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State Ethics Commission

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Appointed Members of State Boards and Commissions

As a Board or Commission member, are you a "special state employee" for purposes of the conflict of interest law?

You are a "special state employee" under the conflict of interest law if you are serving in a state agency in a position for which no compensation is provided. You are also a special state employee if you are not an elected official and you are compensated for your services as a board or commission member for not more than 800 hours during the preceding 365-day period.

Example. You are a board member of a state agency. You are not paid, but may be reimbursed for expenses. You are a special state employee.

Example. You are a board member of a state agency. You receive a stipend for your service. You did not perform services as a board member for more than 800 hours during the preceding 365 days (including time spent at board meetings, preparing, and performing other duties.) You are a special state employee.

How does the conflict of interest law apply to special state employees?

As a special state employee, you are subject to all the provisions in the conflict of interest law that apply to "state employees" except where the statute specifically sets out less restrictive provisions for special state employees.

Which provisions of the conflict of interest law apply less restrictively to special state employees?

Two provisions of the conflict of interest law, section 4 and section 7, apply less restrictively to special state employees. Section 4 restricts the extent to which a state employee may engage in activities on behalf of other people and organizations in matters in which the state has an interest. Section 7 prohibits state employees from having a financial interest in a state contract, unless an exemption applies. Most state board or commission members volunteer their time or receive nominal stipends. In recognition of the need to avoid unduly restricting the ability of board and commission members to earn a living while serving the state, sections 4 and 7 provide more options for special state employees.

Section 4: Acting for Others in State Matters

Section 4 is intended to prevent divided loyalties between your responsibilities as a state employee and your private interests. Generally, the restrictions in section 4 for special state employees will limit your ability to work for or represent other people and organizations in connection with particular matters before your own state board or commission, but are less likely to prevent you from doing such work before other state agencies.

Specifically, if (1) you have participated in a particular matter as a board or commission member, or (2) you have, or have had in the past year, official responsibility for a matter because it has been before your board or commission, even if you did not participate personally, or (3) a particular matter is pending before the state board or commission that you serve, then under section 4, you may not receive compensation from anyone other than the state or act as agent or attorney for anyone other than the state in connection with the matter. The last of the three conditions will not apply to you, however, if you serve in your state position for 60 days or fewer in any 365-day period. (The 60 day period includes any day on which you perform any board duties such as attending a meeting, making a telephone call to a fellow board or staff member or reviewing board materials.)

Example. You are a member of a state housing board. You are also an employee of a non-profit organization that builds affordable housing. Under section 4, as a special state employee, you may not be paid by the non-profit to schedule a meeting with your state housing board to discuss the non-profit organization's proposed joint project. In addition, you may not sign any letters or any plans to be submitted to your own board or appear before your board on the proposed project even if you will not participate in that matter as a board member.

Example. You are a member of a state environmental board. You are also an officer of a private company. Under section 4, because you are a special state employee, you may be paid by the company to prepare amended Articles of Organization to be filed with the Secretary of State's Office (because it is a different state office from the one you are serving). You also may sign that document on behalf of the company as well as contact the Secretary of State's Office to discuss that filing.

Example. You are a member of a state library commission. You are also an employee of a private company that sells computers. On behalf of the private company, you may be paid to prepare and submit a response to a request for bids for new computers from a state highway agency (because it is a different state office from the one you are serving).

If you have a compensated non-public position, section 4 will not prohibit you from receiving your usual compensation during time spent serving in an uncompensated state position.

Example. You are a salaried employee of a private company, and as part of your work there, you typically spend one day per month serving as an uncompensated member of a state board. You may receive your usual salary from your private employer for days spent volunteering for the state without violating section 4.

Section 7: Financial Interest in a State Contract

Section 7 prohibits a state employee from having a financial interest in a state contract, unless an exemption applies. This section is intended to prevent "double-dipping" in situations where a state employee has a second, paid arrangement involving the state, such as a job or a financial interest in a contract. It does not apply to any financial interest which consists of the ownership of less than 1 percent of the stock of a corporation.

Special state employees may be eligible for three exemptions from this prohibition:

- If your Board or Commission position is uncompensated, you may retain financial interests that you had in state contracts before you began your state service. This includes any appointed, paid state position you held at the time. If you hold such a position, you have to file a disclosure with your appointing authority in that position disclosing that you have been elected or appointed to the uncompensated Board or Commission position. *930 CMR 6.02.*
- You may use an exemption under section 7(d) to have a financial interest in a state contract if, in your capacity as a Board or Commission member, you do not participate in or have official responsibility for any of the activities of the state agency that made the contract. You must file a disclosure with the State Ethics Commission of your financial interest in the contract.
- If neither of those exemptions covers a specific situation, then you may seek an exemption from the Governor under section 7(e). In that situation, you must file a disclosure with the State Ethics Commission of your and your immediate family's financial interest in the contract, along with the written exemption you obtain from the Governor.

Example. You are a partner in a law firm. Your firm represents some state agency clients, and you receive a share of their fees. The Governor wants to appoint you to an uncompensated position on a state commission. You may retain your existing interest in your firm's representation of the state agencies without violating section 7, and you are not required to make any disclosure. You may not acquire new financial interests in state contracts while serving on the commission unless you qualify for the section 7(d) or (e) exemptions, which do require disclosures.

Example. You are an uncompensated member of a state court commission. At the time you were named to the state court commission, you already held a paid position with the state library. You may retain the paid position if you disclose the commission appointment to the state official who appointed you to your library position. If you join the commission first and later are offered a paid job with the state library, you will have to file a written disclosure of your financial interest in that position with the State Ethics Commission to comply with section 7(d).

Example. You are an uncompensated member of the board of a state social services agency. You also own a company that sells office furniture. After you go on the board, your company wants to sell office furniture to the state revenue department. Because you are a special state employee, under section 7(d), you may have a financial interest in your company's contract to provide office furniture to the state's revenue department as long as you file a written disclosure of your financial interest in that contract with the State Ethics Commission.

Example. You are a compensated member of a state board that regulates utilities. You are also an employee of a company that sells paper supplies. Your private employer is interested in selling paper supplies to your board; if it does, you will receive a share of the profits. You cannot use the 930 CMR 6.02 exemption because your board position is compensated, and you cannot use the section 7(d) exemption because the sale would be to your own board. You may be paid in connection with providing paper supplies to your board only if you receive a written exemption from the Governor pursuant to section 7(e).

What other provisions of the conflict of interest law apply to special state employees?

As a special state employee, you are subject to prohibitions that apply to other state employees: the prohibitions on bribes, gifts, participating in matters in which you or those close to you have a financial interest, misuse of your position to benefit yourself or others, and the improper disclosure of confidential information. In addition, you are subject to the revolving door prohibitions which prohibit you, after you leave state service, from working for someone else on a matter if you participated in the matter at any time as a special state employee or had responsibility for it during your last two years of state service. You must file a written disclosure with your appointing authority if a relationship or affiliation you have with a person or organization would cause a reasonable person to think you could have a conflict of interest while performing your duties as a board or commission member.

Example. You are a partner in a law firm and you serve in an uncompensated position on a state board. One of your partners does work, on a *pro bono* basis, for a nonprofit entity. The nonprofit has a matter before your board. Your partner is not representing the nonprofit, but his connection with the nonprofit could create an appearance that you might favor the nonprofit. You can eliminate that appearance by filing a written disclosure with your appointing authority.

This summary is intended to help you understand the general requirements of the conflict of interest law. It is not a substitute for legal advice. You may obtain free confidential advice on the Commission's website, www.mass.gov/ethics, by calling (617) 371-9500, or by requesting written advice from the State Ethics Commission's Legal Division, One Ashburton Place, Room 619, Boston, MA 02108.

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