



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-371-9500, fax: 617-723-5851



CONFLICT OF INTEREST OPINION EC-COI-94-1*

FACTS:

You are currently a full-time employee of the State Treasury as a staff employee of the State Board of Retirement (“Board”). The Board was created by statute, as a division of the Department of the State Treasurer. G.L. c. 10, §18. The Board has three members. The first member is the State Treasurer, who is a member *ex officio* and who serves as chairman. The second member is a current or retired member of the retirement system, elected by that group. The third member is chosen by the first two members. You have taken out nomination papers for election as the second member of the Board.

Pursuant to G.L. c. 10, §19, Board members serve without compensation, but are reimbursed for any expense or loss of salary which they may incur through service on the Board. Board members are not involved in staff employees’ promotions, reclassifications, demotions, firings, salary recommendations, personnel evaluations or other like recommendations.

QUESTIONS:

1. Pursuant to the conflict of interest law, may you retain your staff position while running for the Board post?
2. Would the conflict of interest law prohibit you from retaining your staff position if you are elected to the Board?

ANSWERS:

1. Yes.
2. No.

DISCUSSION:

Nothing in the conflict of interest law prevents a government employee from running for any elected position. *Commission Advisory No. 2*. The more difficult issue presented in your request is whether you may retain your current full-time position as a staff member if you are elected to the second Board post. Normally, the propriety of holding multiple positions is addressed by §7 of the conflict of interest law, which prohibits a state employee from having a financial interest, directly or indirectly, in a contract made by a state agency, in which the Commonwealth or any state agency is an interested party, unless an exemption applies. Thus, as a Board member, you would normally be prohibited from holding a paid position as a staff member at the Board, absent a gubernatorial exemption. G.L.c. 268A, §7(e). However, G.L. c. 10, §18 specifically requires the second Board member to be either a current or retired member of the state retirement system. This means that a state employee would serve on the Board by virtue of his state employment. “Such a situation is analogous to a state employee serving *ex officio* on a Board.” *EC-COI-84-148*. Because service in both capacities is “tied to one state contract, i.e. the original state employment contract, such an individual would not have a §7 prohibited financial interest in another state contract.” *Id.* Therefore, §7 is not implicated for you if you are elected to the second Board position.^{1/}

Section 6 prohibits a state employee from participating^{2/} as such an employee in a particular matter^{3/} in

which to his knowledge he has a financial interest. The financial interest must be “direct and immediate, or at least reasonably foreseeable.” *EC-COI-84-123; 84-98; 86-25; 84-96*. You indicate that Board members are not involved in staff employees’ promotions, reclassifications, demotions, firings, salary recommendations, setting of salaries, personnel evaluations or other like recommendations. Pursuant to G.L. c. 10, §20, the State Treasurer has the ability to appoint and remove such clerical and other assistants as may be required to carry on the work of the Board. Thus, if you are elected to the Board, it is unlikely that you will be required to participate in any particular matters in which you have a financial interest.^{4/} However, if you find that you do have a prohibited financial interest in a particular matter that comes before you as a Board member (for example, a dispute concerning your own retirement benefits) you must abstain from that matter.

DATE AUTHORIZED: January 11, 1994

* Pursuant to G.L. c. 268B, §3(g), the requesting person has consented to the publication of this opinion with identifying information.

^{1/} Section 8A of G.L. c. 268A states that no member of a state 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 §8A restriction is not triggered “until a board appoints one of its own members to a position under that board’s supervision. Where a person is first employed under the supervision of a board and then becomes a board member, an issue will not be raised under [§8A] if no additional appointment is necessary.” *EC-COI-93-19* (discussing §21A, the municipal counterpart to §8A). Thus, since you were first employed in your current full-time position, §8A will not be implicated if you subsequently become a member of the Board.

^{2/} “Participate”, participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

^{3/} “Particular matter”, any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

^{4/} Since the second Board member must be an active participant in the retirement system, the statute contemplates that this Board member will participate in particular matters that affect all retirement system participants, including himself. G.L. c. 10, §18. Therefore, as a Board member, you may participate in particular matters which affect generally the financial interests of members of the retirement system.