Commonwealth of Massachusetts
State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851

John Marchesi
c/o Ralph Cianflone, Jr., Esquire
Cianflone & Cianflone
59 Bartlett Avenue
P.O. Box 1405
Pittsfield, MA 01202

RE: PUBLIC ENFORCEMENT LETTER 92-3

Dear Mr. Marchesi:

As you know, the State Ethics Commission has conducted a preliminary inquiry regarding an allegation that you utilized City of Pittsfield Department of Recreation employees to perform typing services for the Massachusetts Amateur Softball Association (MASA), an organization for which you serve as state commissioner. The results of our inquiry (discussed below) suggest that the conflict of interest law may have been violated. Due to a number of mitigating circumstances (also discussed below), the Commission has determined that further proceedings are not warranted. Rather, the Commission and you have agreed that the public interest would be better served by disclosing the facts revealed during our inquiry and explaining the applicable provisions of the law with the expectation that this will ensure both your and other government employees' future understanding of and compliance with the conflict law. By agreeing to this public letter as a final resolution of this matter, you do not necessarily admit to the facts and law as discussed below. The Commission and you have agreed that there will be no formal action against you, and that you have chosen not to exercise your right to a hearing before the Commission.

I. Facts

Since 1965 you have served the City of Pittsfield as the Parks Department Director, and have worked for the same department since 1956. Your responsibilities have included the supervision of a secretary and an assistant recreation department supervisor.

In 1977 the National Amateur Softball Association appointed you as the state commissioner of MASA. MASA is a non-profit unincorporated organization existing to promote amateur softball in Massachusetts. As the state commissioner, you essentially serve as the chief administrator for MASA. Currently, there are 1700 MASA registered teams. You do not draw a salary from MASA, and the organization has no employees.

Your MASA administrative duties peak during the months of May, June and July. While you perform most of this administrative work yourself on your own time, you have occasionally assigned work to the recreation department secretary and the recreation department supervisor. This work involved the typing of letters, team rosters and umpire lists. The great majority of MASA teams and leagues are located outside the City of Pittsfield. From 1988 to 1991, the department secretary performed approximately 80 hours of MASA work (1 to 1.5 hours a week during the busy three months). In 1991, the assistant recreation department supervisor performed approximately two hours a week of MASA work during a ten week period, or roughly 20 hours. All parties interviewed during the Commission's inquiry stated that the department's performance of MASA work did not interfere with regular City of Pittsfield business.

II. The Conflict of Interest Law

As the City of Pittsfield Recreation Department Director, you are a municipal employee for the purposes of the conflict of interest law, G.L. c. 268A. General Laws c. 268A,'23(b)(2) prohibits a municipal employee from knowingly, or with reason to know, using his official position to secure for others unwarranted privileges which are of substantial value[1/] and which are not properly available to similarly situated individuals. The Commission

has routinely interpreted §23(b)(2) as forbidding public officials from using public resources for their private interests. *See, e.g., P.E.L. 89-4* (Undersecretary of Economic Affairs violated §23(b)(2) by using state secretarial services and stationary to help obtain a free trip to the Soviet Union to promote world peace); *In re Buckley*, 1983 SEC 157 (City of Boston employee violated §23(b)(2) by using city stationery to further private landlord interest); *Commission Advisory No. 4* (public resources such as office equipment, telephones and typewriters cannot be used to advance personal, private or political interests of public employees). The essence of §23(b)(2) is that public resources may only be allocated for public business, and may not be utilized to address individual concerns of public employees, even if those concerns are public-spirited in nature. By directing city employees to devote approximately 100 hours of city time towards MASA's administrative needs that were unrelated to city business, you extended an unwarranted privilege of substantial value to MASA. Thus, it appears that you may have violated §23(b)(2).

As indicated above, the Commission has determined that a public adjudicatory proceeding is not necessary to resolve this case.[2/] In choosing to resolve this case by means of a public enforcement letter only, the Commission was mindful of the following mitigating factors:

1. You did not obtain any personal financial benefit as the MASA state commissioner.

2. It was determined the purpose of your securing city secretarial services for MASA was to promote amateur softball throughout Massachusetts, a public-spirited endeavor, not unlike your official recreation duties to the City of Pittsfield.

3. You cooperated fully throughout our inquiry.

4. The use of public resources for MASA's benefit was balanced by your working long hours for the Recreation Department and accruing hundreds of hours of unused compensatory time.

5. You have agreed to contribute to the City of Pittsfield 100 hours of your compensatory time.

III. Disposition

Based on its review of this matter, the Commission has determined that the sending of this letter should be sufficient to ensure your understanding of and your future compliance with the conflict law. This matter is now closed.

Date: August 20, 1992

[1/]Anything valued at $50 or more is substantial value. *Commonwealth v. Famigletti*, 4 Mass. App. Ct. 584, 587 (1976).

[2/]The Commission could have authorized adjudicatory proceedings which can result in fines up to $2000 per ethics violation.