

**CONFLICT OF INTEREST OPINION
NO. EC-COI-83-43**

FACTS:

You are a member of the General Court. As such, you hold positions on two legislative committees: the Ways and Means Committee (Ways and Means) and the ABC Committee. In the former position, you play a significant role in the recommended approval and disapproval of legislation concerning state expenditures involving state supplies, property, personnel and unions. In the latter position, you are empowered to [description of ABC Committee responsibilities omitted].

You are also employed by DEF, a banking and investment firm. You are currently undergoing training so you may begin to act as a broker for DEF. As such, you will be involved in buying and selling common and preferred stock, corporate and municipal bonds and various other financial instruments. You will also be acting as a broker in connection with money market funds, mutual funds, Keough plans, IRA's and other investment plans.

QUESTION:

What limitations does the conflict of interest law impose upon you as a member of the legislature and as an employee of DEF?

ANSWER:

Your activities in each position should be conducted in accordance with the guidelines set out below.

DISCUSSION:

As a member of the General Court, you are a "state employee" as defined in G.L. c. 268A, §1(q), and are subject to the provisions of the state conflict of interest law.

Section 6 of the conflict law prohibits participation^{1/} by a state employee in his official capacity in any particular matter^{2/} in which, in relevant part, either he or a business organization by which he is employed has a financial interest. Should such a matter arise in which the employee would normally be required to participate, the

section provides that he must disclose the nature and circumstances of the particular matter and the financial interest to the Ethics Commission and to "the official responsible for appointment to his position." The latter must then take steps to eliminate the potential violation.^{3/}

Although general legislation is specifically excluded from the definition of particular matter, the term has been held to include "special" legislation. Atty. Gen. Conf. Op. No. 578; EC-COI-79-111. And, the prohibition in §6 applies not only to matters which arise in the normal course of your duties, but also to determinations and decisions of state agencies into which you interject yourself as a member of the General Court. See *In the Matter of James J. Craven*, Commission Adjudicatory Docket No. 110, Decision and Order, pp. 13-16 (June 18, 1980), *aff'd. sub nom. Craven v. Vorenberg*, Suffolk Superior Court Civil Action No. 43269 (further appeal pending). You should also note that the financial interest contemplated by §6 is not one shared by a substantial segment of the public, but one which is distinctly attributable to you or DEF.^{4/}

Section 23 of the conflict law contains standards of conduct which apply to all state employees. Section 23(d) proscribes the use or attempted use of your official position to gain unwarranted privileges or exemptions for yourself or others. Section 23(e) prohibits a course of conduct which gives reasonable basis for the impression that any

^{1/}"Participate" means 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).

^{2/}"Particular matter" means any judicial or other proceeding, application, submission, request for ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court. . . G.L. c. 268A, §1(k).

^{3/}As an elected official, you have no "official responsible for [your] appointment," so this provision of §6 does not apply to you.

^{4/}Section 6A of the conflict law applies only to persons who hold a position for which they are nominated at a state primary or chosen at a state election. The section requires that whenever in the discharge of his official duties such an official is required knowingly to take an action which would substantially affect his financial interest, unless that effect is no greater than the effect on the general public, that official must file a written description of the action and the potential conflict of interest with the Ethics Commission. This section is distinguishable from §6 because its application is not limited to particular matters and it does not prohibit the official from taking the action. Although the question you ask does not specifically implicate the provisions of §6A, you should be aware of its terms and should comply with its conditions should appropriate fact situations arise.

person may improperly influence or unduly enjoy your favor in the performance of your official duties, or that you are unduly affected by the kinship, rank, position or influence of any party or person. These sections will apply to you in regard to certain parties to whom you may wish to offer your products and/or services.

The Commission has previously determined that the attempted sale of goods or services by a state official to state employees over whom he has authority exploits an inherent pressure on those employees resulting from that authority. See EC-COI-82-64; 82-124. Therefore, sales which would be a product of such pressure would be unwarranted privileges secured by you and DEF from the use of your official position. Accordingly, you would be prohibited from seeking or accepting business from legislative employees over whom you have supervisory authority, as well as members of their households.

Similarly, you would give reasonable basis for the impression that you may be unduly influenced in the performance of your duties as a legislator if you were to benefit in your private employment from the use of your services by persons or organizations having regular or reasonably foreseeable matters before you as a legislator. Because of the broad nature of your question and the numerous variables which may come into play, the Commission will not attempt to address each and every possible set of circumstances which may arise. However, certain categories can be identified and discussed, to wit:

- 1) persons or organizations from whom you should not seek or accept employment in your DEF role at all;
- 2) situations not subject to such a proscription but where your activities as a legislator will be limited if the individuals involved fall within your authority as a legislator; and
- 3) individuals or groups which are so removed from your authority that no limitations will apply.

There are others whose particular circumstances prevent them from being classified among the above groups. The Commission cannot speculate on such cases. Should you need further guidance, you should seek another advisory opinion when such a case arises.

As a member of the legislature generally, and of Ways and Means specifically, you have significant authority in connection with legislative approval of various matters involving expenditures of state funds. Among these are recommendations regarding the state budget, approval of union contract cost items, and salary increases for the state personnel in unclassified positions. Because of the effect this authority may have on the decision by certain parties to purchase your services, you are prohibited from seeking or accepting business from them. This group would include the titled or administrative head of a state agency, persons whom you know have primary responsibility for an agency's budget, and those whom you know appear on behalf of an agency in matters before Ways and Means. Unions representing state employees (including the Boston Car-men's Union) are also among this group, as are state employees holding unclassified positions. These are examples of persons or groups whom you are prohibited from offering your service.

[Discussion of limitations as an ABC Committee member omitted]. Otherwise, you are not prohibited by G.L. c. 268A from seeking or accepting business from members of the General Court or from their campaign committees.

Among those to whom you are free to offer your services are state employees covered by state salary schedules, county and municipal unions with whom you have no regular dealings as a member of the General Court and judges. Generally, elected or appointed county and municipal employees are also included in this group. However, should anyone of the aforementioned individuals or groups have a matter in which they have a distinct and unique interest before you in the legislature, you should not offer your services or, if you are already doing business with them, you should take no action as a member of the legislature in connection with that matter. If you are unsure how to act in a particular situation, you should feel free to seek further guidance from the Commission.

Finally, you should not use state equipment, supplies or personnel in the pursuit of your private employment. To do so would result in the receiving of an unwarranted privilege as a result of your position in the legislature in violation of §23(d). See, EC-COI-82-112.

DATE AUTHORIZED: March 22, 1983