COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 14-0006

IN THE MATTER

OF

EDWARD MCGOVERN

**ORDER TO SHOW CAUSE**

1. The State Ethics Commission (the "Commission") is authorized by G.L. c. 268B to enforce G.L. c. 268A, the state conflict of interest law, and in that regard, to initiate and conduct adjudicatory proceedings.

2. On October 17, 2013, the Commission (1) found reasonable cause to believe that Edward McGovern ("McGovern") violated G.L. c. 268A, § 23(b)(2)(ii), and (2) authorized the initiation of adjudicatory proceedings.

**FACTS**

3. McGovern is a lieutenant in the Agawam Police Department (the "APD"). As an APD lieutenant, McGovern is a municipal employee as that term is defined in G.L. c. 268A, § 1.

4. While on duty the evening of June 29, 2012, McGovern was informed by an APD sergeant that an off-duty APD officer (the "Driver") had been stopped in her personal vehicle by police after traveling the wrong way on Route 5 in Agawam. Route 5

is a divided highway with two lanes on each side with a separating guard rail. The speed limit ranges from 45 to 55 miles per hour.

5. The Driver had been stopped around 9:20 p.m. that evening by the West Springfield Police just across the Agawam-West Springfield line in Agawam. Two APD police cars, each driven by an APD officer, arrived on the scene about ten minutes later after being dispatched by the APD. One APD officer described the Driver as "intoxicated," and said that she had bloodshot eyes, was unsteady on her feet, with no understanding of where she was or how she ended up there, was slurring her words, and had an odor of alcohol on her. That APD officer stated that the Driver acknowledged responsibility, stating words to the effect that she messed up. According to the second APD officer, a West Springfield Police officer reported that the Driver appeared intoxicated. Although the second APD officer did not speak with the Driver, he smelled alcohol on her. Both APD officers described the side of the Driver's car as having recent damage consistent with the scraping of a guard rail. An APD sergeant, who subsequently arrived at the scene, stated that the Driver acted out of character by hugging him and crying. The APD sergeant described the Driver as smelling of alcohol and being, in his words, "annihilated."

6. When McGovern arrived at the scene, he spoke with the Driver, who was seated in the front seat of an APD cruiser. When McGovern encountered the Driver in the APD cruiser, she was crying and upset. McGovern later told APD investigators that he was concerned about the Driver's emotional state.

7. After speaking with the Driver, McGovern instructed one of the APD officers to take the Driver in an APD cruiser to the Driver's home. The scene was

cleared around 10:15 p.m. McGovern told the other APD officer to bring the Driver's personal vehicle to the APD back parking lot.

8. McGovern was the highest ranking officer present and therefore the officer in charge at the scene. The other three APD officers at the scene were subordinate to McGovern. McGovern directed his subordinates to drive the Driver home. He did not instruct the officers under his command to conduct field sobriety tests, offer the Driver a Breathalyzer test, issue the Driver a citation, or place the Driver under arrest. As a result, the responding officers conducted none of these tests, and the Driver was not cited or arrested. All of these options were available and authorized by law. *See* G.L. c. 90, § 24.

9. The Hampden District Attorney (the "Hampden DA") reviewed the APD's internal affairs report on the June 29, 2012 incident. By letter dated October 24, 2012, the Hampden DA told the APD that "the failure of investigators to arrest or issue a citation for criminal vehicle infractions at the scene is inexplicable based upon the facts included in the report." The Hampden DA's letter states that "a reasonable conclusion from these circumstances suggests that [the Driver] received preferential treatment from the Agawam Police Department based upon her status as a police officer." The letter further states that by law, the failure of officers to issue a citation at the scene precludes the District Attorney from pursuing a criminal complaint against the Driver.[1]

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[1] The Hampden DA cited G.L. c. 90C, § 2, which provides: "A failure to give a copy of the citation to the violator at the time and place of the violation shall constitute a defense in any court proceeding for such violation, except where the violator could not have been stopped or where additional time was reasonably necessary to determine the nature of the violation or the identity of the violator, or where the court finds that a circumstance, not inconsistent with the purpose of this section to create a uniform, simplified and non-criminal method for disposing of automobile law violations, justifies the failure."

## LAW

10. Section 23(b)(2)(ii) of G.L. c. 268A prohibits a municipal employee from, knowingly, or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.

11. As the senior officer at the scene, McGovern used his official position as an APD lieutenant to direct his subordinates to take the Driver home without first administering any field sobriety tests and/or arresting the Driver or issuing a citation to her as provided by law.

12. By not offering the Driver the opportunity to submit to operating under the influence ("OUI") tests and by not either arresting her or issuing a citation to her, McGovern secured for the Driver a privilege, as well as an exemption from OUI and driving to endanger laws.

13. The privilege/exemption was unwarranted since it was unreasonable under the circumstances for the Driver not to have been offered the standard OUI tests, or arrested or cited because of her intoxicated state. Likewise, it was unreasonable for the police not to cite or arrest the Driver for operating recklessly or negligently in light of the Driver having been stopped for driving the wrong way on a major road.

14. The privilege/exemption secured for the Driver by McGovern was of substantial value as it allowed the Driver to avoid potential criminal and civil consequences for driving under the influence and operating to endanger, which could have included the loss of her driver's license, monetary penalties, and incarceration. Avoiding such potential consequences was of substantial value, $50 or more.

15. The privilege/exemption McGovern provided to a fellow APD officer was not properly available to similarly situated individuals (i.e., other drivers operating a vehicle under similar conditions).

16. Therefore, by acting in the manner described above, McGovern violated the conflict of interest law. McGovern used his official position as an APD lieutenant to direct his subordinates to take the Driver, a fellow police officer, home, rather than responding in a manner provided by law that was appropriate under the circumstances. McGovern knowingly or with reason to know used his official position to secure for a fellow APD officer an unwarranted privilege/exemption of substantial value not properly available to other similarly situated individuals, thereby violating § 23(b)(2)(ii).

WHEREFORE, Petitioner asks that the Commission:

1. find that Edward McGovern violated G.L. c. 268A, § 23(b)(2)(ii) as described above; and

2. levy such fines, issue such orders and grant such other relief as may be appropriate.

Respectfully Submitted,

Petitioner State Ethics Commission
By its attorney,

*/s/ Karen Gray*
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Date: July 14, 2014