Commonwealth of Massachusetts
State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 07-0007

IN THE MATTER
OF
PAUL DONLAN

ORDER ON JOINT MOTION TO DISMISS

On May 18, 2007, the parties filed a Joint Motion to Stay Adjudicatory Proceedings, which the Presiding Officer allowed, and a Joint Motion to Dismiss. Pursuant to 930 CMR 1.01(6)(d), the Commission considered the Joint Motion to Dismiss at its meeting on June 13, 2007. After review and discussion of the Joint Motion to Dismiss, which the Presiding Officer recommended that the Commission allow, the Commission voted to allow the Joint Motion to Dismiss.

Accordingly, the Commission **ALLOWS** the Joint Motion to Dismiss and the adjudicatory proceedings in Commission Docket No. 07-0007 are concluded.

DATE APPROVED: June 13, 2007
DATE ISSUED: July 11, 2007

TO: Laura K. Koepnick, Esq.
State Ethics Commission
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JOINT MOTION TO DISMISS

The parties in the above-captioned matter hereby move that the State Ethics Commission dismiss the adjudicatory proceeding of this matter for the reasons set forth below.

1. Pursuant to 930 CMR § 1.01(6)(d), dismissal of an adjudicatory proceeding may be granted only by a majority vote of the Commission.

2. This adjudicatory proceeding commenced on March 1, 2007, with the filing of an Order to Show Cause ("OTSC") alleging that Respondent Donlan had repeatedly violated G.L. c. 268A, §23(b)(2) and violated §23(b)(3) by, as the former Abington Treasurer/Collector, participating in approving unemployment benefits for his predecessor Abington Treasurer/Collector, Thomas Connolly, whom Donlan had recently defeated in the election and with whom he had previously been friends. As an elected official, Connolly was ineligible by law to receive unemployment benefits. *See* G.L. c. 151A, § 6A. As a result of being approved for unemployment, Connolly collected approximately $13,300. Respondent denied the alleged violations in an answer filed on March 13, 2007.

3. The parties now agree that this matter would be fairly and equitably resolved by dismissing the adjudicatory proceedings. As a basis for this motion, the parties agree that evidence has emerged which supports this resolution, as detailed below.

4. During the preliminary inquiry, due to the strict confidentiality provisions contained in G.L. c. 151A, §46, the Enforcement Division was unable to obtain the Division of Unemployment Assistance ("DUA")[1/] unemployment file for Thomas Connolly. This file included an important document – the DUA Form 1062, a form sent from DUA to the employer seeking information concerning the former employee's wages and the reason why the person is no longer employed. DUA uses the information provided in this form to approve or disapprove unemployment claims.

5. Testimony taken from Donlan and other town employees during the preliminary inquiry supported the conclusion that Donlan was involved in processing Connolly's unemployment claim. Based upon evidence discovered in preliminary inquiry, the Commission found reasonable cause.

6. After the reasonable cause finding, the Enforcement Division was able to obtain confidentiality releases from the claimant, Thomas Connolly, and the employer, the Town of Abington, in order to obtain Connolly's unemployment file.

7. DUA thereafter provided the Enforcement Division with Connolly's unemployment file. DUA's internal computer records indicated that, based on what Connolly told the DUA claims intake person, she entered "lack of work" as the reason that Connolly was no longer employed with the town.

8. Form 1062 was signed by Donlan. It reflected Connolly's wage information. In the section requesting the reason why Connolly was no longer employed, a box next to "lack of work" was checked. Where both DUA's internal records and the Form 1062 filled out by the town indicated that the reason Connolly was no longer employed with the town was "lack of work," a reason which justifies a former employee receiving unemployment benefits, DUA approved Connolly's unemployment claim.

9. On March 1, 2007, the Enforcement Division issued the OTSC in this matter.

10. On March 5, 2007, DUA initiated an investigation into this matter. DUA advised its investigator to attend to the matter immediately because the four year statute of limitations from the initial date of the claim would expire in April 2007.

11. On or about March 8, 2007, DUA sent a notice of overpayment to Thomas Connolly, the former Abington Treasurer/Collector who collected about $13,300 in unemployment.[2/] DUA determined that Connolly had told DUA that he was not re-elected; therefore, the claim was without fraudulent intent and DUA would not seek interest on the $13,300.

12. Subsequently, the Enforcement Division went back to DUA seeking answers about what it knew about Connolly not being re-elected. The Enforcement Division discovered that DUA had an additional "claims processing" file in the Connolly claim that it had not provided to the Enforcement Division.

13. Thereafter, DUA provided its entire file to the Enforcement Division, which subsequently used it to track down and interview DUA employees who were involved in processing Connolly's unemployment claim. DUA also instructed these employees to cooperate with the Enforcement Division's investigation.

14. The Enforcement Division learned that the claims intake employee who took Connolly's unemployment application over the phone did not know that elected employees were ineligible for unemployment, although she had been working for DUA in claims intake for 27 years.

15. DUA computer records produced by the intake employee indicated that the reason the claims intake employee selected for Connolly not being employed was "lack of work." Although the intake employee did not specifically recall whether Connolly told her he was elected when he filed, she told the Enforcement Division that she and every other claims worker would have processed his claim in the same manner as she processed Connolly's. That is, if Connolly told her that the reason he was not longer employed was that he was not re-elected, she would have selected "lack of work" as the explanation for why he was no longer employed. This "lack of work" selection would be coded and show up only on DUA's computer records. DUA would then send out a Form 1062 to the town seeking information about Connolly's wages and the reason he was not employed by the town.

16. The Enforcement Division spoke to the DUA call center director who, upon hearing what the claims intake person told us about how a DUA employee would process a claim if they were told by a claimant that he or she was not re-elected, told the Enforcement Division that it had "probably exposed a flaw" in DUA's intake system. He could not provide the Enforcement Division with information about how a DUA claims intake person would catch or at least flag the "not re-elected" issue that should keep a person from receiving unemployment compensation.

17. The call center director noted that Form 1062 contains an employer comment section where the employer can elaborate on the reasons for separation or to ask questions. Importantly, however, the version of Form 1062 that Donlan signed and that was in effect in 2003 did *not* contain a comments section (see attached form). Rather, the form provided the town with a limited number of options to describe why Connolly was no longer working for the town. The town had to select the best option to describe the reason why Connolly was no longer employed. The Form 1062 did not provide an option that says that the reason a former employee was not working for the town was

that he or she was “not re-elected,” or something to that effect. The version of Form 1062 in effect in 2003 also did not contain a comments section that would have allowed the town to elaborate on the reason why Connolly was no longer employed.

18. The Enforcement Division was unable to identify any way in which DUA flags or identifies when a person files for unemployment but tells the claims intake person that they were not re-elected. Instead, the evidence supports the claims intake person’s statement that such a disclosure would result in DUA permitting such a person to file a claim, processing it under a “lack of work” selection, and sending the employer a Form 1062.

19. The evidence obtained by the Enforcement Division also indicates that DUA did not provide the town with adequate training materials that would instruct the town that an elected official is not eligible for employment benefits.

20. Connolly has entered into a signed agreement to reimburse DUA $13,300 in unemployment compensation he should not have received.

21. Based on the investigation following the reasonable cause determination, the following may be concluded: At the time Donlan signed Form 1062, he had been Treasurer/Collector only a few weeks. Connolly had testified during the preliminary inquiry that he disclosed to DUA when he filed that he had been an elected employee. Prior to DUA providing its entire file to the Enforcement Division, there was no evidence to support Connolly’s statement and it seemed rather incredible. Now, his statement is far more credible and is supported by the DUA’s recent determination that Connolly made such a disclosure. Despite Connolly telling the DUA that he was an elected official (and therefore by law ineligible to receive unemployment benefits), DUA permitted Connolly to file a claim and selected the reason why Connolly was unemployed as “lack of work,” a reason which unless contested will result in an unemployment claim being approved. DUA thereafter placed the burden of contesting the claim upon the town, although the version of Form 1062 in effect at that time provided no clear indication or ability to indicate that Connolly was not re-elected. When Form 1062 was returned with the same reason that DUA provided describing why Connolly was no longer employed – lack of work – DUA approved the claim.

22. Given that a) even DUA selected “lack of work” to describe why Connolly, who was not re-elected, was no longer employed with the town, and b) that Form 1062 failed to indicate or instruct that officials who are not re-elected are not eligible for unemployment compensation, the Enforcement Division recommends dismissing the §23(b)(2) violations against Donlan.

23. The parties agree that the facts support the conclusion that Donlan created the appearance of a conflict of interest, contrary to §23(b)(3), by participating in approving Connolly’s unemployment claim where Donlan had only defeated Connolly for the Treasurer/Collector position approximately three weeks earlier, and where the two had previously been friendly, served on the Finance Committee together, and worked on one another’s campaigns. This appearance problem would have been avoided had Donlan filed a written disclosure to the town clerk. The Petitioner does not believe, however, that this appearance of a conflict of interest alone is sufficiently egregious to warrant a fine.

24. The parties agree that dismissal would be in the interests of justice and in the best interests of the parties and the Commission.

WHEREFORE, the parties request that the Commission dismiss the adjudicatory proceedings in this matter.

Respectfully submitted,
Petitioner State Ethics Commission
By its attorney,

Date: May 19, 2007

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Date: May 19, 2007

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[1] At the time Connolly filed for unemployment, the DUA was known as the Division of Employment and Training ("DET"). This motion will refer to the agency as DUA.

[2] As of January 2007, two months before DUA began its investigation into this matter, Connolly began communicating with DUA to repay it for the unemployment benefits he improperly received.