PENSION

LEGAL ISSUES

PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION

P E N S I O N

LEGAL ISSUES

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PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION

Legal Unit Staff

5 Middlesex Avenue
Third Floor
Somerville, MA 02145
Ph: 617.666.4446
Web: www.state.ma.us/PERAC

BARBARA PHILLIPS
General Counsel
Ext. 902

SANDOR ZAPOLIN
Assistant Counsel II
Ext. 909

JUDITH CORRIGAN
Assistant Counsel I
Ext. 904

DOROTHEA GEOTIS
Administrative Assistant
Ext. 907

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1. Fiduciary Responsibility

FIDUCIARY RESPONSIBILITIES OF BOARD MEMBERS & BOARD STAFF

In the context of retirement systems established pursuant to G.L. c. 32, a person is a fiduciary if he or she has discretionary authority over the assets or funds of the retirement system. Retirement board members and administrative staff are fiduciaries as the result of their ability to exercise control over the disposition of assets of the retirement system. The term "fiduciary" is defined G.L. c. 32, §1 and the standards of fiduciary conduct are further described in G.L c. 32, §23(3) and the PERAC regulations, 840 CMR 17.00. Copies of these statutory and regulatory provisions are included. See pages 4 and 5 of this document.

The authority of a board member and of certain staff members to control and dispose of the system's assets and funds is the determinative factor. A person is a fiduciary if he or she has this authority, even though the individual may not actually exercise it. Lack of involvement in the activities of the retirement board or failure to exercise discretion or control over the assets of the system does not excuse the fiduciary or alter the nature of the fiduciary relationship. Fiduciary liability can result even if the board member or administrator is disengaged from or fails to participate in the board's operations.

Fiduciaries owe a special duty to the system and to the members and beneficiaries of the system. G.L. c. 32, §23(3) provides that a fiduciary shall discharge his duties for the exclusive purpose of providing benefits to members and their beneficiaries with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims and by diversifying the investments of the system so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so.

In order to carry out the responsibilities of a fiduciary, a fiduciary has a duty to be informed so as to be familiar with the retirement laws and other matters relating to his other duties as a retirement board member. Board members should attend meetings of the board and make themselves aware of the actions and activities of the board. Fiduciaries should take advantage of educational opportunities so as to be properly informed. A fiduciary should avail himself or herself of expert assistance in matters where they lack familiarity with the issues at hand. Monitoring the activities of those employed by the board also falls within the fiduciary duties of a board member.

The fiduciary's loyalty is to the members and beneficiaries of the system and **not** to the person(s) who appointed or elected him. The retirement system's funds are separate from those of the community whose employees are members of the system. Members of the retirement board hold no special relationship with the community or with the taxpayers in general because of their position on a public employee retirement board. All members and beneficiaries are to be treated equally and fairly. The fiduciary's duty is to the members and beneficiaries as a group, not to individuals or groups of individuals.

A fiduciary has the duty to comply with all provisions of relevant statutes and regulations. This includes a duty to ascertain that the contributions to the system are in the proper amounts (both member contributions and appropriations from governmental units) and to pay benefits in the correct amount to those members and beneficiaries who are entitled to benefits.

Fiduciaries are not allowed to have a direct or indirect interest in or to benefit or profit from the assets of the system. A fiduciary cannot be paid or otherwise compensated for performing fiduciary duties except as allowed by G.L. c. 32. Even if a gratuity or gift does not affect the judgment of a fiduciary in carrying out his duties, the acceptance of such gifts may be found to be improper or appear to be improper.

A fiduciary can be held responsible for the acts of a co-fiduciary if he or she had knowledge of the co-fiduciary's breach of duty and took no action to remedy the breach. Failing to monitor the conduct of co-fiduciaries may itself be a breach of a fiduciary's duty. A fiduciary cannot escape responsibility or possible liability for the acts of a co-fiduciary by resigning from the board. A fiduciary is required to take reasonable actions to remedy a breach of duty by another fiduciary.

G.L. C. 32, § 1 FIDUCIARY

"Fiduciary", any person who exercises any discretionary authority or discretionary control respecting management of the funds of any retirement system or exercises any authority or control respecting management or disposition of its assets.

G.L. C. 32, § 23(3) FIDUCIARY STANDARDS

Fiduciary Standards. — A fiduciary as defined in section one shall discharge his duties for the exclusive purpose of providing benefits to members and their beneficiaries with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims and by diversifying the investments of the system so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so.

840 CMR 17.00: STANDARDS OF CONDUCT FOR FIDUCIARIES & QUALIFIED INVESTMENT MANAGERS

SECTION

17.01: Bonding of Persons Having Access to Retirement Board Funds

17.02: Code of Ethics for Fiduciaries

17.03: Standards of Conduct for Fiduciaries

17.04: Standards of Conduct for Qualified Investment Managers

840 CMR 17.00, establishing standards of conduct for fiduciaries and qualified investment managers is promulgated by the Public Employee Retirement Administration Commission pursuant to M.G.L. c. 7, § 50 and M.G.L. c. 32, §§ 21 and 23. Except as may otherwise be provided by the Commission, or by supplementary rules of a particular retirement board approved by the Commission pursuant to 840 CMR 14.02, or by statute, 840 CMR 17.00 shall govern the conduct of all retirement board fiduciaries and qualified investment managers. No person who is not a qualified investment manager as defined by 840 CMR 16.01 shall provide investment advice on the purchase and sale of investments to or manage the funds on behalf of any retirement system.

17.01: Bonding of Persons Having Access to Retirement Board Funds

All board members and retirement system staff shall be bonded in an amount sufficient to provide reasonable protection against losses due to fraud and dishonesty and each shall be bonded for no less than 10% of the amount of the fund or $500,000. The Commission may prescribe a bond in excess of $500,000, provided that such bond shall not exceed 10% of the amount of the fund.

17.02: Code of Ethics for Fiduciaries

Fiduciaries shall subscribe and conform to the following code of ethics:

(1) Fiduciaries shall conduct themselves with integrity and act in an ethical manner in their dealings with the public, retirement board, employers, employees, and fellow fiduciaries.

(2) Fiduciaries shall conduct themselves and shall encourage other fiduciaries to perform their functions in a professional and ethical manner that will reflect credit on themselves and their profession.

(3) Fiduciaries shall act with competence and shall strive to maintain and improve their competence and that of others in their profession.

(4) Fiduciaries shall use proper care and exercise independent professional judgment.

17.03: Standards of Conduct for Fiduciaries

Every fiduciary shall know and comply with all applicable provisions of M.G.L. c. 268A governing the conduct of public officials and employees and shall conform to the standards of conduct prescribed by M.G.L. c. 268A, § 23.

(1) Every fiduciary shall:

(a) Comply with the standards set forth in 840 CMR 1.00

(b) operate in accordance with retirement system procedures, documents and instruments; and

(c) inform each retirement system qualified investment manager of the Code of Ethics

and Standards of Conduct applicable to qualified investment managers pursuant to 840 CMR 17.02 and 17.04.

(2) No fiduciary shall:

(a) receive additional compensation for services as a retirement board fiduciary if he or she is employed full-time by an employer whose employees are members of that retirement system except as otherwise provided by law;

(b) deal with retirement system assets for his or her own account or in his or her own interest;

(c) act in any manner affecting a retirement system on behalf of any person or organization whose interests are adverse to the interests of the system, its members or beneficiaries;

(d) receive anything of value for his or her own personal account from any person or organization in connection with a transaction involving retirement system assets; or

(e) cause a retirement system to engage in a transaction which involves, directly or indirectly, a sale, exchange, lease or transfer of assets to or from, or the use of assets by or for the benefit of, or the furnishing of goods, services or facilities to or by, or the lending of money or extension of credit to or by, a party in interest. A party in interest includes:

1. any board member, fiduciary, employee, broker, agent or person providing services to the board;

2. any organization of members of the retirement system;

3. any corporation, partnership, or trust or estate of which or in which 10% or more of:

a. the voting stock or value of all stock of such corporation;

b. the interest in capital or profits of such partnership; or

c. the beneficial interest of such trust or estate is owned directly or indirectly by persons described in 840 CMR 17.03(2)(e)1.; and

4. any spouse, ancestor, lineal descendant, or spouse of a lineal descendant of any individual described in 840 CMR 17.03(2)(e)1.

17.04: Standards of Conduct for Qualified Investment Managers and Consultants

In addition to the standards of conduct for fiduciaries and the standards set forth in 840 CMR 1.00 Qualified Investment Managers shall comply with 840 CMR 17.04. 840 CMR 17.04 shall also apply to Consultants retained pursuant to 840 CMR 25.00.

(1) Compliance with Applicable Law, Regulations, Code of Ethics and Standards of Conduct.

(a) Knowledge of and Compliance with Applicable Law, etc. Every qualified investment manager and every consultant shall be familiar with and comply with all applicable laws and rules and regulations, including rules and regulations of any self-regulatory agency of the profession, the standards of conduct of 840 CMR 17.03 and 17.04 and the code of ethics of 840 CMR 17.02.

(b) Assisting Legal and Ethical Violations Prohibited. No qualified investment manag-

er or consultant shall knowingly participate in, or assist any act in violation of any statute or regulation governing securities matters or any act in violation of the code of ethics of 840 CMR 17.02 or the standards of conduct of 840 CMR 17.03 and 17.04.

(c) Use of Material Non-Public Information Prohibited. Every qualified investment manager and every consultant shall comply with all laws and regulations relating to the use of material non-public information. No qualified investment manager or consultant shall communicate or take investment action on the basis of such information until it is publicly disseminated and any qualified investment manager or consultant who acquires such information, other than as a result of a special or confidential relationship with an issuer, shall make reasonable efforts to achieve public dissemination of such information by the issuer.

(2) Supervision of Employees. Every qualified investment manager and every consultant shall exercise reasonable supervision over employees and agents subject to his or her control to prevent violation by such persons of applicable statutes, regulations, the code of ethics of 840 CMR 17.02 and the standards of conduct of 840 CMR 17.03 and 17.04.

(3) Investment Recommendations and Actions.

(a) Reasonable judgment. Every qualified investment manager and every consultant shall exercise diligence and thoroughness in making investment recommendations and/or in taking investment actions for a retirement board and shall:

1. have a reasonable and adequate basis for each investment recommendation and action, supported by appropriate research and investigation; and
2. maintain appropriate records to support the reasonableness of each investment recommendation and action.

(b) Portfolio Investment Recommendations and Actions. Every qualified investment manager and every consultant shall, when making an investment recommendation or taking an investment action for any portfolio or retirement board, consider its appropriateness and suitability for that particular portfolio or board. In doing so, the qualified investment manager and consultant shall take into account the needs and circumstances of the board, the basic characteristics of the portfolio and the basic characteristics of the investment involved. Every qualified investment manager and every consultant shall use reasonable judgment in determining the factors to be considered and the weight to be given to each factor and shall distinguish between fact and opinion in presenting investment recommendations.

(4) Misrepresentation Prohibited. No qualified investment manager or consultant shall make any statement, orally or in writing, which materially misrepresents the services that the qualified investment manager or consultant is capable of performing for the board, the qualifications of the qualified investment manager or consultant, the investment performance that the qualified investment manager has achieved or can be

expected to achieve for the board or the expected performance of any investment. No qualified investment manager or consultant shall make any unsupported statement concerning these matters or any statement, orally or in writing, about any investment which guarantees or conveys any unsupported assurances, explicitly or implicitly.

(5) Fair Dealing With Retirement Boards. Every qualified investment manager and every consultant shall act in a manner consistent with the qualified investment manager's and consultant's obligation to deal equitably with a board when making investment recommendations, making material changes in prior investment advice, and taking investment action.

(6) Priority of Transactions. Every qualified investment manager and consultant shall conduct himself or herself in such a manner that transactions for the retirement board have priority over personal transactions, and that personal transactions do not operate adversely to the board's interest. A qualified investment manager making a recommendation about the purchase or sale of a security shall give the board adequate opportunity to act on the recommendation before acting on the qualified investment manager's own behalf.

(7) Disclosure of Conflicts.

(a) Every qualified investment manager, and every consultant when making an investment recommendation or taking an investment action, shall disclose to Commission and the board in writing any conflict of interest the qualified investment manager or consultant may have and any beneficial ownership of the securities involved which could reasonably be expected to impair the qualified investment manager's or consultant's ability to render unbiased and objective advice.

(b) Every qualified investment manager, and every consultant shall disclose to the Commission and the board in writing all matters which could reasonably appear to interfere with the qualified investment manager's or consultant's duty to the board or ability to render unbiased and objective advice.

(c) Every qualified investment manager, and every consultant shall also comply with all requirements as to disclosure of conflicts of interest imposed by law and by rules and regulations of organizations governing the activities of investment advisors and shall comply with any prohibition of such activities if a conflict of interest exists.

(8) Compensation.

(a) Disclosure of Additional Compensation Arrangements. Every qualified investment manager, and every consultant shall inform the Commission and the board of any arrangements, oral or in writing, for compensation or other benefit received or expected to be received by the qualified investment manager or consultant or a related person from others in connection with the qualified investment manager's or consultant's services to the board.

(b) Disclosure of Referral Fees. Every qualified investment manager and every consultant shall disclose to the Commission and the board any compensation paid or expected to be paid, directly or indirectly,

by the qualified investment manager or consultant or a related person to others for referring the services of the qualified investment manager or consultant to the board.

(9) Relationships with Others.

(a) Preservation of Confidentiality. Every qualified investment manager and every consultant shall preserve the confidentiality of information communicated by the board concerning matters within the scope of the confidential relationship, unless the qualified investment manager or consultant receives information concerning illegal or potentially illegal activities on the part of any fiduciary or employee of the board. Any knowledge of illegal or potentially illegal activities on the part of any fiduciary or employee of the board shall be conveyed to all the members of the board and the Commission.

(b) Maintenance of Independence and Objectivity. Every qualified investment manager and every consultant, in relationships and contacts with an issuer of securities, whether individually or as a member of a group, shall use particular care and good judgment to achieve and maintain independence and objectivity.

(10) Enforcement and Liability.

(a) Every qualified investment manager and every consultant shall be deemed to have agreed with the retirement board:

1. to be liable to the board for any losses due to any violation of the provisions of M.G.L. c. 32, § 23 or of 840 CMR 17.00 including without limitation, any violation of the code of ethics of 840 CMR 17.02 or the standards of conduct of 840 CMR 17.03 and 17.04;

2. to be subject to removal as a qualified investment manager or consultant by the Commission in the event that the Commission determines that the qualified investment manager or consultant has violated any of the provisions of M.G.L. c. 32, § 23 or of 840 CMR 17.00, including, without limitation, any provision of the code of ethics of 840 CMR 17.02 or the standards of conduct of 840 CMR 17.03 and 17.04; and

3. that neither the board nor the Commission shall be liable to the qualified investment manager or consultant for any such loss, by way of indemnity or otherwise, or for any such removal.

(b) No qualified investment manager or consultant removed by the Commission pursuant to 840 CMR 17.04(10)(a)2. shall continue to serve or be employed as a qualified investment manager or as a consultant by any other retirement board except as may otherwise be authorized by the Commission.

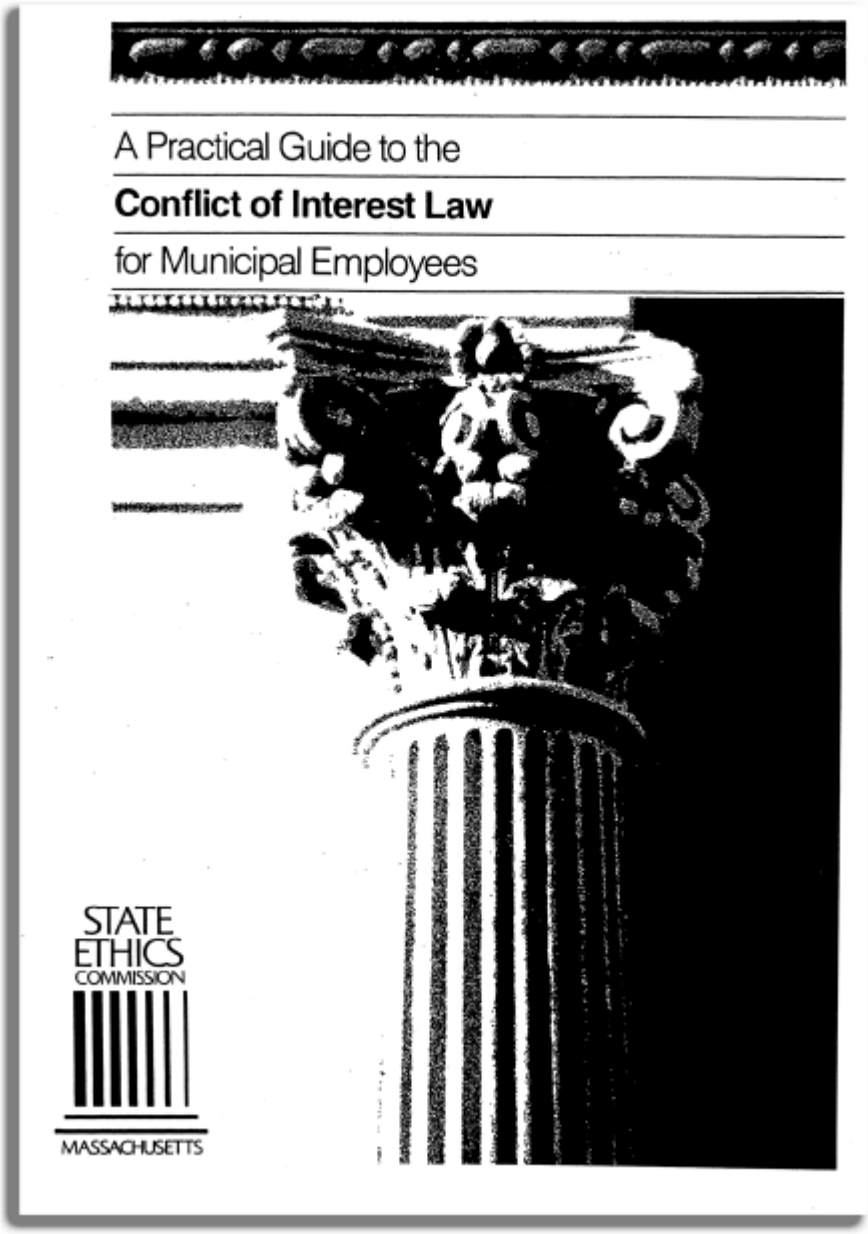
REGULATORY AUTHORITY

840 CMR 17.00: M.G.L. c. 7, § 50; c. 32, §§ 21 and 23.

2. Conflict of Interest

A PRACTICAL GUIDE TO THE CONFLICT OF INTEREST LAW FOR MUNICIPAL EMPLOYEES

Please note that a version of this pamphlet for state employees is available, also.



A Practical Guide to the **Conflict of Interest Law** for Municipal Employees

State Ethics Commission
Room 619
One Ashburton Place
Boston, MA 02108
(617) 727-0060

Executive Director
Andrew B. Crane

Written for the State Ethics Commission by
Lee Regan and
Ardith Wieworka

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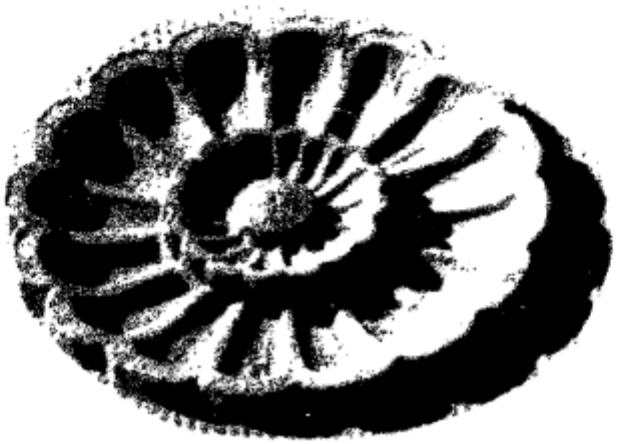
Preface

This Guide provides general guidance to town and city officials and employees on how to comply with the conflict of interest law. It is not meant to serve as formal advice or as a substitute for legal counsel.

If after reading this booklet you have questions about particular situations, you may call the State Ethics Commission and receive informal legal advice or you may request an advisory opinion from either the Ethics Commission or your town or city lawyer. The Ethics Commission urges municipal employees to take advantage of this opinion process. (See page 25 for information on how to obtain an advisory opinion.)

This Guide reviews the conflict of interest law in effect as of 1988. The conflict law may be amended from time to time by the state Legislature; be sure to consult the current version of the law or call the Commission's Legal Division at (617) 727-0060 for advice concerning the most recent application of the law.



Introduction to the Conflict of Interest Law

2

Purpose of the Law

The purpose of the conflict law is to ensure that public employees' private financial interests and personal relationships do not conflict with their public obligations. The law is broadly written to prevent a public employee from becoming involved in a situation which could result in a conflict or give the appearance of a conflict.

The law restricts what a public employee may do:

1. on the job
2. after hours (or "on the side")
3. after leaving public service

Who the Law Governs

Municipal Employees

The conflict law regulates the conduct of public officials and employees (referred to collectively in the law as "employees") at the state, county and municipal levels of government. The term "employee" at each level is defined expansively. You are considered a municipal employee if you hold any office, position, employment or membership in any municipal agency. It does not matter whether you are paid or unpaid or whether you serve full-time or part-time. People who work as consultants or on an intermittent basis are generally covered, as well. For example, unpaid members of local town or city boards or commissions are municipal employees, as are private citizens serving on a special advisory committee appointed by the mayor or board of selectmen to make recommendations on a specific issue. However, elected town meeting members or attendees at an open town meeting and members of a local charter commission are not considered "municipal employees" for purposes of the conflict of interest law.

"Special" Municipal Employees

"Special municipal employee" status may be assigned to certain municipal positions by a vote of the board of selectmen, board of aldermen or city council. Two sections of the conflict law apply less restrictively to special municipal employees. You are eligible to be designated as a special municipal employee provided that:

1. you are not paid; or
2. you hold a part-time position which allows you to work at another job during normal working hours; or
3. you were not paid by the city or town for more than 800 working hours (approximately 20 weeks full-time) during the preceding 365 days.

It is the municipal position which is designated as having special status, not the individual. Therefore, all employees holding the same office or position must have the same classification as special. For instance, one member of a school committee may not be classified as a special unless all members are similarly classified.

Selectmen in towns with a population of 10,000 or less are automatically special.

Selectmen in towns with a population of more than 10,000, city councillors, aldermen and mayors may *not* be designated special municipal employees.

Under no conditions may a mayor, alderman, city councillor or selectman in a town with a population of more than 5,000 be designated as a special. However, in towns of 5,000 or less, selectmen may designate themselves as special employees.

The state Legislature may designate certain employees to be special municipal employees. For example, members of local housing and redevelopment authorities are defined by law as special municipal employees. (See G.L. c. 121B, §7.)

Municipal Agencies

A municipal agency includes all departments, offices, councils, divisions, boards, bureaus, commissions, institutions or tribunals of city or town government. In other words, all entities established by the community, such as the council on aging, the historical commission, the licensing board and the town by-law committee, are municipal agencies under the conflict law.

Regional Organizations

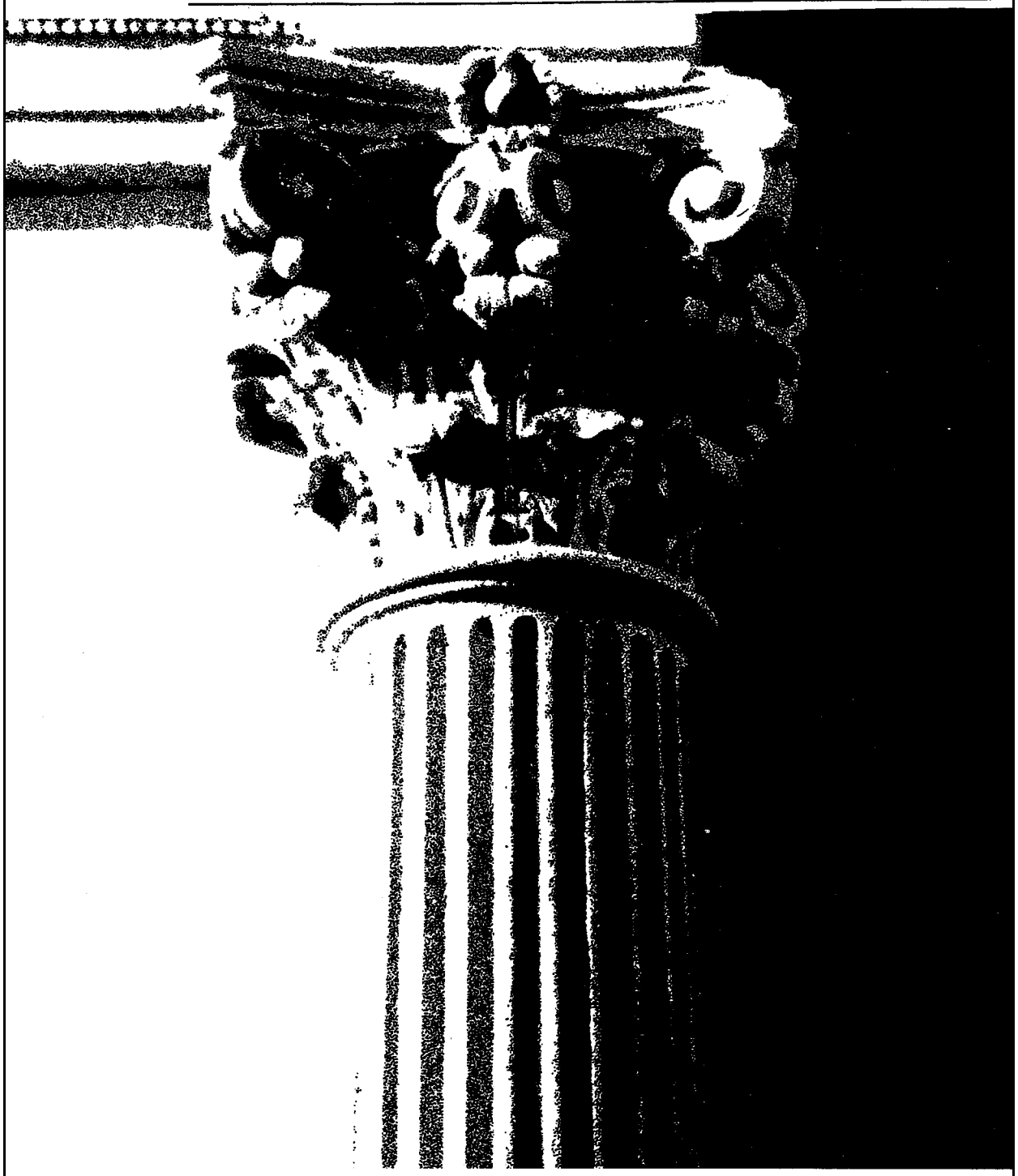
The status of regional bodies such as regional school districts is not clearly defined in the conflict law. However, the State Ethics Commission has ruled that many of these regional organizations are "municipal agencies" for purposes of the law because these organizations provide services to the community which individual towns would traditionally provide.

Some of the regional organizations determined by the State Ethics Commission on a case by case basis to be municipal agencies are:

- Regional School Districts
- Local Water and Fire Districts
- Community Development Corporations
- Local Arts Lottery Councils
- Private Industry Councils

Certain regional bodies which are part of a state-wide organizational structure are not municipal agencies, but rather are considered state agencies. For example, regional transit authorities or regional mental health centers are considered state agencies for purposes of the conflict law.

How the Conflict of Interest Law Affects Municipal Employees



Restrictions "On The Job"

Bribes (Section 2)

The conflict law prohibits all public employees from seeking or receiving bribes, gifts, promises, or anything else of value in return for an official favor or a promise of action or inaction. In addition, the law prohibits public employees from accepting anything of value in exchange for committing any fraud on a state, county or municipal agency (or allowing anyone else to commit such a fraud). Finally, the law prohibits public employees from being influenced in giving testimony under oath or rendering themselves unavailable to testify. (The conflict law does not prohibit a public employee from receiving witness fees and other expenses allowed by law for testimony.)

A public employee violates Section 2 if the employee acts with a "corrupt intent." As a general rule, whenever there is an agreement that a public official will receive something of value from a private party for certain official action (or inaction), that agreement is sufficient evidence that the public employee is acting with corrupt intent.

The bribery section of the conflict law also applies to private parties; *anyone* who bribes or attempts to bribe a public official violates the conflict law and faces criminal sanctions.

The item of value which is solicited or accepted need not be money. Trips, for example, or improvements to one's home would be covered. The item of value need not be for the benefit of the public employee personally, but may be for the benefit of another person or an organization.

Example: The director of public works violates Section 2 by asking a contractor for a cash payment before he will approve the award of a town contract. The director also violates Section 2 if he demands a contribution to the mayor's re-election campaign in return for approving the contract. The contractor would violate the law by offering a bribe to the director in exchange for his approval of the contract. ▪

Gifts (Section 3)

It is illegal to request or accept anything of "substantial value" from anyone with whom you have or are likely to have official dealings (absent some family or social relationship which would explain the gift) even if the motivation for the gift is to express gratitude for a job well done or to foster goodwill.

It is also illegal for a *private party* to offer or give anything of substantial value to a public official or employee if it is given "for or because of" some act the official has performed or will perform; this is true even if there is no corrupt intent on the part of either the giver or the receiver.

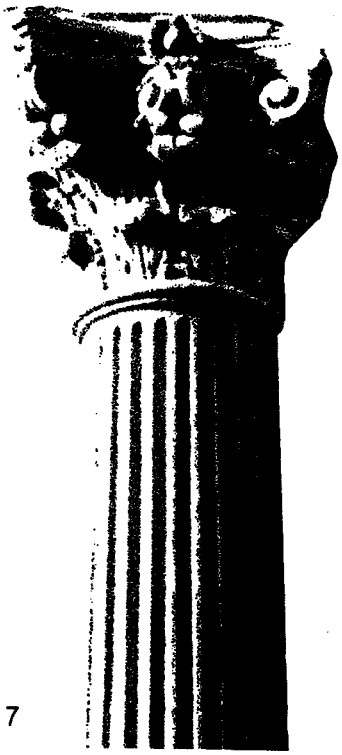
In 1976 the Massachusetts Appeals Court decided that $50 is "substantial value." In 1985 the Commission issued a similar ruling. Items of "substantial value" range from cash, additional compensation and tips to free tickets and passes to entertainment events. In addition, free or discounted services such as construction or accounting work are considered gifts.

Example: A complaint is filed with the town public health department regarding a restaurant. An investigator screens the complaint and determines that no action should be taken on it. Grateful for this resolution of the matter, the restaurant owner invites the investigator and his family to a free dinner at his restaurant. If the investigator accepts the invitation, he violates Section 3 if the dinner is worth $50 or more. If the same investigator had asked for the free dinner from the restaurant owner in return for agreeing not to act on the complaint, he would violate Section 2 (the bribery section of the law). ▪

Example: A municipal purchasing agent awards several city office supply contracts to a stationery supplier who submits the lowest bids. At the end of the year, the general manager of the stationery firm offers the purchasing agent a set of luggage worth over $50 as a token of goodwill. The purchasing agent violates Section 3 if he accepts the gift. The supplier violates Section 3 simply by making the offer of luggage to the purchasing agent. ▪

Example: A car dealer which holds a major contract with the town police department offers a 40% discount to all town police officers. The car dealer violates Section 3 by offering the discount because it is being given only to town police officers who potentially could affect the car dealer's contract by praising or complaining about the cars' quality. The police officers will violate Section 3 if they take the discount and it totals $50 or more. ▪

For more detailed information on accepting or being offered "gifts," see Commission Advisory No. 8, the "Free Pass Advisory," available from the Commission's office.



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Restrictions on Official Actions
(Section 19)

Public employees must not act in their official capacities in matters in which they have a personal financial stake. The law also recognizes that the objectivity and integrity of municipal employees may be compromised if they act on matters affecting the financial interests of people or businesses with whom they are closely related.

Section 19 of the conflict law does not prevent municipal employees from having private financial interests or dealings in their town, but it does restrict what official actions, if any, they may take with respect to their private financial interests.

Acting on Private Financial Interests

To prevent public employees from using their positions to further private interests, the law prohibits municipal employees from participating in a "particular matter" in which they know that they personally, their immediate family or a business they are closely associated with has a financial interest. They are specifically prohibited from acting on matters affecting:

1. themselves
2. their "immediate family" (the employee and his or her spouse and their parents, children, brothers and sisters);
3. their partner;
4. a business organization in which they are serving as an officer, director, trustee, partner or employee (for example, if a municipal employee is an unpaid trustee of a private school she may not participate in a particular matter in which the school has a financial interest, even if she has no personal, direct financial interest herself); or
5. any person or organization with whom they are negotiating for or have any arrangement concerning future employment.

In summary, municipal employees may not act in their official position on any matter affecting the financial interest of themselves, their family or their businesses.

Example: An assessor in town wishes to apply for a tax abatement for his home. He may file the necessary papers and appear on his own behalf to argue for the abatement; however, in his official position as assessor, he may not discuss, recommend, analyze or decide whether to grant himself an abatement. ▪

Example: The elected treasurer is on the board of directors of a local bank. She will violate the law if she takes any official action affecting the bank's financial interest such as investing the town's money in certificates of deposit with the bank. (See page 11 for information on a narrow exemption for treasurers making demand bank deposits.) ▪

A municipal employee is prohibited from participating in a final decision affecting personal financial interests and also from participating in any of the steps along the way.

Finally, the "financial interest" at stake need not be present or immediate. Municipal employees may not participate in a matter if they have a "reasonably foreseeable" financial interest in that matter.

Example: A member of the zoning board of appeals is a developer. His corporation is negotiating to purchase a parcel of land in town. An application to rezone that land has been filed on behalf of the *current* owner. The zoning board member has a "financial interest" in the decision by his board whether to grant the zoning change because he may own the land in the foreseeable future. He would therefore be prohibited from participating in that board decision. ▪

Acting on a Competitor's Financial Interest

The conflict law restricts municipal employees from taking any official action which would affect the financial interest of their business competitors. Such action will ultimately affect the employee's own financial interest. The employee may also not take official action on matters concerning the competitors of his or her immediate family, business or employer.

There is no one easy "rule" for local officials to rely upon when deciding who an official's competitors are in any particular instance. In an advisory opinion concerning a liquor license the Ethics Commission indicated that local authorities are often in a better position than the Commission to identify the local factors which would make a liquor license holder a competitor. In that opinion, we suggested that the appointed official rely on his appointing authority to make such a determination. Elected officials should seek guidance from town or city counsel or from the Commission when faced with a similar issue.

Example: A selectman who owns a restaurant in town may not vote to approve her own liquor license. If the selectman is part-owner and is not active in running the restaurant, she must still abstain from participating. The selectman is also prohibited from voting on any liquor license matter involving an establishment in competition with her restaurant. ▪

Acting on Matters Affecting Family (Nepotism)

The conflict law prohibits a municipal official from participating in any particular matter affecting the financial interests of an "immediate family member." The purpose of the broad prohibition against acts of nepotism is to prevent potential conflicts or the appearance of favoritism which arise whenever a public official's personal loyalty to a family member competes with the need to make objective personnel decisions. "Immediate family member" is defined in the law as the employee and his or her spouse and their parents, children, brothers and sisters.

The following specific acts are prohibited:

1. hiring a family member;
2. *any* significant involvement in a hiring process in which a family member is an applicant, e.g., interviewing or creating a test for applicants;
3. *any* significant involvement in the reappointment, promotion, reclassification, demotion or firing of any family member;
4. determining a family member's salary (including approving "automatic" increases such as annual step increases);
5. conducting a job performance review of a family member;
6. day-to-day supervision of a family member;
7. delegating the task of dealing with an immediate family member to a subordinate.

1. *Voting on Budgets Including Family Members' Salaries*

In situations where a municipal official's immediate family member is employed by the same city or town, the official may not participate in any discussion or vote on any line item of a budget which would affect the family member's salary. The best course of action is simply to leave the room during the deliberation and vote of the board. The prohibition includes voting on a budget which will merely maintain the salary of an immediate family member at its present level or approving "automatic" salary step increases in a budget. The prohibition applies even in cases where a number of other employees are given similar increases.

A 1976 Supreme Judicial Court decision **Graham v. McGrail** provided the following guidelines to allow public officials to vote on the budget's "bottom line" when faced with this conflict. The board must identify the budget line item which includes the family member's salary and vote on it separately. The official whose family member's salary is affected by this line item must abstain from the discussion and vote. After all such conflicts are dealt with through this line item procedure, the board may then vote on the budget as a whole package, with all members participating in the final vote to approve the "bottom line."

Example: A school committee member whose father works as a custodian for the school department must abstain from voting on the line item of the budget which includes his salary. She appropriately leaves the room during any deliberation and vote on this matter. She may vote on other line items in the school department budget. She may also participate in the final vote to approve the budget as a whole at the end of this process. ▪

In addition, an exemption is available for *appointed* municipal employees which will allow them to act on a budget affecting an immediate family member's financial interest. They must receive permission to participate from the public official or board which appointed them to their job (the appointing official). This disclosure and authorization procedure is discussed on page 10.

2. ***Appearances of favoritism***

Some relatives such as cousins, aunts and nephews are not "immediate family" members for purposes of the conflict law. However, a public official's actions regarding these relatives may violate the Standards of Conduct (Section 23) of the conflict law.

Section 23 prohibits a public official from giving the impression that he or she can be improperly influenced by someone or that a relative could receive preferential treatment because of kinship. A public official must be careful to avoid this appearance of favoritism. The law states that an appointed public official will dispel this appearance by making a written disclosure to the official's appointing authority. The law requires that the appointing authority keep the disclosure open to inspection by the public. For elected officials who have no appointing authority, the written public disclosure must be filed with the town or city clerk. In addition, officials would be well advised to make the disclosure a matter of record prior to acting at a public meeting by having the disclosure recorded in the meeting minutes.

In addition to avoiding the "appearance" of favoritism, a public official is, in fact, prohibited from engaging in favoritism. Under the Standards of Conduct, public officials are prohibited from using their positions to secure an unwarranted privilege of substantial value ($50 or over) for anyone. Thus, if an elected official hired a nephew who was unqualified for the job — even if the official publicly disclosed the relationship — the official would violate the law because it would be an "unwarranted privilege" for the nephew to be paid for a job he could not adequately perform.

When *appointed* officials are faced with a nepotism conflict, the law provides an exemption procedure so that the officials may participate in the matter if they receive prior approval. (This is discussed under "Disclosure and Authorization Procedure" below.) However, *elected* officials may not take advantage of this procedure — they must always abstain from participating in a matter involving an immediate family member.

For more detailed information on exactly what constitutes a nepotism violation and what the Commission's enforcement policy is regarding these violations, see Commission Advisory No. 11, available from the Commission's office.

Exemptions 1 to 3

Exemption 1

Disclosure and Authorization Procedure

Appointed municipal employees may participate in a matter which affects their own, their immediate family's or their business' financial interest *only if* they receive permission from the public official who appointed them to their job. To receive the exemption, employees must first advise their appointing official of the nature and circumstances of the particular matter in which they want to participate and make full disclosure of the financial interest involved. The appointing official may then decide whether to allow the person to participate or to have someone else handle the matter. Any such determination must be in writing with a copy available for public inspection at the city or town clerk's office.

This exemption is not available to *elected* municipal officials because they have no "appointing official." They must always abstain from participating in matters involving their own, their immediate family members' or their business' financial interest.

Example: A local businessman has asked for a zoning variance so that he may garage the trucks from his contracting business in an area zoned for residential use. One member of the zoning board of appeals lives adjacent to the lot which is the subject of the application for the variance. Because of the effect such a variance would have on the value of the member's property, he has a financial interest in the zoning board's decision. As a result, Section 19 prohibits him from participating in that decision unless he receives a written exemption from his appointing official. If the zoning board member is elected, he must abstain from participating. ▪

Example: The board of aldermen in a city must give final approval before a major condominium development may begin. One of the aldermen is a member of the board of directors of the development company seeking the approval. As a director of a business organization which has a financial interest in the board of aldermen's decision, this member is prohibited from participating in the decision. Because she is elected to her position as alderman, she has no appointing official and cannot take advantage of the "disclosure and authorization exemption" explained above. ▪

Example: A part-time secretarial position is available in the town treasurer's office. The *elected* treasurer may not hire his sister to fill the position, even if she is more qualified than other candidates and has taken the appropriate civil service examination. An *appointed* treasurer, however, may disclose the situation to his appointing authority (the board of selectmen) and the board may then authorize the treasurer to make the hiring decision. The board of selectmen may also assign the hiring decision to someone else or handle it themselves. ▪

Exemption 2

Determinations of General Policy

Certain decisions made by municipal officials affect either the municipality as a whole or a substantial segment of its population. The decision to raise water or sewer rates, for example, financially affects not only the water commissioner, but all town residents. A strict application of the conflict law in this circumstance would prohibit all town officials from participating in these decisions. This result would severely hinder the operation of a municipality. Therefore, Section 19 does not restrict one's participation in a particular matter if the issue involves a "determination of general policy" *and* the interest of the municipal employee or members of the employee's immediate family is shared with a substantial segment of the population of the municipality.

Exemption 3

Elected Official(s) Making Demand Bank Deposits

Section 19 allows an elected town or city official (e.g., the treasurer) to deposit municipal funds into a checking account in a bank with which the employee is affiliated *only if* the elected official first files with the clerk a statement making full disclosure that he or she is associated with the bank which has a financial interest in the deposits.

Example: The elected city treasurer is a member of the board of directors of a local bank. She opens and maintains a checking account in that bank with city money after filing a disclosure of her position on the board and the bank's interest in the deposit. She is not in violation of Section 19 because she has complied with the exemption. ▪

Using the Rule of Necessity

If a member of a town or city board has a conflict of interest, that member will be disqualified from acting on that board matter. In some cases, especially when more than one member is disqualified, a board cannot act because it does not have a quorum. (If a number for a quorum is *not* set by law, a quorum is generally a majority of the board members.) In these instances, the board may use what is called a Rule of Necessity to permit the participation of the disqualified member in order to make a quorum to allow the board to act.

The Rule of Necessity is not a law written and passed by the Legislature. Rather, the Rule of Necessity was developed because judges applied it in their court decisions.

The Rule of Necessity works in the following way:

1. It can only be used if a board is *unable* to act on a matter because it cannot obtain a quorum because members are disqualified from acting.

Example: A five member board has a meeting and all members are present. Three of the five members have conflicts. A quorum is three. The two members without conflicts do not make a quorum. The board cannot act. The Rule of Necessity will permit all members to participate. ▪

Example: A five member board has a meeting and four members are present (one member is sick at home). Two of the four present members have conflicts. A quorum is three. The one member who is sick at home does not have a conflict. The Rule of Necessity may not be used because there *is* a quorum of the board which is able to act. Because one member of that quorum is absent does not permit use of the Rule of Necessity. ▪

Example: A five member board has a meeting and all members are present. One member has a conflict and is disqualified. The vote is a two to two tie. The Rule of Necessity may not be used to break the tie. In general, a tie vote defeats the issue being voted on. ▪

2. The Rule of Necessity should be invoked by the chairman of the board, upon advice from town or city counsel. It is advisable for town or city counsel to set guidelines for exactly when and in what circumstances the Rule of Necessity should be invoked.

3. If it is proper for the Rule of Necessity to be used, it should be clearly indicated in the minutes of the meeting that the board was unable to obtain a quorum due to disqualification of members and, as a last resort, that those disqualified will now participate under the authority of the Rule of Necessity.

4. The Rule of Necessity may only be used as a last resort. Every effort must be made to find another board capable of acting in place of the board which could not obtain a quorum.

Misuse of Official Position
(Section 23)

Section 23, referred to in the law as the "Standards of Conduct," provides a general code of ethics for all public employees. The Standards of Conduct may apply whenever there is an overlap or direct connection between a public employee's official duties and responsibilities and his or her private activities, interests or relationships. This overlap of personal and public interests can at a minimum create an appearance of a conflict of interest.

A municipal agency or board may establish and enforce additional standards of conduct beyond those in the conflict law.

Unwarranted privileges

Municipal employees may not use or attempt to use their official positions to secure for themselves or others unwarranted privileges of substantial value. Substantial value has been set at $50 by the courts and the Commission.

Example: A city employee submits a request for reimbursement for travel expenses he said that he incurred in attending a conference. The employee did, in fact, attend the conference, but did not incur the full expenses for which he seeks reimbursement. This conduct violates the conflict law since it is an attempt by the employee to use his official position to secure an unwarranted privilege of substantial value for himself. ▪

Example: A full-time employee in the mayor's office uses the office computer after hours to set up a data base for his wife's accounting business. This violates the conflict law. Using city equipment and resources for personal business is using an official position to obtain an unwarranted privilege of substantial value not similarly available to others. ▪

"Appearances" of conflict

Public employees must avoid conduct which creates a reasonable impression that they will act with bias.

A public official can dispel this impression of favoritism by disclosing all the facts which would lead to such a conclusion. For example, it may be necessary for a public official to disclose a personal relationship with someone appearing before his or her board.

Appointed officials must disclose in writing to their appointing authority. This disclosure must be kept available for public inspection. An elected official's public disclosure must be made in writing and filed with the city or town clerk. In addition, officials would be well advised to make a verbal disclosure for inclusion in meeting minutes if such an "appearance" of a conflict arises in a public meeting. These public disclosures must be made *prior* to any official participation or action.

Once this public disclosure has been made, the official may participate in the matter notwithstanding the "appearance of a conflict." When officials act on matters affecting individuals with whom they have a private relationship, they must act objectively and be careful not to use their official position to secure any unwarranted privilege or benefit for that person. Use of an official position to secure an unwarranted privilege for someone is always prohibited, regardless of whether the disclosure procedure is followed.

Example: An elected planning board member participates in the planning board's consideration of a subdivision plan submitted by a contractor who built the planning board member's house. His participation in the planning board's consideration would create a reasonable basis for the impression that the contractor could unduly enjoy his favor in the performance of his official duties. To dispel this appearance of bias, the planning board member must disclose in writing his private relationship with the contractor and file the disclosure

with the town clerk. He may then vote on the subdivision plan (provided he can do so objectively). ▪

Example: The longtime friend of the chief of the town's highway department applies for a job in the highway department. If the chief gets involved in the hiring process, it may appear as though his friend could enjoy undue favoritism. To dispel the appearance of favoritism, the highway department chief must disclose his private relationship with the job applicant in writing to his appointing official (the board of selectmen) prior to any action. This disclosure must be available for public inspection. It is then within the authority of the board of selectmen to determine whether any further steps need to be taken to avoid the appearance of a conflict. ▪

Inherently incompatible activities

A municipal employee is prohibited from accepting other employment involving compensation of substantial value ($50 or more), the responsibilities of which are inherently incompatible with the responsibilities of his public office. For example, in a 1984 enforcement case, a state mediator admitted he violated the conflict law by working privately for a union when he was involved in mediating a labor dispute with the same union.

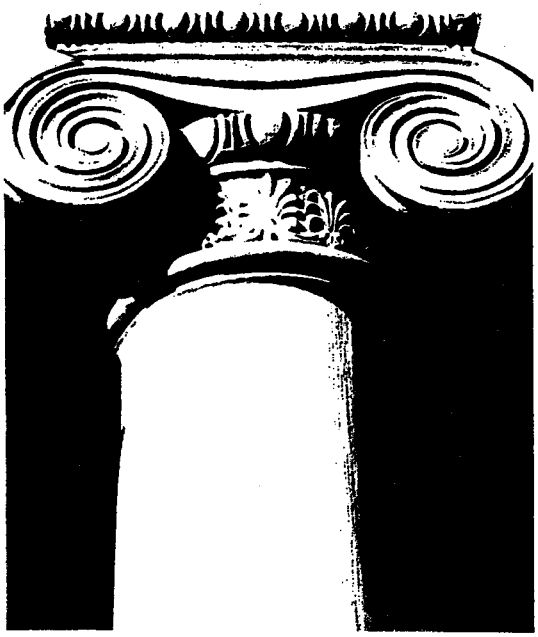
Use of confidential information

No current *or former* officer or employee of a municipal agency may:

1. accept employment or engage in any business or professional activity which will require the employee to disclose confidential information gained by reason of the employee's official position or authority; or

2. improperly disclose material or data which are not considered public records and which are acquired in the course of official duties nor use such information to further personal interests.

Example: A former employee of the town personnel office sets up her own employment placement service and uses confidential information from the town's personnel records to prepare a client list for use in her private business. This violates Section 23 because she would be using confidential information acquired in the course of official duties to further personal interests, and also because she would be using her official position to secure for herself an unwarranted privilege not properly available to similarly situated individuals (i.e., other placement services). ▪



Prohibited Appointments of Board and Commission Members (Section 21A)

The conflict law prohibits town or city board members from being *eligible* for appointment or election to any position under the supervision of their own board. This prohibition continues for thirty days from the member's termination of service on the board.

Only if town meeting approves, may a board member be appointed to a position under the supervision of the member's own board. Even if town meeting approves the appointment, Section 20 (discussed on page 16) may place restrictions on or prohibit the appointment.

Municipal officials considering applying for a paid position under the supervision of their own board should be aware that they may not participate as board members in discussions and/or votes concerning their appointment.

Example: A member of the board of assessors may not apply for and obtain a job in the assessor's office without town meeting's approval. If he resigns his membership on the board, he cannot apply for a job in the assessor's office for 30 days. He also is prohibited from being hired while a board member but technically not accepting the job for 30 days. ▪

Demanding Undated Resignations Prohibited (Section 21B)

The conflict law prohibits the mayor, city manager or town manager from requiring anyone, as a prerequisite to appointment to a municipal position, to submit an undated resignation. This prohibition prevents the chief executive officer of a municipality from using a municipal employee's undated resignation to exert unfair leverage over the employee and from dismissing an employee without the need for public explanation.

Restrictions on Partners of Municipal Employees (Section 18)

The law prohibits partners of municipal employees from deriving an unfair advantage as a result of their association with the municipal employee. Therefore, the partner of a municipal employee may not act as agent or attorney for a private party before the city or town in connection with a matter in which the municipal employee has ever participated or over which the employee has official responsibility.

Municipal employees are also prohibited from shifting to their partners what they themselves are prohibited from doing.

Example: A member of the planning board is a partner in a law firm. As a board member he has official responsibility for approving development plans. His law partners may not represent anyone other than the town before the board in connection with such an application. It does not matter if the board member takes no action on the application or disqualifies himself from that proceeding. ▪

Restrictions "After Hours"

Prohibited Municipal Contracts and Multiple Jobs (Section 20)

Application to Employees & Officials

In general, municipal employees are prohibited from having a direct or indirect financial interest in a "contract" with a municipal agency. Contracts include agreements to provide goods and services. Employment also constitutes a contract with the municipality. Therefore, generally, municipal employees are prohibited from holding more than one paid position or contracting with the same city or town. (However, the courts have said that election to public office is not a contractual relationship; therefore, municipal officials may hold any number of elected paid positions and not be in conflict.)

These restrictions will avoid any public perception that municipal employees have an "inside track" on getting municipal contracts and jobs.

Example: A full-time employee of the school department is half owner of a business which provides transportation for the handicapped. The employee will violate Section 20 if his business enters into a contract with the school department to transport handicapped students to and from school. ▪

Example: The town assessor works for a large data processing firm. The town's assessing department has asked her firm to computerize the town's assessment records. They enter into a contract to do so. The town assessor may continue to work for her firm, but she would be prohibited under Section 20 from working for the firm on the town assessment records project or from receiving any financial benefit from that contract. ▪

Example: A full-time police officer working nights may not take another full-time paid municipal job during the day. ▪

Municipal employees may qualify for one of the exemptions under Section 20 to allow them to contract or hold multiple positions with the town or city for which they work. A municipal employee must fulfill certain specific conditions before receiving an exemption. (See exemptions 1 through 9, starting on the following page.)

Note: Section 20 is the most complex section of the conflict law; we suggest you call the Commission or contact your city solicitor or town counsel for specific advice on Section 20.

Application to Spouses

A spouse's financial interest in a municipal contract is not necessarily attributed to the municipal employee. Therefore, if the spouse has a financial interest in a municipal contract this does not automatically place the municipal employee in violation of the law. However, a municipal employee will not avoid violating Section 20 merely by having the contract "technically" in a spouse's name while continuing to share in the contract proceeds.

Example: An employee of the police department (Jane) is married to the owner of an electronics store (Bob). Bob has a contract selling and leasing radio equipment to the police department. Jane does not, by law, have a financial interest in Bob's contracts simply because she is married to him. Therefore, Bob may have a contract with the town. However, if Jane were a partner or part-owner in her husband's store or if she exercised control over the management of the store, she would have a financial interest in the contracts. Her financial interest would prohibit the electronics store from contracting with the police department. ▪

Exemptions 1 through 9

There will be very few instances when employees will be able to contract or hold second jobs with their *own* agency. However, there will be instances where employees are allowed to contract or hold second jobs with *other* agencies.

Exemption 1.

The most comprehensive exemption is found in Section 20(b). It states that if you are a municipal employee, you may have a contract with a municipal agency *if*:

1. you do not work for the contracting agency;
2. you do not work for any agency which regulates the activities of the contracting agency;
3. you do not participate in or have official responsibility for the activities of the contracting agency;
4. the contract is made after public notice or competitive bidding; and
5. you file with the clerk a disclosure of your and your immediate family's financial interest in the contract.

Example: A full-time employee of the public works department owns a company which produces electrical equipment. He may sell lighting fixtures to the school department provided the contract is competitively bid or publicly advertised and he makes the necessary disclosure to the town clerk. However, if he worked for the school department (the contracting agency) or if the contract were not awarded after advertising or competitive bidding, he would violate the law by having such a contract. ▪

Example: A full-time employee of the purchasing department owns 25 percent of the stock in a cleaning supply company. If the purchasing department approves every purchase and contract made by every town agency, the employee will violate Section 20 if his corporation enters into a contract with any agency of the town to provide cleaning supplies. This violates the law because the full-time employee of the purchasing department is employed by an agency "which regulates the activities of the contracting agency." ▪

If the contract is for personal services (i.e., a second job) *in addition*, you must fulfill the following criteria:

1. the services must be provided outside the normal working hours of your primary job;
2. the services may not be required as part of your regular duties;
3. you may not be compensated for the second job for more than 500 hours in a calendar year;
4. the head of the contracting agency must file a written certification with the clerk that no employee of the contracting agency is available to perform those services as a part of his or her regular duties.

Example: A full-time secretary in the town clerk's office may contract with the licensing board to provide typing services, provided he does the work on his own time (e.g., nights or weekends); he does not bill the board for more than 500 hours in any one calendar year; he makes the necessary disclosure to the clerk; the board gives members of the general public the opportunity to seek the contract; and the head of the licensing board certifies that no one at the board is available to do the work. ▪

Exemption 2.

Special municipal employees may have a contract or a second job with the same city or town if the employee meets *one* of the following conditions:

1. the special municipal employee does not participate in or have official responsibility for any of the activities of the contracting agency, and files with the city or town clerk a statement disclosing the financial interest in the contract; or
2. the special municipal employee has filed with the city or town clerk a statement disclosing the interest in the contract *and* the

city council, board of selectmen or board of aldermen has approved his or her exemption from this section. This means that if a special municipal employee gets formal approval, that employee may have a financial interest in a contract with the agency he or she works for, e.g., a school committee member contracting with the school department.

Example: An engineer works part-time for the city's conservation commission and has been classified a special municipal employee. As a special, she may have a consulting contract with the highway department regarding road construction *if* she has filed with the city clerk a disclosure of her interest in the consulting contract. In addition, if she receives approval from the board of selectmen and files a disclosure statement, she may contract with the conservation commission (her own agency). ▪

Exemption 3.

Section 20 does not prohibit municipal employees from receiving benefits from programs funded by the United States or any other source in connection with the rental, improvement, or rehabilitation of their residence.

Example: A municipal employee who owns and resides in a home which qualifies for federal subsidies for home weatherization may obtain such a subsidy, even though the program is administered by, and the funds distributed by, a municipal agency of the same town in which she is employed. ▪

Exemption 4.

Section 20 does not prohibit a municipal employee from being eligible for a housing subsidy program administered by a local housing authority. However, the housing authority employee who has responsibility for the administration of the subsidy program may not be eligible for a subsidy.

Exemption 5.

Section 20 does not prohibit an individual who is already a municipal employee from also serving as selectman (or as councillor in a municipality with a town council form of government) in the same town as long as the selectman:

1. does not vote or act as selectman on any matter which is within the authority of the agency which employs the selectman or over which he or she has official responsibility (for example, a policeman who is elected as selectman may not vote on any matter which comes under the police department's authority); and

2. receives compensation for only one office or position in the town (individuals may choose which pay they wish to receive).

A selectman who does not hold a municipal position before being elected may not be appointed to a municipal position afterwards. In fact, once one's term as selectman expires or one resigns, there is a six month waiting period before being eligible to be appointed to a municipal position. However, a selectman may be routinely reappointed to a previously held position.

Example: A school teacher may serve as elected selectman so long as she does not vote or act on any matter which is within the authority of the school department, and she receives only one salary. Her original municipal teaching contract may be renewed. However, she is not eligible for promotion to the position of principal (considered a new appointment) while she is a selectman, or for six months after her term as selectman ends. After a selectman is elected, she may not be appointed to any new municipal position (e.g., be hired as a teacher) during her term as selectman or for six months after her term ends. ▪

Note: Selectmen designated as specials in towns with a population of under 5,000 may hold additional paid town positions if they meet the requirements detailed in Exemption 2 (page 17).

Exemption 6.

Section 20 does not prohibit an employee of a housing authority from serving in any elected position, except mayor, as long as the person:

1. does not vote or act on any matter within the purview of the housing authority; and
2. receives compensation for only one office or position in the municipality (individuals may choose which pay they wish to receive)

A city councillor, alderman or other elected official who did not work for a housing authority before being elected may not be appointed to a job in the housing authority afterward. In fact, once one's elected term expires or one resigns, there is a six month waiting period before being eligible to be appointed to such a position.

Exemption 7.

A *state* employee may hold a paid or unpaid elected or appointed office in a city or town. However, in the municipal position, an employee may not vote or act on any matter which comes under the authority of the state agency the employee works for or over which the employee has official responsibility. This exemption is found under Section 4 of the conflict law.

Example: A full-time employee of the State Department of Public Health (DPH) may not serve as a municipal health agent because every matter which he would be acting on as health agent would be within the purview of DPH. The DPH employee may serve as selectman but may not, as selectman, vote or act on any matter under the authority of DPH. ▪

Exemption 8.

A clerk of a city or town may hold additional municipal positions for compensation as long as this arrangement is not disapproved of by the selectmen, town meeting, town counsel (in a town) or mayor and city council (in a city). (See G.L. c. 41, §19I).

Exemption 9.

A municipal employee in a town with a population of less than 3,500 may hold more than one paid appointed position if the board of selectmen formally approve the additional appointments. The employees do not need to be designated as specials in communities with a population of less than 3,500.

Limits on Private Activities
(Section 17)

Application to Municipal Employees

Section 17 limits what a municipal employee may do "on the side" for someone other than the city or town which the employee works for. A person cannot serve two masters; whenever an employee works for private interests in matters in which the city or town also has an interest, there is a potential for divided loyalties at the expense of the municipality. Therefore, Section 17 prohibits any municipal employee from:

1. acting as agent or attorney for a private party before city or town boards, or
2. being paid by a private party in relation to any "particular matter of direct and substantial interest" to the city or town. (See Glossary)

The term attorney applies to lawyers and may also include any person exercising a power of attorney. The term agent refers to anybody acting in a representative capacity on behalf of someone else, regardless of whether the person is a lawyer.

Section 17 also prohibits anyone from giving, promising or offering such compensation to a municipal employee.

With respect to this section, you should note at the outset:

1. Not all outside activity is prohibited, only outside activity which relates to particular matters of direct and substantial interest to the city or town. This outside activity is prohibited whether or not it benefits or is adverse to the city or town's interest.

2. The restriction applies as long as *any* municipal agency has a direct and substantial interest in the matter; it makes no difference whether the employee's own agency has the interest.

3. "Anyone other than the city or town or a municipal agency" includes private individuals or organizations, as well as other levels of government (state, county or federal).

4. Compensation includes not only money but also anything of value received for services rendered. For example, the opportunity to participate in an investment qualifies as compensation as would various fringe benefits. Reimbursements for expenses are not compensation.

5. Finally, when a municipal employee acts as agent or attorney for someone other than the city or town in connection with a particular matter of direct and substantial interest to the city or town, the employee violates Section 17 even if the services are unpaid.

Example: A full-time city engineer may not be paid by a developer to help prepare plans for a private development which will be presented to the city's planning board for approval. Although the city engineer does not work for the planning board, Section 17 would prevent him from performing such services, even on his own time. ▪

Example: A municipal employee serves in his off-duty hours as an unpaid trustee of a church in his town. The church and the town are negotiating a land exchange. If the employee represents the church in discussions with the town on this matter (the land exchange), he is acting as agent for the church in connection with a particular matter in which the town is a party. This is prohibited. ▪

Application to Special Municipal Employees

The conflict law imposes fewer restrictions on special municipal employees. Section 17 applies to special municipal employees only when there is a connection between the special municipal employee's outside activity and the employee's agency's work.

A special municipal employee may receive compensation from, or act as an agent or attorney for, someone other than the city or town *unless* the particular matter involved is one:

1. in which he or she participated at any time as a municipal employee or special municipal employee;

2. which is or has been (within the preceding year) the subject of the employee's official responsibility; or

3. which is pending in the municipal agency in which the employee is serving — if the employee serves more than 60 days in any 365 day period. To serve more than 60 days means to perform work on more than 60 days; work on any part of a day will be considered work for one full day. The employee is responsible for keeping accurate records in this regard.

Example: A computer programmer is hired by the city's school department as a part-time consultant. By virtue of this city consulting job, the programmer is a municipal employee; the city council has designated this position as a "special" position. A computer company which has a contract with the city's personnel office offers a job to the programmer to work on this contract. The programmer may work for the company because the contract with the personnel office is not a particular matter she participates in or has official responsibility for (in her school department position) and the matter is not pending in the school department for any type of action. ▪

Example: A nurse consults with a town board of health (BOH) for 45 days spread out over a year; her position has been designated as a special municipal employee position. Her work relates exclusively to the BOH lead-paint program. The nurse may also represent a community health center in a funding application before BOH because she does not have official responsibility for or participate in BOH funding decisions and she worked less than 60 days for BOH during the previous year. ▪

Exemptions 1 through 5

Exemption 1.

If a municipal employee's job responsibilities require the employee to represent interests other than the municipality's, the employee does not violate Section 17. It is rare, however, that municipal employees are expected to represent outside interests before the town.

Example: The tenant representative on a local rent control board may act as spokesperson for tenant groups as part of his official duties. This would not violate the conflict law even though he is acting as their "agent." ▪

Exemption 2.

A municipal employee may provide unpaid assistance to someone who is subject to employment discipline or other municipal personnel proceedings.

Exemption 3.

Appointed municipal employees may represent members of their immediate family or any person for whom the employees serve as a guardian, executor, administrator or other fiduciary before a town board or agency, so long as the employees do not participate in, and do not have responsibility over the matter involved. An employee's appointing authority must approve the arrangement in writing prior to any action.

Elected municipal officials may represent only themselves before town boards; they may not represent members of their immediate family.

Example: An elected or appointed zoning board of appeals member may personally seek a variance from the zoning board to build a garage next to his house. An appointed ZBA member may represent his father before the ZBA on a variance request, provided he receives permission from his appointing authority (i.e., the board of selectmen). An elected ZBA member may not represent his father under any circumstances. The ZBA member may not participate as a board member in the decision regarding his own or his father's petition. ▪

Exemption 4.

A present or former *special* municipal employee may assist another person for compensation in working on a municipal contract, so long as the head of his or her agency certifies in writing that "the interest of the city or town requires such aid or assistance," and the certification has been filed with the city or town clerk.

Exemption 5.

A municipal employee may give testimony under oath or sworn statements and receive witness fees from one other than the city.

Restrictions After You Leave Government Service

Misuse of Government Connections (Section 18)

Former municipal employees may not use their past friendships and associations within government, or use confidential information obtained while serving the government, to derive unfair advantages for themselves or others. The law does not prohibit a municipal employee from using general expertise which he or she developed while a municipal employee; rather, the law limits what actions a former city employee may take regarding individual decisions or other "particular matters" in which the employee actually participated or over which he or she had official responsibility while a municipal employee. (The prohibition against using confidential information is contained in Section 23, page 14.)

The law also applies to the business partners of former municipal employees. Former municipal employees may not shift to their partners what they themselves are prohibited from doing. In addition, the law prohibits partners from deriving an unfair advantage as a result of their association with a former municipal employee.

Application to Former Municipal Employees

1. *Forever Ban*

If a municipal employee participated in a "particular matter" as a municipal employee he or she may *never* become involved in that same matter after leaving municipal service except on behalf of the city or town.

Specifically, the law states that a former municipal employee may not act as agent or attorney for, or receive compensation directly or indirectly from, anyone other than the municipality in connection with any particular matter in which the municipality is a party or has a direct and substantial interest *and* in which he or she participated as a municipal employee.

Example: A member of the zoning board of appeals votes to deny a special zoning permit to a person who wants to put a second floor on a convenience store in violation of height restrictions. After his term on the board expires the board member who is a lawyer is asked to represent the store owner in a suit against the board challenging its permit denial. Because he participated as a board member in the permit denial, he may not act as the attorney in the lawsuit. ▪

Example: The superintendent of a municipal public works department selects a contractor to do sewer reconstruction work in the town. Shortly afterward, he resigns his superintendent position and is hired by the contractor to act as foreman on the work under the town sewer contract. The law prohibits him from accepting this employment because he participated in the award of that contract while a municipal employee. However, the superintendent may work for the contractor on other jobs in which he did not participate as a municipal employee. The superintendent may also, in the future, work on a town contract he had no responsibility for and did not participate in as a municipal employee. ▪

2. *One Year "Appearance" Ban*

The law also restricts the actions of a town or city employee who had official responsibility for a matter even though the employee did not personally participate in it. After an official leaves municipal service, for one year, he or she may not appear before any municipal agency on behalf of a private party if:

1. the appearance is in connection with a particular matter in which the municipality has a direct and substantial interest; *and*

2. the matter was within the employee's official responsibility within the two-year period before leaving municipal service. Note that this prohibition lasts for only one year, and restricts only appearances (whether paid or unpaid) before municipal agencies.

Example: The chairman of a local liquor licensing board had official responsibility over all license applications submitted to the board. For one year after leaving the board, the member may not appear on behalf of an applicant for a liquor license if that application was before the board at any time during the last two years of his service. This prohibition exists even if the member personally took no action on the case. If he had taken some action he may never represent the applicant on that particular application. He may, however, represent the applicant on a new liquor license application. ▪

Example: An employee of a city's building department is assigned by his supervisor to inspect a newly-constructed building for local building code violations. The law prohibits that employee from ever being paid by the building's owner in relation to that inspection, e.g., to perform required repairs. Although the *supervisor* does not personally make the inspection, for one year after she leaves municipal service she is prohibited from appearing on behalf of the building owner before a municipal agency in connection with the inspection. ▪

Application to Business Partners of Former Municipal Employees

The partner of a *former* municipal employee is restricted for one year after the former municipal employee leaves municipal service from personally representing or being paid by a private party in connection with a matter that the former municipal employee participated in as a public employee.

Example: A member of the planning board is a partner in a law firm. When the planning board member's term expires, she is forever prohibited from representing private clients in connection with applications in which she had actually participated as a board member. Her partners may not, for one year after the planning board member leaves the board, represent anyone (except the town) in connection with matters in which the former board member participated. ▪

Example: Three contractors do not have a formal partnership agreement, but share office space, common expenses and advertising and work together and share profits on some projects. Because they would reasonably appear to be partners to an outsider, the three contractors will be treated as partners for purposes of the conflict law. Accordingly, if one of the contractors is a former municipal employee, the other two will be prohibited for one year after the municipal employee/partner leaves municipal service from working on any matter in which the former municipal employee participated while serving town government. ▪

If a partner of a former municipal employee is also a member of another partnership in which the former employee has no interest, there are no restrictions on the activities of the latter partnership.

Example: A former member of the board of assessors may not be compensated by anyone other than the town in connection with any assessment decisions in which he participated. The former board member is in a real estate partnership. His partner, Jones, is also a partner in a law firm. The law firm may represent a client challenging an assessment made by the former board member so long as Jones takes no part in the law firm's activities challenging the assessment. ▪

Application to Former Town Counsel

A former town counsel who was paid less than $2,000 per year on a salary or retainer may not represent a private party before any municipal agency *only* in connection with particular matters in which he participated as a municipal lawyer. These former town and city lawyers may appear before municipal agencies regarding particular matters over which they had official responsibility but did not personally participate.

Former town counsels who were paid more than $2,000 a year must abide by the same restrictions outlined on page 22 for former municipal employees.

Appendix

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How to Obtain Legal Advice

You may call the State Ethics Commission's Legal Division at (617) 727-0060 for informal, confidential advice on the conflict law, or you may seek a written advisory opinion from your city solicitor or town counsel or from the Ethics Commission. If you have a question about your own activities, we urge you to request an opinion *prior* to engaging in the activity in question. Requests to the Commission for an advisory opinion must be in writing and must be about a real, not hypothetical, situation which presents a problem under the conflict of interest law.

Investigations

How to File a Complaint

Anyone can file a complaint concerning a conflict of interest — in person, over the phone or by letter. The law requires the Ethics Commission to keep the identity of all complainants confidential and the Commission's enabling statute (M.G.L. c. 268B, §8) protects a complainant from retribution for filing a complaint with the Commission.

The Commission can initiate investigations based on these complaints, on referrals from other civil and criminal enforcement agencies or on its own based on information obtained through other sources, such as news reports.

If you believe that a violation of the conflict of interest law has occurred or is occurring, you may call or visit the State Ethics Commission office at Room 619, One Ashburton Place, Boston, (617) 727-0060, and speak with a member of the Commission's enforcement staff.

Investigation Procedures

The Enforcement Division reviews each complaint received. If the complaint falls within the Commission's jurisdiction, an initial "screening" is done to determine if the facts warrant a formal investigation. The screening is an informal fact gathering stage. Many enforcement cases end confidentially at the conclusion of the screening with a private educational letter sent to the subject of the investigation. In these cases, no formal charge of a violation is brought and the matter remains confidential.

After the screening, if the staff determines a case should be formally investigated, authorization is sought from the appointed Commissioners to conduct a Preliminary Inquiry. During this formal investigation the Commission staff has subpoena powers for testimony under oath.

After the investigation is conducted, the Commissioners vote on whether "reasonable cause" exists to believe that the law has been violated. If the Commissioners find "reasonable cause," the subject of the complaint is entitled to a public hearing before the Commission to present evidence and testimony on his or her own behalf. At the conclusion of a public hearing the Commissioners issue a Decision and Order stating whether there was a violation of the conflict law and what fine, if any, will be assessed. A person has the right to appeal the Commission's decision directly to Superior Court. In the alternative, the person may settle the case by admitting publicly that he or she violated the law and agreeing to pay a civil penalty for each violation.

If the Commission finds "no reasonable cause" to believe the law has been violated, the case is closed and records and proceedings of the investigation remain confidential.

Penalties

The Commission is authorized to impose civil fines of up to $2,000 per violation of the conflict law. In addition, the Commission may bring a civil action against individuals who have acted to their economic advantage in violation of the law, and may recover on behalf of the commonwealth or a municipality, damages in the amount of the economic advantage or $500, whichever is greater. In certain circumstances, the Commission may also recover multiple damages.

Further, any violation which has substantially influenced an action taken by a municipal agency is grounds to avoid, rescind or cancel that action. For example, if a zoning board approved a variance to allow a hotel to be built and one of the members was in conflict when he voted, the approval of the variance could be rescinded.

The conflict law also carries criminal penalties including fines and terms of imprisonment. Criminal prosecutions under the law are the responsibility of the Attorney General and District Attorneys. The Ethics Commission has the authority to refer cases to or concurrently investigate cases with these other law enforcement agencies.

Statute of Limitations

In general, the Ethics Commission will review cases which are not more than six years old. The Commission has established rules governing the Statute of Limitations. These rules state that the Statute of Limitations begins on the date that the Ethics Commission (or another law enforcement agency, such as the District Attorney) learns about an alleged violation of the conflict law. This is usually the date when someone makes a complaint. The Ethics Commission has three years from the date it learns of an alleged violation to issue an Order to Show Cause which starts public proceedings against an individual.

An Order to Show Cause may not be issued more than six years after the alleged violation occurred. Therefore, if a municipal official violated the law in 1980, if the Ethics Commission did not learn of the violation until 1988, the Commission could not take any action against the official.

Public Education

Public education has been a primary commitment of the State Ethics Commission since its establishment in 1978.

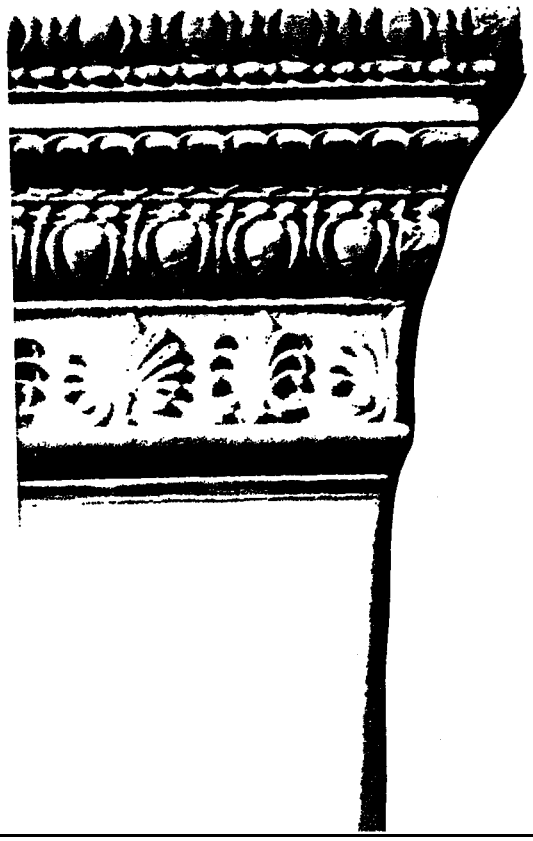
The Public Education Division conducts seminars for municipal employees and officials to help avoid potential conflicts which may arise between an employee's private interests and public position. The Commission staff will travel anywhere in the state to conduct a seminar tailored to any group of public employees or citizens.

The goal of the presentation and question and answer period is to provide an understanding of the basic principles of the law and how to comply with it by discussing "real life" conflicts that arise on the job.

Some of the topics covered at our seminars include: restrictions on receiving gifts, outside employment, contracting with municipal agencies, acting on matters which financially affect family members and business associates, holding more than one town job, and leaving the government to work for companies you dealt with as a public employee.

To arrange for a seminar on the conflict law, call (617) 727-0060 and ask for the Director of Public Education.

The Public Education Division also provides other publications free of charge or for a nominal fee including: the Commission's newsletter, *The Bulletin*; pamphlets for state, county and municipal employees on the conflict of interest and financial disclosure laws; a yearly compilation of Enforcement Actions and Advisory Opinions; an Annual Report and advisories and fact sheets which provide specific guidance to public officials on various aspects of the conflict law.



Commissions or Agencies Which Oversee Ethical Conduct

The following is a list of agencies which oversee the ethical conduct of public employees, including judges and legislators, as well as private sector lawyers. These agencies are responsible for interpreting and/or enforcing the statutes and regulations which are noted.

Massachusetts Municipal, County and State Employees:

State Ethics Commission
One Ashburton Place
Room 619
Boston, MA 02108
(617) 727-0060

M.G.L. c. 268A and c. 268B.

Federal Employees:

Federal agencies have a designated "ethics in government officer" who handles questions and refers complaints to the appropriate law enforcement agency concerning the federal conflict of interest statute. You may also contact the Inspector General's office within each federal agency for advice and information. In addition, the Office of Government Ethics (202-632-7642) will handle questions of a general nature.

Federal employees are covered by:

1. The Ethics in Government Act of 1978, Public Law 95-521.
2. Executive Order 11222 issued 5/21/65 (Standards of Ethical Conduct for Executive Agency Personnel).
3. Code of Federal Regulations 5 CFR 735.101 to 735.306 (Regulations promulgated by the Office of Government Ethics).

Judges:

Commission on Judicial Conduct
14 Beacon Street
Suite 102
Boston, MA 02108
(617) 725-8050

(Rule 3:09 of the Rules of the Supreme Judicial Court Code of Judicial Conduct.)

Judges, as state employees, are also covered by the conflict of interest law enforced by the State Ethics Commission.

Legislators:

House Ethics Committee
State House, Room 163
Boston, MA 02133
(617) 722-2040

House Rules 16 and 16A.

Senate Ethics Committee
State House, Room 517
Boston, MA 02133
(617) 722-1544

Senate Rules 10, 10A, and 12A.

Legislators, as state employees, are also covered by the conflict of interest law enforced by the State Ethics Commission.

Private Sector Lawyers:

Massachusetts Board of Bar Overseers
11 Beacon Street
Boston, MA 02108
(617) 720-0700

Rule 3:01 of the Rules of the Supreme Judicial Court.

For information on:

Campaign and Fundraising Activities

Office of Campaign & Political Finance
One Ashburton Place
Room 1005
Boston, MA 02108
(617) 727-8352

M.G.L. c. 55.

Open Meeting Law

Contact your local District Attorney's Office.

M.G.L. c. 30A §§11A, 11A 1/2, 11B and 11C; c. 34 §9; c. 39 §§23A, 23B and 23C.

Public Records

Public Records Division
Secretary of State's Office
Room 1701
One Ashburton Place
Boston, MA 02108
(617) 727-2832

M.G.L. c. 4, §7 cl.37.

Glossary

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This Glossary contains the definitions of those terms which are defined in the conflict law. They are designated with an asterisk.* In addition, we have given the ordinary meaning of terms used in this Guide which the conflict law does not specifically define.

Agent: anybody acting in a representative capacity on behalf of someone else, regardless of whether the person is a lawyer.

Attorney: a lawyer; any person exercising a power of attorney.

Business Organization: business companies and agencies such as sole proprietorships, corporations, partnerships, and trusts; also includes non-profit corporations, associations and municipalities.

***Compensation:** any money, thing of value or economic benefit conferred on or received by any person or entity in return for services rendered or to be rendered by himself or another.

***Competitive bidding:** all bidding, where the same may be prescribed by applicable sections of the General Laws or otherwise, given and tendered to a state, county or municipal agency in response to an open solicitation of bids from the general public by public announcement or public advertising, where the contract is awarded to the lowest responsible bidder.

Contract: any type of agreement or arrangement between two or more parties where each undertakes certain obligations in consideration of the promises made by the other(s); for example, construction or consulting contracts, employment arrangements, contracts for the sale of goods or to provide services, grants awarded by the city or town to individuals or corporations, and agreements between a municipal agency and a state agency.

***Immediate family:** the employee and his spouse, and their parents, children, brothers and sisters.
Note: Cousins, nephews, aunts, uncles, etc. are *not* considered immediate family members. Also, under the definition of immediate family, some brothers-in-law are immediate family, others are not; if your brother-in-law is your spouse's brother — he is immediate family *but* if he is your sister's husband, he is not immediate family for purposes of the conflict law.

***Municipal agency:** any department or office of a city or town government and any council, division, board, bureau, commission, institution, tribunal or other instrumentality thereof or thereunder.

***Municipal employee:** a person performing services for or holding an office, position, employment or membership in a municipal 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, but excluding (1) elected members of a town meeting and (2) members of a charter commission established under Article LXXXIX of the Amendments to the Constitution.

***Official act:** any decision or action in a particular matter or in the enactment of legislation.

***Official Responsibility:** the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and whether personal or through subordinates, to approve, disapprove or otherwise direct agency action.

Note: Many special municipal employees, including most consultants, have responsibility over only the specific project for which they were hired. On the other hand, members of boards or commissions are often special municipal employees but will normally have "official responsibility" for every matter which is pending in their agency.

*Participate: 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.

*Particular matter: any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but *excluding* 1. enactment of general legislation by the general court, and 2. petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property.

While the enactment of general legislation is not included in the definition of particular matter, the term does cover enactment of special legislation. Special laws are those directed at a specific situation or individual or entity — for example, a law exempting a specifically identified parcel of land from local zoning restrictions. General laws, in contrast, usually establish a rule of future conduct applicable on a wider scale of people or things and apply uniformly to all individuals similarly situated.

Particular matter of direct and substantial interest to a city or town includes: 1) All particular matters which affect the financial interests of the city or town — for example, contracts, grants and determinations of local tax liability (e.g., property, excise); 2) any city or town regulatory or adjudicatory proceeding such as permits, applications, licensing, zoning, eminent domain or assessment proceedings; 3) civil litigation involving a city, town or municipal agency as a party (but not a lawsuit between two private parties where the city or town is not involved even though that lawsuit is pending in a state court); and 4) decisions about the use of municipal property and funds.

Partner: Any person who joins with any other person(s) formally or informally in a common business venture. The term is not restricted to those who enter into formal partnership agreements. The following criteria are examined to determine if a partnership exists: whether the person shares in the advantages or risks of ownership, contributes to capital or operating expenses, owns a transferable interest in the assets of the entity, or reasonably appears as having a stake in the ownership of the business to an objective third person. In addition, if a group creates the public appearance of a partnership (for example, by using joint stationery, business cards, and business listings), the group will be treated as a partnership even though profits may not be shared.

*Person who has been selected: any person who has been nominated or appointed to be a municipal employee or has been officially informed that he will be so nominated or appointed.

STATE
ETHICS
COMMISSION

MASSACHUSETTS

The State Ethics Commission
One Ashburton Place
Room 619
Boston, MA 02108
(617) 727-0060

AN INTRODUCTION TO THE

CONFLICT OF INTEREST LAW

FOR THE PRIVATE SECTOR

STATE
ETHICS
COMMISSION

COMMONWEALTH
OF MASSACHUSETTS

CONFLICT OF INTEREST

The Conflict of Interest Law, G.L. c. 268A, is one of several laws that govern your dealings with public officials and employees. Below are some of the general rules that you must follow. You could face civil and criminal penalties if you take a prohibited action. There *are* some exemptions to these rules, so you may wish to seek legal advice from the State Ethics Commission regarding how the law would apply in a particular situation.

BRIBERY

You may not offer or give anything to a public official in exchange for that official agreeing to perform or not perform an official act. This prohibition applies to *all* offers and gifts, regardless of their value. You also may not give, offer or promise anything to a public employee (or prospective public employee) with the intent to influence an official act, or to persuade the employee to commit, collude in or allow a fraud. (G.L. c. 268A, §2.)

REGISTERED EXECUTIVE AND LEGISLATIVE AGENTS

If your job involves interaction with the state Legislature, the Executive branch, or independent authorities, you should contact the Secretary of State's Office regarding whether you are required to register as an Executive or Legislative Agent. **Registered Agents may not give *anything* to a public official or policy-making public employee, or to an immediate family member of a public official or policy-making public employee.** This prohibition applies to meals, drinks, entertainment, and all other types of offers or gifts, regardless of their value. [Acts of 1994, Ch. 43.]

GIFTS AND GRATUITIES

Even if you are not a Registered Agent, you may not give a public official or *any* public employee anything "of substantial value" for or because of the official's duties. [G.L. c. 268A, §3(a).]

- Gifts that are worth $50 or more are considered to be "of substantial value", and are therefore prohibited.

- This restriction applies to meals, drinks, entertainment, discounts, free educational conferences, waived event admission costs, travel reimbursements, gifts of appreciation, retirement presents, and all other forms of gratuities that are given to public officials. Honoraria for speeches may be given to state legislators, but *not* to appointed officials or employees.

- If more than one gift is given to a public employee, the value of all gratuities may be aggregated to reach the "substantial value" threshold.

- The value of gifts given to immediate family members of a public employee may, in certain circumstances, be attributed to the public employee.

- "Standing offers" (e.g., "call me anytime you want to go to a game") are almost always considered to be "of substantial value", even if the cost of a single event is less than $50, because the public employee could accept the offer more than once.

- You may generally pay for travel and limited other expenses incurred by a public employee in connection with a "legitimate speaking engagement". Contact the Legal Division of the State Ethics Commission for more information about this exemption.

- You may pay for travel, meals and other costs for state executive branch employees who utilize the "Travel and Participation in Training Sessions where Private Entities Provide Financing" process described in 801 CMR 7.00. Note that this process requires advance approval by the state employee's Agency Head and Cabinet Secretary.

HIRING PUBLIC EMPLOYEES

Except in rare instances, you may *not* pay or otherwise compensate a public employee in connection with any matter that is "of direct and substantial interest" to their public employer. [G.L. c. 268A, §§ 4(b), 11(b) and 17(b).]

Types of matters that are considered "of direct and substantial interest" to the Commonwealth (or, in the case of a county or municipal employee, the relevant public employer) include: any matter pending before, under the official jurisdiction of, or involving action by an agency, board, commission or department of the public employer; any effort to change regulations, policies or procedures; and any contract, court case, or other legal matter to which the public employer is a party.

You *may* pay "special" state, county and municipal employees in connection with matters of interest to their public employers, if they have not personally participated in the matters, and the matters are not under their official jurisdiction. Also, special exemptions apply to state legislators; contact the Ethics Commission for more information.

HIRING FORMER PUBLIC EMPLOYEES

Former public employees and their business partners may *never* accept pay or other forms of compensation in connection with matters in which they participated as public employees. Also, even if they did not personally participate in the matters, there is a one-year "cooling-off" period before former public officials may personally appear before government agencies in connection with matters that had been under their official responsibility. [G.L. c. 268A, §§ 5, 12 and 18.]

Special prohibitions apply to former state employees who worked on privatization contracts; contact the State Ethics Commission for more information.

"Whenever you do a thing...ask yourself how you would act were all the world looking at you, and act accordingly."

— Thomas Jefferson

State Ethics Commission
Room 619
One Ashburton Place
Boston, MA 02108
(617) 727-0060

George D. Brown, Chairman
Constance J. Doty, Vice Chair
Nonnie S. Burnes
Herbert P. Gleason
Paul F. McDonough, Jr.

Andrew B. Crane
Executive Director

November 1994

3. The Basics of Retirement Plans

TYPES OF PLANS

- Retirement Plans in private and public sector.
- Is an important employee benefit.
- Types of Plans:
  - Defined Benefit
  - Defined Contribution

DEFINED BENEFIT PLANS

- Benefit provided by plan/law (formula).
- Employer has the risk.
- Employee and employer share cost.
- Future liability on employer.
- Once started, difficult to end.
- Portability limited: Chapter 32 can usually only be rolled-over into an IRA.
- Harder to explain to employees.
- Benefits long term employees.
- Chapter 32 is contributory defined benefit plan (pension).
- Also industrial companies, union plans.

DEFINED CONTRIBUTION PLANS

- Final account balance is the benefit.
- Employee has the risk.
- Employee and possibly employer (employer match) share cost.
- No future liability for employer, can cancel at any time.
- Employee may direct investments.
- Unlimited investment options.
- Popular with employees, media.
- Portability, take it with you to next job.
- Types:
  - 401(k): Corporations, Partnerships
  - 403(b): Non-profits
  - 457: Government
  - Profit Sharing
  - ESOP
  - Other

DEFERRED COMPENSATION

- 457 Plans
- State Deferred Compensation Plan.
- Variation of Defined Contribution Plan.
- Tax Advantages
- Mass.: No employer contribution/match.

IRS QUALIFIED PLAN

- 401 (a)
- Qualification
- Requires IRS letter
- Chapter 32 is not a “qualified plan.”

ERISA [EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974]

- Purpose of ERISA.
- Requirements of ERISA.
- Chapter 32 is exempt from ERISA.
- Despite exemption, Chapter 32 board members have fiduciary duty.

SOCIAL SECURITY OFFSET

- Social Security payments are offset by Chapter 32 benefits.
- Information available from Social Security.
- PEBES Statement available from SS or can be ordered on SS web sight.

ONLINE RESOURCES

- PERAC: www.state.ma.us/perac
- IRS: www.irs.ustreas.gov
- Dept. Labor: www.dol.gov/dol/pwba
- Social Security: www.socialsecurity.gov
- IFEBP: www.ifebp.org
- Mass. Deferred Comp.: www.massdcp.org

4. Board Meetings

Retirement board meetings are open and public meetings. G.L. c. 39, § 23B is the open meeting law for municipal entities (text follows). This law states "All meetings of a governmental body shall be open to the public and any person shall be permitted to attend any meeting except as otherwise provided by this section." Other similar laws exist for county and state entities. These laws require all retirement board meetings to be open and accessible to the public. A narrow exception for executive session is included in these laws. Executive sessions should be used sparingly and only in accordance with the applicable law. Boards may not use an executive session solely to exclude participation or observation. These open meeting laws do include provisions which provide for investigation and prosecution of violations by law enforcement agencies. A copy of the Commission's written policy on executive sessions is included (text follows).

Another important issue addressed in these laws is the requirement of maintaining minutes of both open and executive sessions. This requirement both guarantees the public access to the decision making process of government and protects the retirement board against suits alleging an unfair or illegal decision making process. Retirement boards should decide whether meetings should be tape-recorded and transcribed or whether a record keeper can make accurate minutes. Boards should consider whether both recording and minute taking are appropriate. A good example of retirement board minutes is included on pages 59-68 of this document. These minutes should include accurate notes on all discussions, procedures and votes taken. The minutes should include notations of documents that were distributed to board members. When dealing with investment or procurement issues, it is especially important for the minutes to accurately describe discussions and deliberations. Retirement boards should also prepare a meeting agenda in advance of meetings to be made public upon request.

Board members should carefully review the previous meeting's minutes to assure that they are complete and accurate. The board should then vote to accept the minutes of the previous meeting.

Retirement board minutes are crucial in proving that board members properly fulfilled their fiduciary duty. Boards should consider these minutes to be as important to board operation as contracts and other important documents.

CHAPTER 39: SECTION 23B OPEN MEETINGS OF GOVERNMENTAL BODIES

Section 23B. All meetings of a governmental body shall be open to the public and any person shall be permitted to attend any meeting except as otherwise provided by this section.

No quorum of a governmental body shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as provided by this section.

No executive session shall be held until the governmental body has first convened in an open session for which notice has been given, a majority of the members have voted to go into executive session and the vote of each member is recorded on a roll call vote and entered into the minutes, the presiding officer has cited the purpose for an executive session, and the presiding officer has stated before the executive session if the governmental body will reconvene after the executive session.

Nothing except the limitation contained in this section shall be construed to prevent the governmental body from holding an executive session after an open meeting has been convened and a recorded vote has been taken to hold an executive session. Executive sessions may be held only for the following purposes:

(1) To discuss the reputation, character, physical condition or mental health rather than the professional competence of an individual, provided that the individual involved in such executive session has been notified in writing by the governmental body, at least forty-eight hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:

(a) to be present at such executive session during discussions or considerations which involve that individual.

(b) to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation in said executive session.

(c) to speak in his own behalf.

(2) To consider the discipline or dismissal of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual, provided that the individual involved in such executive session pursuant to this clause has been notified in writing by the governmental body at least forty-eight hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:

(a) to be present at such executive session during discussions or considerations which involve that individual.

(b) to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation.

(c) to speak in his own behalf.

(3) To discuss strategy with respect to collective bargaining or litigation if an open

meeting may have a detrimental effect on the bargaining or litigating position of the governmental body, to conduct strategy sessions in preparation for negotiations with nonunion personnel, to conduct collective bargaining sessions or contract negotiations with nonunion personnel.

(4) To discuss the deployment of security personnel or devices.

(5) To investigate charges of criminal misconduct or to discuss the filing of criminal complaints.

(6) To consider the purchase, exchange, lease or value of real property, if such discussions may have a detrimental effect on the negotiating position of the governmental body and a person, firm or corporation.

(7) To comply with the provisions of any general or special law or federal grant-in-aid requirements.

(8) To consider and interview applicants for employment by a preliminary screening committee or a subcommittee appointed by a governmental body if an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee or a subcommittee appointed by a governmental body, to consider and interview applicants who have passed a prior preliminary screening.

(9) To meet or confer with a mediator, as defined in section twenty-three C of chapter two hundred and thirty-three, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or body, provided that: (a) any decision to participate in mediation shall be made in open meeting session and the parties, issues involved and purpose of the mediation shall be disclosed; and (b) no action shall be taken by any governmental body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open meeting after such notice as may be required in this section.

This section shall not apply to any chance meeting, or a social meeting at which matters relating to official business are discussed so long as no final agreement is reached. No chance meeting or social meeting shall be used in circumvention of the spirit or requirements of this section to discuss or act upon a matter over which the governmental body has supervision, control, jurisdiction or advisory power.

Except in an emergency, a notice of every meeting of any governmental body shall be filed with the clerk of the city or town in which the body acts, and the notice or a copy thereof shall, at least forty-eight hours, including Saturdays but not Sundays and legal holidays, prior to such meeting, be publicly posted in the office of such clerk or on the principal official bulletin board of such city or town. The secretary of a regional school district committee shall be considered to be its clerk and he shall file the notice of meetings of the committee with the clerk of each city or town within such district and each such clerk shall post the notice in his office or on the principal official bulletin board of the city or town and such secretary shall post such notice in his office or on the principal official bulletin

board of the district. If the meeting shall be of a regional or district governmental body, the officer calling the meeting shall file the notice thereof with the clerk of each city and town within such region or district, and each such clerk shall post the notice in his office or on the principal official bulletin board of the city or town. The notice shall be printed in easily readable type and shall contain the date, time and place of such meeting. Such filing and posting shall be the responsibility of the officer calling such meeting.

A governmental body shall maintain accurate records of its meetings, setting forth the date, time, place, members present or absent and action taken at each meeting, including executive sessions. The records of each meeting shall become a public record and be available to the public; provided, however, that the records of any executive session may remain secret as long as publication may defeat the lawful purposes of the executive session, but no longer. All votes taken in executive sessions shall be recorded roll call votes and shall become a part of the record of said executive sessions. No votes taken in open session shall be by secret ballot.

A meeting of a governmental body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction or by means of videotape equipment fixed in one or more designated locations determined by the governmental body except when a meeting is held in executive session; provided, that in such recording there is no active interference with the conduct of the meeting.

Upon qualification for office following an appointment or election to a governmental body, as defined in this section, the member shall be furnished by the city or town clerk with a copy of this section. Each such member shall sign a written acknowledgement that he has been provided with such a copy.

The district attorney of the county in which the violation occurred shall enforce the provisions of this section.

Upon proof of failure by any governmental body or by any member or officer thereof to carry out any of the provisions for public notice or meetings, for holding open meetings, or for maintaining public records thereof, any justice of the supreme judicial court or the superior court sitting within and for the county in which such governmental body acts shall issue an appropriate order requiring such governmental body or member or officer thereof to carry out such provisions at future meetings. Such order may be sought by complaint of three or more registered voters, by the attorney general, or by the district attorney of the county in which the city or town is located. The order of notice on the complaint shall be returnable no later than ten days after the filing thereof and the complaint shall be heard and determined on the return day or on such day thereafter as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties; provided, however, that orders with respect to any of the matters referred to in this section may be issued at any time on or after the filing of the complaint without notice when such order is necessary to

fulfill the purposes of this section. In the hearing of such complaints the burden shall be on the respondent to show by a preponderance of the evidence that the action complained of in such complaint was in accordance with and authorized by section eleven A1/2 of chapter thirty A, by section nine G of chapter thirty-four or by this section. All processes may be issued from the clerk's office in the county in which the action is brought and, except as aforesaid, shall be returnable as the court orders.

Such order may invalidate any action taken at any meeting at which any provision of this section has been violated, provided that such complaint is filed within twenty-one days of the date when such action is made public.

Any such order may also, when appropriate, require the records of any such meeting to be made public, unless it shall have been determined by such justice that the maintenance of secrecy with respect to such records is authorized. The remedy created hereby is not exclusive, but shall be in addition to every other available remedy. Such order may also include reinstatement without loss of compensation, seniority, tenure or other benefits for any employee discharged at a meeting or hearing held in violation of the provisions of this section.

Such order may also include a civil fine against the governmental body in an amount no greater than one thousand dollars for each meeting held in violation of this section.

The rights of an individual set forth in this section relative to his appearance before a meeting in an executive or open session, are in addition to the rights that an individual may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements, and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

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[redacted] Retirement Board Meeting
June 23, 1998

The regular meeting of the [redacted] Retirement Board, duly posted to be held in the Town Hall Conference Room, [redacted] Town Hall, [redacted], MA on the above date was called to order at 2:00 p.m. by Chairman [redacted], with members [redacted], [redacted], and [redacted] present.

Board to meet with [redacted], Senior Vice President [redacted], Inc. to discuss the Retirement System's Fixed Income Portfolio. Bill noted that I.R.M. has assets of $2.3 billion with 52 clients and 8.5 employees.I.R.M. is no longer actively marketing, they are satisfied with the clients they have. The investment results as of May 31, 1998 is 2.86% year to date, 9.10% in the last 12 months and 22.97% inception cumulative. Account-inception 7/31/95.

On June 3, 1996, the Board had sent a letter to IRM requesting that they keep $180,000.00 liquid in cash at all times because of Board s cash flow needs. However, the cash flow needs will now be through the [redacted] Fund and therefor IRM will no longer need to keep the $l80,000.00 available. On a motion made and second, the Board
VOTED to send a letter to [redacted] to notify them that they no longer need to keep a cash balance of $180,000.00.

[redacted] and [redacted] was present at the meeting at this time.

[redacted] - Received report and and certificate from the Regional Medical Panel pertaining to the examinaton of Mr. [redacted] on May 21, 1998 by Dr. [redacted], Chairman, Dr. [redacted] and Dr. [redacted]. All three doctors voted "Yes" to each of the following questions:

1. Is the member mentally or physically incapable of performing the essential duties of his or her job as described in the current job description?
2. Is said incapacity likely to be permanent?
3. Is said incapacity such as might be the natural and proximate result of the personal injury sustained or hazard undergone on account of which retirement is claimed?

On a motion made and second, the Board
VOTED to accept the Certificate and Report of the Regional Medical Panel consisting of [redacted] M.D., [redacted], M.D. and [redacted], M.D. who examined [redacted] on May 21, 1998. Unanimous

Also received the following legal opinion from the Board's Legal Counsel, which states:

[redacted] Retirement Board Meeting
June 23, 1998

"You have requested our opinion on with respect to the Application for Accidental Disability Retirement ("Application") filed with the [redacted] Retirement Board ("Board") on or about September 20, 1996 by [redacted] in the Department of Public Works. Mr. [redacted] is seeking accidental disability retirement pursuant to M.G.L. c. 32 s.7, claiming that a back injury he received during the course of his employment on January 10, 1994 has rendered him permanently disabled.

The Board voted to request that the Public Employee Retirement Administration Commission ("PERAC") convene a regional medical panel to examine [redacted]. The appointed members were [redacted], M.D., [redacted], M.D. and [redacted] M.D. ("First Panel") and examined Mr. [redacted] on February 25, 1997. On or about March 6, 1997, the Board received the First Panel's Regional Medical Panel Certificate ("Certificate"), which answered the first question in the negative, thus opining that Mr. [redacted] is not disabled.

The Board reviewed the First Panel's Certificate and supporting narrative report and met on April 22, 1997 to discuss the Application with Mr. [redacted] and his counsel. Thereafter, the Board requested clarification from the First Panel with respect to its opinion that Mr. [redacted] was not disabled. On June 30, 1997, the Board received the First Panel's clarification report, which reiterated its earlier opinion that Mr. [redacted] was not disabled from performing his duties as a [redacted]. On July 22, 1997, the Board met to discuss the First Panel's clarification report. Upon doing so, the Board voted pursuant to M.G.L. c.32, s. 20(5)(d) to refer the matter to a neutral physician for an opinion with respect to Mr. [redacted]'s claim.

On November 5, 1997, Mr. [redacted]'s medical records were forward to [redacted], M.D. for review. On November 23, 1997, Dr. [redacted] submitted his report to the Board, which stated that Mr. [redacted] suffered from a pre-existing degenerative spine condition which was aggravated by his work-related injuries of January, 1994 and May, 1995, thus rendering him permanently disabled from performi[redacted] duties as a [redacted]. After considering Dr. [redacted]'s report as its December 16, 1997 meeting, the Board voted to refer the matter to PERAC for the convening of a new regional medical panel. After contacting PERAC on January 22, 1998, the Board's request was granted and a new medical panel was convened to examine Mr. [redacted].

A regional medical panel comprised of [redacted], M.D., [redacted], M.D., and [redacted] M.D.("Second Panel") examined Mr. [redacted] on May 21, 1998. On June 12, 1998, the Board received the Second Panel's Certificate, which answered all three questions in the

affirmative, thus opining that Mr. [redacted] is permanently physically incapacitated from performing the essential duties of his position and that his incapacity is such that might be the natural and proximate result of January 10, 1994 injury.

We have been asked by the Board to determine whether the Panel has applied the appropriate standard in rendering its opinion and if so whether Mr. [redacted] has satisfied the statutory criteria to be retired for accidental disability. Based on our review of M.G.L. C. 32, ss. 6 and 7, the applicable rules and regulations of PERAC and the relevant case law, we believe that the Panel has applied the appropriate standard and the Board may grant Mr. [redacted]'s Application.

DISCUSSION

To qualify for accidental disability retirement, Mr. [redacted] must show that he is totally and permanently disabled for further service due to a personal injury sustained or hazard undergone as a result of, and while in the performance of his duties at some definite time and at some definite place. M.G.L. c. 32, s. 7(1). To be awarded benefits pursuant to M.G.L. c. 32, s. 7, the medical panel must conclude that Mr. [redacted]'s disability might be the natural and proximate result of the personal injury sustained by the applicant. Malden Retirement Board v. Contributory Retirement Appeal Board. 1 Mass. App. Ct. 420 (1973); Kelley v. Contributory Retirement Appea1 Board. 341 Mass. 611 (1961). In addition, the aggravation of a pre-existing condition by a work-related injury is compensable under M.G.L. c. 32. Robinson v. Contributory Retirement Appeal Board, 20 Mass. App. Ct. 634, 638, (1985); Baruffaldi v. Contributory Retirement Appeal Board. 337 Mass. 495, 501 (1958).

A medical panel's affirmative certificate as to causation is not conclusive of the ultimate fact of causation; rather, the certification by the medical panel is merely "in the nature of evidence before the local board." Wakefield Contributory Retirement Board v. Contributory Retirement Appeal Board. 352 Mass. 499, 502 (1967); Blanchette v. Contributory Retirement Appeal Board. 20 Mass. App. Ct. 479, 483 (1985). The medical panel's obligation to determine whether a specific incident or series of incidents "might" have caused the applicant's disability. M.G.L. c. 32, s 6(3); Lisbon v. Contributory Retirement Appeal Board. 41 Mass. App. Ct. 24-6, 254 (1996).

The final determination whether causation has been proved by the applicant is reserved for the local retirement board based upon all relevant evidence, including medical and non-medical facts. Noone v. Contributorv-Retirement Appeal Board, 34 Mass. App. Ct. 756, 758 (1993); Wakefield, 352

Mass. at 503; Kelley. 341 Mass. at 614. Based on our review of all the documentary evidence, it appears that Mr. [redacted] has satisfied his burden of establishing an entitlement to
accidental disability retirement.

The evidence before the Board in the way of medical and non-medical facts indicates that on January 10, 1994, Mr. [redacted] was using a crane to move the rear section of a sander when it slipped away from him and in an effort to regain control of the sander, he injured his back. Mr. [redacted] was awarded worker's compensation as a result this injury and continued to receive weekly worker's compensation benefits until he accepted a]ump-sum settlement of his case on April 14, 1998. The Second Panel has opined that Mr. [redacted] is permanently incapacitated from performing the essential duties of his position as a [redacted], and that his incapacity Is such as might be the natural and proximate result of his claimed job-related injury. There has been no evidence presented to suggest that Mr. [redacted] is not incapacitated or that his incapacity is not the result of his claimed job-related injury. Upon reviewing all the evidence in this case, it would be appropriate for the Board to grant Mr. [redacted]'s Application.

CONCLUSION

The evidence before the Board in the way of medical and non-medical evidence indicates that Mr. [redacted] has identified an injury which was sustained during the performance of his duties which has rendered him incapacitated. The Second Panel has opined that Mr. [redacted] is permanently incapacitated from performing his duties as a [redacted] and that his incapacity is such as might be the natural and proximate result of his claimed job-related injury. There has been no evidence presented to gen-uineness of Mr. [redacted]'s claim. Therefore. Based on the foregoing, it would be reasonable the Board to award Mr. [redacted]'s accidental disability retire-ment. Such a decision is both substantively and procedurally appropriate."

FINDINGS 0F FACT

1. [redacted] (hereinafter referred to as [redacted] was employed as a [redacted] in the Town of [redacted].

2. On or about September 20, 1996, [redacted] filed an application for accidental disability retirement pursuant to M.G.I,. c. 32, s. 7. [redacted] submitted document entitled "Intent to Retire" ("Application") in conjunction with other relevant documentation wherein he applied for accidental disability retirement as the

result of a back injury he sustained while in the performance of his duties on January l.0, 1994.

3. The Board voted to convene a Regional Medical Panel and requested that the Public Employee Retirement Administration Commission ("PERAC") appoint said Panel.The appointed Panel members were [redacted], M.D., [redacted], M.D. and [redacted], M.D. The members of the appointed Regional. Medical Panel (hereinafter referred to as the "first Panel") examined [redacted] on February 25, 1997 and answered the first question on the Regional Medical Panel Certificate ("Certificate") in the negative, thus opining that [redacted] is not incapacitated from performing the essential duties of a [redacted].

4. The Board sought clarification from the First Panel regarding its negative response. In reply to the Board's inquiry, the Panel reiterated its position that [redacted] is not disabled from performing his duties.

5. On July 22, 1997, the Board voted pursuant to M.G.L. c. 32, s 20(5)(d) to refer the matter to a neutral physician for an opinion with respect to [redacted]'s claim.

6. On November 5, 1997, [redacted]'s medical records were forwarded to [redacted], M.D. On November 23, 1997, Dr.[redacted] submitted his report to the Board, which stated that [redacted] suffered from a pre-existing degenerative spine condition which was aggravated by his work-related injuries of January, 1994 and May, 1995, thus rendering him permanently disabled from performing the essential duties of a [redacted].

7. At its meeting on December 17, 1997, the Board voted to refer the matter to PERAC the convening of a new regional medical panel to examine [redacted]. PERAC granted the Board's request.

8. The appointed Panel members were [redacted], M.D., [redacted], M.D., [redacted], M.D. The members of the appointed Regional Medical Panel (hereinafter referred to as the "Second Panel") examined [redacted] on May 21, 1998 and answered all three questions on the Certificate in the affirmative, thus opining that [redacted] is permanently incapable of performing the essential duties of a [redacted] and that his incapacity is such as might be the natural and proximate result of [redacted]'s job-related injuries.

9. The Board sought the opinion of its legal counsel whether the Second Panel has applied the proper medical

standard pursuant to M.G.L. c. 32. Opinion s. 6 in rendering its opinion with respect to [redacted]'s condition.

10. By letter dated June 23, 1998, legal counsel informed the Board that

the Second Panel had satisfied its statutory obligations pursuant to M.G.I.. c. 32 s. 6 in opining that is permanently incapable of performing the essential duties of a master mechanic as a result of his job-related injuries.

11. After reviewing the medical and non-medical evidence, the Board voted to accept the Second Panel's Certificate and supporting narrative report.

After reviewing the Application, the Second Panel's Regional Medical Panel Certificate, the accompanying narrative report, the medical reports, the opinion of legal counsel and the provisions of the General Laws, Chapter 32, s. 6 and s. 7, on a motion made and second the Board
VOTED unanimously to grant the accidental disability application of [redacted], provided however, that said grant is subject to review by the Public Employee Retirement Administration Commission pursuant to the provisions of M.G.L. c. 32, s. 21(1)(d).

Cases pending -

[redacted], widow of [redacted], petition for accidental death benefits under C.32 s.9 and s.94B. Letters requesting medical records-from doctors and hospitals who had treated [redacted] where sent out on June 8, 1998.

[redacted], widow of [redacted] petition for accidental death benefits under C.32 s.9 and s. 94, received notice on June 8, 1998 from PERAC that [redacted], Cardiology Associates of Greater Boston, MA has been appointed a single physician to review the medical records of [redacted]. Records mailed to Dr. [redacted] on June 9, 1998.

Received approval from PERAC to grant retirement allowances to [redacted], as of April 18, 1998 under option (a).
Annuity $ 5,180.04
Pension 14,914.56
Yearly $20,094.60
Monthly 1,674.55
VOTED to issue for payment as approved.

[redacted] Retirement Board Meeting
June 23, 1998

Received approval from PERAC to grant retirement benefits to [redacted] as of May 1, 1998 under option (c).

	Member	Beneficiary
Annuity	$4,398.12	$2,932.08
Pension	17,302.32	11,534.88
Yearly	21,700.44	14,466.96
Monthly	1,808.37	

VOTED to issue for payment as approved.

Received notice of the death of [redacted], member, [redacted] Housing Authority on 5/29/98.
VOTED to note the records and file.

Received application for Spousal Death Benefits under C.32, s.12 (2)(d)from [redacted], widow of [redacted]. NOTE: [redacted] was having buyback payments for his Veteran's Military Service credit. Mrs. [redacted] will have to pay the ful1 balance due the buyback to have it included in the retirement calculations.
VOTED to accept and process pending payment in full, of the balance due for the military service credit buyback.

Received application for superannuation from [redacted], Police Officer, at 51 years of age with 25 years 6 months creditable service and choosing option (b). Retirement to be effective June 13, 1998.
VOTED to accept and process.

Received application for Superannuation Retirement Allowance under C.32, s. 5, from [redacted] at age 56 years with 16 years 4 months creditable service and choosing option (a). Retirement to be effective.
VOTED to accept and process.

VOTED to include for membership in the [redacted] Contributory Retirement System the following new employees with certificate numbers:
[redacted], Police Officer eff. 6/1/98
[redacted], Officer, eff. 6/1/98
[redacted], Police Officer eff. 6/1/98

Received notice for transfer of account of [redacted] to the State Boston Retirement System and the account of [redacted] to the State Teachers' Retirement System.
VOTED to transfer as requested.

VOTED to issue for payment Vouchers #12, & #13.

[redacted] Retirement Board Meeting
June 23, 1998

Received notice of injury to the following members:
[redacted], Superintendent Unicorn Back injury
[redacted], Ass't. [redacted], Leg injury
[redacted], Sch [redacted] Back, Chest injury
[redacted], DPW Laborer Injury to both eyes

VOTED to so note the records and file.

Received from [redacted], Governmental Account Representative, [redacted] Insurance Agency, Inc. letter regarding the Board's Public Officials Liability insurance coverage and due to renew on June 25, 1998.

VOTED to renew the Public Officials Liability Insurance coverage and pay the premium.

Received from [redacted], a bill for [redacted] for 1st Quarter 1998 - [redacted] Services.
Since the Board never signed [redacted] and will not pay [redacted] for [redacted] services that the Board never received or requested.

The Board then
VOTED to send a letter to each of the Board's investment managers to notify them to discontinue forwarding any monthly or quarterly statements to [redacted]

The Board also
VOTED to invite [redacted] from [redacted] to come to the next Board meeting on July 28, 1998

NOTE: Transfer of The [redacted] Company Equity Pooled Fund to PRIT was completed on June 1, 1998.

Copies of the February and March Trial Balance given to each Board member.

Received notice from the Board of Selectmen that a Special Town Meeting is scheduled to be held in the [redacted] Town Hall on Monday, June 29, 1998 at 7:30 p.m.

Retirement Board submitted the following article for the Special Town Meeting:

ARTICLE To see if the Town will vote to accept the provisions of Section 103 of Massachusetts General Law, Chapter 32 relative to the annual cost-of-living adjustment (COLAS) for

[redacted] Retirement Board Meeting
June 23, 1998

eligible retirees in the [redacted] Contributory Retirement System or take any other action in relation thereto.

Received from PERAC list of two retirees ([redacted] and [redacted]) that have been sent "failure to resubmit" letters by PERAC because they have not completed the requisite documents for PERAC. This information was sent to the Board for their information.
VOTED to file.

Received from PERAC the following memorandums:

#21/1998	COLA Questions
#22/1998	Investment Manager, Consultant and Custodian Listing
#23/1998	COLA
#24/1998	CRAB Administration
#25/1998	Simultaneous Applications for Disability and Superannuation Retirement Benefits
#26/1998	Early Intervention Program/H.5020 PERAC had also fax this memorandum on 6/15/98. PERAC is asking all board members to contact their respective legislative delegation and urge favorable action on H5020. (Also received follow-up notice from Ralph White regarding H5020
#27/1998	Relocation of PERAC's Offices to 5 Middlesex Avenue, Somerville, MA 02145 during the period June 22 through June 29, 1998. PRRAC's new main phone number will be (617) 666-4446 and their PAX number will be (617) 628-4002.

NOTE: copies of memorandums given to each Board member.
VOTED to so note the records and file.

Received from BankBoston letter regarding the year 2000. BankBoston has implemented a comprehensive and integrated plan to verify compliance across its internal systems, as well as external systems that share date-dependent information with BankBoston.
VOTED to so note the records and file.

Also received from [redacted] letter requesting the Board to complete their Certification letter of authorized signers and a sample of signature of Board's representative.
VOTED to send the Certification letter to BankBoston indicating the following authorized.signers: [redacted], [redacted], [redacted], and in the absence of [redacted], [redacted].

[redacted] Retirement Board Meeting
June 23, 1998

On a motion made by [redacted] and second [redacted], the Board
VOTED to increase the stipend of the Treasurer and Custodian of Funds, [redacted], in accordance with M.G.L. c. 32, s. 20(4)(h) from $1,500.00 to $3,000.00 per year contingent upon that [redacted] submit monthly reconciled bank statements to the Retirement Board
Increase to become effective July 1, 1998.

Received Notice of Class Action in regard to Sears, Roebuck and Co. Securities Litigation.

VOTED to submit information to the Custodial Bank, BankBoston.

Board reviewed all the miscellaneous correspondence.

Retirement office has moved from the basement floor to the second floor of the [redacted] Town Hall effective June 18, 1998. - Possibly will need two new desks, a chair and two file cabinets.

On a motion made by [redacted] and second by [redacted], the Board

VOTED that purchase [redacted] purchase any furniture or equipment necessary to run the office sufficiently.

On a motion made by [redacted] and second by [redacted], the Board
VOTED a increase to the salaries of the Retirement Board Administrator and Administrative Assistant effective 7/1/98. [redacted], [redacted], [redacted], [redacted] voted "Yes" [redacted] voted "No".

VOTED to change the August Retirement Meeting be changed to Wednesday, August 27, 1998 at 2:00 p.m.

There being no further business to come before the Board, it was
VOTED to adjourn. Meeting adjourned at 3:40 p.m.

The next regular Board Meeting is scheduled for Tuesday, July 28, 1998 at 2:00 p.m.

APPROVED BOARD OF RETIREMENT

[redacted], Chairman
[redacted], Member
[redacted], Member

[redacted], Member
[redacted], Member
Respectfully submitted,
[redacted]
Retirement Administrator/
Executive Secretary

COMMISSION POLICY 97-003 EXECUTIVE SESSIONS

The Public Employee Retirement Administration Commission (Commission) must perform its oversight and management of affairs in an efficient and effective manner compliant with Commonwealth laws, regulations and generally accepted operating procedures consistent with the public purpose for the Commission's creation. The Commission therefor establishes this policy to further its efforts in providing the appropriate level of authority and responsibility over the staff and issues coming before it.

The Commission recognizes that there will be times where the Commission must deal with a sensitive issue that must be discussed away from direct public exposure. While these occurrences will be the exception, the Commission in accordance with G.L. c.30A hereby establishes this procedure to formalize the process it will use in these situations.

No executive session shall be held until the governmental body has first convened in an open session for which notice has been given.

- A majority of the members is recorded in attendance and entered in the minutes of the open meeting.
- The vote of each member is recorded and entered in the minutes of the open meeting.
- The Chair of the Commission must cite the purpose for the executive session.
- The Chair of the Commission must state before the executive session whether the Commission will reconvene in open session after the executive session.

Executive sessions may be held only for the following purposes:

1) To discuss the reputation, character, physical condition or mental health rather than the professional competence of an individual, provided that the individual to be discussed in such executive session has been notified in writing by the governmental body, at least forty-eight hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. The governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:

a) to be present at such executive session during discussions or considerations which involve that individual.

b) to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation in said executive session.

c) to speak in his own behalf.

2) To consider the discipline or dismissal of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual, provided that the individual involved in such executive session has been notified in writing by the governmental body at least forty-eight hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. The governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the rights outlined in (1) above.

3) To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the governmental body, and to conduct collective bargaining sessions.

4) To discuss the deployment of security personnel or devices.

5) To investigate charges of criminal misconduct or to discuss the filing of criminal complaints.

6) To consider the purchase, exchange, lease or value of real property, if such discussions may have a detrimental effect on the negotiating position of the governmental body and a person, firm or corporation.

7) To comply with the provisions of any general or special law or federal grant-in-aid requirements.

A record or minutes of executive sessions shall also be maintained. The records of an executive session may remain secret as long as publication may defeat the lawful purposes of the executive session, but no longer.

No votes taken in executive session or open session shall be by secret ballot.

All votes taken in executive sessions shall be recorded and shall become a part of the record of the executive session.

Adopted at Commission meeting on May 27, 1997.