (April 30, 1985). The Superior Court decision was later vacated on jurisdictional grounds which are no longer relevant in light of the enactment of St. 1986 c. 12.

[6] We find no persuasive reason to conclude that c. 121B only applies to a limited number of housing authority employees.

[7] The Conflict of Interest Statute of Limitations provides that an Order to Show Cause must be issued within three years of the date upon which a disinterested person learned of the violation. 930CMR 1.02(10)(a).

[8] We address the other procedural defects raised by Hickson by noting that the Order to Show Cause articulates the elements of a s.20 violation, thereby stating a claim upon which relief can be granted, G.L. c. 268B, s.3(i) gives the Commission jurisdiction to act as the civil enforcement agency for conflict of interest violations and although Hickson claims that the Commission is estopped from enforcing its Order to Show Cause, there is no factual or legal basis for this contention. Hickson has not demonstrated that his right to due process has been infringed as a result of the petitioner's maintaining the confidentiality of the complainants identity. Moreover, the parties have stipulated to all the facts which form the basis of the petitioner's case, and the identity of the complainant is irrelevant now.