Commonwealth of Massachusetts
State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 592

IN THE MATTER
OF
MICHAEL J. SWEENEY

DISPOSITION AGREEMENT

The State Ethics Commission ("the Commission") and Michael J. Sweeney ("Sweeney") enter into this Disposition Agreement ("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, §4(j).

On December 16, 1998, 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 Sweeney. The Commission has concluded its inquiry and, on May 12, 1999, found reasonable cause to believe that Sweeney violated G.L. c. 268A.

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

1. Sweeney is the fire chief for the town of Blackstone, a position he has held for over seven years. As such, he is a municipal employee as that term is defined in G.L. c. 268A, §1.

2. In addition to his duties as fire chief, Sweeney is also in charge of supervising the town's ambulance service. His appointing authority is the town administrator.

3. Bert's Body Works, Inc. ("Bert's") is a Blackstone business that specializes in repairing and refurbishing ambulances. It is owned by Sweeney's sister Roberta and her husband Lucien Rainville. Roberta is named as the corporate president and works for Bert's on a part-time basis as bookkeeper. Lucien is primarily responsible for the day-to-day operations of Bert's.

4. In spring 1996, the town of Blackstone decided to refurbish its 1988 ambulance by remounting it on a new chassis and installing new equipment. Town Meeting approved a transfer of $60,000 from the ambulance services account to pay for the work. The cost of a new ambulance would have been about $100,000.

5. Sweeney and the town administrator put together the bid package to request proposals on refurbishing the ambulance. The town administrator handled the legal and statutory requirements per G.L. c. 30B, and Sweeney handled that part of the bid package describing the vehicle and the scope of the work to be done. The town issued the request for proposals in June or July 1996.

6. Bert's and one other bidder submitted bids for the refurbishing work. On July 26, 1996, the town administrator opened the bids with Sweeney present. Bert's bid was for

$58,086. The other bid was for $58,469, did not include transportation costs to and from the bidder's location in Georgia, and indicated the wrong chassis model for the remount.

7. The town administrator, who was going on vacation shortly after the bid opening date, left the bids with Sweeney to review. According to Sweeney's review, both bids were in compliance with the bid specifications, but Bert's bid was about $400 lower.

8. Sometime after the bid opening, Sweeney told Lucien Rainville, his brother-in-law, that the town was awarding the contract to Bert's. There was no formal confirmation from the town administrator and no contract executed at that time, although Sweeney subsequently issued a notice of award letter on Blackstone Fire department stationery.

9. At some point in August 1996, Sweeney realized that the bid specifications had not included Onspot chains for the vehicle,[1/] even though he had intended to include those items as part of the refurbishing work. Sweeney discussed this matter with Lucien Rainville, who suggested that the town could save $1,886 on the contract by waiving the performance bond, and then use that money to pay for the Onspot chains.[2/]

10. Sweeney then spoke with the town administrator, who was concerned that Bert's provide a financial instrument to guarantee the work. Eventually, the town administrator agreed to waive the performance bond requirement if Bert's submitted a bank check for $58,086.

11. Instead of a bank check, Sweeney received a regular company check from Bert's for $58,086. Sweeney did not require Bert's to provide a bank check as the town administrator had asked, and he did not deposit or cash the check provided. Thereafter, Bert's purchased and installed the Onspot chains for a total cost of $1,886. Thus, the total cost of the refurbishing work remained $58,086.

12. In late November or early December 1996, when Bert's was about to deliver the refurbished ambulance, the town administrator first learned that Sweeney and Lucien Rainville were related by marriage.

13. Bert's delivered the refurbished ambulance in mid-December 1996, and received payment from the town in the amount of $58,086. The town received valid service for its money.

14. According to Sweeney's testimony taken under oath, he knew that his brother-in-law owned Bert's and that his sister Roberta worked for the company, but he did not know that Roberta was a co-owner.

15. Section 23(b)(3) of G.L. c. 268A prohibits a municipal employee from knowingly, or with reason to know, acting 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.[3/]

16. By participating in the award of the ambulance remounting contract to Bert's, his brother-in-law's company, Sweeney created an appearance that his involvement in awarding

the contract may have been based in part on his brother-in-law's having a financial interest in the contract. In addition, by allowing Bert's to submit a regular company check in lieu of a performance bond, Sweeney created an appearance that his allowing Bert's to do so may have been based in part on his brother-in-law's having an interest in this arrangement. Therefore, by his above-described conduct, Sweeney acted in a manner which would cause a reasonable person knowing all of the relevant facts to conclude that Bert's and/or Rainville could unduly enjoy Sweeney's favor in the performance of his official duties.[4/] Consequently, Sweeney violated §23(b)(3) on at least two occasions.[5/]

17. Sweeney cooperated fully in this investigation.

In view of the foregoing violations of G.L. c. 268A, §23(b)(3) by Sweeney, 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 Sweeney:

(1) that Sweeney pay to the Commission the sum of one thousand dollars ($1,000) as a civil penalty for violating G.L. c. 268A, §23(b)(3); and

(2) that Sweeney 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: September 21, 1999

[1]Onspot chains are mounted to the underside of the vehicle and install on tires automatically at the push of a button, for better traction in snow.

[2/]In fact, Bert's had provided the town with an alternative bid of $56,200 in its original proposal, indicating that the town could save $1,886 on the contract by waiving the performance bond requirement. Bert's usually provided this option in addition to its standard bid.

[3/]Section 23(b)(3) further provides, "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." Sweeney made no such disclosure.

[4/]As the Commission stated in *In re Keverian*, 1990 SEC 460, 462, regarding situations where public officials have private dealings with people that they regulate in their official capacities, "And even if in fact no abuse occurs, the possibility that the public official may have taken unfair advantage of the situation can never be completely eliminated. Consequently, the appearance of impropriety remains." Here, too, for the same reason, the appearance of impropriety unavoidably arises when a fire chief participates in awarding a contract affecting a family member, even if in fact no actual abuse occurs.

[5/]G.L. c. 268A, §19 prohibits a municipal employee from participating as such in a particular matter in which *to his knowledge* an immediate family member has a financial interest. As a general rule, a municipal employee participating

in the award of a contract to a company owned in part by his sister would violate §19.

See, e.g., In re Studenski, Comm. Dkt. No. 211 (June 23, 1983). Here, Sweeney has asserted under oath that he did not know that his sister was a co-owner of Bert's, and no evidence to the contrary has been presented. *See In re Manca*, 1993 SEC 621.