



# Commonwealth of Massachusetts State Ethics Commission

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## CONFLICT OF INTEREST OPINION EC-COI-93-14

### FACTS:

You are a member of the Legislature and, in the course of your duties and committee work, you are frequently invited to business meetings which include a meal. These meals are paid for by individuals with an interest in legislative business.

### QUESTION:

Does the \$50.00 threshold used by the Ethics Commission in its assessment of whether an item is “of substantial value” for purposes of G.L. c. 268A remain a viable measure of substantial value?<sup>1/</sup>

### ANSWER:

Yes.

### DISCUSSION:

The term “substantial value” first appeared as part of the comprehensive 1962 conflict of interest legislation that created c. 268A. In response to the need for a comprehensive law covering all employees and addressing the major kinds of conduct which might create either a conflict of interest or the appearance of conflict, the General Court established a special study commission in 1961 to draft and recommend appropriate legislation. The special commission modeled much of its work on drafts of similar legislative initiatives pending in Congress. The special commission was guided by two objectives: that the proposed legislation address corruption in public office, inequality of treatment of citizens, and the use of public office for private gain; and that the proposed legislation set realistic and precise standards so that the Commonwealth, counties, and municipalities may continue to attract capable individuals who are willing to serve in government. Final Report of the Special Commission on Code of Ethics, H. 3650 at 18 (1962).

The relevant section in the 1962 legislation is §3. G.L. c. 268A, §3(b) prohibits a public employee from directly or indirectly soliciting, accepting, or agreeing to accept anything of substantial value for himself for or because of any official act or act within his official responsibility performed or to be performed by him. Section 3(a) places a corresponding prohibition on anyone who offers or gives something of substantial value to a public employee for or because of any official act or act within the employee’s official responsibility.<sup>2/</sup>

The General Court did not establish a statutory dollar amount for substantial value. This approach followed the recommendation of the special commission that the substantial value standard should “be dealt with by judicial interpretation in relation to the facts of a particular case, an approach more desirable than the imposition of a fixed valuation formula.” Final Report, 1962 House Doc. No. 3650, p. 11.

Subsequently, in *Commonwealth v. Famigletti*, 4 Mass. App. 584 (1976), the Massachusetts Appeals Court opined that it would be “difficult to conceive of circumstances in which \$50 ... could not be found “substantial” in the context of §3(b).” The Commission relied upon the *Famigletti* decision when it established a \$50 threshold as a guideline for public employees who were offered gifts, meals, or other benefits during the course of their official employment. See *In re Michael*, 1981 SEC 59, 69; *Commission Advisory No. 8 (Free Passes)* (1985). As a matter of prosecutorial discretion, the Commission has declined to sanction gifts valued at less than \$50, considering such gifts to be of nominal value.<sup>3/</sup>

The term “substantial value” has not been limited to cash gifts and has been interpreted to include, among other things, tickets (*Advisory No. 8*), meals, loans (*In re Antonelli*, 1986 SEC 101), transportation (*EC-COI-82-99*), bequests (*Public Enforcement Letter 92-1*), and frequent flyer points (*EC-COI-88-22*), as well as intangible benefits such as a desirable faculty appointment (*EC-COI-81-136*), access to hospital administrators (*In re Burke*, 1985 SEC 248), and use of the state seal to benefit private interests (*EC-COI-92-5*).

This opinion request raises the question whether the Commission should continue to use a \$50 threshold in measuring “substantial value.” We re-affirm our decision that substantial value is \$50 or more.

The \$50 standard is part of the long-standing precedent of the Commission and has been relied upon as a guide by thousands of public employees. We have received no public comment urging us to increase the threshold. We are reluctant to change long-standing precedent when we have not been presented with a compelling reason to do so, particularly in light of the important public interest which underlies the substantial value requirement and the provisions of G.L. c. 268A, §3.

In reaching our decision, we are guided by the original preamble to G.L. c. 268A, which states,

A continuing problem of a free government is the maintenance among its public servants of moral and ethical standards which are worthy and warrant the confidence of the people. The people are entitled to expect from their public servants a set of standards of the highest order. A public official of a free government is entrusted with the welfare, prosperity, security and safety of the people he serves. In return for this trust, the people are entitled to know that no substantial conflict between private interests and official duties exists in those who serve them.

One of the fundamental principles upon which the conflict law, in general, and §3, in particular, are based, is public confidence that the judgment of public employees and their decisions are based on the public’s interest, and are not made because an official has been influenced, or appears to be influenced, by gratuities. When a public official accepts gratuities from private individuals and organizations with an interest in the official’s actions, the public’s confidence in the credibility and impartiality of the government process is undermined. *See EC-COI-86-14; In re Michael*, 1981 SEC 59, 68; *Commission Advisory No. 8 (Free Passes)*. Questions arise in the public’s mind concerning preferential treatment.

The acceptance of gratuities “negates the trust that the public is entitled to place in public employees: that the public, not private interests, are furthered when the employee performs his duties. In such a case the private citizen may reasonably ask why a public official is entitled to compensation or benefits over and above what the taxpayer has authorized and from which he has been excluded,” thus creating an environment where “those who serve the people are treated better than the people themselves.” *EC-COI-86-14; see also, EC-COI-83-4*.

In conclusion, the term “substantial value” is not defined in G.L. c. 268A, and the Commission is charged with interpreting the term in light of the overall remedial purpose and intent of the conflict of interest law. *See e.g., United States v. Evans*, 572 F.2d 455, 480 (5th Cir. 1978); *Everett Town Taxi, Inc. v. Board of Aldermen of Everett*, 366 Mass. 534, 536 (1974). We believe that the \$50 threshold serves the public interest in maintaining the integrity of the government decision-making process, and provides a realistic and workable measure which public officials may use to guide their conduct.

**Date Authorized: May 25, 1993**

<sup>1</sup>Because the definition of “substantial value” is an issue of great interest to public employees at all levels of government and to the public, we publicly invited legal arguments from interested parties, including the Office of Governor’s Legal Counsel, Counsels for the House of Representatives and the Senate, Common Cause and the Massachusetts Municipal Association. We did not receive any response.

<sup>2</sup>The term “substantial value” was more recently inserted into 1986 amendments for two of the G.L. c. 268A, §23 standards of conduct. Section 23(b)(1) provides that a public employee may not accept employment involving compensation of substantial value, the

responsibilities of which are inherently incompatible with the responsibilities of his public office. Section 23(b)(2) provides that a public employee may not use or attempt to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value.

<sup>3</sup>In certain instances, the Commission has aggregated repeated gratuities whose cumulative value is greater than \$50 to find a violation under §3 and has indicated that it may aggregate donations from organizations or entities which share a common interest in legislative business. See *EC-COI-93-8; 92-2; In re Flaherty*, 1990 SEC 498; *In re United States Trust Company*, 1988 SEC 356. For example, if an organization provides you with free meals or other gratuities on a repeated basis over the course of a year, the Commission will aggregate the total value of all of the meals for purposes of determining substantial value. See *In re United States Trust Company*, 1988 SEC 356, 358; *Commission Advisory No. 8*. This example is not intended to represent the only circumstances in which the Commission will aggregate. The Commission will consider other circumstances on a case by case basis.