Commonwealth of Massachusetts
State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 644

IN THE MATTER
OF
JOAN LANGSAM

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Joan Langsam pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On March 22, 2000, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Langsam. The Commission has concluded its inquiry and, on August 8, 2001, found reasonable cause to believe that Langsam violated G.L. c. 268A, §19.

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

Findings of Fact

1. Langsam was Somerville's solicitor from January 1993 to June 1999.

2. Langsam is married to Frank MacDonald.

3. MacDonald is the president and treasurer of Management Construction, Inc. Management Construction, Inc. and Genevieve MacDonald, Frank MacDonald's mother, are partners in Commercial Bidding Limited Partnership ("CBLP").
tract. The contract was for three years at $60,000 per year, a total of $180,000. It then went to the city auditor in early January 1999.

4. In late 1998, Somerville Mayor Michael Capuano decided to name MacDonald as the project manager for the 11 million-dollar renovation of, and addition to, the Somerville Central Library.

5. The project manager contract was to be awarded by the city's Department of Public Works. Carol Antonelli was the DPW administrator whose job included preparing such contracts.

6. Langsam and her department would have limited, if any, participation in the drafting of a city contract. If a boilerplate contract existed, it would be adapted as appropriate to the circumstances by the interested department, signed by the department head and the vendor, and then signed by the auditor attesting to the availability of sufficient funds. At that point the contract would come to the Law Department and Langsam would have an attorney in her office

review the already executed contract for its legal correctness. If the contract were acceptable legally, she would sign it, approving it "as to form."

7. While ordinarily Antonelli would have used a "boilerplate" form contract for consultant services, such as the library renovation project manager services, she did not have a suitable form contract. This was because, traditionally, the city contracted with an architect, and the city's project manager was on the architect's payroll. For the library project, and other future similar construction projects, however, the city had decided to contract directly with the project manager. Consequently, Antonelli sought help from Langsam in drafting this new type of boilerplate contract.

8. In her position as city solicitor Langsam participated in drafting the contract for MacDonald's services. Langsam first helped Antonelli prepare a boilerplate contract with general terms and conditions for any DPW project manager situation. Thereafter, Langsam provided input to Antonelli in adapting that boilerplate contract to the particular circumstances of MacDonald serving as the library renovation project manager. She advised Antonelli that the library project manager contract should identify CBLP as the contracting party. Thereafter, she also advised Antonelli that as a matter of law the contract did not need to go out to bid, and that the contract should specify a minimum term of 32 months. (Langsam wrote the 32-month recommendation in her own handwritten edit on of the drafts between her and Antonelli.) The final contract was in CBLP's name and did not go out to bid. The 32-month minimum was dropped in favor of a 36-month term, apparently at the DPW commissioner's request because he determined that such a minimum was in the city's interests.

9. Once the contract was drafted, it went to CBLP and the DPW commissioner for execution. In or about late December 1998 those parties signed the con-tract. The contract was for three years at $60,000 per year, a total of $180,000. It then went to the city auditor in early January 1999.

10. In early January 1999, MacDonald began providing project management services regarding the library work even though the contract had not yet been approved by the auditor, city solicitor or the acting mayor (by this point Mayor Capuano had resigned).

11. The auditor refused to sign the contract as drafted. She questioned several aspects of the contract, primarily a clause relating to reimbursement for expenses and whether the contract need not go out to bid, a concern shared by some of Langsam's subordinates in the city's law department.

12. Later in January 1999 Langsam advised members of her legal staff that the contract did not have to go out to bid. She also selected one of her subordinates to address the auditor's concerns.

13. On February 11, 1999, after returning from a four-week trial in federal court, Langsam disclosed in writing to the acting mayor her husband's financial interest in the contract and that her office had reviewed the contract "only as to form" and that her "signature on contracts indicates that my department has reviewed them and is satisfied that they meet all necessary legal requirements." By letter dated February 22, 1999, the acting mayor made a written determination that Langsam could participate in determining whether "the contract meets all legal requirements," since her role did "not extend to any evaluation of the business benefits of a particular contract or the desirability of the particular terms negotiated by the department

involved." The contract was thereafter executed by the acting mayor. It was ultimately repudiated by Mayor Capuano's elected successor in June 1999.

14. Ultimately, on February 22, 1999, the law department provided the auditor with a letter informing her that her authority was limited to certifying that adequate funds were available. The auditor then agreed to sign the contract.

Conclusions of Law

15. Section 19 of G.L. c. 268A, except as otherwise permitted in that section, prohibits a municipal employee from participating as such in particular matters in which he or an immediate family member has a financial interest (None of the exemptions applies here.)

16. As Somerville's solicitor, Langsam was a municipal employee as that term is defined in G.L. c. 268A, §1.

17. The decisions to draft a boilerplate contract for MacDonald's type of project manager position, and then more particularly as to MacDonald's contract to have the city engage him in his corporate rather than individual capacity, to not put the contract out to bid, and to include a minimum term for the contract, were each particular matters.[1/]

18. Langsam participated[2/] in each of these particular matters by providing substantive legal advice to Antonelli.

19. MacDonald was a member of Langsam's immediate family. [3/]

20. MacDonald had a financial interest in each of these particular matters. The decision to draft a boilerplate contract would set the basic generic terms and conditions for any contract that MacDonald would end up signing. The decision to include a minimum term could have guaranteed MacDonald a minimum payment of $160,000 on the contract. The decision to not put the contract out to bid guaranteed that MacDonald would get the contract, and the decision to contract with MacDonald in his corporate capacity protected MacDonald from individual liability. Langsam knew of MacDonald's interest in each of these particular matters at the time she participated in each of these decisions.

21. By providing advice as city solicitor as to each of these particular matters, Langsam participated in each of those matters. When Langsam so participated, she knew on each occasion that her husband had a financial interest in the matter. Therefore, by so acting, Langsam violated §19.

22. The contract review performed by the city was also a particular matter.

23. MacDonald had a financial interest in the successful completion of that review process.

24. Langsam knew of MacDonald's interest in the successful completion of the contract review.

25. Langsam participated in the contract review process by advising lawyers in her own department that the contract need not be put out to bid, and by selecting the subordinate to address the auditor's concerns.

26. Therefore, by participating as city solicitor in each of the forgoing particular matters as part of the contract review process knowing that her husband had a financial interest in those matters, Langsam violated §19.

27. According to Langsam, she believed that her filing her written disclosure of her husband's financial interest in the contract and her obtaining a written determination from the acting mayor as described above protected her under the §19(b)(1) exemption.[4/] Langsam's disclosure is not a defense, however, because it occurred after her participation in the drafting and review of the contract, and, in any event, failed to disclose that participation. This in turn prevented her appointing authority from having the opportunity to make an informed written judgment as to whether he was willing to permit that degree of participation notwithstanding her husband's financial interest in those particular matters. All that the disclosure she filed and written determination she received allowed her to do was sign the contract "as to form."

Resolution

In view of the foregoing violations of G.L. c. 268A by Langsam, 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 Langsam:

(1) that Langsam pay to the Commission the sum of $3500 as a civil penalty for violating G.L. c. 268A, §19 by participating as described above in the drafting of and the law department's review of the library renovation project manager contract

(2) that she 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.

DATE: October 18, 2001

[1/]"Particular matter" means 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 by cities, towns, counties and districts for special laws related to their governmental organizations, power, duties, finances and property.

[2/]"Participate" means to 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/]"Immediate family member" means the employee and his spouse, and their parents, children, brothers and sisters. G.L. c. 268A, §1(e).

[4/]Section 19(b)(1) provides that it shall not be a violation of '19 "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.”