

**CONFLICT OF INTEREST OPINION
EC-COI-91-15**

FACTS:

You are the Secretary/Treasurer for the ABC County Conservation District (District) Board of Supervisors (Board) and seek an opinion on behalf of the Board members. The Board is the governing body of the District and exercises the powers and duties provided in G.L. c. 21, §24. Certain Board members are interested in performing paid consultant services for the District in addition to their per diem compensation for serving as Board members.

QUESTION:

Does G.L. c. 268A permit a Board member to perform paid consultant services to the District?

ANSWER:

No.

DISCUSSION:

The District is a "county agency"^{1/} for the purposes of G.L. c. 268A since its boundaries are county-wide, its supervisors are elected by residents and landowners of the County, and the activities and expenditures of the District are controlled by the County, rather than the state. See, G.L. c. 21, §§22-24. Compare, EC-COI-83-157; 83-63. The members of the Board are therefore "county employees"^{2/} for the purposes of G.L. c. 268A.

Under G.L. c. 268A, §14, a county employee is prohibited from having a financial interest, direct or indirect, in any contract made by the District or any other County agency of the same county, unless an exemption applies. By performing paid consultant services to the District, a Board member would have a direct financial interest in a contract made by the District, a county agency, in violation of G.L. c. 268A, §14. EC-COI-81-27. Moreover, none of the exemptions in G.L. c. 268A, §14 are applicable to supervisors. Specifically, even if Board members could be considered special

county employees² under G.L. c. 268A, §1(m), they do not qualify for an exemption under §14(c) since their financial interest is in a contract made by their own agency. Accordingly, Board members are prohibited from performing paid consultant services to the District.

Following his resignation, a Board member cannot immediately work for the District because of the restriction in G.L. c. 268A, §15A:

No member of a county commission or board shall be eligible for appointment or election by the members of such commission or board to any office or position under the supervision of such commission or board. No former member of such commission or board shall be so eligible until the expiration of thirty days from the termination of his service as a member of such commission or board.

Accordingly, a Board member would not be eligible for appointment to any position under the supervision of the Board until thirty days after the member's resignation from the Board. Additionally, if the Board member will be seeking a consultant position with the Board after the termination of his services, he could not, while still on the Board, officially participate in any discussion, recommendation, or vote concerning the hiring of consultants. See e.g. EC-COI-87-1; 86-13 (effect on competitors). The member could have a financial interest in the outcome. G.L. c. 268A, §13.

Date Authorized: September 11, 1991

¹"County agency," any department or office of county government or any division, board, bureau, commission, institution, tribunal or other instrumentality thereof or thereunder. G.L. c.268A, §1(c).

²"County employee," a person performing services for or holding an office, position, employment, or membership in a county agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis. G.L. c. 268A, §1(d).

³"Special county employee," a county employee who is performing services or holding an office, position, employment or membership for which no compensation is provided; or who is not an elected official and (1) occupies a position which, by its classification in the county agency involved or by the terms of the contract or conditions of employment, permits personal or private employment during normal working hours, provided that disclosure of such classification or permission is filed in writing with the State Ethics Commission and the office of the county commissioners prior to the commencement of any personal or private employment, or (2) in fact does not earn compensation as a county employee for an aggregate of more than eight hundred hours during the

preceding three hundred and sixty-five days. For this purpose, compensation by the day shall be considered an equivalent to compensation for seven hours per day. A special county employee shall be in such a status on days for which he is not compensated as well as on days on which he earns compensation. G.L. c. 268A, §1(m).