

**CONFLICT OF INTEREST OPINION
NO. EC-COI-83-113**

FACTS:

You are a member of the Massachusetts Housing Finance Agency (MHFA). MHFA is an independent public body whose primary function is to provide mortgage financing for the introduction of housing throughout the state. To accomplish this goal, MHFA raises funds by issuing tax-exempt bonds through underwriters. G.L. c. 23A App. §§1-8. As a member of MHFA, you vote approval of all bond issues including the price of the bond and the accompanying interest rate. *Id.*

MHFA recently completed a bond issue for one of its housing programs. You voted as a member to approve this bond issue. MHFA entered into a contract with underwriters for the issuance of these bonds.

QUESTION:

May you purchase MHFA bonds for your personal portfolio without violating G.L. c. 268A, the conflict of interest law?

ANSWER:

No, unless you receive an exemption from the governor under §7(e).

DISCUSSION:

MHFA is a state agency as defined by G.L. c. 268A, §1(p)^{1/}, and as a member of the MHFA, you are a state employee. Because you receive no compensation for your membership (G.L. c. 23A App. §§1-3, you are a special state employee and certain provisions of G.L. c. 268A apply less restrictively to you. G.L. c. 268A, §1(o).

Under §7, a state employee is prohibited from having a financial interest in a contract made by a state agency. A bond is a contract. *Day v. Walton*, 199 Tenn. 10 (1955); *Guaranty Tr. Co. of N.Y. v. W. Va. Turn. Com'n*, 144 W. Va. 266 (1959). When it is issued by the state, it creates a contractual obligation between the state and the holders of the

^{1/}"State agency," any department of a state government including the executive, legislative or judicial, and all councils thereof and thereunder, and any division, board, bureau, commission, institution, tribunal or other instrumentality within such department and any independent state authority, district, commission, instrumentality or agency but not an agency of a county, city or town. G. L. c. 268A, §1(f) (Emphasis added.)

bond. *Arizona St. Highway Com'n v. Nelson*, 105 Ariz. 76 (1969); *New Jersey Sports & Exposition Auth. v. McCrane*, 61 N.J. 1 (1972). Therefore, when a bond is issued by a state agency, the contract runs between the agency and the bondholder and is within the purview of §7.^{2/} If you purchase MHFA bonds, you would have a financial interest in a contract made by a state agency.^{3/} However, §7 does not apply

to a special state employee who does not participate in or have official responsibility for any of the activities of the contracting agency and who files with the state ethics commission a statement making full disclosure of his interest and the interest of his immediate family in the contract. . . §7(d) or

to a special state employee who files with the state ethics commission a statement making full disclosure of his interest and the interests of his immediate family in the contract, if the governor with the advice and consent of the executive council exempts him. §7(e)

In view of the facts presented, you do not qualify for the §7(d) exemption. In your position as a board member of MHFA, you participate in the activities of MHFA, the contracting agency. Therefore, the only exemption under §7 for which you can qualify is paragraph (e). Pursuant to §7(e), in order to purchase MHFA bonds, you must receive an exemption from the governor and file a statement disclosing your bond purchase(s) with the Commission.

DATE AUTHORIZED: August 16, 1983

^{2/} Although the MHFA's enabling legislation allows state employees to participate in MHFA residential mortgage programs notwithstanding the provisions of G.L. c. 268A, see, G.L. c. 23A App. §1-5A, the scope of this limited exemption does not cover the MHFA bond issue upon which your inquiry is based.

^{3/} The purchase of government bonds will not always create a contractual relationship prohibited by §7. For example, treasury bonds issued by the Commonwealth through the Treasurer's office rather than by a specific agency do not trigger the application of §7 since there is no "contracting agency" involved.