RULINGS

Advisory Opinions

Enforcement Actions

for Calendar Year 2001

STATE
ETHICS
COMMISSION

MASSACHUSETTS

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RULINGS

Advisory Opinions

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Included in this publication are:

- **State Ethics Commission Formal Advisory Opinions issued in 2001. Cite Conflict of Interest Formal Advisory Opinions as follows: *EC-COI-01-(number).***

- **State Ethics Commission Decisions and Orders, Disposition Agreements and Public Enforcement Letters issued in 2001. Cite Enforcement Actions by name of respondent, year, and page, as follows: In *the Matter of John Doe*, 2001 SEC (page number).**

Note: Enforcement Actions regarding violations of G.L. c. 268B, the financial disclosure law, are not always included in the *Rulings* publications.

Typographical errors in the original texts of Commission documents have been corrected.

State Ethics Commission

Advisory Opinions

2001

Summaries of Advisory Opinions
Calendar Year 2001

EC-COI-01-1 - The "city councillor's exemption" of M.G.L. c. 268A, §20 does not allow a high school counselor who is elected to the City Council to accept a paid position as an assistant principal or principal in the City's school system.

EC-COI-01-2 - A member of the general court is permitted, under paragraph 5 of M.G.L. c. 268A, §7, to receive compensation from an educational institution of the Commonwealth for employment as an adjunct faculty member and is also permitted to be compensated as the coordinator of evening services because the coordinator duties are predominantly associated with the instructional function of the College, and therefore, "related" to teaching.

CONFLICT OF INTEREST OPINION
EC-COI-01-1

FACTS:

You are employed full time as a school counselor at a City's High School.[1] While holding that position, you were elected to the City Council and have continued to serve in both municipal positions in the City in compliance with G. L. c. 268A, §20.[2]

You anticipate that positions as a principal or assistant principal in the City's school system may become open. If one of these positions were to become open while you are serving as a City Councillor, you would like to apply for it and, if appointed, continue to serve as a City Councillor while also receiving a salary for your position as an assistant principal or principal in the City's school system.

School counselors are part of the same union collective bargaining unit as assistant principals and each position operates under the same collective bargaining agreement. If you were appointed an assistant principal, you would, however, receive a higher salary than your current school counselor's salary. By contrast, principals are not part of a union because they are considered managers in the school system. As a result, each principal has a separate contract with the school system.

You assert that the normal progression for school counselors or teachers is to move up to school administration. You compare this advancement to the promotion system for the Fire and Police departments, where, based on examinations, firefighters or officers move up the ranks to Sergeants or Lieutenants.

QUESTION:

May you, while serving as a City Councillor, relinquish your current paid position as a school counselor and accept a paid position as an assistant principal or principal in the City's school system under the "city councillor's exemption" to G. L. c. 268A, §20?

ANSWER:

No. For the reasons described below, §20 will prohibit you from being appointed and paid to become an assistant principal or principal while you are a City Councillor.

DISCUSSION:

As a school counselor, you are a municipal employee[3] under the conflict of interest law. When you later became a City Councillor, you also became a municipal employee in that capacity for purposes of the conflict of interest law. Because, as a City Councillor, you also have a financial interest in your contract with the City to serve as a school counselor, you must comply with G. L. c. 268A, §20, which prohibits you from having such a financial interest [4] unless you qualify for one of the statutory exemptions. Section 20 imposes a broad prohibition against a municipal employee's having an additional "financial interest, directly or indirectly, in a contract made by a municipal agency of the same city." As we said in *EC-COI-99-2*, §20 "is intended to prevent a municipal employee from influencing the awarding of contracts by any municipal agency in a way which might be beneficial to the employee" and "'is concerned with the . . . potential for impropriety as well as with actual improprieties.'"[5]

As noted above, you have complied with the "city councillor's exemption" in order to hold both positions. In pertinent part, this exemption states:

> This section shall not prohibit an employee of a municipality with a city . . . council form of government from holding an elected office of councillor in such municipality, nor in any way prohibit such an employee from performing the duties of or receiving the compensation provided for such office; provided, however, that no such councillor may vote or act on any matter which is within the purview of the agency by which he is employed or over which he has official responsibility; and provided, further, that *no councillor shall be eligible for appointment to such additional position while a member of said council* or for six months thereafter. Any violation of the provisions of this paragraph which has substantially influenced the action taken by a municipal agency in any matter shall be grounds for avoiding, rescinding or cancelling such action on such terms as the interest of the municipality and innocent third parties require. No such elected councillor shall receive compensation for more than one office or position held in a municipality, but shall have the right to choose which compensation he shall receive.[6]

Here, the issue is whether the phrase "no councillor shall be eligible for appointment to *such additional position*" prohibits you from becoming an assistant principal or principal while you continue to serve as a City Councillor.

(a) Statutory Language

We begin our analysis with the plain meaning of the statutory language of the restriction.[7] The exemption allows a compensated municipal employee also to become a city councillor, under certain conditions. However, the individual shall not be eligible for appointment to "such additional position." The word "such" commonly means "of a kind or character about to be indicated, suggested

or exemplified,"[8] or "previously characterized or specified."[9] In this context, such must refer to a *municipal* position. The word "additional" plainly refers to something that is added.[10] Accordingly, the restriction appears, at a minimum, to prohibit you from holding a third paid municipal employee position, in addition to the school counselor and City Councillor positions.

Although the plain language prohibits adding a *third* municipal position in which the individual has a financial interest in a contract, it is unclear whether it is also meant to prohibit substituting the city councillor's pre-existing municipal position for another position in which he has a financial interest in a contract, such as changing from school counselor to assistant principal or principal.[11] There is not necessarily only one antecedent term to the phrase "such additional position" in this exemption. Although we know "such" must refer to a municipal position, it could refer either to the antecedent phrase "employee of a municipality" or the phrase "elected *office* of councillor" or both positions. However, given that "such additional position" appears most closely after "no councillor," it may be that the phrase is intended to refer to a position in addition to that of city councillor.

In any event, if "additional" means "existing by way of addition," it is unclear whether the phrase "such additional position" should also include a municipal position that exists by way of substitution for the prior municipal position. We have no doubt, however, that a change or a promotion from the school counselor position to an assistant principal's position or principal's position would constitute new positions in the school system. And either of these new positions would be in addition to your position of City Councillor.

(b) Legislative History

To help us understand the meaning of "such additional position" because its meaning is open to different interpretations, we may resort to the statute's legislative history.[12] We also consider such factors as "the evil or mischief toward which the statute was apparently directed",[13] the purpose of the legislation, in that "the purpose and not the letter of the statute controls",[14] and the "fair import" of the statute.[15]

In 1999, the Legislature created the exemption for city councillors by amending the existing exemption for town councillors.[16] That exemption, when formerly available only to town councillors,[17] was patterned after another exemption to §20 for selectmen. The Legislature created this latter exemption, the "selectman's exemption,"[18] in response to decisions by the Ethics Commission and the Superior Court which held that §20 prohibited current town employees from continuing to be paid in their primary municipal jobs while also serving as selectmen.[19] Similarly, the exemption for town councillors was enacted in response to opinions by the Commission.[20] Because the relevant language in the selectman's exemption is identical to the language in the current city councillor's exemption and the language first appeared when the Legislature added the selectman's exemption to §20, we may look to the legislative history of the selectman's exemption to determine the legislative intent of the phrase "such additional position."[21]

As noted above, prior to the enactment of the selectman's exemption, the Commission interpreted §20 to prohibit a selectman from continuing to receive compensation for serving in the municipal position he held prior to election. The Legislature and the Governor considered the fact that approximately twenty teachers, who were elected to boards of selectmen, would have to relinquish their teacher salaries or resign from their boards to comply with §20, unless the amendment that became St. 1982, c. 107 was enacted.[22]

The bill, as initially filed by its sponsor, Representative Cellucci, did not include the clause "and provided further that no member shall be eligible for appointment to such additional position while a member or for six months thereafter."[23] Representative Cerasoli moved to amend the bill by adding that clause.[24] In response, the Executive Director of the Ethics Commission wrote to State Senator Fonseca noting, "This new language limits the dual relationships to selectman and some other position. It also guards against a selectman using his position to get himself the other job. For example, it would not prohibit a person who is already a teacher in a town from then becoming selectman. However, a selectman could not be appointed as a teacher while he served as selectman . . ."[25]

Notably, in explaining the legislation in his letter to the Governor, the sponsoring legislator stated, "1.) No such member may vote or act on any matter which is within the purview of the agency by which, he is employed or over which he has official responsibility, and 2.) No member shall be eligible for appointment to such additional position while a member or for six months thereafter. Thus, for example, a teacher can be elected and serve as a selectman in the town he teaches, but he cannot vote, on a matter which effects [sic] the school system, but a selectman who is not a teacher or other municipal employee cannot be appointed as a teacher or other municipal employee during his [selectman's] term ..."[26] In sum, the selectman's exemption allows an elected selectman to retain his pre-existing municipal position.

Subsequent to the enactment of St. 1982, c. 107, the Commission was asked to consider whether the selectman's exemption" would prohibit a municipal employee, who was later elected selectman, from being reappointed to his pre-existing municipal position. The Commission observed in *EC-COI-82-107*,

In response to this prohibition, the General Court considered proposals during the 1982 legislative session to allow dual status of selectman and employee. During the consideration of these proposals, the General Court was made aware of concerns over *potential abuses in the dual status arrangement in particular where selectmen could potentially acquire other municipal positions by virtue of their incumbency in the office of selectman.*[27] [28] In response to this concern, the General Court adopted an amendment to House Doc. No. 1657 which prohibited selectmen from eligibility for appointment to an additional municipal position.[29] This amendment was retained in the final language amending §20 which was approved by the Governor as St. 1982, c. 107.

In view of the legislative history, we concluded that the scope of the restriction "*was intended to cover only new, post-elective appointments to municipal positions* and was not intended to prohibit municipal employees from eligibility for reappointment to positions held immediately prior to their election as selectmen."[30] We also concluded that "to construe §20 so that selectmen could not be eligible for reappointment for positions held prior to election would, in effect, nullify the legislative purpose in enacting St. 1982, c. 107, and would be inconsistent with the Commission's obligation to give G. L. c. 268A a workable meaning."

However, we have not, until now, addressed the issue of whether the selectman's exemption or its subsequent analogues would prohibit an incumbent selectman, town councillor, or city councillor, as the case may be, from being promoted from his first municipal employee position to another position within the same municipal agency.

Here, the positions of assistant principal and principal are different from the position of school counselor. Although you would not be gaining an "additional position" by adding a *third* job, which the city councillor's exemption plainly prohibits, you would be substituting the new position of assistant principal or principal for your current position of school counselor. Unlike the circumstances in *EC-COI-82-107*, you would not be reappointed to the same position but, rather, appointed to a new position. Like any new municipal position, you would have to compete for it, rather than be promoted to it *only* by virtue of your current position.

Mindful that we are obligated to narrowly construe exemptions to the conflict law's prohibitions,[31] we believe that the plain language and the policy behind the city councillor's exemption, like the selectman's exemption, is to prevent a councillor "from influencing the awarding of contracts by any municipal agency in a way which might be beneficial to"[32] the city councillor. Although the Legislature narrowed §20's general restriction by adding the selectman's, town councillor's, and city councillor's exemptions, it ultimately approved the narrower of the proposed exemptions. Thus, it remained concerned about municipal officials, particularly at the highest levels of their respective municipal governments, being able to acquire financial interests in "*other municipal positions by virtue of their incumbency.*"[33] It would undercut the Legislature's intent to allow you, while you are a city councillor, to be promoted from your current municipal position to a different municipal position, either of which would constitute your having a financial interest in a contract for purposes of §20. To conclude otherwise would allow a city councillor to "leverage" the city councillor's exemption to change his pre-existing municipal contract position for better contract positions in city government.

In light of the legislative intent of §20, we are not inclined to extend our conclusion in *EC-COI-82-107* to an appointment to a new position. Accordingly, we conclude that while you have a financial interest in your contract to serve as a school counselor, §20 prohibits you from being eligible for appointment to a principal or assistant principal's position in the City's school system while you are also a member of the City Council or for six months thereafter.[34]

DATE AUTHORIZED: April 10, 2001

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[1] The background to your request is based on information you and the City Solicitor provided.

[2] G. L. c. 268A, §20, para. 4.

[3] "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, ..." G. L. c. 268A, §1(g).

[4] "A municipal employee who has a financial interest, directly or indirectly, in a contract made by a municipal agency of the same city or town, in which the city or town is an interested party of which financial interest he has knowledge or has reason to know, shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than two years, or both." G. L. c. 268A, §20(a).

[5] *Quoting, Quinn v. State Ethics Commission*, 401 Mass. 210, 214 (1987) (holding that §7, the state counterpart to §20, prohibited a state employee from having an interest in his additional contract as a bail commissioner). For an incumbent city councillor who holds no other municipal positions but who wishes to add an appointed paid job with his city or have any other financial interest in a city contract in addition to serving on the city council, only one exemption is available. That exemption, §20(b), imposes significant obstacles to having a financial interest in a municipal contract, evidencing the Legislature=s general intent to make it difficult for a city councillor also to hold other jobs in his city.

[6] G. L. c. 268A, §20, para. 4. (emphasis added).

[7] *Int'l Organization of Masters, etc. v. Woods Hole, Martha's Vineyard & Nantucket Steamship Authority*, 392 Mass. 811, 813 (1984) ("The

intent of the legislature is to be determined primarily from the words of the statute, given their natural import in common and approved usage, and with reference to the conditions existing at the timeof enactment. This intent is discerned from the ordinary meaning of the words in a statute considered in the context of the objectives which the law seeks to fulfill.")

[8] *Webster's Third New International Dictionary* (1993). *See e.g., Brisk Waterproofing Co., Inc. v. Director of the Division of Building Construction*, 338 Mass 784, 785 (1958) (in G. L. c. 149, §44D, which provides that "the awarding authority shall reserve the right to reject any sub-bid . . . if it determines that such sub-bid does not represent the sub-bid of a person competent to perform the work . . . ," the word "such" obviously refers to a "sub-bid of a person competent to perform the work.")

[9] *Id. See also Black's Law Dictionary* (Fifth Ed.). "Of that kind, having particular quality or character specified. Identical with, being the same as what has been mentioned. "like, similar, of the like kind. 'Such' represents the object as already particularized in terms which are not mentioned, and is a descriptive and relative word, referring to the last antecedent."

[10] "Addition" means "the result of adding: anything added" and "additional" means "existing or coming by way of addition." *Webster's Third New International Dictionary* (1993). *See e.g., Town of Burlington v. Dept. Of Educ. Com. of Mass.*, 736 F.2d 773, 790 (1st Cir. 1984) (construing "additional" in the ordinary sense of the word, "additional evidence" means supplemental evidence, thus the clause "additional evidence" in 20 U.S.C. §1415(e)(2), which requires the court to receive the records of administrative proceedings and hear additional evidence at the request of a party, does not authorize witnesses at trial to repeat or embellish their prior administrative hearing testimony—this would be inconsistent with the usual meaning of "additional"); *Chambers I-93 v. Mercedes-Benz of North America*, 911 F. Supp. 34, 35 (D. Mass. 1995) (under G. L. c. 93B, which prohibits a manufacturer from "arbitrarily and without notice to existing franchisees . . ." entering into an agreement "with an additional franchisee," the phrase "additional franchisee" includes only a new franchisee, rather than the sale and relocation of an existing automobile dealership).

[11] You argue that the phrase "such additional position" is not meant to include what amounts to advancement to other jobs within the same career path. Here, you would like to advance in the school system's hierarchy to assistant principal or principal. Moreover, if appointed to one of those positions, you would not continue to serve as a school counselor because you would be promoted to a new position. As a result, you believe that you would not be adding a third position to your current two municipal positions, which, you argue, is what the exemption intends to prohibit. You also contend that if your promotion were considered to be an "additional position," §20 would stifle promotional advancement and opportunity by making a sitting City Councillor ineligible for such a promotion.

[12] *Treasurer & Receiver Gen. v. John Hancock Mut. Life Ins. Co.*, 388 Mass. 410, 423 (1983).

[13] *Meunier's Case*, 319 Mass. 421, 423 (1946).

[14] *Walsh v. Ogorzalek*, 372 Mass. 271, 274 (1977).

[15] *Thatcher v. Secretary of Commonwealth*, 250 Mass. 188, 191 (1924).

[16] The words "city or" were inserted by *St. 1999, c. 7*. This act, entitled "An Act allowing certain municipal employees to serve as city councillors," also amended G. L. c. 39, §6A and G. L. c. 43, §17A. We offer no opinion about whether your seeking appointment as principal or assistant principal would be restricted under those General Laws.

[17] *St. 1985, c. 252, §3.*

[18] "This section shall not prohibit an employee or an official of a town from holding the position of selectman in such town nor in any way prohibit such an employee from performing the duties of or receiving the compensation provided for such office; provided, however, that such selectman shall not, except as hereinafter provided, receive compensation for more than one office or position held in a town, but shall have the right to choose which compensation he shall receive; provided, further, that no such selectman may vote or act on any matter which is within the purview of the agency by which he is employed or over which he has official responsibility; and, provided further, that no such selectman shall be eligible for appointment to any such additional position while he is still a member of the board of selectmen or for six months thereafter. Any violation of the provisions of this paragraph which has substantially influenced the action taken by any municipal agency in any matter shall be grounds for avoiding, rescinding or cancelling the action on such terms as the interest of the municipality and innocent third parties may require."

[19] *St. 1982, c. 107 as amended by St. 1984, c. 459; EC-COI-93-4.* In EC-COI-*82-107*, we observed that St. 1982, c. 107 was enacted in response to the following two decisions. *EC-COI-80-89* concluded that §20 prohibited a selectman from being compensated to teach in his town's school system. *Walsh v. Love*, Norfolk Superior Court Civil Action No. 132687 (July 2, 1981) held also that being paid to be a teacher while also serving as a selectman in the same town violated §20.

[20] *See e.g., EC-COI-83-38* (Commission concluded that the selectman's exemption was not available to town councillors but noted that bills were then pending in the legislature to expand the exemption).

[21] "Sound principles of statutory construction dictate that interpretation of provisions having identical language be uniform" *Webster v. Board of Appeals of Reading*, 349 Mass. 17, 19 (1965).

[22] *See* letter to Governor King, dated May 26, 1982 from Rep. Cellucci.

[23] *See* House Doc. No. 1657 [January 1982].

[24] *See* House Doc. No. 5877 [March 15, 1982]

[25] Letter dated March 25, 1982 from Maureen McGee, Executive Director of the Ethics Commission to State Senator Fonseca.

[26] *See* letters to Governor King, dated May 26, 1982 from Rep. Cellucci and May 27, 1982 from Rep. Flood. *See also* letter dated March 25, 1982 from the Executive Director of the Ethics Commission to Senator Fonseca.

[27] Emphasis added.

[28] *See e.g.*, letter dated March 25, 1982 from Maureen McGee, Executive Director of the Ethics Commission to State Senator Fonseca (describes in detail the general purpose of §20, the concerns about prohibiting teachers from serving as selectmen, and the need to provide an exemption for them without allowing "the very kind of 'double-dipping' that Section 20 is meant to prohibit."

[29] *See* House Doc. No. 5877 [March 15, 1982].

[30] Emphasis added. We observed in *EC-COI-82-107* that the title of St. 1982, c. 107, "An act providing that a person shall not be prohibited from holding the office of selectman in a town because such person is an employee of the Town," reflects an intent to allow incumbent municipal employees also to serve as selectmen while continuing their prior municipal employment.

[31] *See Department of Environmental Quality Engineering v. Town of*

Hingham, 15 Mass. App. Ct. 409, 412 (1983).

[12] *See note 5, supra.*

[13] *EC-COI-82-107* (emphasis added).

[14] Although we concluded in *EC-COI-99-2* that a city councillor, who held no other municipal position prior to his election, may be able to qualify for an exemption under §20(b) to have a financial interest in a contract with his city's school system under certain circumstances, it does not appear that you would be able to qualify for that exemption if you were to resign your position as a school counselor prior to being eligible for appointment to assistant principal or principal. Among other requirements, as noted above, §20(b) requires that, under a contract for personal services, the employee must not receive compensation for more than 500 hours during a calendar year. A contract to serve as assistant principal or principal would require well in excess of 500 hours during a year.

CONFLICT OF INTEREST OPINION
EC-COI-01-02

FACTS:

You are a member of the General Court. In addition to your legislative duties, you have two different part-time contractual arrangements with an educational institution of the Commonwealth ("College"). Under one agreement, you teach a course each semester to College students. Under a second agreement, you serve as the Coordinator of Evening Services (Coordinator) at the College. You have indicated that these positions do not overlap. That is, you do not teach your course at the same time as you are acting as Coordinator.

Traditionally, the College has had a difficult time filling the Coordinator's position. In the past, the College has assigned College administrators and faculty to rotate and cover one day per week. The College posted the position of Coordinator, you applied, and were hired for the position. When classes are in session you work three days a week in the early evening and Saturday mornings.

You describe your actual duties as follows. You make sure there is appropriate staff on duty. You check to make sure that all the equipment that the faculty may need that evening is in good working order. You verify that classrooms are available, and, if there is a problem, such as two professors assigned to the same room, you find other teaching space. You are a resource to the faculty and coordinate any problems or needs that the faculty may request. For example, if audio-visual equipment is needed, you will arrange to get it. On occasion you have also served as a teaching assistant. Because you have extensive knowledge of the College computer system, you fill in to register students at the beginning of the semester. You also register students for the numerous community service educational programs that the College offers throughout the year. Finally, you provide assistance to students by directing them to their classes, offering guidance regarding available College services, and counseling students about courses.

QUESTION:

Does paragraph 5 of G.L. c. 268A, §7, that allows state employees to receive compensation for "teaching and other related duties" in the state college system, permit you to receive compensation from an educational institution of the Commonwealth for employment as an adjunct faculty member and as the coordinator of evening services?

ANSWER:

Yes. Paragraph 5 of G.L. c. 268A, §7 will permit you to receive compensation from an educational institution of the Commonwealth for employment as an adjunct faculty member and will also permit you to be compensated as the coordinator of evening services because your coordinator duties are predominantly associated with the instructional function of the College, and therefore, "related" to teaching.

DISCUSSION:

G.L. c. 268A, §7 prohibits a state employee, including a state legislator, from having a financial interest, directly or indirectly, in a contract made by a state agency, unless an exemption applies. Paragraph 5 of §7 states:

> This section [§7] shall not prohibit a state employee from teaching or performing other related duties in an educational institution of the commonwealth; provided, that such employee does not participate in, or have official responsibility for, the financial management of such educational institution; and provided, further, that such employee is so employed on a part-time basis. Such employee may be compensated for such services, notwithstanding the provisions of section twenty-one of chapter thirty. (emphasis added) ("teaching exemption").

Clearly, the plain meaning of the statutory language will permit you to receive compensation for teaching your government course. However, an issue is raised of whether your Coordinator duties are "other related duties" as contemplated by the statutory exemption so

that you may receive compensation for these duties.

When analyzing statutory language, the "language itself is the principal source of insight into the legislative purpose."[1/] The common dictionary meaning of the term "related" is "having relationship: connected by reason of an established or discoverable relation (such as painting and the arts) . . . ." [2/] In using the term "related," the Legislature employed language that evidences an intent to include activities in addition to and related to teaching, but the Legislature did not further define the parameters of the exemption. Thus, the Commission has the power to give the phrase a workable meaning.[3/] In interpreting the parameters of a general classification created by the Legislature, it is helpful for us to review prior legislative history and Commission rulings to consider "conditions existing at the time of enactment" and the "objectives the law seeks to fulfil." [4/]

The "teaching exemption" was enacted in 1980 in response to Attorney General and Ethics Commission rulings. Prior to 1980, both the Attorney General and the Ethics Commission interpreted §7 to prohibit a state employee from entering a part-time teaching contract with a state educational institution.[5/] In reaction to these opinions, legislation was proposed to add an exemption concerning teaching to G.L. c. 268A, §7. This legislation was strongly supported by the Commonwealth's higher educational institutions and the Department of Education. According to the educational institutions, §7, as written and interpreted, unduly restrained the institutions from obtaining quality faculty for evening continuing education courses and from permitting day faculty to also teach in the evening division.[6/]

St. 1980 c. 303 amended G.L. c. 268A, §7, stating:

> this section [§7] shall not prohibit a state employee from teaching in an educational institution of the commonwealth; provided, that such employee does not participate in, or have official responsibility for, the financial management of such educational institution; and provided, further, that such employee is so employed on a part-time basis. Such employee may be compensated for such services, notwithstanding the provisions of section twenty-one of chapter thirty.

Following enactment of this amendment, the Ethics Commission advised state employees that they were permitted to have part-time teaching arrangements with state colleges. But, in one opinion, *EC-COI-82-158*, the Commission declined to interpret the word "teaching" to include activities other than actual instruction. In *EC-COI-82-158*, a state college faculty member was interested in teaching part-time in the graduate and continuing education division of the college, as well as working on the division catalog issued each semester. The Commission advised the state employee that he could accept the teaching assignment but could not be paid to work on the catalog.[7/]

In 1990, a bill was submitted to the Legislature seeking to amend the teaching exemption, by adding the phrase "or performing other related duties." This amendment was passed, becoming St. 1990 c. 487. Governor Dukakis, in a letter to the Secretary of the Commonwealth, declared the act to be an emergency act and indicated in his letter that the act was to "enable teachers to perform related duties (such as part-time coaching and teaching) . . . ."

In the only formal opinion issued by the Commission following enactment of this amendment, the Ethics Commission was asked whether a state college professor could be compensated in a separate college position as track coach.[8/] The Commission, relying on the Governor's letter discussed above, concluded that the teaching exemption would permit the professor's second contractual arrangement with the college as a coach. Additionally, while noting that the Commission expressed no opinion on the merits of St. 1990, c. 487, the Commission provided the following guidance concerning how it would interpret the parameters of the exemption.

> With respect to the type of services implicated by the amended exemption, we conclude that, while the General Court intended more flexibility than under the original 1980 amendment, the permissible services are not unlimited and must be directly related to the content of instruction and how that content is taught. Thus, services related to the development of curriculum, the selection and evaluation of teachers, course scheduling, and the advising of students in connection with courses would fall within the statutory exemption. On the other hand, purely administrative or custodial functions such as record-keeping, facility management, financial and budgetary services and personnel administration, while indirectly supporting the ultimate educational objectives of the institution, do not have a sufficiently direct relationship to instruction and therefore do not qualify under the amended exemption. In construing this exemption, we note our customary reluctance to expand unduly language contained in statutory exemptions to G.L. c. 268A.[9]

Thus, the 1990 legislative amendment evidences an intent to permit state employees, including elected state officials, to be compensated for providing some services to state educational institutions, other than classroom teaching. Further, the Legislature limited the expansive language, by keeping two limiting requirements: (1) only

part-time work is permitted and; (2) those individuals, who, in their primary employment, are involved in the financial management of the educational institution are not eligible to use the exemption. Presumably, the latter requirement reflects a legislative concern that the top administrative and managerial employees at the educational institution can not use their positions to obtain an "inside track" on additional positions.

The Commission has not, since 1991, taken a formal opportunity to review the teaching exemption. In *EC-COI-91-7*, issued shortly after the enactment of the amendment, the Commission alerted state employees that it would require the proposed activity to be closely connected to actual teaching and/or curriculum activities in order to be covered by the exemption. In that case, based on a reading of the legislative history, the Commission permitted an extracurricular activity, namely coaching a sport, to be covered by the exemption. We continue to believe that, to benefit from the "teaching exemption," the proposed compensated activities should be associated with the teaching component of the state college. If the proposed duties include both administrative and instructional responsibilities, we conclude that the "teaching exemption" will be applicable if the duties predominantly support the instructional function of the college.

Turning to a review of your coordinator responsibilities, your contractual duties include both teaching and administrative obligations. For the following reasons we conclude that your coordinator arrangement is permissible under the teaching exemption. First, your duties do not implicate the two limiting requirements in the exemption. Your coordinator duties are part-time and, as a legislator, you do not participate in the financial management of the institution. The majority of your coordinator duties are directly supportive of the classroom teaching and are necessary faculty support. Additionally, at the College, the coordinator duties have, in the past, been a shared faculty/administration responsibility. Some of your duties are tasks in which faculty would traditionally be involved. For example, teachers generally advise students about course offerings, provide guidance about College services, and monitor students as they go to classes. These obligations are supportive of the instructional function at the College. Given the legislative intent to include activities, other than direct teaching, and the expansive language used by the Legislature, your coordinator duties at the College are predominantly associated with teaching and, therefore, are "other related duties" for the purpose of the law.

DATE AUTHORIZED: April 10, 2001

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[1] *Leary v. Contributory Retirement Appeal Board*, 421 Mass. 344, 345 (1995).

[2] Webster's Third International Dictionary; *see also* American Heritage Dictionary ("connected; associated").

[3] *See e.g., Life Insurance Assoc. of Massachusetts v. State Ethics Commission*, 431 Mass. 1002, 1003 (2000).

[4] *Int'l Org. of Masters, etc. v. Woods Hole, Martha's Vineyard & Nantucket Steamship Authority*, 392 Mass. 811, 813 (1984).

[5] *EC-COI-79-9*, Attorney General Conflict Opinion No. 844.

[6] *See Memorandum of Corinne Martin, dated June 13, 1980 (Executive Office of Educational Affairs) to the Governor's Office.*

[7] *Id.*

[8] *EC-COI-91-7.*

[9] *Id*

ACTIONS

TABLE OF CASES

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State Ethics Commission

Enforcement Actions

2001

Summaries of Enforcement Actions
Calendar Year 2001

In the Matter of Patrick J. Oser
In the Matter of David L. Phinney - The Commission fined former Boston Public Facilities Department ("BPFD") construction specialist David L. Phinney and Boston building contractor Patrick J. Oser for violating the state's conflict of interest law. In his private capacity, Phinney was paid by Oser to prepare requisition forms for BPFD approval in order for Oser to be paid; as a BPFD inspector, Phinney approved those very same forms for payment. In addition, Phinney oversaw another developer's BPFD contracts while doing private consulting work for that developer. Phinney has agreed to pay a $13,500 fine: $8,500 as a civil penalty for the violations and $5,000 as a civil forfeiture of the money he received from Oser for privately preparing BPFD requisitions. Oser has agreed to pay a $3,500 fine. In a Disposition Agreement, Phinney admitted that he violated G.L. c. 268A, §17(a) by preparing, for pay, parts of requisitions submitted to the BPFD by Oser. Phinney further admitted that he violated G.L. c. 268A, §§19 and 23(b)(3) by, in his capacity as a BPFD construction specialist, signing the same requisitions that he had been paid by Oser to prepare, certifying that he had inspected Oser's work. Finally, Phinney admitted that he also violated G.L. c. 268A, §23(b)(3) by doing private paid consulting work in communities other than Boston for Long and Gordon at a time when Phinney was a construction specialist overseeing Long & Gordon's contracts with the BPFD. In a second Disposition Agreeement, also released today, Oser admitted he violated G.L. c. 268A, §17(b) by paying Phinney to help prepare Oser's payment requisitions to the BPFD. Oser had contracts with the BPFD to renovate buildings for resale to first-time home buyers; the requisitions authorized payment to Oser for the costs of the renovation. Phinney received approximately $5,000 for preparing more than 20 such requisitions. Long & Gordon paid Phinney $5,000 for the private consulting work he performed.

In the Matter of Michael A. Caliri - The Commission fined Randolph School Department director of maintenance and custodial services Michael A. Caliri $5,500. In a Disposition Agreement, Caliri admitted to violating the state's conflict of interest law by seeking and receiving services from subordinates and a School Department vendor in connection with the construction of his new house in Plymouth, Massachusetts and by supervising his brother. Caliri was fined $4,000 as a civil penalty and paid a $1,500 civil forfeiture for certain of the benefits he received in connection with his house construction. According to the Disposition Agreement, in connection with building his new house in Plymouth in 1997, Caliri violated G.L. c. 268A, §23(b)(2) by using his position to obtain free services from one of his subordinates, Ken Pignatelli, a temporary School Department employee who was later appointed to a permanent position. At his boss Caliri's request, Pignatelli spent many weekends as well as at least one unpaid day off painting Caliri's house. Pignatelli provided Caliri with free painting services valued at approximately $1,500. Pignatelli had no personal relationship with Caliri that would explain his providing Caliri with those services free of charge. In addition, Caliri violated §23(b)(3) by requesting and/or receiving unpaid services from School Department employees Joseph Broderick, David Kilmurray and Joseph Callahan, all of whom had personal relationships with Caliri, at a time when Caliri supervised them. Also, by requesting and receiving paid services from School Department employee Thomas Steele and from School Department vendor Williams Coal & Oil Company at a time when Caliri supervised Steele and oversaw the work provided by Williams Coal & Oil to the School Department, Caliri violated §23(b)(3). Finally, from January 1997 to March 1999, Caliri supervised his brother Wayne, who was a School Department custodian and authorized Wayne's overtime work, in violation of G.L. c. 268A, §19.

In the Matter of Ralph Shalsi - The Commission fined Everett 911 Emergency Services Director Ralph Shalsi $500 for violating the state's conflict of interest law by soliciting and receiving loans from a subordinate. According to a Disposition Agreement, in May 1999, Shalsi asked dispatcher Beth Frongillo to loan him $130 to pay for shirts with embroidered work that Shalsi had ordered. Frongillo testified that Shalsi being her boss was a factor in her agreeing to loan Shalsi the money. In June 1999, Shalsi solicited a $200 loan from Frongillo. Frongillo refused this request. Shalsi repaid Frongillo $130 in July 1999 after Frongillo made requests for repayment. By using his position as the 911 director to secure a $130 loan and attempt to obtain a $200 loan from a subordinate, Shalsi violated §23(b)(2) of the conflict law.

In the Matter of Frank Costa - The Commission fined Dighton Selectman and Board of Health member Frank Costa $1,000 for violating the state's conflict of interest law by using his position to obtain police intervention in a private family dispute and by invoking the authority of the selectmen/board of health in the private dispute. Costa's daughter, Veronica Costa, and her husband, David Silva, were involved in a dispute in which David's brother, Paul, shut off an illegal water line from Paul's house to the house next door occupied by Veronica and David. When Paul refused to turn the water back on, Costa requested that a police officer deliver a letter from Costa. In the letter, Costa, citing his authority as a member of the board of selectmen and board of health, ordered Paul to repair the line and restore water service to Veronica and David. In a Disposition Agreement, Costa admitted that he violated G.L. c. 268A, §23(b)(2) by using his official position to get his daughter's water service restored.

In the Matter of Victoria Deibel - The Commission fined Rockland Board of Health member Victoria Deibel $1,000 for violating the state's conflict of interest law by voting to terminate two Board of Health employees who recently had been involved in negative inspections of her family's restaurant, Anita Marie's. In a Disposition Agreement, Deibel admitted that she violated G.L. c. 268A, §23(b)(3) by voting to terminate the employment contracts of health director John Doyle and health agent Michael Hambly less than one month after Doyle and Hambly inspected Anita Marie's restaurant in August, 1998. The restaurant was cited for four critical and 16 non-critical violations. This violation could have been avoided if Deibel had made a written disclosure which was public in nature of her family's restaurant inspection history with Hambly and Doyle. She made no such disclosure.

In the Matter of Patrick Murphy - The Commission fined former Cambridge School Department Deputy Superintendent Patrick Murphy $2,000 for violating the state's conflict of interest law by having school department employees assist his daughter in writing papers for her college English class. According to a Disposition Agreement, in November 1999, Murphy asked a school department employee to assist his daughter, a college freshman, on a paper. The employee took the assignment sheet from Murphy and a week later gave Murphy a draft paper on *Othello* intended as a "template" for a final paper. Murphy gave the paper to his daughter. The paper was used for her college course. Subsequently, Murphy asked the same employee to redo the *Othello* paper, which had received a D+ grade. Murphy also asked a second school department employee to assist the first employee in redoing the *Othello* paper. Murphy also gave the school department employees an assignment sheet on *Hamlet*. They prepared a paper and gave the paper to Murphy, who gave the paper to his daughter. The Disposition Agreement points to Murphy's official relationship with the two employees, his making the requests for assistance for his daughter (as opposed to their offering), his making these requests at the School Department during regular working hours and the fact that each employee stated that Murphy's official position played a significant role in the employees agreeing to do the work as factors which lead to the conclusion that Murphy was using his position as deputy superintendent. By having school department employees assist his daughter with her college work, Murphy violated §23(b)(2) of the conflict law. Murphy resigned his position as deputy superintendent in December 1999.

In the Matter of William J. Maloney, Jr. - The Commission fined Walpole Selectman William J. Maloney Jr. $1,000 for violating the state's conflict of interest law by participating in the selectmen's discussion of a bylaw amendment in which he and his employer, subdivision developer Walsh Construction, had a financial interest. Maloney was the exclusive real estate broker in Walpole for Walsh Construction and received an eight percent commission on each lot that he sold for Walsh Construction. In a Disposition Agreement, Maloney admitted that he violated G.L. c. 268A, §19 by, as a selectman, discussing a proposed amendment to the town's bylaws, known as Article 48. On March 30, 1999, the selectmen voted to recommend that Town Meeting approve Article 48. Town Meeting subsequently approved Article 48 on April 12, 1999. The amendment allowed Walsh Construction to begin acquiring building permits for lots in a new subdivision phase sooner than had previously been permitted. Before the amendment was approved, all of the occupancy permits in the previous phase of a subdivision had to be issued before a building permit for a lot in the next phase could be issued. The amendment allowed the issuance of building permits for a subsequent phase after all but two occupancy permits for the previous phase had been issued. While Maloney did not vote on the recommendation to amend the by-law to town meeting, his discussion of the bylaw, its history and its intended effect, as well as his support of the recommendation, amounted to participation. The Ethics Commission had previously warned Maloney not to participate in either discussions or votes concerning matters in which Walsh Construction might have financial interests. Maloney and Walsh Construction had financial interests in the passage of Article 48 because it increased from eight to ten the number of lots which Maloney could potentially sell for Walsh Construction in 1999.

In the Matter of Carole Foley - The Commission fined Dedham Council on Aging outreach worker Carole Foley $2,000 for violating section 23(b)(2) of G.L. c. 268A, the state's conflict of interest law, by introducing her daughter-in-law to Foley's nursing home client Marie Manning and by failing to involve outside professionals who would protect Manning's interests. Foley's son and his wife were seeking to purchase a house in Dedham; Manning had expressed interest to Foley in selling hers for less than 10 percent of its value plus certain outstanding bills. According to a Disposition Agreement, Foley became involved as an outreach worker in placing Manning in a nursing home in July 1998. Once in the nursing home, Manning told Foley she would be willing to sell her house, which was in poor condition, for $7,000 plus any back taxes and utilities that were due. Soon after this conversation, Foley introduced her daughter-in-law to Manning. In August 1998, Foley's son and daughter-in-law entered into a purchase and sale agreement with Manning to buy the house for $7,000 plus other payments of up to $3,000. Foley failed to involve any outside professionals, such as an attorney and/or a real estate broker, in the proposed sale of Manning's house. Foley's practice in the past had been to involve such professionals. After one of Manning neighbors complained about the sale of Manning's house to Foley's son and daughter-in-law, Manning's nursing home arranged to have a legal services

attorney appointed to protect Manning's interests. Manning's attorney put the sale on hold and contacted a contractor, who offered $90,000 for the property. Foley's son and daughter-in-law declined to bid against that offer. The house subsequently sold for $90,000 in December 1999. Manning died in January 1999.

In the Matter of Mable E. Gaskins - The Commission fined former Lawrence School Department superintendent Mable E. Gaskins $2,000. In a Disposition Agreement, Gaskins admitted that she violated the state's conflict of interest law by hiring and approving payments to her sister Sylvia H. Stokes and by signing a contract with and approving payments to Drucille H. Stafford, with whom Gaskins shared an apartment in Lawrence. Gaskins could have avoided these violations by filing a disclosure regarding her roommate and by receiving a determination from the School Committee allowing her to participate in matters involving her sister. Gaskins made no such disclosure and did not receive any such written determination. According to the Disposition Agreement, shortly after Gaskins became superintendent in July 1998, she violated G.L. c. 268A, §19 by hiring Stokes at $50 per hour to review resumes, formulate interview questions and evaluate candidates for school department positions. Stokes received $950 in December 1998 for 19 hours of work after Gaskins sought expedited payment for her from the Mayor. Gaskins hired Stokes in April 1999 to perform the same tasks for two additional school department positions. In this instance, Stokes was paid $500 for ten hours of work. Section 19 of the conflict law generally prohibits a municipal employee from officially participating in a "particular matter" in which a sister or "immediate family" member has a financial interest. An exemption to §19 would have allowed Gaskins to participate in matters involving her sister. The exemption, which Gaskins did not seek, would have required a written disclosure to the School Committee and a written determination from the School Committee that the financial interest was not so substantial that it would affect the "integrity" of Gaskins' services to the School Department. In addition, Gaskins admitted violating §23(b)(3) by signing a School Department consultant contract with and approving payments to Stafford, a professional colleague and personal acquaintance with whom Gaskins began sharing an apartment in April 1999. Stafford was paid over $150,000 in fees and expenses by the School Department from July 1998 through January 2000. Stafford and Gaskins each paid half of the $1,150 rent for their apartment.

In the Matter of Thomas D. Hackenson - Mendon Building Inspector Thomas D. Hackenson entered into a Disposition Agreement with the Commission and agreed to pay a civil penalty of $500 to resolve allegations that he inspected and approved work performed by his son. According to the Disposition Agreement, Hackenson agreed he violated G.L. c. 268A, §19 by inspecting and approving framing work done at 61 Kinsley Lane by his son Thomas M. Hackenson. Hackenson's son was paid more than $1,600 for the framing work he performed.

In the Matter of Philip Travis - Rep. Philip Travis of Rehoboth entered into a Disposition Agreement with the Commission and agreed to pay a $1,500 civil penalty to resolve allegations that he improperly solicited charitable donations from several Massachusetts banks. At the time, Travis was House Chairman of the Joint Committee on Banks and Banking. In the disposition agreement, Travis admitted that he violated G.L. c. 268A, 23(b)(2) by using his position to solicit donations. The Disposition Agreement states that Travis, by soliciting banks under the particular circumstances in which he made these solicitations, "had reason to know he was attempting to use his position to obtain an unwarranted privilege." In early 1998, the Wampanoag Tribe asked Travis to help raise money to buy land in Seekonk. After a September 1998 meeting held at Travis' State House office between Travis and officials from U.S. Trust, Travis asked if U.S. Trust would be interested in making a donation to the Tribe. Travis made several phone calls to U.S. Trust employees to discuss the status of the requested donation. U.S. Trust decided not to make a donation. After learning this, Travis left voice-mail messages for two U.S. Trust officials indicating his displeasure. He stated in one message, "It doesn't sit well with me, and I certainly will remember this particular incident." U.S. Trust employees who received these messages raised concerns that Travis was threatening retaliation if U.S. Trust did not reconsider a donation. Travis also solicited charitable donations from Fleet Bank, Bank Boston and Citizen's Bank while he was banking committee chairman. These solicitations took place following meetings between Travis and bank representatives regarding official business. Charities received a total of $30,000 in donations as a result of Travis' solicitations.

In the Matter of Patti Guiliano - The Commission issued a Disposition Agreement in which Board of Chiropractors member Patti Giuliano of Westwood admitted violating the conflict law by discussing a complaint involving her husband, a practicing chiropractor, with an investigator and with fellow Board members. The seven-member Board of Chiropractors licenses, regulates and disciplines chiropractors. Giuliano paid a civil penalty of $1,000. According to the Disposition Agreement, Giuliano and her husband, Peter Kevorkian, were allegedly harassed by a patient of Kevorkian who threatened to file a complaint with the board. Prior to a complaint being filed, Giuliano told an investigator about the harassment and discussed the investigative procedure that would be followed if a complaint was filed. While the complaint was pending or about to be filed, Giuliano twice made comments to fellow board members which were favorable about her husband and disparaging about the complainant. The complaint was filed in April 1998. By

discussing the complaint with an investigator who could have been assigned to the case and making comments to fellow Board members, Giuliano acted as an agent for her husband in connection with a particular matter in which the state was a party in violation of §4(c) of the conflict law.

In the Matter of Joseph S. Tevald - The Commission fined Joseph S. Tevald $1,500 for violating the state's conflict of interest law by issuing permits to Manter Contruction, Inc. while he was a tenant in a house owned by Warren Manter, president of Manter Contruction. In a Disposition Agreement, Tevald admitted that he violated G.L. c. 268A, §23(b)(3) by issuing 27 permits to install septic systems, conducting the vast majority of the inspections of those systems and by issuing 21 compliance certificates to Manter Construction during the period that Tevald was discussing the possibility of renting a home or renting a home from Manter. Beginning in 1995, Manter Construction built 42 homes in subdivision known as Fatherland Farms. In July 1996, after Tevald lost his home in Newbury to foreclosure, Tevald entered a two year lease/purchase agreement with Manter for a home in Fatherland Farms. Tevald agreed to pay $2,050 per month in rent and had an option to purchase the home at the end of the lease for $250,000. Most of Tevald,s payments were late. Tevald never paid interest on late payments to Manter and Manter waived the final seven rental payments totaling $14,350 to offset improvements Tevald made to the property. Waiver of these final rental payments was instrumental in enabling Tevald to qualify for a mortgage. In August 1998, Tevald purchased the house from Manter. This violation could have been avoided if Tevald had made a written disclosure, which was public in nature, of his lease/purchase relationship with Manter. He made no such disclosure.

In the Matter of Angelo M. Scaccia - The Commission issued a Decision and Order denying a motion for a new hearing and ordering Rep. Angelo M. Scaccia (D-Readville) to pay a civil penalty totaling $1,750, a reduction of $1,250 from a $3,000 penalty, imposed in 1996, that Rep. Scaccia appealed. The reduced penalty is the Commission's response to a 2000 Massachusetts Supreme Judicial Court decision which vacated part of the Commission's findings and ordered the Commission to redetermine the penalty. In November 1996, the Commission found that Rep. Scaccia violated the conflict of interest and/or financial disclosure laws on five occasions by receiving illegal gratuities for himself and family members, by creating an appearance of conflict related to the gratuities, by accepting gifts worth more than $100 from lobbyists and by failing to report the gratuities on his financial disclosure forms. The gratuities included meals and golf fees given to Rep. Scaccia between 1991 and 1993 by lobbyists representing Philip Morris, John Hancock Life Insurance Company and the Life Insurance Association of Massachusetts. In 1998, Suffolk Superior Court upheld the Commission's ruling. In May 2000, the SJC affirmed the Commission's findings that Scaccia violated the conflict of interest law by creating the appearance of conflict, and the financial disclosure law by accepting gifts worth more than $100 from lobbyists and by filing a false statement of financial interests. However, the SJC ruled that there was not substantial evidence to find that the gratuities Rep. Scaccia received violated the G.L. c. 268A, §3(b). Section 3(b) prohibits a public official from receiving anything of substantial value for or because of any official act or acts performed or to be performed by such official. The SJC decision was based in part on a 1999 U.S. Supreme Court decision that Sun-Diamond Growers of California did not provide illegal gratuities to former U.S. Agriculture Secretary Michael Espy. In view of Sun-Diamond, the SJC ruled for the first time that "it is necessary to establish a link between a gratuity and an official act. . . not merely the fact that the official was in a position to take some undefined or generalized action...." Therefore, the SJC remanded the matter to the Ethics Commission for a redetermination of the civil penalty. Of the $1,750 civil penalty, $1,400 is for violations of G.L. c. 268A, §23(b)(3) and $350 is for violations of G.L. c. 268B, §7.

In the Matter of Edwin Kiley - The Commission fined former Burlington Zoning Board of Appeals member Edwin Kiley $1,000 for violating the state's conflict of interest law by, as a ZBA member, participating in a ZBA decision regarding land abutting his property. In a Disposition Agreement, Kiley admitted that he violated G.L. c. 268A, §19 by voting to continue the April 20, 1999 public hearing of an application by Bedford Builders, Inc. for a variance to build a $300,00 to $400,000 single family home on a lot beside Kiley's home. Kiley also participated in a two hour ZBA discussion of the variance on May 18, 1999. At the meeting, Kiley stated, "I'd like to see the [Bedford Builders] land developed. It needs to be developed. It's a mess back there . . . I'd like to see a little value on my house someday when I sell it because that's going to look so much better." The Disposition Agreement notes that "a significant portion of Kiley's involvement was at the chair's request." The Agreement also states that the fact that Kiley did not vote on the matter regarding the variance is not mitigating.

In the Matter of Peter Curtin
In the Matter of Edward Fennelly - The Commission fined Tyringham selectman and Board of Health members Peter Curtin and Edward Fennelly for violations of the conflict law. Peter Curtin was fined $1,000 for retaliating against Donald Hale, a local restaurant owner. Hale had complained to Department of Environmental Protection ("DEP") about damage caused to nearby wetlands by silt dumped at the Tyringham Transfer Station. The silt was dredged from the bottom of a private pond on property for which Curtin was the caretaker. The DEP ultimately found Curtin responsible for the damage and ordered him to restore the wetlands. Curtin retaliated

by requesting local and state inspections of Hale's restaurant. Fennelly was fined $1,500 for joining Curtin in requesting local and state inspections of the restaurant in apparent retaliation for Hale's complaint and, in addition, threatening to shut down Hale's restaurant. Curtin admitted in a Disposition Agreement that he violated G.L. c. 268A,§23(b)(3) by requesting the inspections of Hale's restaurant. In a second Disposition Agreement, Fennelly admitted that he violated G.L. c. 268A, §23(b)(3) by threatening to shut down Hale's restaurant and requesting the inspections of Hale's restaurant following Hale's complaint to DEP. Curtin also admitted that he violated G.L. c. 268A, §19 by advocating for and authorizing payments for the wetlands cleanup and was fined an additional $1,500 for advocating and authorizing town payments of $1,860 to restore the wetlands. In addition to paying a total of $2,500 in penalties to the Ethics Commission, Curtin also reimbursed the town $1,860 for the cleanup costs.

In the Matter of Dianne Wilkerson - In a Disposition Agreement, Sen. Dianne Wilkerson admitted that she violated G.L. c. 268A, §23(b)(3) by advocating as a state senator that the Boston Bank of Commerce ("BBOC"), with which she had a contract to solicit private-sector deposits, should receive divested bank branches as a result of the Fleet Bank/BankBoston merger. Wilkerson was not compensated under her contract for her actions in advocating for the BBOC. Wilkerson agreed to pay a $1,000 civil penalty. The Disposition Agreement notes that Wilkerson brought this matter to the Commission as a self-report of a possible violation by her and cooperated with the Commission's investigation. Wilkerson began her relationship with the BBOC, the only minority-owned financial institution in New England at the time, in January 1999 when she signed a contract with the BBOC to identify deposit prospects from the private sector and solicit such prospects to establish accounts with the BBOC. Her contract provided Wilkerson with a $1,000 monthly retainer fee, later increased to $2,000, plus a one-time fee for each new deposit generated and maintained. Wilkerson provided the services and received the fees for those services. In spring 1999, with a merger between Fleet Bank and BankBoston pending, the BBOC informed Fleet Bank that it was interested in purchasing some of the branches that would have to be divested as a result of the merger. In June 1999, Wilkerson wrote a letter to Fleet Bank and BankBoston on her senate letterhead advocating divestiture to local, minority-owned banks. In July 1999, she testified as a state senator before the Federal Reserve Board and the Board of Bank Incorporation, a state body with power to approve the Fleet/BankBoston merger. She also sent a copy of her June letter to the banks and submitted a filing to the Board of Bank Incorporation. In each instance, Wilkerson stated that the BBOC should get the divested branches. This violation could have been avoided if Wilkerson had made a written disclosure that was public in nature of her relationship with the BBOC. She made no such disclosure.

In the Matter of Eugene LeMoine - The Commission fined former Southampton Police Chief Eugene LeMoine $2,000 for violating the state's conflict of interest law by submitting an invoice for payment by the town for sweatshirts for which he had already received payment. LeMoine also agreed to reimburse the town $605, which was the total payment he received. According to a Disposition Agreement, in spring 1997, LeMoine ordered 25 sweatshirts on behalf of the Southampton police force. He collected $605 from several police officers to pay for the sweatshirts. When the invoice totaling $605 for the sweatshirts arrived, LeMoine submitted it for payment by the town and the town paid it. LeMoine distributed the sweatshirts but did not return to his subordinate police officers the funds he had collected from them. By securing the town's payment for sweatshirts for which he had already received payment, LeMoine violated §23(b)(2) of the conflict law. LeMoine retired in September 1999.

In the Matter of Joan Langsam - In a Disposition Agreement, former Somerville Solicitor Joan Langsam admitted violating M.G.L. c. 268A, §19 by participating, in late 1998 and early 1999, in the drafting of a $180,000 project manager contract between the city and her husband after former Mayor Michael Capuano named MacDonald project manager. Langsam's participation included helping to prepare a boilerplate contract with general terms and conditions for any project manager situation and providing input in adapting that boilerplate contract to the particular circumstances of her husband serving as the library renovation project manager. She advised that the contract should identify Commercial Bidding Limited Partnership, a partnership of MacDonald and his mother, as the contracting party. She also advised that the contract did not need to go out to bid and that the contract should specify a minimum term of 32 months. In early January 1999 before the contract was approved by the auditor, solicitor and acting mayor, MacDonald began providing project management services. The city auditor raised concerns about a clause relating to reimbursement for expenses and whether the contract needed to go out to bid and refused to sign it. Langsam assigned a subordinate to address the auditor's concerns. She also advised lawyers in her department that the contract did not have to go out to bid. On February 11, 1999, Langsam disclosed in writing to the city's acting mayor (Capuano had resigned) her husband's financial interest in the contract, stating that her office reviewed the contract "only as to form." In a letter dated February 22, 1999, the acting mayor made a determination that Langsam could participate in determining whether "the contract meets all legal requirements." Langsam then signed the contract as city solicitor "as to form." The contract was executed by the acting mayor, but was ultimately repudiated by Mayor

Capuano's elected successor in June 1999. An exemption is available that would allow a municipal employee to participate if the municipal employee makes a full written disclosure to and receives a written determination in advance from her appointing authority, the mayor.

In the Matter of Peter Vallianos - The Commission issued a Disposition Agreement in which Monterey Zoning Board of Appeals Chairman Peter Vallianos admitted violating the state's conflict law and agreed to pay a fine of $1,250. According to the Agreement, Vallianos, who is an attorney, violated G.L. c. 268A, §17(c) by appearing before the ZBA on behalf of two clients of his law practice. Vallianos represented Monterey residents Georgianna and Daniel Eschen in their purchase of a cottage at 11 Sylvan Road. The Eschens sought a special permit from the ZBA to expand the cottage. In spring 2000, Vallianos assisted the Eschens in the preparation of the special permit application that was submitted to the ZBA. At the July 7, 2000 ZBA hearing on the Eschens' application, Vallianos was replaced on the ZBA by an alternate at his request because he represented the Eschens. Vallianos, however, attended the hearing and became significantly involved in it. He stated that he could not represent the Eschens' during the hearing but was available to answer any questions ZBA members might have. He then participated in a twenty-minute discussion with the ZBA about the application.

In the Matter of Richard Seveney - The Commission fined Ware High School Principal Richard Seveney $1,000 for violating the state's conflict of interest law by participating in the hiring of his brother-in-law and his daughter. In a Disposition Agreement, Seveney admitted that he violated G.L. c. 268A, §19 by participating in the hiring of his wife's brother, Francis Mitus, as an audio-visual/computer technician. In spring 1998, Seveney was one of three members of a screening committee for the technician position. Mitus was an applicant. While Seveney did not attend Mitus' interview, he participated in the interviews of the other two applicants and recommended to the superintendent on behalf of the screening committee that Mitus be hired to the $33,000 per year position. Seveney also admitted violating §19 by participating in the hiring of his daughter, Amy Wnek, as an in-school suspension monitor for the remainder of the 1999-2000 school year. In January 2000, Seveney served on a three member screening committee for the monitor position. Wnek was an applicant. While Seveney did not attend Wnek's interview, he participated in the interviews of the other five applicants and recommended that Wnek be appointed to the $25,000 per year position. Both Mitus and Wnek were appointed by the superintendent, who was aware that both applicants were family members of Seveney. An exemption is available that would allow a municipal employee to participate if the muncipal employee makes a written disclosure to and receives a written determination from his appointing authority, the superintendent in this instance. While the superintendent was aware of the family relationship, no written disclosures by Seveney or determinations by the superintendent were made, nor did the superintendent know the extent of Seveney's participation in the hiring process.

In the Matter of Adelle Reynolds - The Commission fined Douglas Building Inspector Adelle Reynolds $1,000 for violating the state's conflict of interest law by issuing permits to and conducting building inspections for GBI Builders while GBI Builders was building a $144,000 modular home in Webster for Reynolds and her parents. In a Disposition Agreement, Reynolds admitted that she violated G.L. c. 268A, §23(b)(3) by issuing eight building permits to and conducting at least 17 inspections of GBI Builders houses during the period that GBI Builders was discussing building a home or building a home for Reynolds. This violation could have been avoided if Reynolds had made a written disclosure, which was public in nature, of her relationship with GBI Builders. She made no such disclosure.

In the Matter of Robert Manzella - The Commission issued a Disposition Agreement in which Rockland Zoning Board of Appeals Member Robert Manzella admitted violating the state's conflict law and paid a fine of $2,000. According to the agreement, Manzella violated G.L. c. 268A, §17(c) by appearing before the ZBA on behalf of Manzella & DiGrande Inc., a family-operated property management firm. Manzella is the assistant vice-president of the firm, which is located in Town Line Park in Rockland. In 1997, Manzella & DeGrande Inc. sought a special permit for the construction of a cellular tower in Town Line Park. While Manzella did not participate as a ZBA member regarding the special permit, he represented his family business before the ZBA by presenting the Manzella & DiGrande Inc. petition and answering questions from ZBA members about the cellular tower. The ZBA voted unanimously to grant the special permit. After the special permit was granted, Manzella & DiGrande Inc. entered a 20-year contract in which Bell Atlantic agreed to pay Manzella & DiGrande Inc. a monthly rental fee starting at $1,100 per month and increasing by three percent annually.

In the Matter of Kenneth Walley - Revere Assistant Building Inspector Kenneth Walley entered into a Disposition Agreement and paid a civil penalty of $2,500 to resolve allegations that he applied for and issued permits for electrical work he performed, then inspected and approved that work. According to the Disposition Agreement, Walley admitted he violated G.L. c. 268A, §17 by applying for electrical permits and receiving compensation for the electrical work he performed at two sites. Walley was paid $200 for wiring a basement and installing an additional electric meter at 26 Wave Avenue and $4,500 for re-wiring a house at 574 Proctor Avenue.

He also admitted violating G.L. c. 268A, §19 by inspecting and approving this work.

In the Matter of Matthew J. O'Neil - The Commission fined former Boston Redevelopment Authority ("BRA") Chief of Staff Matthew J. O'Neil $2,000 for violating the state's conflict of interest law by having a financial interest in a contract with the BRA involving O'Neil's purchase of a Charlestown Navy Yard rowhouse. In addition, as part of a disposition agreement released today, O'Neil agreed to sell his unit within six months and to forgo any profit from the sale. In 1999, O'Neil signed a note and a mortgage with the BRA to purchase a three-bedroom rowhouse for $158,462 in the Charlestown Navy Yard. The rowhouse is located on property conveyed to developers by the BRA ten years earlier and is subject to a deed restriction intended to maintain the unit as affordable housing. The restriction, enforceable by the BRA, precludes the owner from conveying the unit for more than a maximum resale price of the purchase price plus 5 percent per year. According to the agreement, "But for the "maximum resale price" restriction, Unit 17's fair market value would have been no less than twice the amount that O'Neil paid for the unit." In addition, the agreement states that the BRA's general counsel advised O'Neil that "he should obtain legal advice from the Ethics Commission before proceeding with the Unit 17 purchase" and that "O'Neil did not seek such advice." O'Neil admitted that he violated G.L. c. 268A, §20 by entering into a note and a mortgage with the BRA to purchase the row house.

In the Matter of Barry Vinton - Plympton Police Chief Barry Vinton entered into a Disposition Agreement in which he admitted violating the state's conflict of interest law by recommending that his wife, Carol, be hired as the police department clerk, by recommending that her position be funded and that her hours be increased and by approving warrants for payments to her. Vinton agreed to pay a civil penalty of $2,000. According to the Disposition Agreement, Vinton admitted he violated G.L. c. 268A, §19 by recommending to the town in March 1998 that his wife be hired as the police department clerk for a maximum of 19 hours per week. In spring 1999, Vinton recommended that the number of hours increase to 25 hours per week for fiscal year 2000. The town ultimately funded Carol's position at 22 hours per week, which allowed her to receive town benefits. In spring 2000, Vinton recommended that Carol's position be increased to 40 hours per week for fiscal year 2001. Effective July 1, 2001, Carol began working 32-hour weeks. Between March 1998 and March 2000, Vinton signed payroll warrants that included his wife's salary. An exemption to §19 could have authorized Vinton to participate in matters involving his wife. The exemption, which Vinton did not seek, required a written disclosure to selectmen and a written determination from them that his wife's financial interest was not so substantial that it would affect the "integrity" of Vinton's services to the town.

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss COMMISSION ADJUDICATORY
DOCKET NO. 611

IN THE MATTER
OF
PATRICK J. OSER

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Patrick J. Oser pursuant to Section 5 of the Commission's Enforcement Procedures. This agreement constitutes a consented-to order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On December 15, 1999, the Commission initiated, pursuant to G.L. c. 268A, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Oser. The Commission has concluded its inquiry and, on December 13, 2000, found reasonable cause to believe that Oser violated G.L. c. 268A.

The Commission and Oser now agree to the following findings of fact and conclusions of law:

1. Oser is a building contractor based in Boston. During the period here relevant, Oser did business as Oser Builders and as The Oser Corporation.

2. In 1994 and 1995, the City of Boston Public Facilities Department ("BPFD") awarded Oser contracts to renovate four buildings in Boston. The BPFD contracts provided that Oser would receive construction and subsidy loans from the BPFD to acquire and renovate the properties for resale to first-time home buyers.

3. Pursuant to the BPFD contracts, as the renovations proceeded in 1994, 1995 and 1996, Oser was required to submit requisitions to the BPFD requesting payment from the loan funds for "hard" costs (e.g., construction labor and materials) and "soft" costs (e.g., insurance and other overhead).

4. During the period here relevant, David L. Phinney worked as a construction specialist for the BPFD. As such, Phinney was a municipal employee as that term is defined in G.L. c. 268A, §1.

5. As part of his duties and responsibilities as a BPFD construction specialist, Phinney monitored the status and progress of housing rehabilitation projects done under contract with the BPFD, including Oser's projects. Phinney regularly visited project sites and performed inspections. In addition, as a construction specialist, Phinney received payment requisition forms from the contractors, reviewed the forms and, when warranted, signed his approval on the forms certifying that he had, in his official capacity, inspected the work required for the payment and found it to have been performed in good and workmanlike manner.

6. Shortly after Oser received the first BPFD contract, Phinney and Oser entered into an arrangement pursuant to which Oser agreed to compensate Phinney for preparing the parts of Oser's requisitions to the BPFD requesting payment for hard costs.

7. Between September 1994 and October 1996, Oser had Phinney prepare the hard costs portions of approximately twenty-three requisitions for payment by the BPFD.

8. After Phinney prepared the hard costs sections of each of Oser's requisitions, he signed each as a BPFD construction specialist making the certification described above. In so doing, Phinney, as a BPFD construction specialist, approved the hard costs portion of each Oser requisition for payment by the BPFD.

9. After privately preparing, and in his official capacity approving, the hard costs portions of the requisitions, Phinney gave them to Oser. Oser then prepared the portions of the requisitions relating to soft costs, and submitted the complete requisitions to the BPFD for payment.

10. Pursuant to the requisitions, Oser was paid a total of more than $500,000.[1] Oser, in turn, knowingly, directly and indirectly, paid Phinney a total of approximately $5,000 for preparing the hard cost portions of the requisitions.

11. Section 17(b) of G.L. c. 268A, prohibits anyone from knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly offering, promising or giving compensation to a municipal employer in relation to any particular matter in which the same municipality is a party or has a direct and substantial interest.

12. Each of Oser's requisitions for payment by the BPFD and each decision by or on behalf of the BPFD to approve Oser's requisitions for payment was a particular matter.[2]

13. The City of Boston had direct and substantial interests in Oser's requisitions for payment and the BPFD's decisions to approve those requisitions in part because the requisitions and payments were pursuant to a contract to which the city was a party. At all relevant

times, Oser knew of the city's interest in the BPFD requisitions.

14. As a BPFD construction specialist, Phinney was a Boston municipal employee. At all relevant times, Oser knew that Phinney was a Boston municipal employee.

15. Thus, by, as described above, knowingly, directly or indirectly, offering, promising and giving Phinney compensation for helping to prepare Oser's payment requisitions to the BPFD, Oser knowingly offered, promised and gave compensation to a Boston municipal employee in relation to a particular matter in which the City of Boston had a direct and substantial interest.

16. The compensation that Oser offered, promised or gave to Phinney was not as provided by law for the proper discharge of Phinney's official duties as a construction specialist.

17. Therefore, each time Oser offered, promised or gave compensation to Phinney for helping to prepare the BPFD requisitions, Oser violated §17(b)[3] Oser fully cooperated with the Commission's investigation of this matter.

In view of the foregoing violations of G.L. c. 268A by Oser, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Oser:

(1) that Oser pay to the Commission the sum of $3,500 as a civil penalty for violating G.L. c. 268A; and

(2) that Oser waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this agreement in this or any other related administrative or judicial proceeding to which the Commission is or may be a party.

DATE: February 8, 2001

[1]The Commission is not aware of any evidence that Oser failed to perform any work for which he was paid under his BPFD contracts.

[2]"Particular matter" means 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 enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

[3]According to Oser, he was not aware at the time of his above-described actions that he was violating the conflict of interest law, G.L. c. 268A. Ignorance of the law is, however, no defense to a violation of the conflict of interest law. *In re Doyle*, 1980 SEC 11, 13; see also *Scola v. Scola*, 318 Mass. 1, 7 (1945).

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY DOCKET NO. 612

IN THE MATTER OF DAVID L. PHINNEY

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and David L. Phinney pursuant to Section 5 of the Commission's Enforcement Procedures. This agreement constitutes a consented-to order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On December 15, 1999, the Commission initiated, pursuant to G.L. c. 268A, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Phinney. The Commission has concluded its inquiry and, on September 19, 2000, found reasonable cause to believe that Phinney violated G.L. c. 268A.

The Commission and Phinney now agree to the following findings of fact and conclusions of law:

I

1. Phinney worked as a construction specialist for the City of Boston Public Facilities Department ("BPFD") from 1988 to October 31, 1997. As such, Phinney was a municipal employee as that term is defined in G.L. c. 268A, §1. Phinney's municipal position was full-time and salaried.

2. As part of his duties and responsibilities as a BPFD construction specialist, Phinney monitored the status and progress of housing rehabilitation projects done under contract with the BPFD. Phinney regularly visited project sites and performed inspections. In addition, as a construction specialist, Phinney received payment requisition forms from the contractors, reviewed the forms and signed his approval on the forms when warranted. Phinney's signature on the form signified that he had inspected the project site and confirmed that the work for which payment was being requested had in fact been performed by the contractor in a good and workmanlike manner.

II

3. Patrick Oser is a building contractor. During the period here relevant, Oser did business as Oser Builders and as The Oser Corporation. ("Oser," as hereinafter used, means and refers to Patrick Oser, Oser Builders and/or The Oser Corporation.)

4. In 1994 and 1995, the BPFD awarded Oser contracts to renovate four buildings in Boston. The BPFD contracts provided that Oser would receive construction and subsidy loans from the BPFD to acquire and renovate the properties for resale to first-time home buyers.

5. Pursuant to the BPFD contracts, Oser was required to submit requisitions to the BPFD as construction proceeded, requesting payment from the loan funds for "hard" costs (e.g., construction labor and materials) and "soft" costs (e.g., insurance and other overhead).

6. Shortly after Oser received the first BPFD contract, Phinney and Oser entered into an arrangement pursuant to which Oser would pay Phinney to prepare the parts of Oser's requisitions to the BPFD requesting payment for hard costs. Phinney requested and Oser agreed to pay Phinney between $250 and $400 per requisition.

7. Between September 1994 and October 1996, Phinney prepared for Oser the hard costs portions of approximately twenty-three requisitions for payment by the BPFD.

8. After Phinney prepared the hard costs sections of each of Oser's requisitions, he signed each as a BPFD construction specialist certifying that he had, in his official capacity, inspected the work required for the payment and found it to have been performed in a good and workmanlike manner. In so doing, Phinney, as a BPFD construction specialist, approved the hard costs portion of each Oser requisition for payment by the BPFD.

9. After privately preparing, and in his official capacity approving, the hard costs portions of the requisitions, Phinney gave them to Oser. Oser then prepared the portions of the requisitions relating to soft costs, and submitted the complete requisitions to the BPFD for payment. Pursuant to the requisitions, Oser was paid a total of more than $500,000. Oser, in turn, paid Phinney a total of approximately $5,000 for preparing the hard cost portions of the requisitions.

10. In 1995, in addition to preparing the hard costs portions of BPFD payment requisitions for Oser, Phinney was hired by Oser to do construction management work in connection with a home renovation in South Weymouth. Oser paid Phinney over $3,000 for this non-BPFD related work.

11. Phinney did not disclose any of his private work for Oser to his appointing authority.

III

12. Long & Gordon is a real estate development company. In 1996 and 1997, Long & Gordon had three contracts with the BPFD relating to the rehabilitation of several buildings in Boston. Phinney acted as the BPFD construction specialist on each of these projects, inspecting the progress of the work and reviewing and approving Long & Gordon's BPFD payment requisitions as to hard costs.

13. In late 1996, Long & Gordon hired Phinney as a part-time, private consultant to review subcontractor bids and to perform cost analysis on company projects that did not involve the BPFD or the City of Boston. Phinney did not prepare any Long & Gordon requisitions or parts thereof for submission to the BPFD.

14. Phinney worked as a private consultant for Long & Gordon from October 1996 through June 1997. Long & Gordon paid Phinney $5,000 for this work.

15. Phinney did not disclose any of his private work for Long & Gordon to his appointing authority.

IV

16. Phinney resigned from the BPFD in late October 1997, when his private dealings with Oser and Long & Gordon first became known to his BPFD superiors.

17. Phinney fully cooperated with the Commission's investigation of this matter.

V

18. Section 17(a) of G.L. c. 268A, prohibits a municipal employee from, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receiving or requesting compensation from anyone other than the municipality or an agency thereof in relation to any particular matter in which the municipality is a party or has a direct and substantial interest.

19. Each decision by or on behalf of the BPFD to approve Oser's requisitions for payment was a particular matter.[1/]

20. The City of Boston had direct and substantial interests in the BPFD's decisions to approve Oser's requisitions for payment.

21. Thus, each time that Phinney requested or received payment from Oser for helping to prepare Oser's

payment requisitions to the BPFD, Phinney requested or received compensation from a party other than the City of Boston or a Boston municipal agency in relation to a particular matter in which the City of Boston had a direct and substantial interest. The compensation that Phinney requested and received from Oser was not as provided by law for the proper discharge of Phinney's official duties as a construction specialist. Therefore, each time Phinney requested or received compensation from Oser for helping to prepare the BPFD requisitions, he violated §17(a).

22. Section 19 of G.L. c. 268A prohibits a municipal employee from participating as such an employee in a particular matter in which, to his knowledge, he has a financial interest.

23. Phinney participated as a municipal employee in the particular matters of the BPFD's decisions to approve Oser's payment requisitions by personally approving the hard costs portions of the requisitions in his official capacity as a BPFD construction specialist.[2]

24. If the requisitions that Phinney had helped Oser prepare had been rejected by the BPFD and not been paid, Oser would likely have terminated the private arrangement with Phinney. Thus, Phinney had a financial interest in the BPFD's approval of the Oser requisitions.[3] Phinney knew of his financial interest in the BPFD's approval of the Oser requisitions at the time that he approved the hard costs portions of them as a BPFD construction specialist.

25. Therefore, each time that Phinney, as a BPFD construction specialist, approved the hard costs portions of an Oser payment requisition that he had prepared, Phinney participated in a particular matter in which, to his knowledge, he had a financial interest. Each time that he did so, Phinney violated §19.

26. Section 23(b)(3) of G.L. c. 268A, prohibits a municipal employee from, knowingly or with reason to know, acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as the result of the undue influence of any person or party. Section 23(b)(3) further provides that "[i]t shall be unreasonable to so conclude if [the employee] has disclosed in writing to his appointing authority ... the facts which would otherwise lead to such a conclusion."

27. A reasonable person, with knowledge of the above-stated circumstances, would conclude from Phinney's approval of Oser's requisitions as to hard costs, contemporaneously with his private paid BPFD requisition preparation and South Weymouth project administrative work for Oser, that Oser could improperly influence Phinney or unduly enjoy his favor in the performance of his official duties as a BPFD construction specialist. Accordingly, by contemporaneously working privately for Oser and approving, as a BPFD construction specialist, Oser's payment requisitions as to hard costs, Phinney violated §23(b)(3). Phinney at no time made the disclosure to his appointing authority required to avoid violating §23(b)(3).

28. Finally, a reasonable person, with knowledge of the above-stated circumstances, would conclude from Phinney's approval of Long & Gordon's requisitions as to hard costs, contemporaneously with his private paid consulting arrangement with the company, that Long & Gordon could improperly influence Phinney or unduly enjoy his favor in the performance of his official duties as BPFD construction specialist. Accordingly, by contemporaneously working as a paid private consultant for Long & Gordon and, as a BPFD construction specialist, approving the company's payment requisitions as to hard costs, Phinney violated §23(b)(3). Phinney at no time made the disclosure to his appointing authority required to avoid violating §23(b)(3).

VI

In view of the foregoing violations of G.L. c. 268A by Phinney, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Phinney:

(1) that Phinney pay to the Commission the sum of $8,500 as a civil penalty for violating G.L. c. 268A;

(2) that Phinney pay to the Commission the sum of $5,000 as a civil forfeiture of the compensation he received for preparing requisitions submitted to the BPFD in violation of G.L. c. 268A, §17(a); and

(3) that Phinney waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this agreement in this or any other related administrative or judicial proceeding to which the Commission is or may be a party.

DATE: February 8, 2001

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[1] "Particular matter" means 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 enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special

laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

[2]"Participate" means to 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. G.L. c. 268A, §1(j).

[3]"Financial interest" means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. *See Graham v. McGrail*, 370 Mass. 133, 345 N.E. 2d 888 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. *See EC-COI-84-98*. The interest can be affected in either a positive or negative way. *See EC-COI-84-96*.

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss COMMISSION ADJUDICATORY DOCKET NO. 613

IN THE MATTER OF MICHAEL A. CALIRI

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Michael A. Caliri pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On January 19, 2000, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A by Caliri. The Commission has concluded the inquiry and, on August 23, 2000, found reasonable cause to believe that Caliri violated G.L. c. 268A.

The Commission and Caliri now agree to the following findings of fact and conclusions of law:

1. Caliri is the director of maintenance and custodial services ("maintenance director") for the Randolph public schools ("School Department"). Caliri was appointed to this full-time, salaried position by the Randolph superintendent of schools ("the superintendent") on or about January 21, 1997.

2. As maintenance director, Caliri, among other duties, schedules, supervises and oversees the work of all School Department custodial and maintenance personnel (including electricians, plumbers and carpenters) and of private vendors providing maintenance and repair services to the School Department. In addition, Caliri authorizes overtime work pursuant to the governing collective bargaining agreement and signs off on weekly payroll/attendance sheets for all School Department custodial and maintenance personnel.

3. In early 1997, Caliri and his wife contracted to purchase land for a new house in the Manomet section of Plymouth. In February 1997, the Caliris contracted with a builder to build the weathertight shell of the house for $70,000. Pursuant to the contract, the Caliris were responsible for the wiring, plumbing, heating, insulation, exterior paint and all interior finish work for the house.

4. Also in early 1997, Caliri approached School Department employee Thomas Steele at work and asked if Steele would build the kitchen cabinets and countertops and bathroom vanities for the new house. Steele is a special education teacher who also performs cabinetry work in the maintenance department part-time during the school year and full-time during the summer. Caliri coordinates Steele's cabinetry work with the superintendent's office and signs off on Steele's timesheets during the summer; however, Steele's hours of work, compensation and work assignments are determined by the superintendent, not Caliri. For many years prior to 1997, Steele had privately made and sold cabinets, countertops and vanities out of his home wood shop. By 1997, however, Steele had ceased that business activity and was instead doing cabinet work only for family and friends. According to Caliri, he was not aware that Steele had curtailed his business activities when he approached Steele to discuss the cabinet work. Caliri and Steele had a friendly work relationship but did not socialize outside of work. Steele agreed to do the work that Caliri requested for $3,500, a price that was unilaterally set by Steele. Caliri purchased all the cabinet hardware separately. Steele built and installed Caliri's countertops, cabinets and vanities between April and November 1997. Caliri paid Steele his price for his work as agreed.

5. In early 1997, Caliri asked a School Department vendor, Williams Coal & Oil Co. ("Williams Coal & Oil") of Braintree, to furnish and install the heating system, to rough-in the air conditioning system and to furnish (except for certain fixtures purchased by Caliri) and install the plumbing in his new house. The company agreed to do the plumbing, heating and air conditioning work for Caliri. The company performed the work between April and October 1997 and charged Caliri $9,350, a price that was unilaterally set by the company. Caliri paid Williams Coal & Oil its price for the work in several installments ending in early 1998. Around the time when Williams Coal & Oil performed the work at Caliri's new house, the company was one of several vendors providing price quotes for various plumbing and heating jobs required by the School Department. Between March and June 1997,

the company was selected, based upon its price, to perform and did perform $3,300 worth of plumbing work for the School Department under Caliri's oversight as maintenance director.

6. In early 1997, Caliri told School Department electrician Joe Broderick that he was building a new house. Caliri and Broderick had worked at the same private company for several years prior to working at the School Department and had become friends in that context. In the early 1990s, Caliri had helped Broderick by renting Broderick a three-bedroom cottage that Caliri owned on the beach in Manomet for September through May of three years at a low rent. Broderick wished to reciprocate for Caliri's prior help and offered to do the wiring of Caliri's new house.

7. Broderick wired Caliri's new house, with materials supplied by Caliri, over the course of approximately ten Saturdays during the summer and fall of 1997. Broderick's labor in wiring Caliri's new house was worth about $3,000. This was, however, less than the value of the total benefit that Caliri had provided to Broderick when he rented him the Manomet cottage. Broderick did not charge Caliri, and Caliri did not pay Broderick anything for wiring Caliri's new house.

8. During the late spring, summer and fall of 1997, Caliri requested and received the assistance of School Department maintenance worker David Kilmurray and then School Department temporary hourly maintenance worker Ken Pignatelli with the interior and exterior painting of his new house.[1]

9. As of spring 1997, Kilmurray and Caliri had a friendly relationship; they occasionally socialized off the job by going with a group of School Department maintenance workers for drinks after work at the Randolph Amvets Post. Caliri and Kilmurray also had gone to the dog track together on a number of occasions, and Kilmurray had visited Caliri's home several times. In addition, Caliri had previously loaned Kilmurray $900 without interest, which Kilmurray repaid in four months.

10. Kilmurray agreed to help Caliri and spent many weekends and several of his vacation and personal leave days during the summer and early fall of 1997 helping paint Caliri's house. Kilmurray also spent a few hours one weekend helping Caliri plant a lawn for the new house. Kilmurray did not charge Caliri, and Caliri did not offer to pay or, in fact, pay Kilmurray anything for his work at Caliri's new house.

11. As of spring 1997, Caliri and Pignatelli, who had known each other for several years, were not friends and did not socialize. Caliri had never helped Pignatelli in any private matter.

12. Pignatelli agreed to help Caliri and spent many weekends during the summer and early fall of 1997 helping paint Caliri's house. Pignatelli, who as a temporary worker did not get paid vacation days, also, at Caliri's request, took at least one day off without pay to help paint Caliri's house. Pignatelli did not charge Caliri, and Caliri did not offer to pay or, in fact, pay Pignatelli anything for his work at Caliri's new house.

13. Caliri supplied all of the paint and most of the equipment used by Kilmurray and Pignatelli. Pignatelli supplied some of his own brushes and drop cloths. Caliri and his wife did some of the painting, but the substantial majority of the painting was done by Kilmurray and Pignatelli, with Pignatelli doing significantly more painting than Kilmurray. Kilmurray's and Pignatelli's combined labor in painting Caliri's new house was worth about $2,500 (with Pignatelli's labor being worth about $1,500 of that total). Kilmurray's landscaping work for Caliri was worth about $50.

14. During the summer of 1997, School Department custodian Joseph Callahan, at Caliri's invitation, went to Caliri's new house with Kilmurray and Pignatelli on at least one weekend and one of his vacation days. On one occasion, while Callahan was at Caliri's house, Callahan helped wash windows for a few hours at Caliri's request. On another occasion, also at Caliri's request, Callahan spent a few hours doing landscaping work at the house, including helping Caliri plant a large bush and rake out the top soil for the lawn. At the time, Caliri and Callahan had a friendly relationship and occasionally socialized off the job at the Randolph Amvets Post, including some events which Caliri and his wife attended with Callahan and a female friend of Caliri's wife. In addition, Callahan and Caliri's brother Wayne Caliri are close personal friends. As of the time that Callahan helped Caliri, Caliri had never helped Callahan in any private matter. Callahan's work at Caliri's new house was worth between $60 and $100. Callahan did not charge Caliri, and Caliri did not offer to pay or, in fact, pay Callahan anything for his work at Caliri's new house.

15. On the days that the School Department employees helped Caliri with his new house, Caliri and his wife provided them with free meals and drinks in appreciation of their help. The men also socialized with the Caliris after working on the new house, swimming at the beach and barbecuing. Additionally, on several weekends when Kilmurray painted, he brought his two young children with him, and Caliri's wife watched them (together with the Caliris' two young children) and took them to the beach while Kilmurray painted. The Caliris also invited Callahan, Pignatelli and Kilmurray to stay overnight at their cottage on the weekends that they worked at the new house. Pignatelli stayed at the Caliris' cottage several nights, Kilmurray (and his children) two or three nights, and Callahan one or two nights during the course

of their work on the Caliris' new house. Finally, on Labor Day weekend, the Caliris paid for Kilmurray and his children to stay overnight at a nearby motel.[2]

16. During the summer of 1997, Caliri, as School Department maintenance director, signed off on weekly payroll/attendance sheets for Steele. During the summer and fall of 1997, Caliri signed off on weekly payroll/attendance sheets for Pignatelli, and on several occasions authorized overtime work for Kilmurray, Broderick and Callahan. During the period of March to December 1997, Caliri approved 145 hours of overtime for Broderick, 323 hours of overtime for Kilmurray, and 473 hours of overtime for Callahan.[3] Pignatelli, as a temporary worker, was not eligible for overtime. At the time, the superintendent also reviewed and approved all overtime sheets before payment was made.

17. In October 1997, when the superintendent was considering Pignatelli's appointment as a permanent employee, the superintendent sought Caliri's assessment of Pignatelli. Caliri in response gave Pignatelli his "highest praises," in part, according to Caliri, based upon feedback about Pignatelli's work that Caliri received from the principals of the school where Pignatelli had worked. The superintendent subsequently appointed Pignatelli to a permanent position.

18. At no time did Caliri disclose to his appointing authority, the superintendent, that Caliri had requested and received help from his School Department subordinates and a School Department vendor in the construction of his new home and that he was continuing to take official actions as maintenance director concerning those subordinates and that vendor.

19. As School Department maintenance director, Caliri is a municipal employee as defined in G.L. c. 268A, §1. As such, Caliri is subject to the provisions of the conflict of interest law, G.L. c. 268A.

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

21. Receiving without charge services for which payment is normally required is a privilege. The electrical, painting, landscaping and window washing services that Broderick, Kilmurray, Pignatelli and Callahan provided to Caliri without charge were services for which Caliri would otherwise have been required to pay. Accordingly, Caliri's receipt of those free services was, in each case, a privilege within the meaning of §23.

22. The free services which Caliri received from his School Department subordinates Broderick, Kilmurray, Pignatelli and Callahan were of substantial value.[4]

23. The privilege of the free painting services that Caliri requested and received from Pignatelli was unwarranted because it was obtained from a subordinate who did not have a private relationship with Caliri and/or a private motive, unrelated to his subordinate-boss relationship with Caliri, significant enough to have independently motivated the provision of the free services in question.[5] Under such circumstances, free services from a subordinate public employee are not properly available to individuals situated similarly to Caliri, i.e., other supervising public employees or officials.[6]

24. Given that Caliri's private (off the job) relationship with Pignatelli was too limited to have motivated Pignatelli to help Caliri to the extent that he did, Caliri knew or had reason to know that Pignatelli was providing him with those free services, at least in substantial part, because Caliri was Pignatelli's School Department boss. This was especially true because Pignatelli was in a vulnerable and exploitable position as a temporary hourly worker, had only a very limited pre-existing private relationship with Caliri, and provided a large amount and value of free painting services to Caliri. Accordingly, by requesting and receiving Pignatelli's help with his new house, Caliri knowingly or with reason to know used his official position to obtain his subordinate's free services.

25. Therefore, by requesting and receiving Pignatelli's uncompensated help with his new house, Caliri knowingly or with reason to know used his official position to secure for himself a substantially valuable unwarranted privilege which was not properly available to similarly situated persons. In so doing, Caliri violated G.L. c. 268A, §23(b)(2).

26. Section 23(b)(3) of G.L. c. 268A prohibits a municipal employee from, knowingly or with reason to know, acting in a manner which would cause a reasonable person, with knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy the employee's favor in the performance of the employee's official duties, or that the employee is likely to act or fail to act as a result of kinship, rank, position or undue influence of any person or party. Section 23(b)(3) further provides that the section is not violated if the employee "has disclosed in writing to his appointing authority ... the facts which would otherwise lead to such a conclusion."

27. By requesting and receiving the paid services of Steele and Williams Coal & Oil, and by requesting and/or receiving the unpaid services of Broderick, Kilmurray, Pignatelli and Callahan in connection with the construction of his new house in 1997 and by, during the same period, in the case of the employees, assigning and super-

vising their work for the School Department, signing their time sheets, approving their overtime and taking other actions concerning their municipal employment, and, in the case of the vendor, overseeing its work for the School Department, Caliri knowingly or with reason to know, acted in a manner which would cause a reasonable person, with knowledge of the relevant circumstances, to conclude that Steele, Williams Coal & Oil, Broderick, Kilmurray, Pignatelli and Callahan could unduly enjoy Caliri's favor or improperly influence Caliri in his performance of his official duties. In so acting, Caliri violated G.L. c. 268A, §23(b)(3). Caliri did not make the disclosures to his appointing authority, the school superintendent, required to avoid violating §23(b)(3).[7]

28. Caliri's brother Wayne worked as a School Department custodian from 1986 until March 1999. From January 1997, when Caliri was appointed as maintenance director, until March 1999, Caliri supervised Wayne, who also reported to the principal of the school to which he was assigned. As part of his supervision of Wayne, Caliri assigned work to Wayne and authorized his overtime. For example, between March and December 1997, Caliri approved 469 hours of overtime for Wayne, which was one of the highest overtime totals among maintenance workers and custodians for that period. According to Caliri, the reason Wayne received so much overtime in 1997 was because Wayne was one of two custodians assigned to the recently fire-damaged Donovan School and had the right of first refusal under the applicable collective bargaining agreement for overtime assignments at the school. Caliri's assignments of overtime hours to Wayne were subject to the superintendent's review and approval.

29. Caliri's appointing authority, the superintendent, was aware when he appointed Caliri to serve as maintenance director that Caliri and Wayne were brothers and that Caliri would be responsible for supervising Wayne. Caliri, however, did not at anytime file a written disclosure to the superintendent that he was supervising Wayne, approving Wayne's overtime and taking other official actions concerning matters in which Wayne had financial interests. The superintendent, in turn, at no time made a written determination that Wayne's financial interest was not so substantial as to be deemed likely to affect the integrity of the services which the town of Randolph may expect from Caliri as maintenance director.

30. Section 19 of G.L. c. 268A prohibits a municipal employee from participating[8] as such in a particular matter[9] in which to his knowledge a member of his immediate family[10] has a financial interest,[11] except as permitted by paragraph (b) of that section.[12]

31. Wayne, as Caliri's brother, is a member of Caliri's immediate family.

32. In supervising Wayne as a School Department custodian, Caliri, as maintenance director, participated in many particular matters in which he knew that Wayne had a financial interest, including, for example, Caliri's numerous decisions to authorize Wayne's overtime work. In so doing, Caliri violated §19.

33. The fact that Caliri's appointing authority, the superintendent, was aware that Caliri was supervising his brother is not a defense to Caliri's violation of §19. The formal disclosure and written determination requirements of the §19(b)(1) exemption are not mere technicalities. They protect the public interest from potentially serious harm. As the Commission has stated, "The steps of the disclosure and exemption procedure ... are designed to prevent an appointing authority from making an uninformed, ill-advised or badly motivated decision." *In re Hanlon*, 1986 SEC 253, 255. Accordingly, the Commission requires that anyone seeking exemption under §19(b)(1) from the prohibitions of §19 strictly comply with provisions of §19(b)(1). *See In re Ling*, 1990 SEC 456, 458-459. Furthermore, "the primary responsibility for compliance with these provisions rests on the public employee seeking the exemption." *Hanlon*, supra. The superintendent's knowledge is, however, a mitigating circumstance which the Commission has considered in determining the amount of the fine imposed for Caliri's violation of §19. *Id.*[13]

34. According to Caliri, he was not aware at the time of his above-described conduct that his actions violated the conflict of interest law, as he had, prior to becoming aware of the Commission's investigation of this matter, never read G.L. c 268A nor received any training concerning its requirements. Ignorance of the law is, however, not a defense to a violation of the conflict of interest law. *In re Brewer*, 1987 SEC 300, 3001 n.1; see also *Scola v. Scola*, 318 Mass. 1, 7 (1945).

In view of the foregoing violations of G.L. c. 268A by Caliri, the Commission has determined that the public interest would be served by the disposition of the matter without further enforcement proceedings, on the basis of the following terms and conditions agreed upon by Caliri:

(1) that Caliri pay to the Commission the sum of $4,000 as a civil penalty for violating G.L. c. 268A, §§19, 23(b)(2) and 23(b)(3);

(2) that Caliri pay to the Commission the sum of $1,500 as a civil forfeiture of the benefit he received by using his position to secure the unwarranted privilege of free services from his subordinate Pignatelli in violation of G.L. c. 268A; and

(3) that Caliri waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or

any other related administrative or judicial proceeding to which the Commission is or may be a party.

DATE: March 12, 2001

[1] According to Caliri and Kilmurray, before Caliri's new house was ready for painting, Kilmurray told Caliri that he and Pignatelli could do the painting without charge. Thus, according to Caliri, when the house was ready for painting and he asked his subordinates for help, he was accepting that prior offer. The Commission, however, finds the evidence on this point to be contradictory and does not find that the offer was made prior to Caliri's request for help as Caliri and Kilmurray state.

[2] Kilmurray stated under oath that he agreed to help Caliri because of their friendly relationship and because of the opportunity his helping Caliri provided for his children to spend several weekends at the beach. Kilmurray further stated under oath that he felt he was adequately compensated for the work he performed at Caliri's new house by his children's enjoyment of the beach and by the Caliris' hospitality.

[3] According to Caliri, he offered maintenance workers and custodians an unusually large amount of overtime in 1997 because the School Department had eight maintenance and custodial vacancies at the time, and because the Donovan School suffered $700,000 in damage in an April 1997 fire and needed extensive clean up and repair work. According to Caliri, all overtime was offered and assigned according to the applicable collective bargaining agreement, and no grievances were filed concerning Caliri's assignment of overtime in this period.

[4] The Commission construes substantial value to mean or include any item or service with a value of $50 or more. *In re LIAM*, 1997 SEC 879, 890.

[5] By contrast, Broderick's free services to Caliri were not unwarranted privileges because they were independently motivated by Broderick and Caliri's private relationship including, in particular, the housing assistance that Caliri had provided to Broderick, for which Broderick's services were reciprocation. Also by contrast, Callahan's free services were not unwarranted because they were sufficiently minor to be attributable to his friendly off the job relationship with Caliri. Finally, while it is a close question, Kilmurray's free services were not unwarranted because they appear to have been attributable to his friendly off the job relationship with Caliri and to the value to Kilmurray of having his children spend several summer weekends at the beach while he helped Caliri.

[6] Public employees are prohibited by the conflict of interest law from taking private advantage of the inherently exploitable relationships they have with those persons whom they supervise or regulate in their official positions. *See In re Corson*, 1998 SEC 912; *see also In re Shay*, 1992 SEC 591.

[7] The Commission, nevertheless, does not find that Caliri was in fact unduly influenced in the performance of his official duties as maintenance director by his private dealings with Broderick, Kilmurray, Callahan or Pignatelli, or with Steele and Williams Coal & Oil, nor is the Commission aware of any evidence that the men or the company ever received any preferential treatment from Caliri in the performance of his official duties.

[8] "Participate" means to 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. G.L. c. 268A, §1(j).

[9] "Particular matter" means 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 enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

[10] "Immediate family" means the employee and his spouse, and their parents, children, brothers and sisters. G.L. 268A, §1(e).

[11] "Financial interest" means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. *See Graham v. McGrail*, 370 Mass. 133, 345 N.E. 2d 888 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. *See EC-COI-84-98*. The interest can be affected in either a positive or negative way. *See EC-COI-84-96*.

[12] Section 19(b)(1) provides that conduct which would otherwise be a violation of 19 "shall not be a violation ... if the municipal employee first advises the official responsible for appointment to his position of the nature and circumstances of the particular matter and makes full disclosure of such financial interest, and receives in advance a written determination made by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee."

[13] Further, the Commission is not aware of any evidence that Wayne received preferential treatment from Caliri in the performance of his official duties.

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY DOCKET NO. 614

IN THE MATTER OF RALPH SHALSI

DISPOSITION AGREEMENT

The State Ethics Commission and Ralph Shalsi enter into this Disposition Agreement pursuant to 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court pursuant to G.L. c. 268B, §4(j).

On September 19, 2000, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law by Shalsi. The Commission concluded that inquiry, and on December 13, 2000, found reasonable cause to believe that Shalsi violated G.L. c. 268A, §23(b)(2).

The Commission and Shalsi now agree to the following findings of fact and conclusions of law:

1. From January 1998 through July 31, 2000, Shalsi served as the Everett 911 Emergency Services Director. As such, he was a municipal employee within the meaning of §1 of the conflict of interest law, G.L. c. 268A.

2. During the relevant time, Beth Frongillo served as a dispatcher at the Everett 911 Emergency Communications Center. Shalsi, as the 911 director, was Frongillo's supervisor. Shalsi had the ability to and did take action concerning Frongillo's employment.

3. Shalsi and Frongillo had no private business or social relationship.

4. In spring 1999, certain employees of the 911 Department ordered shirts with embroidered work. Shalsi's order came to $130. In May 1999, Shalsi told Frongillo that he was short on funds and asked her to loan him $130 to pay his outstanding shirt debt. Frongillo agreed to loan Shalsi the money and wrote out a $130 check. There was no understanding as to when the loan was to be repaid. Frongillo testified that Shalsi being her boss was a factor in her agreeing to loan Shalsi the money.

5. In June 1999, Shalsi, again finding himself short on funds, asked Frongillo to loan him an additional $200. Frongillo refused Shalsi's request.

6. In July 1999, after Frongillo made requests for repayment, Shalsi paid Frongillo the $130 he had borrowed from her.

7. Section 23(b)(2) of G.L. c. 268A prohibits a municipal employee from knowingly or with reason to know using or attempting to use his position to obtain for himself or others an unwarranted privilege of substantial value which is not properly available to similarly situated individuals.

8. Shalsi requested loans of $130 and $200 from his subordinate Frongillo. Where Shalsi was Frongillo's superior, had the ability to and did take action concerning her employment, and had no friendship or other personal relationship outside the employment relationship, Shalsi knew or had reason to know that he was using his official position in his requests for the loans. That is, Shalsi knew or had reason to know that Frongillo would, in part, be motivated to agree to loan him the money because of his official position as her supervisor.

9. The ability to borrow significant monies is a special benefit and thus is a privilege.

10. Borrowing money from a subordinate with whom one has no private business or social relationship is an unwarranted privilege. Inevitably, such a solicitation is inherently coercive as it is based in part on the exploitable nature of the superior-subordinate relationship.

11. The ability to borrow significant monies (here $130 and $200) from a subordinate is of intangible substantial value.

12. The ability of a supervisor to request and/or obtain loans from a subordinate is not permitted in the workplace. Therefore it is not properly available to similarly situated individuals.

13. Thus, by using his official position as the 911 director in securing for himself the unwarranted privilege of a loan of $130 and in attempting to obtain a $200 loan, both from his subordinate, Shalsi violated G.L. c. 268A, §23(b)(2).

In view of the foregoing violations of G.L. c. 268A, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Shalsi:

(1) that Shalsi pay to the Commission the sum of $500 as a civil penalty for the violation of G.L. c. 268A, §23(b)(2); and

(2) that Shalsi waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceeding to which the Commission is or may be a party.

DATE: March 15, 2001

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY
DOCKET NO. 615

IN THE MATTER
OF
FRANK COSTA

DISPOSITION AGREEMENT

The State Ethics Commission and Frank Costa enter into this Disposition Agreement pursuant to §5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable

in the Superior Court pursuant to G.L. c. 268B, §4(j).

On May 12, 1999, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law by Costa. The Commission concluded that inquiry, and on March 22, 2000, found reasonable cause to believe that Costa violated G.L. c. 268A, §23(b)(2).

The Commission and Costa now agree to the following findings of fact and conclusions of law:

1. At all relevant times, Costa served as a Town of Dighton selectman and board of health member. As such, Costa was a municipal employee as that term is defined in G.L. c. 268A, §1(g). Costa was first elected to the board of selectmen in 1986 and has served continuously since that time. The board of selectmen also serves as the board of health.

2. At all relevant times, Veronica Costa ("Veronica"), Costa's daughter, lived with her husband, David Silva ("David"), at 2033 Elm Street in Dighton in a house they rented from David's mother, Beatrice Tremblay ("Beatrice"). Beatrice's former husband, now deceased, caused the Elm Street house to receive its water from an illegal water line that was run from a house he also owned at 374 School Lane and now owned by David's brother Paul Silva ("Paul"). The Elm Street house continued to receive its water from the School Lane house during the period Veronica and David lived there.

3. As the result of a dispute between Paul and David regarding their father's estate, Paul shut off the water to the Elm Street house on November 13, 1998.

4. On November 13, 1998, Veronica telephoned Costa and informed him of the shutoff.

5. Costa states that he telephoned several town officials to solicit their assistance to resolve the problem, however, he was unable to reach any of them at their offices or homes.

6. Costa then called Paul and told him he (Paul) had created a "serious health violation" by shutting off the water. Paul refused to discuss the matter with Costa.

7. On Friday, November 13th and Saturday, November 14th, Costa telephoned the police department three times to seek their assistance in getting Paul to turn the water back on.

8. On November 15, 1998, Costa contacted the police department and requested an officer deliver a letter Costa had written to Paul. Officer David McGuirk delivered the letter to Paul and notified Costa of the delivery. (In making this request, Costa knew that his being a selectman and board of health member would likely cause the police department to accept his request.)

9. In his November 15, 1998 letter to Paul, Costa cited his authority as a member of the board of selectmen and board of health, and ordered Paul to repair the line and restore the water service to Elm Street by 3:30 p.m. that day, or arrangements would be made to repair the water line and all associated costs billed to Paul. Costa also asserted that a complaint had been filed alleging that Paul willfully and maliciously defiled the Elm Street water source and that, if the allegations proved true, Paul faced fines and imprisonment.

10. The other board of selectmen/board of health members never authorized Costa's actions nor were they even aware of Costa's actions until November 17, 1998.

11. Under 105 CMR 410.180, an owner must provide his tenant with potable water, and the board of health has jurisdiction to force the property owner to do so. Where Paul was not the owner of the property at 2033 Elm Street, it would have been inappropriate for the board of health to direct Paul to take any action regarding the water line. Moreover, it would have been inappropriate to re-establish the illegal water connection. The correct action would have been to direct the property owner to connect 2033 Elm Street directly to the town water supply.

12. Section 23(b)(2) of G.L. c. 268A prohibits a municipal employee from knowingly or with reason to know using or attempting to use his position to obtain for himself or others an unwarranted privilege of substantial value which is not properly available to similarly situated individuals.

13. Costa knew or had reason to know that he was using his official position in this matter by as a selectman/board of health member requesting the police department to deliver his letter, and by in that letter explicitly invoking his authority as a selectman/board of health member to order Paul to repair the line and restore water service.

14. Costa's ability as a municipal official to obtain police intervention in a private family dispute was a special advantage, and, as such a privilege.[1] Similarly, Costa's ability to unilaterally invoke the authority of the selectmen/board of health in a letter in such a private dispute was also a privilege.

15. These privileges were unwarranted because Costa was not lawfully authorized to so use his official position. The privileges were each of substantial values because they made it more likely that the water would be promptly turned back on, a result in which Veronica had a significant financial interest. (This water dispute could

have resulted in Veronica having to find and pay for an alternative water source and/or in having to pay additional rent and/or water bills.)

16. These privileges were not properly available to similarly situated individuals.

17. In summary, by using his official position as a board of health/board of selectmen member to secure the foregoing unwarranted privileges of substantial value for his daughter, Costa violated G.L. c. 268A, §23(b)(2).

In view of the foregoing violations of G.L. c. 268A, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Costa:

(1) that Costa pay to the Commission the sum of $1,000 as a civil penalty for the violation of G.L. c. 268A, §23(b)(2); and

(2) that Costa waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement or any other related administrative or judicial proceeding to which the Commission is or may be a party.

DATE: March 19, 2001

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[1]As defined in *The American Heritage Dictionary* (second college ed.), a privilege is "A special advantage, immunity, permission, right or benefit granted to an individual, class or caste."

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss.COMMISSION ADJUDICATORY DOCKET NO. 616

IN THE MATTER OF VICTORIA DEIBEL

DISPOSITION AGREEMENT

The State Ethics Commission and Victoria Deibel enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On May 22, 2000, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Deibel. The Commission has concluded its inquiry and, on September 20, 2000, found reasonable cause to believe that Deibel violated G.L. c. 268A.

The Commission and Deibel now agree to the following findings of fact and conclusions of law:

1. At all times relevant to this matter, Deibel was a member of the Rockland Board of Health ("Board"). As such, she was a municipal employee within the meaning of G.L. c. 268A, §1.

2. During the relevant period, members of Deibel's immediate family owned a restaurant in Rockland called Anita Marie's.

3. In June 1998, the Board hired Michael Hambly as health agent. In August 1998, the Board hired John Doyle as health director. Doyle's contract did not have a notice-of-termination clause. Hambly's contract required a 60-day written notice before he could be terminated.

4. On August 27, 1998, Hambly and Doyle inspected Anita Marie's. They found four critical and 16 non-critical violations.

5. On September 10, 1998, Hambly and a State Department of Public Health Food and Drug Inspector re-inspected Anita Marie's. The inspection resulted in one critical and 11 non-critical violations.

6. In the ordinary course of the health inspection process, a re-inspection of Anita Marie's would have occurred in late September.

7. At the September 22, 1998 Board meeting, a motion was made to terminate Doyle's and Hambly's contracts, "effective immediately." Deibel seconded the motion. The motion passed 2 to 1 with Deibel voting in favor of termination. The termination notice was communicated immediately to both Doyle and Hambly, without a 60-day notice to Hambly.

8. Deibel testified that her vote to terminate Doyle and Hambly was unrelated to any inspections of Anita Marie's. Deibel maintains that her actions were based on merit, mainly the inspectors' failure to perform their duties in matters concerning the landfill and their failure to send notices to residences of a potential methane gas leak in a timely manner. Deibel, however, did not indicate her rationale at the time of the September 22, 1998 Board termination vote.

9. The Commission has no evidence to suggest that Deibel was aware that her actions violated G.L.

c. 268A when she participated in the decision to terminate the employment contracts of health director Doyle and health agent Hambly. Ignorance of the law, however, is no defense to a violation of G.L. c. 268A. *In re Doyle*, 1980 SEC 11, 13. *See also, Scola v. Scola*, 318 Mass. 1, 7 (1945).

10. General Laws chapter 268A, §23(b)(3), in relevant part, prohibits a municipal employee from, knowingly or with reason to know, acting in a manner which would cause a reasonable person having knowledge of the relevant circumstances, to conclude that any person can improperly influence the employee or unduly enjoy the employee's favor in the performance of the employee's official duties, or that the employee is likely to act or fail to act as the result of kinship, rank, position or undue influence of any party or person. Section 23(b)(3) further provides that "[i]t shall be unreasonable to so conclude if [the employee] has disclosed in writing to his appointing authority ... the facts which would otherwise lead to such a conclusion."

11. By as a Board member voting to terminate the employment contracts of health director Doyle and Health agent Hambly, who had recently been involved with negative inspections of her family's restaurant, and who would likely perform follow up inspections in the near future, Deibel knowingly or with reason to know acted in a manner which would cause a reasonable person with knowledge of the relevant circumstances to conclude that her and/or her family's interests could improperly influence Deibel in the performance of her official duties as a Board member. In so doing, Deibel violated §23(b)(3). (This violation could have been avoided if Deibel had made a written §23 disclosure which was public in nature of her family's restaurant inspection history with Hambly and Doyle.)

12. Deibel cooperated with the Commission's investigation.

In view of the foregoing violation of G.L. c. 268A by Deibel, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Deibel:

(1) that Deibel pay to the Commission the sum of $1,000 as a civil penalty for violating G.L. c. 268A, §23(b)(3); and

(2) that Deibel waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: March 21, 2001

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY DOCKET NO. 617

IN THE MATTER OF PATRICK MURPHY

DISPOSITION AGREEMENT

The State Ethics Commission and Patrick Murphy enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On January 19, 2000, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Murphy. The Commission has concluded its inquiry and, on November 21, 2000, found reasonable cause to believe that Murphy violated G.L. c. 268A, §23.

The Commission and Murphy now agree to the following findings of fact and conclusions of law:

1. Murphy was, during the time relevant, the Cambridge deputy school superintendent. As such, Murphy was a municipal employee as that term is defined in G.L. c. 268A, §1(g).

2. Murphy has a daughter who at the relevant time was a freshman in college.

3. In November 1999, Murphy asked a Cambridge School Department employee to assist his daughter on a paper his daughter needed to write for her college freshman English class. The employee took the assignment sheet from Murphy and approximately a week later gave Murphy a draft paper on *Othello* intended as a "template" for a final paper. Murphy gave the paper to his daughter. The paper was used substantially unchanged for her college course. Subsequently, Murphy returned to the employee with the *Othello* paper, which had received a D+ grade. and asked the employee to redo the paper. Murphy also went to a second school department employee and asked her to assist the first employee with redoing the *Othello* paper. Murphy then gave the two school department employees an assignment sheet on *Hamlet* for his daughter's same college course. They prepared a paper on *Hamlet* and gave the paper to Murphy, and he gave the paper to his daughter. Murphy made the above requests in face-to-face meetings with the employees at the school department during regular hours. The employees expended several hours of time in responding to Murphy's requests.

4. Until his resignation in December 1999, Murphy as deputy superintendent, occupied the "number two" position in the department. He was responsible for managing and improving program operations at both the elementary and secondary levels. While he was not either of these employees' direct supervisor, as deputy superintendent he did have the authority to direct their actions and participate in personnel actions that could affect them. At the same time, Murphy had a private relationship with the employees. While they did not have a close friendship or business relationship or history of exchanging private favors, the parties have known each other for numerous years and have attended several social/professional gatherings together. In any event, according to each of the above school department employees, she provided the above-described assistance in part because of friendship, but also in significant part because Murphy was deputy superintendent. Both employees have indicated that they felt pressured by the requests.

5. Section 23(b)(2) G.L. c. 268A prohibits a municipal employee from knowingly or with reason to know using or attempting to use his position to obtain for himself or others an unwarranted privilege of substantial value which is not properly available to similarly situated individuals.

6. Given Murphy's official relationship with the two employees, his making the requests (as opposed to their offering), his making these requests at the School Department during regular work hours, and the fact that each employee states Murphy's official position played a significant role, it is clear that when Murphy made the above requests he was, in effect, using his position as deputy superintendent to do so. (This conclusion applies even if Murphy to some extent was also relying on his private relationship with these employees in making these requests.)

7. A college student's receiving substantial assistance in the writing of her college papers from City of Cambridge School Department employees is a special advantage or benefit. As such it is a privilege.

8. There is no justification for Murphy's daughter receiving such a privilege under these circumstances. School department employees are not supposed to be assisting a senior school department administrator's daughter with her college course work. Therefore, the privilege was unwarranted. The assistance was particularly unwarranted when it moved from drafting a "template" for the first paper to redoing the first paper and preparing the second paper.

9. Having Cambridge School Department employees do such work was a privilege of substantial value in two respects: first, it involved in the aggregate a significant amount of those employees' time; second, it provided Murphy's daughter with course work assistance of substantial intangible value by which she could potentially earn college credit.

10. The privilege which Murphy obtained for his daughter was not properly available to "similarly situated individuals."

11. Therefore, by having school department employees assist his daughter with her college work as discussed above, Murphy knowingly used his deputy superintendent position to obtain an unwarranted privilege of substantial value not properly available to other similarly situated individuals in violation of §23(b)(2).

In view of the foregoing violations of G.L. c. 268A by Murphy, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Murphy:

(1) that Murphy pay to the Commission the sum of $2,000 as a civil penalty for the violations of G.L. c. 268A, §23(b)(2); and

(2) that Murphy waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: March 29, 2001

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY DOCKET NO. 618

IN THE MATTER
OF
WILLIAM J. MALONEY, Jr.

DISPOSITION AGREEMENT

The State Ethics Commission and William J. Maloney Jr. enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On November 17, 1999, the Commission initiated,

pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Maloney. The Commission has concluded its inquiry and, on October 18, 2000, found reasonable cause to believe that Maloney violated G.L. c. 268A, §19.

The Commission and Maloney now agree to the following findings of fact and conclusions of law:

I. Introduction

1. At all times here relevant, Maloney was a Walpole selectman, having been elected to that position in 1991.

2. In addition, at all times here relevant, Maloney was a licensed real estate broker and independent contractor who had contracted to sell real estate for Walsh Construction ("Walsh"), a subdivision developer in Walpole. Maloney had worked for Walsh since 1975 and, by agreement, was the exclusive real estate broker for Walsh in Walpole. For each subdivision, Walsh granted Maloney a power of attorney to execute and deliver all necessary closing documents and to receive the sale proceeds from the buyers. Maloney received an 8% commission on each sale, which accounted for the majority of his annual income during the time relevant.

3. On at least three occasions between June 1996 and January 1999, the Ethics Commission warned Maloney not to participate as a selectman in either discussions or votes concerning matters in which Walsh might have financial interests. In October 1997 and January 1999, after receiving advice from the Ethics Commission, Maloney filed disclosures with the town stating that he was the exclusive broker for Walsh and that his income from Walsh was solely derived from the sale of house lots.

II. Article 48

4. In 1990, the town enacted a subdivision phase by-law (§9-I), which provided that an applicant "may not receive building permits for a subsequent development phase until the previous development phase is completed." The by-law defined "development phase" as the period of construction within a subdivision phase beginning with the issuance of the first building permit and ending with the issuance of the last occupancy permit.[1]

5. In late 1998, the town, through its board of selectmen, received a petition proposing an amendment to the subdivision phase by-law, redefining the meaning of "development phase."[2] Neither Walsh nor Maloney were involved in the promotion of the by-law amendment.

6. On February 18, 1999, the planning board voted 3-0-0 to approve what had become known as Article 48: to amend the definition of "development phase" to allow the issuance of a building permit in a subsequent subdivision phase if *all but one* occupancy permit had been issued in the prior phase.

7. On March 15, 1999, the finance committee voted to amend Article 48 to allow the issuance of building permits for a subsequent phase after all but two occupancy permits had been issued for the earlier phase, and to recommend the article to town meeting.

8. On March 30, 1999, Article 48, as amended and approved by the finance committee, came before the selectmen for review and recommendation to town meeting. At that meeting, Maloney discussed the matter from his seat at the selectmen's table. Maloney spoke for several minutes, giving some history on the current interpretation of the by-law and the intended effect of the proposed change. In particular, he explained how the current interpretation of the by-law caused developers to speed up their construction, even though the town had enacted the by-law to control and slow growth. Maloney stated that the amendment would provide some relief and that he "would support it."

9. After Maloney had spoken on the matter, the selectmen voted 2-1-1 to recommend favorable action on Article 48. Maloney abstained from the vote.

10. The selectmen's vote to recommend Article 48 for favorable action was presented to town meeting prior to its vote on the matter, as was the usual practice with respect to most town meeting warrant articles. On April 12, 1999, town meeting passed Article 48 as amended by the finance committee and recommended by the selectmen. The amendment took effect immediately.

11. Other than participating in the discussion at the selectmem's meeting on March 30, 1999, Maloney had no official involvement in Article 48.

III. Maloney's Financial Interest in Article 48

12. Many of the subdivisions that Walsh developed in Walpole were developed in two or more phases, with seven or eight lots in each phase. Walsh sold the lots without houses built on them. As Walsh's agent, Maloney finalized the sales (i.e., conducted the closings) only when the lots in question were capable of receiving building permits. Maloney received his 8% commission after obtaining the sale proceeds from the buyer at the closing and delivering the money to Walsh. At all times relevant, Maloney was aware of how many building permits were allowed each year for each subdivision phase.

13. Maloney never sold more than ten lots per year for Walsh, a limitation imposed by Walsh. In 1997, Maloney sold nine lots for Walsh and, in 1998, Maloney

sold ten lots for Walsh.

14. In the beginning of 1999, Walsh had 16 lots available for sale in Walpole, including all eight lots in the third and final phase of the Northwood III subdivision ("Phase 3"). Maloney had executed purchase and sale agreements on two of the Phase 3 lots in December 1998, with the closings set for June 1, 1999.

15. Under the pre-Article 48 subdivision phase by-law then in effect, a building permit for a lot in Phase 3 could not be issued until *all of the occupancy permits* for Phase 2 of Northwood III ("Phase 2") were issued. Phase 2 was the subdivision phase immediately preceding Phase 3 in the Northwood III subdivision. Walsh had already sold all of the lots in Phase 2, but the owners had not completed building on those lots and, as of March 30, 1999, three houses in Phase 2 had not received occupancy permits. One of those houses was almost complete (and, in fact, received its occupancy permit in early May 1999), but the other two were far from complete: one house consisted only of a foundation, and the other house was just short of rough-frame approval. Thus, under the pre-Article 48 by-law, Maloney could not close on any of the eight lots in Phase 3 until the three remaining occupancy permits for Phase 2 were issued. As a result, Maloney's sales inventory for 1999 was reduced from 16 lots to eight (16 total lots minus the eight Phase 3 lots), which meant two fewer potential sales for 1999 than his allowable limitation of ten.

16. Neither Walsh nor Maloney had any control over the speed with which the houses in Phase 2 were constructed. Nevertheless, when Maloney spoke at the March 30, 1999 board of selectmen's meeting, he was aware of the status of construction in Phase 2, and he knew that, under the pre-Article 48 by-law, he would not be able to close on the Phase 3 lots until the three remaining occupancy permits for Phase 2 were issued. If the pre-article 48 by-law were amended, then Maloney would be able to close on the two Phase 3 lots under agreement as soon as just one more occupancy permit for Phase 2 issued, and his total potential sales for 1999 would remain at 16 lots. Under that scenario, Maloney would be more likely to achieve his limitation of ten closings for 1999.

17. As described above, the by-law was amended in April 1999.

18. On May 7, 1999, the Phase 2 house that had been close to completion on March 30, 1999, received its occupancy permit.

19. As a result of the change in the by-law and the issuance of all but two occupancy permits in Phase 2, Maloney was free to conduct the closings on the lots in Phase 3, as those lots had now become eligible to receive building permits. On August 31, 1999 and October 22, 1999, Maloney closed on the two Phase 3 lots that had been under agreement since December 1998. On August 26, 1999 and November 2, 1999, Maloney closed on two other Phase 3 lots. If the by-law had not been amended, Maloney could not have conducted closings on *any* Phase 3 lots until after December 10, 1999, when the last occupancy permit for Phase 2 issued.

20. Maloney was able to conduct closings on a total of ten lots in 1999. As a result of the change in the by-law, these ten closings included four lots in Phase 3 that would not have otherwise been available for closings until after December 10, 1999.

21. For the foregoing reasons, the by-law amendment in part contributed to Maloney's earning $148,000 in commissions and Walsh's receiving $1,850,000 in sale proceeds for 1999.

IV. Legal Analysis

22. As a Walpole selectman, Maloney was at all times relevant a municipal employee as that term is defined in G.L. c. 268A, §1. As such, Maloney was subject to the provisions of the conflict of interest law, G.L. c. 268A.

23. Except as otherwise permitted,[3] §19 of G.L. c. 268A prohibits a municipal employee from participating[4] as such an employee in a particular matter[5] in which to his knowledge he, a business organization by which he is employed, or an organization with whom he has any arrangement concerning prospective employment has a financial interest.[6]

24. Walsh is a business organization within the meaning of §19.

25. Maloney contracted to sell real estate for Walsh as Walsh's exclusive real estate broker in Walpole. Maloney's only "employment" compensation (as opposed to investment or retirement income) derived from his work as Walsh's exclusive real estate broker. Therefore, Walsh was Maloney's employer within the meaning of§19.[7]

26. The proposed by-law amendment known as Article 48 was a particular matter under consideration by the town in 1999.

27. Maloney participated in the Article 48 particular matter as a selectman by making an extensive statement on Article 48 prior to the selectmen's vote on March 30, 1999. In making his statement, Maloney stated his support for Article 48 because it would provide some relief from the status quo.[8]

28. When he participated in the particular matter, Maloney had a financial interest in reducing any delay

in the receipt of his commissions. Upon the enactment of Article 48 in April 1999, Maloney was able to sell the first Phase 3 lots in August and October 1999, whereas under the old by-law he would have had to wait until at least December 1999. Thus, where Maloney's commissions were contingent upon his ability to close on the sale of a lot, and where the timing of those closings was contingent upon Article 48, Maloney had a financial interest in Article 48 when he so participated.

29. Maloney also had a financial interest in how many lots were available for him to sell that year. Thus, where the size of Maloney's available inventory for 1999 was contingent upon Article 48, Maloney had a financial interest in Article 48 when he so participated.

30. In addition, Walsh, Maloney's employer, had a financial interest in Article 48 because the by-law amendment allowed Walsh to receive the sales proceeds earlier than it would have under the old by-law.

31. Maloney understood the proposed by-law amendment well enough to know that its net effect would contribute to his being able to close on certain sales earlier, thereby affecting both his own and Walsh's financial interests. Thus, when Maloney participated in the March 30, 1999 discussion, he knew of his and Walsh's financial interests in the particular matter.

32. The Commission found reasonable cause to believe that Maloney had violated the conflict of interest law and authorized public proceedings on this matter for the following reasons. First, on at least three different occasions prior to March 30, 1999, the Commission warned Maloney not to participate in either the vote *or the discussion* on a matter in which Walsh might have financial interests. Certainly, Maloney's abstention from the vote on March 30, 1999 indicated that he knew that Article 48 was such a matter. Nevertheless, Maloney failed to abstain from the discussion. Second, the Commission believes that discussion without voting can be an effective advocacy tool providing more impact on a matter than would a single vote, depending on the circumstances. Indeed, in some situations, the discussion may be determinative of the vote. Under the circumstances described above, where the board appears not to have fully understood the import of the proposed amendment, Maloney's explanation and advocacy in favor of Article 48 may have had such an impact.

33. Accordingly, by participating as a selectman in the particular matter concerning Article 48 when he knew that he and/or Walsh had financial interests in that particular matter, Maloney violated §19.

V. Resolution

In view of the foregoing violations of G.L. c. 268A by Maloney, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Maloney:

(1) that Maloney pay to the Commission the sum of $1,000 as a civil penalty for violating G.L. c. 268A, §19; and

(2) that Maloney waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: April 18, 2001

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[1] Specifically, §9-I(2) of the by-law defined "development phase" as follows:

> DEVELOPMENT PHASE - the period of time elapsed between the date of issuance of a building permit for the first dwelling eligible to be constructed within a particular development unit to the date of issuance of the final occupancy permit for the last dwelling within the same development unit, or one year from the date of issuance of the first building permit for each development unit, whichever occurs later.

[2] The proposed amendment rewrote the definition of "development phase" to allow the issuance of a building permit in a subsequent subdivision phase one year after the earlier subdivision phase was begun. The promoter of this petition later suggested a definition that would allow a building permit in a subsequent subdivision phase to be issued if no more than 20% of the units within the previous phase or two units, whichever was greater, had not received occupancy permits.

[3] None of the §19 exemptions apply in this case.

[4] "Participate" means to 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. G.L. c. 268A, §1(j).

[5] "Particular matter" means 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 enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

[6] "Financial interest" means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. *See Graham v. McGrail*, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. *See EC-COI-84-98*. The interest can be affected in either a positive or negative way. *EC-COI-84-96*.

[7] Maloney is deemed to be Walsh's employee even if he worked as a so-called independent contractor for Walsh. *See In re Burgess*, 1992 SEC 570 n.8 (Commission will construe term "employed" broadly to include independent contractor relationships where a significant portion of subject's annual compensation as an independent contractor is derived from that relationship); *EC-COI-83-34* (portion of income earned from business organization and time spent serving organization are factors determining whether official is "employee").

[8] The Supreme Judicial Court has determined that participation for purposes of the conflict of interest law involves more than just voting, and includes any significant involvement in a discussion leading up to a vote. *See Graham v. McGrail*, 370 Mass. 133, 138 (1976).

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss.COMMISSION ADJUDICATORY
DOCKET NO. 620

IN THE MATTER
OF
CAROLE FOLEY

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Carole Foley pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On April 22, 1999, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A by Foley. The Commission has concluded the inquiry and, on June 21, 2000, found reasonable cause to believe that Foley violated G.L. c. 268A.

The Commission and Foley now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Foley, a licensed social worker, has been a paid, appointed Town of Dedham Council on Aging ("OA") outreach worker since 1995.

2. As a COA outreach worker, Foley provides assistance and advice to elderly citizens, especially those who do not have family or friends available to provide such assistance and advice. Sometimes, upon request, Foley assists an elderly client to find a more suitable living arrangement and sell his or her home. Typically, Foley helps the client to find a real estate agent and an attorney. In addition, when people in town approach Foley about buying a home which is being sold by one of her elderly clients, Foley usually refers the potential buyer to the seller or the real estate agent.

3. In summer 1998, Marie Manning was a 60-year-old woman who lived alone in a three-bedroom house in Dedham. Unemployed and suffering from acute depression and cancer, Manning no longer was able to take care of herself or her home.

4. On July 4, 1998, one of Manning's neighbors became concerned after not having seen Manning in some time and noticing that Manning' mail was piling up. The neighbor contacted the police, who spoke with Manning later that day. Although Manning declined any help, the police were concerned about her condition.

5. On Tuesday, July 7, 1998, a police officer returned to Manning' home with Foley, who was acting in her capacity as COA outreach worker. Upon observing Manning and the poor sanitary conditions in which she was living, Foley persuaded Manning to allow herself to be taken to Norwood Hospital for treatment.

6. On July 10, 1998, Foley accompanied a board of health inspector on an inspection of Manning' house. By letter dated July 13, 1998, the inspector informed Manning that the house inspection had revealed a number of state sanitary code violations, including serious structural deficiencies, exposed wiring, broken windows and clutter throughout the house.

7. During the week of July 13, 1998, Foley contacted Manning's brother Edward in New Jersey. Manning had not been in contact with Edward for many years. Foley asked Edward for a letter authorizing Foley to handle Manning's affairs in case Foley became medically unable to do so. By letter dated July 17, 1998, Edward gave Foley that authority. (Foley never had to use the letter, however.)

8. In mid-July, Foley visited Manning at the hospital, bringing her clothes and mail. According to Foley, Manning told Foley that she had only a short time to live and wanted to sell her house. Because Manning could no longer live alone in her house, Foley agreed to find a nursing home that would accept Manning and to help Manning sell her house.

9. The hospital's records indicate that, at the time, although clinically depressed, Manning was mentally oriented and understood her medical situation.

10. Shortly thereafter, Foley contacted the Eastwood Care Center, a long-term nursing home facility. Eastwood's director of admissions interviewed Manning and determined that a long-term placement at Eastwood was clinically appropriate. Medicaid would

cover the nursing home costs for Manning.

11. On July 30, 1998, Norwood Hospital transferred Manning to Eastwood.

12. On or about July 31, 1998, Foley visited Manning at Eastwood and discussed selling her house. Manning stated that she would be willing to sell the house for $7,000 plus any back taxes and utilities that were due.

13. According to the Assessor's Office, for fiscal year 1999 Manning's three bedroom home situated on approximately one-quarter acre was assessed at $121,000; the lot alone was valued at $79,000.

14. At the time, Foley's son, Russell, and daughter-in-law, Debbie, lived in Dedham and were looking to buy a home.

15. Shortly after speaking with Manning about selling her house, Foley had a telephone conversation with either Russell or Debbie in which Foley related that she had a client at Eastwood who was interested in selling her home. Foley explained that the house was in poor condition and might be of interest to them.

16. Shortly thereafter, either Russell, Debbie or both of them drove by the house and confirmed that it was in poor condition but had potential.

17. On August 4, 1998, Foley introduced Debbie to Manning at Eastwood. Foley did not disclose to Manning that Debbie was her daughter-in-law.

18. At about this time, Foley asked Manning's brother Edward to speak with Manning and try to influence her to sell the house to Russell and Debbie.

19. Sometime during the week of August 9, 1998, Foley told Dedham COA Director Joanne Mucciaccio that Manning had been placed in a nursing home and that Russell and Debbie were interested in buying her home. Mucciaccio told Foley that it was a "no-no" for Foley's son and daughter-in-law to be so involved. Mucciaccio told Foley to have an attorney and three realtors involved in the transaction to make sure that nothing went wrong, and that Foley herself should have no further involvement. Foley did not disclose any sales price nor did she reveal that she had introduced Debbie to Manning.

20. The COA has no written policy regarding how a social worker is supposed to deal with a client who needs assistance in selling property. Standard protocol, however, dictates that the social worker seek the assistance of a realtor and an attorney to advise the client. Indeed, Foley's own practice in dealing with such situations had been to involve outside professionals.

21. In the case of Manning's house, however, Foley never involved an attorney or real estate agent in the process, nor did she take any steps to find other interested buyers for the property.

22. On or about August 11, 1998, Foley's son and daughter-in-law entered into a purchase and sale agreement with Manning to buy the house for $7,000 (plus the assumption of unpaid taxes and utility bills up to an additional $3,000).

23. In late August 1998, one of Manning's neighbors complained to town officials about the sale of Manning's house to Foley's son and daughter-in-law. At the town administrator's suggestion, Eastwood arranged to have a legal services attorney appointed to protect Manning's interests in the disposition of her property.

24. By letter dated September 4, 1998, Manning's attorney wrote to Russell and Debbie's attorney stating, "The sale to the Foleys is presently on hold pending further review of the sale price for the property." Manning's attorney then contacted a contractor, who offered $90,000 for the property. Russell and Debbie declined to bid against that offer.

25. The contractor purchased the property on December 31, 1999, for $90,000.

26. Manning died on January 16, 1999.

Conclusions of Law

27. As a COA outreach worker, Foley is a municipal employee as defined in G.L. c. 268A, §1. As such, Foley is subject to the provisions of the conflict of interest law, G.L. c. 268A.

28. Section 23(b)(2) of G.L. c. 268A prohibits a municipal employee from, knowingly or with reason to know, using or attempting to use her official position to secure for herself or others unwarranted privileges[1/] or exemptions of substantial value which are not properly available to similarly situated individuals.

29. Foley's introducing her daughter-in-law to Manning under the above-described circumstances and her failure to bring in an attorney and/or realtor involved a use of her official position because in each situation she was acting as a COA outreach worker to bring about the result. Thus, Foley was able to make the introduction because she was Manning's outreach worker. And, in deciding not to involve other professionals, Foley was obviously exercising her authority as an outreach worker.

30. Foley's introducing her daughter-in-law to Manning and failing to involve other professionals gave her son and daughter-in-law special advantages. First,

the introduction carried with it Foley's implied endorsement of Russell and Debbie as Manning's COA outreach worker. Presumably, Manning would have a certain degree of trust in her outreach worker's judgment as to who would be an appropriate buyer. Second, by failing to involve other professionals (such as contacting realtors), Foley gave her son and daughter-in-law the special advantage of not having to compete against any other buyers. Similarly, by failing to retain a real estate agent or an attorney for Manning, Foley gave her son and daughter-in-law the special advantage of being able to respond to an extraordinarily low price ($7,000 plus outstanding bills) that was not, in effect being scrutinized by independent professionals. These special advantages were privileges within the meaning of §23(b)(2).

31. The privileges were of substantial value because the endorsement, the lack of competition from other buyers and the absence of outside professional scrutiny made it more likely Foley's son and daughter-in-law would be able to buy the property at Manning's bargain asking price.[2]

32. Foley's implied endorsement of her son and daughter-in-law was unwarranted because Foley should not having been using her official position to promote her own family's interests. Foley's failure to retain outside professionals, an attorney and a real estate broker, was unwarranted because standard practice would dictate that such professionals be involved, especially for a client in such an inherently exploitable situation.

33. These unwarranted privileges were not properly available to individuals situated similarly to Foley's son and daughter-in-law. In other words, there was no statute, ordinance, practice or protocol that would make it appropriate for a social worker's family members to, in effect, have an exclusive purchasing opportunity with the social worker's client.[3]

34. Accordingly, by making this introduction and failing to involve outside professionals who would protect Manning's interests, Foley knowingly or with reason to know used her official position to secure unwarranted privileges of substantial value for her son and daughter-in-law. In so doing, Foley violated G.L. c. 268A, §23(b)(2).[4]

Resolution

In view of the foregoing violations of G.L. c. 268A by Foley, the Commission has determined that the public interest would be served by the disposition of the matter without further enforcement proceedings, on the basis of the following terms and conditions agreed upon by Foley:

(1) that Foley pay to the Commission the sum of $2,000 as a civil penalty for violating G.L. c. 268A, §23(b)(2); and

(2) that Foley waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceeding to which the Commission is or may be a party.

DATE: April 23, 2001

[1] As defined in The American Heritage Dictionary (second college ed.), a privilege is "A special advantage, immunity, permission, right or benefit granted to an individual, class or caste."

[2] The Commission construes substantial value to mean or include any item or service with a value of $50 or more. *Liam v. State Ethics Commission*, 431 Mass. 1002, 1003 (2000).

[3] Public employees are prohibited by the conflict of interest law from taking private advantage of inherently exploitable relationships that they have with those persons they supervise or regulate in their official positions. *See In re Corson*, 1998 SEC 912; *see also In re Shay*, 1992 SEC 591.

[4] This same conduct raises issues under G.L. c. 268A, ?19. Section 19 prohibits a municipal employee from participating as such in a particular matter in which she knows that an immediate family member, among others, has a financial interest. In settling this case, however, the Commission has chosen to focus exclusively on the extent to which the conduct involved unwarranted privileges.

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, s. **COMMISSIONADJUDICATORY DOCKET NO. 623**

IN THE MATTER OF MABLE E. GASKINS

DISPOSITION AGREEMENT

The State Ethics Commission and Mable E. Gaskins enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On February 23, 2000, pursuant to G.L. c. 268B, §4(a), the Commission initiated a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Gaskins. The Commission has concluded its inquiry and, on April 10, 2001, found reasonable cause to believe that Gaskins violated G.L. c. 268A, §§19 and 23.

The Commission and Gaskins now agree to the following findings of fact and conclusions of law:

I. Introduction

1. At all times here relevant, Gaskins was the Lawrence superintendent of schools, having been appointed by the school committee to serve from July 1998 until June 2002. Therefore, Gaskins was a municipal employee as that term is defined in G.L. c. 268A, §1, and subject to the provisions of the conflict of interest law, G.L. c. 268A.

2. Lawrence is one of the poorest school districts in the state and relies heavily on state funds. Lawrence High School lost its state accreditation in 1997.

II. Hiring and/or Compensating Sylvia H. Stokes

3. Sylvia H. Stokes is Gaskins' sister and a member of her immediate family as that term is defined in G.L. c. 268A, §1.

4. Shortly after becoming superintendent in July 1998, Gaskins hired Stokes at the rate of $50 per hour to review resumes, formulate interview questions and evaluate candidates for school department positions. Stokes worked a total of 19 hours on those tasks and submitted an invoice for $950.

5. On December 21, 1998, Gaskins sent a letter to the mayor of Lawrence seeking to have the city expedite the $950 payment to Stokes. Gaskins also signed a payment slip and an accounting sheet regarding the $950 on that same date. Thereafter, Stokes received her $950 payment.

6. In April 1999, Stokes was again hired to work for the school department at the rate of $50 per hour to review resumes and develop interview questions for two additional school department positions. Stokes worked a total of 10 hours and submitted an invoice for $500.

7. Gaskins signed a payment slip for $500 in May 1999. Stokes received her $500 payment for these tasks thereafter.

8. Except as otherwise permitted,[1] §19 of G.L. c. 268A prohibits a municipal employee from participating as such an employee in a particular matter in which to his knowledge he or a member of his immediate family has a financial interest.

9. Gaskins' sister, Stokes, was a member of Gaskins' immediate family within the meaning of §19.

10. The decisions to hire and compensate Stokes in 1998 and the decision to approve her compensation in 1999 were particular matters within the meaning of G.L. c. 268A, §1.[2] In addition, Stokes' submission of invoices requesting payment for her work were particular matters.

11. Stokes had financial interests in those particular matters because she was to receive $50 per hour as compensation for her work.[3]

12. As school superintendent, Gaskins participated personally and substantially in the decisions to hire and compensate Stokes.[4] In addition, Gaskins participated personally and substantially as superintendent in reviewing and approving Stokes' submitted invoices, and in seeking to expedite payment for Stokes in 1998.

13. When she so participated, Gaskins knew that Stokes had financial interests in those particular matters.

14. Accordingly, by hiring her sister and approving and expediting her payments in 1998, and by approving her payments in 1999, Gaskins officially participated in particular matters in which to her knowledge a member of her immediate family had financial interests. By doing so, Gaskins violated G.L. c. 268A, §19 on those occasions.

III. Approving Drucille H. Stafford's Payments and Contract

15. Drucille H. Stafford, a doctor of education, was a professional colleague and personal acquaintance of Gaskins. Gaskins and Stafford first met in 1992, when Gaskins hired Stafford to work for an educational consulting firm based in Minneapolis. Stafford left that firm in 1997 to start her own educational consulting firm, Stafford & Associates, based in Baltimore, Maryland.

16. In July 1998, shortly after her own hiring by Lawrence, Gaskins recommended to the mayor and the school committee that Stafford be hired to serve as Gaskins' transitional assistant for one year, from July 1998 until June 1999. Having observed Stafford's work during the years with EAI, Gaskins believed that Stafford would be a valuable asset to the Lawrence schools.

17. Based in part on Gaskins' recommendation, the school committee reviewed and approved Stafford's hiring.

18. Stafford was first hired for a six-day term to set up the new teacher training program, but her engagement was extended through June 1999 (FY99), pursuant to an employment contract, to advise the school system on "a staff development model for student achievement and teacher accountability." Stafford's FY99 consultant contract was for 135 days ($725 per day) not to exceed

$97,875. The contract authorized the city to reimburse Stafford for certain "direct costs" incurred pursuant to work performed under the contract, but did not specify per diem expenses for lodging or meals.

19. Gaskins, as department head, signed Stafford's FY99 contract on behalf of the city. The mayor also signed Stafford's contract, and the city attorney approved it as to form.

20. Between July 1998 and April 1999, Stafford traveled to Lawrence each month to consult with Lawrence school officials. Both Gaskins and Stafford kept their primary residences out-of-state, and each woman maintained a separate residence in Lawrence.

21. In or about April 1999, Stafford and Gaskins discussed finding an apartment together. As both women were maintaining separate residences in other states, it made economic sense to share rental expenses in an apartment near their workplace. In April 1999, Gaskins and Stafford jointly signed a lease agreement to rent a two-bedroom apartment at the Museum Square Apartments in Lawrence. The rent was $1,150, split evenly between the two women. The apartment was approximately 100 yards from the Lawrence Public Schools' central office.

22. When Gaskins and Stafford moved in together, Stafford was still working under her FY99 contract. Neither Stafford's FY99 contract nor the FY99 contracts of the other consultants to the school district contained a per diem lodging or meal allowance.

23. Pursuant to her FY99 contract, Stafford submitted invoices for her consulting fees through the end of June 1999. As superintendent, Gaskins reviewed and approved all payments made to Stafford. These matters were also reviewed and approved by other city officials, including the mayor, whose review and approval was required in the ordinary course.

24. In July 1999, Stafford signed a new one-year contract with the city of Lawrence to assist the high school in achieving accreditation. Stafford's FY00 contract was capped at $62,250, which included compensation for consulting services ($725 or $750 per day, depending on the services provided) and reimbursement for certain expenses based on submitted receipts. Among the allowable expenses were $3,600 for a "Lodging Allowance" ($50 per day for 6 days per month) and $2,520 for a "Meal Allowance" ($35 per day for 6 days per month). These allowances were also added to the FY00 contracts of the other consultants to the school district.

25. Gaskins, as superintendent, signed Stafford's FY00 contract, and the FY00 contracts of all other consultants to the school district, on behalf of the city. The mayor also signed the consultants' contracts, and the city attorney approved them as to form.

26. Stafford was terminated on January 25, 2000. From July 1999 until her termination on January 25, 2000, Stafford submitted invoices for her consulting fees and receipts for such items as lodging, groceries, meals, personal items, transportation and conferences. Stafford's request for a lodging allowance varied each month depending on how many days she worked in Lawrence, but she always included a receipt from her landlord to show that she had paid $575 in rent.

27. As superintendent, Gaskins reviewed and approved all compensation and expense reimbursements paid to Stafford pursuant to her FY00 contract. These matters were also reviewed and approved by other city officials, including the mayor, whose review and approval was required in the ordinary course.

28. From Stafford's initial hiring in July 1998 until her termination in January 2000, the city paid Stafford over $150,000 in fees and expenses.

29. Section 23(b)(3) of G.L. c. 268A prohibits a municipal employee from knowingly, or with reason to know, acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. Section 23(b)(3) further provides that the section is not violated if an appointed municipal employee discloses in writing to his appointing authority the facts which would otherwise lead to such a conclusion.

30. By approving payments to Stafford and signing her FY00 contract while sharing an apartment with Stafford from April 1999 onward, Gaskins knowingly acted in a manner which would cause a reasonable person, with knowledge of the relevant circumstances, to conclude that Stafford could unduly enjoy Gaskins' favor in the performance of her official duties. By so acting, Gaskins violated G.L. c. 268A, §23(b)(3) on those occasions.

31. Gaskins did not file any disclosures with the school committee, her appointing authority, relevant to these matters to avoid violating §23(b)(3).[2]

IV. Resolution

In view of the foregoing violations of G.L. c. 268A by Gaskins, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Gaskins:

(1) that Gaskins pay to the Commission the sum of two thousand dollars ($2,000) as a civil penalty for violating G.L. c. 268A, §§19 and 23(b)(3); and

(2) that Gaskins waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: May 22, 2001

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[1]Section 19(b)(1) provides that it shall not be a violation of this section if the municipal employee first advises the official responsible for appointment to his position of the nature and circumstances of the particular matter and makes full disclosure of such financial interest, and receives in advance a written determination made by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee. As an appointed municipal employee, Gaskins could have sought, but did not, a §19(b)(1) exemption; none of the other §19 exemptions apply in this case.

[2]"Particular matter" means 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 enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

[3]"Financial interest" means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. *See Graham v. McGrail*, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. *See EC-COI-84-98.* The interest can be affected in either a positive or negative way. *EC-COI-84-96.*

[4]"Participate" means to 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. G.L. c. 268A, §1(j).

[5]Gaskins notes that, in the first paragraph of a two-page letter sent to the school committee on April 23, 1999, she included the statement, "this was moving week for Dru and me. "Dru" referred to Stafford. In the remaining two pages of the letter, Gaskins advised the school committee of numerous school department issues. Section 23(b)(3) provides that it shall be unreasonable to conclude that a public employee has created an appearance of impropriety if the employee has "disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion." Other than this reference to "moving week for Dru and me," Gaskins provided no written statement to the school committee regarding her sharing an apartment with Stafford. Moreover, even if the letter had been made public -- which is not clear from the facts -- that statement alone does not reflect that Gaskins and Stafford were moving in together *as roommates*. Thus, Gaskins' April 23, 1999 letter did not suffice as a §23(b)(3) disclosure.

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY DOCKET NO. 621

IN THE MATTER OF THOMAS D. HACKENSON

DISPOSITION AGREEMENT

The State Ethics Commission and Thomas D. Hackenson enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On October 20, 1999, pursuant to G.L. c. 268B, §4(a), the Commission initiated a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Hackenson. The Commission has concluded its inquiry and, on September 19, 2000, found reasonable cause to believe that Hackenson violated G.L. c. 268A, §19.

The Commission and Hackenson now agree to the following findings of fact and conclusions of law:

I. Findings of Fact

1. At all times here relevant, Hackenson was the appointed Mendon building inspector. As such, Hackenson was a municipal employee as that term is defined in G.L. c. 268A, §1, and subject to the provisions of the conflict of interest law, G.L. c. 268A.

2. As building inspector, Hackenson's responsibilities included authorizing the issuance of building permits and inspecting work performed pursuant to such permits.

3. Hackenson has a son, Thomas M. Hackenson, who is a member of Hackenson's immediate family as that term is defined in G.L. c. 268A, §1. At all times here relevant, Thomas M. Hackenson individually performed construction work for others for compensation.

4. In or about August 1996, Mendon resident Diane Rice obtained a building permit from the Mendon building department to construct an addition on her house at 61 Kinsley Lane in Mendon.

5. In 1998, Rice, acting as the general contractor on her own project, hired subcontractors to do the framing and other work on her addition.

6. Among the people that Rice hired to do the framing on her addition was Hackenson's son Thomas M. Hackenson, who is a member of Hackenson's immediate family within the meaning of §19.

7. Rice paid Thomas M. Hackenson at least $1,600 in compensation for his labor on the framing work.

II. Conclusions of Law

8. The inspection determination regarding the framing work performed pursuant to Rice's building permit for 61 Kinsley Lane was a particular matter within the meaning of G.L. c. 268A, §1.

9. Hackenson participated as building inspector in the above-described framing inspection by performing the inspection himself. Thus, Hackenson participated personally and substantially as building inspector in the 61 Kinsley Lane framing inspection particular matter.

10. Thomas M. Hackenson had a financial interest in the inspection and approval of the framing work that he performed at 61 Kinsley Lane because Rice hired and paid Thomas to perform some of the framing work.

11. When Hackenson performed the framing inspection at 61 Kinsley Lane, he knew that his son Thomas M. Hackenson had been working at 61 Kinsley Lane, that his son had performed some of the framing work that Hackenson was inspecting, and that Rice would pay his son in due course for his framing work. Thus, Hackenson knew that his son Thomas had a financial interest in the inspection and approval of the framing work.

12. By inspecting and approving his son Thomas's work, Hackenson officially participated in a particular matter in which to his knowledge a member of his immediate family had a financial interest. Therefore, Hackenson violated G.L. c. 268A, §19.

13. There is no evidence that Hackenson improperly favored his son Thomas in regard to the framing inspection at 61 Kinsley Lane.

III. Resolution

In view of the foregoing violations of G.L. c. 268A by Hackenson, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Hackenson:

(1) that Hackenson pay to the Commission the sum of $500 as a civil penalty for violating G.L. c. 268A, §19; and

(2) that Hackenson waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: June 27, 2001

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY DOCKET NO. 619

IN THE MATTER
OF
PHILIP TRAVIS

DISPOSITION AGREEMENT

The State Ethics Commission and Philip Travis enter into this Settlement Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On October 20, 1999, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Travis. The Commission concluded its inquiry and, on June 21, 2000, found reasonable cause to believe that Travis violated G.L. c. 268A. On April 19, 2001, the Commission's Enforcement Division issued an Order to Show Cause. Travis answered on May 10, 2001, denying that he had violated the law and setting forth four affirmative defenses. On June 15, 2001, the parties submitted a Joint Motion for Entry of Judgment based on this disposition agreement rather than having a hearing on the charges and affirmative defenses. The Commission approved that motion on June 20, 2001.The Commission and Travis now agree to the following findings of fact and conclusions of law:

US Trust Solicitation
Findings of Fact

1. At all times relevant, Travis was an elected state representative from the Fourth Bristol District. He was also House chairman of the Joint Committee on Banks and Banking ("the banking committee"). As such, Travis was a state employee as that term is defined in G.L. c. 268A, §1, and subject to the provisions of the conflict of interest law, G.L. c. 268A.

2. The banking committee's primary responsibil-

ity is to oversee and draft legislation regarding state-chartered banks and credit unions. As House chairman of the banking committee, Travis worked with his Senate counterpart to schedule and conduct hearings and to oversee various pieces of banking legislation through the banking committee.

3. In 1997 and 1998, the banking committee addressed a variety of matters affecting banks. These included such matters as mortgage transactions, banks selling insurance, regulatory compliance, lending limits, electronic funds transfers, bank security, and a bill to ban ATM surcharges.

4. At the time relevant, Seaconke Wampanoag Indian Tribe, Inc. ("the Tribe") was a non-profit entity with a usual place of business in Travis' district.

5. In July 1998, the Tribe asked Travis to help raise money to buy a half-acre lot of land in Seekonk, on which a visitors' center would be constructed.

6. On or about September 10, 1998, Travis and the banking committee counsel met in Travis' State House office with US Trust senior executives, including its chief executive officer. The primary purpose of the meeting was to introduce US Trust's CEO to Travis as the banking committee co-chair. The meeting lasted about 45 minutes and covered various topics of concern to the bank. In addition, the parties exchanged personal background information.

7. At the end of the meeting, with the banking committee counsel still present, Travis asked the US Trust CEO if his bank had a philanthropic organization interested in making a charitable donation to the Tribe. The CEO said he would put Travis in touch with the appropriate people at US Trust.

8. Travis forwarded an informational packet about the Tribe's fund-raising efforts to US Trust. Travis attached his State House business card, which identified him as the banking committee chair, to the packet. The informational packet listed contribution possibilities ranging from $1,000 to $25,000.

9. On September 16, 1998, the Tribe executed a purchase and sale agreement for the land in Seekonk.

10. In October 1998, Travis contacted US Trust employees on four or five occasions to discuss the status of the requested donation. In addition, on at least two occasions during that time Travis had a banking committee staff member make telephone inquiries regarding the request as well. As a result of these conversations, the committee staff member and Travis believed that US Trust had agreed to make a $2,000 contribution to the Tribe. Travis asked US Trust to consider increasing its donation to $5,000.

11. According to US Trust personnel, the bank never had any dealings with the Tribe. US Trust had no branches in Seekonk or adjacent communities. According to the US Trust employee who was dealing directly with Travis on this matter, US Trust ordinarily would not have given serious consideration to a request like the Tribe's where the request was so large ($25,000 according to the US Trust employee) and involved a non-profit outside US Trust's market. Because US Trust's CEO was trying to establish a good relationship with Travis, however, the employee was reluctant to reject the request. Eventually, she shared her concerns with US Trust's legal counsel. After counsel's review, US Trust decided to reject the request. None of the facts set forth in this paragraph were made known to Travis prior to November 10, 1998.

12. On November 10, 1998, Travis learned that US Trust would not make a donation to the Tribe. On that same day he left voice-mail messages for two US Trust employees. The first message was:

> Hi, [_____], this is Representative Phil Travis at the State House. I just got a phone call from [bank employee]. Complete shock to me that your institution cannot give a contribution to the Seaconke Wampanoag Tribe for their visitors' center and learning center they're planning to build in Seekonk. I thought we had a commitment of $2,000 towards that venture. All I have here is "after checking with Legal Review they decided it's not a good idea." I don't think it constitutes a conflict of any sort. Other institutions have made contributions to this and to other things in the past freely because it doesn't involve me personally and they're non-profits in every instance. So perhaps you can give me a clarification and I would appreciate that. And I certainly won't be so bold in the future to approach your institution for anything like this. If we can't deal with this issue, I'm sure we'll have problems with others. Thank you.

The second message was:

> Hi, [_____], this is Chairman Phil Travis at the State House, just calling back. [bank staffer] told me you folks had called on the Wampanoag Seaconke Tribe towards the construction of their center, that your institution could not be of any help. Number one: I certainly do not appreciate the timeliness of your late reply. You've had this situation to deal with for nearly three weeks. A commitment was made for $2,000, which was fine. We tried to increase it to five ($5,000) and

I can understand perhaps that wasn't doable. Now we have nothing. And I've already told (the Tribe) what they might expect. But if that is the way you folks deal, that certainly will have to be understood. I really don't appreciate the run-around and the time consumed. I appreciate the effort. I'm sure a lot of thought went into it. But I wish someone from [CEO] down to your level could have said "no" up front and not lingered for so long. It doesn't sit well with me and I certainly will remember this particular incident. Thank you.

13. According to the US Trust employees who received those voice mail messages, they were alarmed by their tone and content. They shared the voice mails with one another and contacted senior US Trust officials to relay their concern that Travis was threatening retaliation if US Trust did not reconsider a donation. One of the employee's concerns was that Travis was threatening taking away "access to his committee." These concerns were not shared with Travis.

14. In addition, at or about the same time, Travis tried to speak directly to US Trust's CEO, but failing that left a message with a US Trust secretary in which he identified himself as the banking committee chair, asked that the CEO return his call, and asked that the CEO be told that Travis was "extremely upset" (according to the secretary's note) over US Trust's decision. The US Trust CEO decided not to return the call. US Trust did not alter its decision.

15. According to Travis, he did not intend the voice-mail messages or any of his conduct to be threatening in any way. Rather, he was expressing his strong disapproval of what he perceived to be US Trust's reneging on a commitment to him and, more importantly from Travis' perspective, to the Seaconke Wampanoags.

16. There is no evidence that Travis took retaliatory action against US Trust.

Conclusions of Law

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

18. By soliciting a private donation from US Trust under the particular facts described above, Travis had reason to know that he was attempting to use his official position to obtain an unwarranted privilege. Such conclusion is based on the following factors. First, Travis was the House chair of the powerful joint banking committee. Second, he solicited a private donation from an entity that had or would have interests in legislative matters before the banking committee. Third, at the time that Travis made his solicitation request, US Trust had or would have interests in legislation that potentially had a significant impact on banking business. Finally, Travis initially solicited the donation in the context of a concluded business meeting where he was acting in his legislative capacity and had access to US Trust executives. The unwarranted nature of the solicitation is further exacerbated by the voice-mail in which Travis identified himself as banking committee chair and left a message which was construed as a threat of retaliation (even if unintended by Travis as such).

19. Under these circumstances, the unwarranted privilege was of substantial value.

20. The ability to have a banking committee chairman solicit private donations from entities that had or would have interests in legislative matters before his committee under the above circumstances is not properly available to similarly situated individuals.

21. Therefore, based on the above circumstances, Travis, with reason to know, used his official position to secure for private entities an unwarranted privilege of substantial value not properly available to similarly situated individuals. By doing so, Travis violated G.L. c. 268A, §23(b)(2).

Findings of Fact Concerning Other Solicitations

22. In September 1998, early October 1998, and later in October 1998, Travis solicited donations for the Tribe from Fleet Bank, BankBoston and Citizens Bank, respectively. In addition, in January 1998, Travis solicited a donation from Fleet Bank for a non-profit entity other than the Tribe. Those banks had or would have interests in legislation subject to the banking committee's jurisdiction. These solicitations occurred while Travis was the banking committee chair and took place at Travis' State House office immediately or shortly after he had an official business meeting with one or more representatives of the banks solicited.

23. Charities initially received a total of $30,000 in charitable donations as a result of Travis' solicitations.[1]

24. None of these solicitations involved voice mail messages or any other type of language similar to that quoted above as to the US Trust solicitation that could be reasonably construed as a threat.

25. According to Travis, he did not intend to use his banking committee chair position to cause the banks to make contributions as a result of these solicitations.

Conclusions of Law

26. By soliciting at his State House office, private donations from entities that had or would have interests in legislative matters before the banking committee (of which he was the committee chairman), where those solicitations took place immediately after an official business meeting between him and the bank's representatives, Travis had reason to know that he was using or attempting to use his official position to obtain an unwarranted privilege. This is because he has reason to know that the combination of 1) who he was; 2) who the party solicited was; and 3) where the solicitation took place, would create implicit pressure on the banks to contribute because he was the banking committee chair.

27. Under these circumstances, the unwarranted privileges were of substantial value.

28. The ability to have a banking committee chairman solicit private donations from entities that had or would have interests in legislative matters before his committee under the above circumstances is not properly available to similarly situated individuals.

29. Therefore, based on the above circumstances, Travis had reason to know he used his official position to secure for private entities an unwarranted privilege of substantial value not properly available to similarly situated individuals. By doing so, Travis violated G.L. c. 268A, §23(b)(2).

Resolution

In view of the foregoing violations of G.L. c. 268A by Travis, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Travis:

(1) that Travis pay to the Commission the sum of $1,500 as a civil penalty for violations of §23(b)(2); and

(2) that Travis waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: June 27, 2001

[1]The Tribe was ultimately not able to close on the one-half acre lot it had under agreement and a substantial portion of the contributions intended for it were returned.

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY DOCKET NO. 633

IN THE MATTER
OF
PATTI GIULIANO

DISPOSITION AGREEMENT

The State Ethics Commission and Patti Giuliano enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On October 20, 1999, the Commission initiated, pursuant to G.L. c. 268B, §4(j), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Giuliano. The Commission has concluded its inquiry and, on May 22, 2000, found reasonable cause to believe that Giuliano violated G.L. c. 268A.

The Commission and Giuliano now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. At all times material to this matter, Giuliano was a member of the Board of Registration of Chiropractors ("Board"). As such, she was a state employee within the meaning of G.L. c. 268A, §1.

2. The Board is responsible for licensing chiropractors, regulating their professional conduct, and taking disciplinary action against those chiropractors who fail to meet the regulatory standards. Board disciplinary action sometimes includes an adjudicatory proceeding to determine whether to suspend or revoke a chiropractor's license to practice.

3. At all times material to this matter, John Sullivan was a Division of Registration ("DOR") investigator.

4. The DOR is an umbrella agency that provides legal, investigative and administrative services to the 33 boards of professional registration, one of which is the Board.

5. At all time material to this matter, Giuliano's husband, Dr. Peter Kevorkian, was a practicing chiropractor.

6. In or about late 1997, Giuliano told DOR Investigator Sullivan that she and her husband were being harassed by a patient of Dr. Kevorkian.

7. The patient contacted the Board in early spring of 1998, and began to discuss certain charges against Kevorkian with an investigator and was threatening to file a formal complaint against Kevorkian with the Board. The investigator immediately reported the matter to the Board's general counsel. The matter was given special assignment status, meaning potentially serious charges had been made that could develop into a complaint. Giuliano maintains that she was not aware of this action.

8. In February 1998, Giuliano and Kevorkian received a telephone call from the patient threatening to file a formal complaint against Kevorkian with the Board. Giuliano telephoned Sullivan and informed him of the threat by the patient, the same one by whom Giuliano and Kevorkian had indicated had been harassing them. Giuliano and Sullivan discussed the investigative procedure which would be followed if a complaint was eventually filed.

9. On each of two separate occasions, Giuliano made comments to two board members while the complaint was pending or about to be filed against her husband. On each occasion, Giuliano spoke favorably about her husband and disparagingly about the complainant.

10. The patient filed a formal complaint with the Board on April 8, 1998.

11. At a subsequent Board meeting, the chairman informed Giuliano that comments by her concerning her husband's case were inappropriate. Giuliano did not participate in and/or comment on the case after this point.

Conclusions of Law

12. Section 4(c) of G.L. c. 268A prohibits a state employee from acting as agent for anyone other than the Commonwealth or a state agency in connection with any particular matter in which the Commonwealth or state agency is a party or has a direct and substantial interest.

13. The initial inquiry and subsequent complaint concerning Kevorkian were in effect requests for determinations. Therefore, they were particular matters.[1] The Board, a state agency hearing the case, had a direct and substantial interest in the initial inquiry because the charges had been reported to it and were sufficiently serious to warrant special assignment status. And, of course, the Board had a direct and substantial interest in the formal complaint once it was filed. When Giuliano discussed the investigative process with an investigator that could have been assigned to the case and made comments to fellow Board members in relation to the anticipated and/or filed complaint on behalf of her husband, she acted as agent for someone other than the Commonwealth in connection with a particular matter in which the Commonwealth was a party. Therefore, Giuliano violated G.L.c.268A, §4(c).

14. Section 4 reflects the maxim that a person cannot serve two masters. Whenever a state employee acts on behalf of private interests in matters in which the state also has an interest, loyalties are divided and there is the potential use of insider information and favoritism, all at the expense of the state. In this case, Giuliano's private actions concerning an anticipated or ongoing sensitive investigation of her husband were in direct conflict with her responsibilities as a member of the very Board that would handle that investigation.

15. Giuliano cooperated with the Commission's investigation.

Resolution

In view of the foregoing violation of G.L. c. 268A by Giuliano, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Giuliano:

(1) that Giuliano pay to the Commission the sum of $1,000 as a civil penalty for violating G.L. c. 268A, §4(c);

(2) that Giuliano waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: July 10, 2001

[1] "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 enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY
DOCKET NO. 634

IN THE MATTER
OF
JOSEPH S. TEVALD

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Joseph S. Tevald pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On April 14, 2000, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Tevald. The Commission has concluded its inquiry and, on April 4, 2001, found reasonable cause to believe that Tevald violated G.L. c. 268A, §23(b)(3).

The Commission and Tevald now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Tevald is a selectman in the Town of Newbury, an office he has held since 1987. As a member of the Board of Selectmen, Tevald also serves on the town's Board of Health ("BOH").

2. BOH members are responsible for issuing permits and certificates of compliance for new septic system installations in Newbury. First, if tests on the property yield acceptable results, and if the permit application is in order, a BOH member will issue a permit for the installation of the septic system. Subsequently, three inspections are conducted while the system is being installed. If the installation passes these three inspections, and an as-built plan is submitted to the BOH, a member of the BOH will issue a certificate of compliance for the septic system.

3. Between March 1996 and August 1998, Tevald handled most of the septic system installation inspections for the BOH.

4. In or about 1995, Manter Construction Company, Inc., whose president is Warren Manter, secured approval to construct Fatherland Farms, a 120-acre, 42-lot subdivision in Newbury. Manter Construction began site work in 1995, and began constructing houses in 1996.

5. Between March 1996 and August 1998, Tevald approved no fewer than 27 septic system permit applications and 21 certificates of compliance for Manter Construction in the Fatherland Farms development. He also conducted the vast majority of the inspections performed in connection with those permit applications and certificates of compliance.

6. In or about March of 1996 Tevald learned that he was going to lose his Newbury home to foreclosure, and that he would need to secure new housing.

7. Shortly thereafter, in or about April of 1996, Tevald and Manter discussed the possibility that Tevald would purchase a home in Fatherland Farms. Because of his then current financial situation, Tevald was not in a position to secure bank financing for a purchase, and Manter agreed to rent him a home for a defined period, after which Tevald would have the option to purchase the home from Manter.

8. In or about July 1996, Tevald and Manter entered into a two-year lease/purchase agreement for a home in Fatherland Farms. The lease obligated Tevald to pay Manter $2,050 per month in rent, and provided an option for Tevald to purchase the property at the end of the lease term for $250,000. (The rental payments and the purchase price appear to have been at fair market value.)

9. Most of Tevald's rent payments to Manter were significantly late: seven were more than 90 days late, four were between 60 and 90 days late, and another three were between five and 60 days late. Only the first three payments were made on time.

10. Manter never charged Tevald any interest on late payments, and never made any effort to evict Tevald for late payment. During this period of time Tevald was making improvements to the property which Manter would otherwise have been required to make.

11. According to Manter and Tevald, they orally agreed that Tevald could forgo making the final seven rental payments, totaling $14,350, altogether, to offset the value of Tevald's improvements to the property.

12. Forgoing this $14,350 in rent payments put Tevald in a better position to qualify for mortgage financing to purchase the home.

13. In August 1998, Tevald purchased the home in Fatherland Farms from Manter. The closing documents do not mention the agreement between the parties to offset rent due with a credit for improvements made to the property.

14. Tevald never made a public, written disclo-

sure of his lease/purchase relationship with Manter. According to the Board of Selectmen chair, however, both he and the third selectmen were aware that Tevald was renting from Manter and still inspecting septic systems in Fatherland Farms.

Conclusions of Law

15. As a selectman and as a BOH member, Tevald is, as he was during the relevant time period, a municipal employee as that term is defined in G.L. c. 268A, §1.

16. Section 23(b)(3) of G.L. c. 268A prohibits a municipal employee from knowingly, or with reason to know, acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

17. By issuing 27 permits to install septic systems to Manter Construction while he was Manter's tenant, by conducting the vast majority of the inspections of those systems, and by issuing 21 compliance certificates to Manter Construction during the period that Tevald was either (i) in discussions with Manter about moving in to a home in Fatherland Farms or (ii) Manter's tenant and the likely purchaser of the home, Tevald knowingly or with reason to know, acted in a manner which would cause a reasonable person, having knowledge of all the relevant circumstances, to conclude that Manter and/or Manter Construction could unduly enjoy Tevald's favor in the performance of his official duties.[1/] Tevald did not file any written disclosure regarding these circumstances. Therefore, in so acting, Tevald violated G.L. c. 268A, §23(b)(3).

18. The appearance of a conflict of interest created by Tevald's actions was exacerbated by the fact that, as a BOH inspector, he was in a position to expedite or delay the processing of Manter Construction's permit applications, the performance of inspections, and the issuance of certificates of compliance. The failure to conduct inspections and issue permits and certificates in a timely manner can be frustrating and costly to a party seeking to install a septic system. In this case there was no evidence of such improper behavior.

19. The appearance of a conflict of interest created by Tevald's actions was further exacerbated by the following: (i) while Manter's tenant, Tevald consistently paid his rent late with no penalty or sanction from Manter, (ii) Manter and Tevald did not document the offsets that entitled Tevald to forgo paying $14,350 in rent, and (iii) Manter's willingness to forgo the $14,350 in rent in exchange for Tevald's completion of the construction was instrumental in enabling Tevald to qualify for a mortgage.

Resolution

In view of the foregoing violations of G.L. c. 268A by Tevald, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Tevald:

(1) that Tevald pay to the Commission the sum of $1,500.00 as a civil penalty for violating G.L. c. 268A, §23(b)(3); and

(2) that Tevald waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: July 31, 2001

[1/] Tevald recused himself from any involvement with the permits, certificates of compliance, or inspections on the lot he intended to purchase.

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY DOCKET NO. 529

IN THE MATTER OF ANGELO M. SCACCIA

Appearances: **David A. Wilson, Esq.**
Counsel for Petitioner

Thomas R. Kiley, Esq.
Counsel for Respondent

Commissioners: **Wagner, Ch., Moore, Cassidy, Roach, and Dolan**

DECISION AND ORDER

I. Procedural History

This matter was remanded by the Superior Court

on October 23, 2000, upon Order of the Supreme Judicial Court. The Supreme Judicial Court ordered the remand to the Commission "for a hearing regarding the civil penalty to be assessed against Scaccia," in light of the Court's decision that there was not substantial evidence to support the Commission's conclusion that Representative Scaccia violated G.L. c. 268A, §3, but that the Commission was correct in its conclusions that Representative Scaccia violated G.L. c. 268A, §23(b)(3), G.L. c. 268B, §6, and G.L. c. 268B §7. *Scaccia v. State Ethics Commission,* 431 Mass. 351, 359 (2000).

Following remand, the Respondent filed a Motion For A New Hearing, asking the Commission to hold further hearings and take additional evidence regarding the substantive chapter 268A and chapter 268B violations. The Petitioner opposed this motion.

The parties submitted briefs on the Motion for A New Hearing and on the disposition of the case. On June 20, 2001 the Commission held a hearing on the Motion and on the Disposition issue. Each party presented oral argument.

II. Decision and Disposition

Having fully considered the parties' written and oral arguments, we conclude that the Respondent, Representative Scaccia, has not proven, by a preponderance of the evidence, either under the standards of G.L. c. 30A, §14(6) or Mass. R. Civ. P. 60(b), that any additional evidence would be material to the outcome of the case and could not have been presented at the original hearing of the case. Accordingly, the Respondent's Motion for A New Hearing is **DENIED.**

Having concluded in the original adjudicatory hearing that the Respondent violated G.L. c. 268A, §23(b)(3), G.L. c. 268B, §6, and G.L. c. 268B, §7 and pursuant to the authority granted it by G.L. c. 268B, §4(j), the State Ethics Commission hereby **orders** Representative Angelo M. Scaccia to pay a civil penalty of $ 1,400 for violations of G.L. c. 268A, §23(b)(3) and a civil penalty of $350 for violations of G.L. c. 268B, §7, resulting in an aggregate total civil penalty of $ 1750.00. The Commission declines to assess an additional civil penalty for the violations of G.L. c. 268B, §6 because the predicate conduct for the §6 violations is the same as the conduct found to violate G.L. c. 268A, §23(b)(3).

DATE: August 8, 2001

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY
DOCKET NO. 635

IN THE MATTER
OF
EDWIN KILEY

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Edwin Kiley pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

In August 2000, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Kiley. The Commission has concluded its inquiry and, on June 20, 2001, found reasonable cause to believe that Kiley violated G.L. c. 268A, §§19 and 23(b)(3).

The Commission and Kiley now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Kiley served on the Burlington Zoning Board of Appeals ("ZBA") from November 26, 1991 until he resigned in June 1999. Kiley was vice-chairman of the ZBA at all times here relevant.

2. On January 20, 1999, a developer, Bedford Builders, Inc., filed a petition with the ZBA for three variances to build a $300,000 to $400,000 single family home on a lot on McSweeney Way in Burlington. The lot was located approximately 150 feet north of where McSweeney Way intersects with Bedford Street, a busy main road.

3. At the same time, Kiley owned property that abutted the Bedford Builders' property on the southerly side. Kiley's lot was located on the northeastern corner of the intersection of McSweeney Way and Bedford Street.

4. Kiley has had an ongoing dispute with neighbor Terry McSweeney regarding whether Kiley could use McSweeney Way as a right of way. Kiley had used McSweeney Way as a second means of access to his property (on which he had built a house) for a number of years. McSweeney, however, built a home on the west side of McSweeney Way and constructed a cul-de-sac without a curb cut at the end of McSweeney Way. This

prevented Kiley from using McSweeney Way to access his house. Kiley was told by the planning board that he had to obtain a curb cut in order to gain access to his house from McSweeney Way. Kiley still had access to his house from the main road, Bedford Street.

5. At an April 20, 1999 ZBA meeting, a motion was made to continue the hearing on the Bedford Builders' frontage variance application. The vote passed with Kiley voting in favor.

6. At the May 18, 1999 ZBA public hearing, the ZBA resumed its consideration of the Bedford Builders' frontage variance application, and after a two-hour discussion, denied the request by a 3-2 vote. Kiley did not vote on the matter.

7. Kiley sat at the ZBA table during the entire two-hour discussion. Approximately 20 minutes into the Board's discussion before the public was invited to participate, Kiley whispered an expletive to a board member who had voiced opposition to the variance. Approximately 25 minutes into the discussion, the Chairman asked Kiley for his opinion regarding the variance. Kiley strongly voiced his belief that McSweeney Way be turned back into a street so that he could access his house from it. He further stated, "I think the whole thing [the petition] is going down the tubes. I don't think it's right for a lousy 67-foot frontage we can't grant-you can't grant. That's wrong." Kiley repeatedly interrupted his fellow board members and argued with two board members regarding their position on the amount of frontage the petitioner should have.

8. The Chairman then opened the meeting to the public, at which time McSweeney spoke. Kiley proceeded to interrupt McSweeney several times with such comments as, "Why are you stopping the house back there, Terry, why?" and "I think you're very selfish." McSweeney and Kiley had a heated discussion about Kiley's ability to obtain a curb cut onto McSweeney Way.

9. Later in the meeting, the chairman again addressed Kiley and told him he was trying to understand his concerns. Kiley responded, "I'd like to see the [Bedford Builders'] land developed. It needs to be developed. It's a mess back there...I'd like to see a little value on my house someday when I sell it because that's going to look so much better."

Conclusions of Law

10. As a ZBA member, Kiley was at all times here relevant a municipal employee as that term is defined in G.L. c. 268A, §1.

11. Section 19 of G.L. c. 268A prohibits a municipal employee from participating as such in any particular matter in which he has a financial interest.

12. The ZBA's decision as to whether to grant the frontage variance was a particular matter.

13. Kiley had a financial interest in that particular matter given that his property value would be affected by the construction of a $300,000-$400,000 home immediately next door to his property. Moreover, it appears that Kiley had a financial interest in the variance being granted because in effect, it would recognize McSweeney Way as a public way such that Kiley would be able to seek a curb cut to maintain his other, safer access to his property, and make the property more valuable.

14. Kiley participated in the particular matter as a ZBA member by voting to continue the April 20, 1999 public hearing and by, on May 18, 1999, sitting at the ZBA table during the entire two hour discussion regarding the frontage variance and arguing the variance should be granted before and after the meeting was opened for public comment.

15. When Kiley so participated, he knew that he had a financial interest in the particular matter because he believed, and in fact expressed the view, that his property value would increase with the construction of a $300,000-$400,000 home on the property he abuts. Kiley also had a financial interest in the construction of the house because it would require McSweeney Way to be recognized as a public way and therefore would provide Kiley with a second, safer means of access to his house.

16. Therefore, Kiley participated as a ZBA member in a particular matter in which he had a financial interest. In so doing, Kiley violated §19.

17. In his defense Kiley asserts that he participated in the May 18, 1999 meeting primarily at the urging of the Chairman. (The Chairman, 25 minutes into the meeting, said, "Ed owns a piece of property close to it. I know he's not voting on it but I just wanna hear from Ed why he thinks that this is going to be in the best interest.") In addition, Kiley asserts that when he did speak, he spoke as a private citizen, not as a ZBA member, although he was mistaken not to step down from the table to make his status clear.

The Commission, however, has concluded that the weight of the evidence indicates that Kiley was acting as a ZBA member because: (1) Kiley sat at the ZBA table during the entire two hour discussion rather than stepping down: (2) Kiley spoke about the variance while at the table before being asked to do so by the chairman; (3) even when he spoke at the invitation of the chairman, Kiley spoke prior to the meeting being opened for public comment; in other words at a time when only board members were supposed to speak; and (4) when Kiley later

spoke during the public comment session, he neither did nor said anything to indicate that he was speaking as an abutter.

When a board member speaks "at the table" during the course of a formal board meeting, he is acting as a board member unless the evidence indicates otherwise. In this case, it did not. Therefore, Kiley's defense is rejected. On the other hand, it is somewhat mitigating that a significant portion of Kiley's involvement was at the chair's request.

18. The fact that Kiley did not participate in the vote regarding the variance is not mitigating. Input at the discussion stage can be as important, if not more important, than the vote itself.

19. As a result of Kiley's participation at the May 18, 1999 ZBA meeting, Kiley's appointing authority, the town administrator, asked for and received Kiley's immediate resignation from his ZBA position.

20. Kiley fully cooperated with the Commission's investigation of this matter.

Resolution

In view of the foregoing violations of G.L. c. 268A by Kiley, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Kiley:

(1) that Kiley pay to the Commission the sum of $1,000 dollars as a civil penalty for violating G.L. c. 268A,§19; and

(2) that Kiley waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: August 14, 2001

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss.COMMISSION ADJUDICATORY DOCKET NO. 636

IN THE MATTER OF PETER CURTIN

DISPOSITION AGREEMENT

The State Ethics Commission and Peter Curtin enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court pursuant to G.L. c. 268B, §4(j).

On June 23, 1999, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law by Curtin. The Commission concluded that inquiry, and on March 1, 2001, found reasonable cause to believe that Curtin violated G.L. c. 268A.

The Commission and Curtin now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. At all times relevant, Curtin served on the Tyringham Board of Selectmen ("BOS"). As such, he was a municipal employee within the meaning of §1 of the conflict of interest law, G.L. c. 268A.

2. The selectmen also serve as the Board of Health ("BOH").

3. Curtin was employed as a caretaker for a property in Tyringham.

4. In summer 1997, a pond located on the property was dredged.

5. At its September 25, 1997 meeting, the BOH decided that the silt from the pond dredging would be dumped at the Tyringham Transfer Station ("TTS"). Curtin asserts he did not participate in this decision.

6. On September 27, 1997, Curtin arranged to have the silt dumped at the TTS.

7. Shortly thereafter a heavy rain caused the silt to "run-off" and damage the nearby wetlands.

8. A local restaurant owner, Donald Hale, complained to the Division of Environmental Protection about the damage.

9. Shortly after Hale reported this matter to the DEP, Curtin, as a Board member, requested local and state health and building inspections of Hale's restaurant. All the inspections were within the authority of the Board to order.

10. In December 1997, the DEP fined Curtin for illegal dumping in a wetlands area and ordered him to submit a restoration plan and restore the site by June 1, 1998.

11. At the December 22, 1997 Board meeting, the Board decided the town was responsible for the wetlands violation and that the town, as opposed to Curtin, would restore the wetlands as the Board members had agreed where to put the silt. Curtin significantly involved himself as a Board member in this decision by advocating in the discussion that the town should assume responsibility for any damage caused by the dumping.

12. White Engineering and Wilkinson Excavating restored the wetlands at a cost of $1,860 and sent bills in that amount to the town.

13. On April 13, 1998, Curtin signed a warrant, which included a $1,140 payment to White Engineering for the restoration plan. On June 22, 1998, Curtin signed a warrant that included a $720 payment to Wilkinson Excavating for the restoration.

14. On September 17, 1998, Commission Enforcement staff questioned Curtin about this matter. On October 1, 1998, Curtin reimbursed the town for the $1,860 in clean-up expenses paid to White Engineering and Wilkinson Excavating.

Conclusions of Law
Curtin and the Clean-Up

15. Section 19 of G.L. c. 268A, except as otherwise permitted in that section, prohibits a municipal employee from participating as such an employee in a particular matter in which to his knowledge he has a financial interest. None of the exceptions in §19 apply.

16. The decision made at the December 22, 1997 BOH meeting to make the town responsible for the wetlands violation was a particular matter. In addition, the decision to have the town pay White Engineering and Wilkinson Excavating a total of $1,860 for the restoration work was a particular matter.[1]

17. As set forth above, Curtin participated[2] as a BOH member by 1) significantly involving himself as a BOH member in the December 22, 1997 BOH meeting to have the town, rather than Curtin restore the wetlands; and 2) approving warrants totaling $1,860 for the restoration work.

18. Curtin had a financial interest in the town paying for the restoration as the DEP had indicated that Curtin was responsible for the clean-up. Curtin was aware of his financial interest at the time he participated.

19. Accordingly, by 1) participating in the December 22, 1997 BOH meeting to have the town restore the wetlands; and 2) approving warrants totaling $1,860 for the restoration work, Curtin participated as a municipal employee in particular matters in which he knew he had a financial interest. In so doing, Curtin violated G.L. c. 268A, §19 on each occasion.

Retaliation against Hale

20. Section 23(b)(3) prohibits a municipal employee from knowingly, or with reason to know, acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person.

21. By requesting local and state health and building inspections of Hale's restaurant shortly after Hale complained about the silt run-off to the DEP, Curtin acted in a manner which would cause a reasonable person knowing all of these facts to conclude that Curtin was likely to act as a result of Hale's position as the DEP complainant. Therefore, Curtin violated §23(b)(3).

Resolution

In view of the foregoing violations of G.L. c. 268A, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Curtin:

(1) that Curtin pay to the Commission the sum of $1,500 as a civil penalty for violating G.L. c. 268A, §19;[3]

(2) that Curtin pay to the Commission the sum of $1,000 as a civil penalty for violating G.L. c. 268A, §23(b)(3); and

(3) that Curtin waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceeding to which the Commission is or may be a party.

DATE: August 21, 2001

[1] "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 enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

[2] "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. G.L. c. 268A, §1(j).

[3] In imposing this fine, we note that Curtin has reimbursed the town $1,860 for the restoration costs.

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY
DOCKET NO. 637

IN THE MATTER
OF
EDWARD FENNELLY

DISPOSITION AGREEMENT

The State Ethics Commission and Edward Fennelly enter into this Disposition Agreement pursuant to section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court pursuant to G.L. c. 268B, §4(j).

On June 23, 1999, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law by Fennelly. The Commission concluded that inquiry, and on March 1, 2001, found reasonable cause to believe that Fennelly violated G.L. c. 268A.

The Commission and Fennelly now agree to the following findings of fact and conclusions of law:

Findings of Fact

At all times relevant, Fennelly served on the Tyringham Board of Selectmen ("BOS").

As such, he was a municipal employee within the meaning of §1 of the conflict of interest law, G.L. c. 268A.

1. The selectmen also serve as the Board of Health ("BOH").

2. Peter Curtin and Fennelly are close friends. Curtin is also a selectman.

3. Curtin was employed as a caretaker for a property in Tyringham.

4. In summer 1997, a pond located on the property was dredged.

5. At the September 25, 1997 meeting, the BOH decided that the silt from the pond dredging would be dumped at the Tyringham Transfer Station ("TTS").

6. On September 27, 1997, Curtin arranged to have the silt dumped at the TTS.

7. Shortly thereafter a heavy rain caused the silt to "run-off" and damage nearby wetlands.

8. A local restaurant owner, Donald Hale, complained to the Division of Environmental Protection about the damage. The DEP eventually fined Curtin for the illegal dumping.

9. Shortly after Hale complained to the DEP about the silt run-off: (a) Fennelly confronted Hale about his complaint to the DEP regarding the silt-run-off, and told Hale that he could shut down Hale's restaurant if he wanted to;[3] and (b) Fennelly, as a Board member, requested local and state health and building inspections of Hale's restaurant. All the inspections were within the authority of the Board to order.

Conclusions of Law

10. Section 23(b)(3) prohibits a municipal employee from knowingly, or with reason to know, acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person.

11. By, as a Board member, requesting inspections of Hale's restaurant shortly after Hale complained about Curtin's dumping, while Curtin was Fennelly's close friend and colleague, and, after stating that he could shut down Hale's restaurant if he wanted, Fennelly acted in a manner which would cause a reasonable person knowing all of these facts to conclude that he was improperly influenced in the performance of his officials duties by his friendship and association with Curtin. Therefore, Fennelly violated §23(b)(3).

Resolution

In view of the foregoing violations of G.L. c. 268A, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Fennelly:

(1) that Fennelly pay to the Commission the sum of $1,500 as a civil penalty for violating G.L. c. 268A, §23(b)(3); and

(2) that Fennelly waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceeding to which the Commission is or may be a party.

DATE: August 21, 2001

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[1] According to Fennelly, he believed that Hale had not remedied past health code violations at his restaurant.

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY DOCKET NO. 639

IN THE MATTER OF DIANNE WILKERSON

DISPOSITION AGREEMENT

The State Ethics Commission and Dianne Wilkerson enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On June 21, 2000, the Commission initiated, pursuant to G.L. c. 268B, §4(j), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Wilkerson. The Commission has concluded its inquiry and, on April 10, 2001, found reasonable cause to believe that Wilkerson violated G.L. c. 268A.

The Commission and Wilkerson now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Wilkerson has served in the state legislature since 1993. As a senator, she is a state employee within the meaning of G.L. c. 268A, §1.

2. Wilkerson has been actively interested in minority community issues, in general, and in minority community banking issues, specifically, for several years, first in her capacity as a private practice attorney and community activist in the 1980s and then as a state senator in the 1990s.

3. At all times relevant in this agreement, the Boston Bank of Commerce ("BBOC") was the only minority-owned financial institution in New England.

4. In January 1999, Wilkerson, in her private capacity, entered into a contract with the BBOC by which from December 15, 1998 to April 15, 1999, she was to solicit private-sector deposits for the BBOC. According to the agreement, Wilkerson was to "identify deposit prospects from the private sector and actively solicit such prospects for significant funds to be placed with BBOC." The contract provided that Wilkerson would receive a monthly retainer fee of $1,000, plus a one-time fee for each new deposit generated and maintained, based on a set fee schedule.

5. In May 1999, Wilkerson's contract was extended through December 31, 1999. Wilkerson's monthly retainer fee was increased to $2,000.

6. Wilkerson provided the services and received the fees contemplated by the contract and its extension.

7. In 1999, the BBOC paid Wilkerson monthly fees totaling $21,500 pursuant to the original contract and the contract as extended.

8. In spring 1999, a merger between Fleet Bank and BankBoston was pending. At that time it was clear that any such merger would require Fleet to divest a number of its branches.

9. Wilkerson was concerned about the negative impact the Fleet and BankBoston merger could have on minority and low-income communities across the commonwealth. Wilkerson wanted Fleet to divest some its branches and transfer them to banks with a history of serving minority communities. The BBOC fit that description and was interested in acquiring the local branches.

10. The BBOC informed Fleet that it was interested in purchasing some of the branches that would be divested in the merger. If the BBOC had been permitted to purchase all the branches it desired, the BBOC would have increased its deposits six-fold by purchasing the branches that Fleet planned to sell.

11. On June 4, 1999, Wilkerson wrote a letter on her senate letterhead to Fleet and BankBoston stating that the merger divestiture plan should be one that supports local, minority-owned banks. In an attachment to the letter, Wilkerson noted favorably the example of another bank, which under similar circumstances sold four branches and $50 million in associated deposits to a mi-

nority-owned commercial bank. Wilkerson also wrote, "The Department of Justice and Federal Reserve Board can ensure that competition and community interests are served by directing FleetBank and BankBoston to make some of their divested branches available to a CDFI."[1]

12. In addition, Wilkerson forwarded a copy of her June 4, 1999 letter to the Board of Bank Incorporation ("the BBI"). The BBI is a state adjudicative body consisting of the State Treasurer, the Banking Commissioner and the Department of Revenue Commissioner. The BBI represented the final regulatory hurdle before the merger of Fleet and BankBoston was complete.

13. On July 7,1999, Wilkerson, identifying herself as a state senator, testified at a public meeting on the merger before the Federal Reserve Board in Boston. In her testimony, Wilkerson stated that the question of who gets the divested branches was of critical importance to the minority community and that the BBOC, as the sole minority-owned bank in the community, should get these branches.

14. Wilkerson, identified as a state senator, also spoke at a public hearing before the BBI on July 13, 1999. Her testimony was substantially the same as what she gave before the Federal Reserve Board. In a July 13, 1999 BBI filing, Wilkerson wrote, "The support for divestiture to community banks, and the minority-owned bank, BBOC, results from awareness as to who is currently serving the public need. We encourage this Board to pay attention to this reality as well."

15. Wilkerson was not compensated under her consulting arrangement with the BBOC for her actions in advocating the BBOC receive some of the branches divested through the Fleet/BankBoston merger.

16.The BBI approved the Fleet/BankBoston merger on September 30, 1999. Fleet ultimately sold all the divested branches to Sovereign Bank.

17.On October 1, 1999, Wilkerson contacted the Commission seeking legal advice and subsequently on October 21, 1999, requested that this matter be referred to the Commission's enforcement division for review.

18. Wilkerson received legal advice concerning her arrangement with the BBOC from the Commission. According to Wilkerson, she understands that advice and complied with it. In addition, Wilkerson will request additional guidance in the future regarding any arrangement with BBOC from the Commission, if necessary, and will act accordingly.

19. Wilkerson cooperated with the Commission's investigation.

Conclusions of Law

20. General Laws chapter 268A, §23(b)(3), in relevant part, prohibits a state employee from, knowingly or with reason to know, acting in a manner which would cause a reasonable person having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy the employee's favor in the performance of the employee's official duties, or that the employee is likely to act or fail to act as the result of kinship, rank, position or undue influence of any party or person. An elected state employee can avoid a violation of §23(b)(3) by disclosing in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

21. By advocating in testimony and written submissions and/or letters as a state senator that the BBOC and/or minority-owned banks should receive the divested branches arising from the Fleet/BankBoston merger while she had a significant private commercial relationship with a potential beneficiary of her official actions, Wilkerson with reason to know acted in a manner which would cause a reasonable person knowing these facts to conclude that the BBOC can unduly enjoy her favor in the performance of her official duties. Therefore, Wilkerson violated §23(b)(3). (This violation could have been avoided if Wilkerson had disclosed in a manner which was public in nature her private relationship with the BBOC.)

Resolution

In view of the foregoing violation of G.L. c. 268A by Wilkerson, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Wilkerson:

(1) that Wilkerson pay to the Commission the sum of $1,000[2] as a civil penalty for violating G.L. c. 268A, §23(b)(3); and

(2) that Wilkerson waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: September 13, 2001

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[1] The BBOC is the only Massachusetts bank designated by the Treasury Department as a Community Development Financial Institution ("CDFI"), which is defined by the Treasury Department as an institution that specializes in community business development and lending in urban, rural or Native American communities that frequently lack adequate access to capital.

[4]In determining the amount of the civil penalty, the Commission considered that Wilkerson sought and obtained legal advice from the Commission, reported her actions to the Commission, and, that Wilkerson has a history of active participation in minority community banking issues (which somewhat mitigates the appearance issue).

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss.COMMISSION ADJUDICATORY DOCKET NO. 640

IN THE MATTER OF EUGENE LEMOINE

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Eugene LeMoine pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On August 8, 2001, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by LeMoine. The Commission has concluded its inquiry and, on September 12, 2001, found reasonable cause to believe that LeMoine violated G.L. c. 268A, §23(b)(2).

The Commission and LeMoine now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. LeMoine was appointed to the Southampton Police Department in 1975. He served as a police officer until May 1996, when he was promoted to chief of police. LeMoine remained the chief until he retired from the force on September 30, 1999.

2. In spring 1997, LeMoine ordered 25 sweatshirts on behalf of the Southampton police force from Inventory Trading Company, a sportswear supplier.

3. LeMoine collected money, totaling $605, from several police officers to pay for the sweatshirts.

4. On May 1, 1997, Inventory Trading Company invoiced LeMoine for $605. LeMoine submitted the invoice to the town for payment on May 20, 1997, and the town issued a check in the amount of $605 made payable to Inventory Trading Company on May 22, 1997. Inventory Trading Company processed the check with Fleet Bank on May 28, 1997.

5. Despite the fact that the town paid Inventory Trading Company for the 25 sweatshirts he had ordered and distributed to the officers who had ordered them, LeMoine did not return to his subordinate police officers the funds that he had collected from them.

Conclusions of Law

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

7. As the Southampton police chief, LeMoine was, in May 1997, a municipal employee as that term is defined in G.L. c. 268A, §1.

8. By submitting the $605 invoice to the town, in his position as chief, LeMoine used his position to secure payment for the sweatshirts.

9. Securing the town's payment for the sweatshirts was a special benefit and as such a privilege.

10. Because the payment totaled $605, the privilege was of substantial value.

11. The town's payment for the sweatshirts was unwarranted because LeMoine had already collected $605 from his fellow officers to purchase the sweatshirts.

12. The privilege of securing the town's payment for sweatshirts for which LeMoine had collected money from his officers was not otherwise properly available to similarly situated individuals.

13. Therefore, by submitting the $605 invoice to the town, even though he had collected $605 from the police officers whom he supervised to purchase the sweatshirts, LeMoine used his position to secure for himself an unwarranted privilege of substantial value that was not properly available to similarly situated individuals, violating §23(b)(2).

Resolution

In view of the foregoing violation of G.L. c. 268A by LeMoine, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by LeMoine:

(1) that LeMoine pay to the Commission the sum of $2,000.00 as a civil penalty for violating G.L. c. 268A, §23(b)(2);

(2) that he reimburse the town of Southampton the sum of $605.00, forthwith; and

(3) that he waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: September 24, 2001

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY DOCKET NO. 644

IN THE MATTER OF JOAN LANGSAM

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Joan Langsam pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On March 22, 2000, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Langsam. The Commission has concluded its inquiry and, on August 8, 2001, found reasonable cause to believe that Langsam violated G.L. c. 268A, §19.

The Commission and Langsam now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Langsam was Somerville's solicitor from January 1993 to June 1999.

2. Langsam is married to Frank MacDonald.

3. MacDonald is the president and treasurer of Management Construction, Inc. Management Construction, Inc. and Genevieve MacDonald, Frank MacDonald's mother, are partners in Commercial Bidding Limited Partnership ("CBLP").

4. In late 1998, Somerville Mayor Michael Capuano decided to name MacDonald as the project manager for the 11 million-dollar renovation of, and addition to, the Somerville Central Library.

5. The project manager contract was to be awarded by the city's Department of Public Works. Carol Antonelli was the DPW administrator whose job included preparing such contracts.

6. Langsam and her department would have limited, if any, participation in the drafting of a city contract. If a boilerplate contract existed, it would be adapted as appropriate to the circumstances by the interested department, signed by the department head and the vendor, and then signed by the auditor attesting to the availability of sufficient funds. At that point the contract would come to the Law Department and Langsam would have an attorney in her office review the already executed contract for its legal correctness. If the contract were acceptable legally, she would sign it, approving it "as to form."

7. While ordinarily Antonelli would have used a "boilerplate" form contract for consultant services, such as the library renovation project manager services, she did not have a suitable form contract. This was because, traditionally, the city contracted with an architect, and the city's project manager was on the architect's payroll. For the library project, and other future similar construction projects, however, the city had decided to contract directly with the project manager. Consequently, Antonelli sought help from Langsam in drafting this new type of boilerplate contract.

8. In her position as city solicitor Langsam participated in drafting the contract for MacDonald's services. Langsam first helped Antonelli prepare a boilerplate contract with general terms and conditions for any DPW project manager situation. Thereafter, Langsam provided input to Antonelli in adapting that boilerplate contract to the particular circumstances of MacDonald serving as the library renovation project manager. She advised Antonelli that the library project manager contract should identify CBLP as the contracting party. Thereafter, she also advised Antonelli that as a matter of law the contract did not need to go out to bid, and that the contract should specify a minimum term of 32 months. (Langsam wrote the 32-month recommendation in her own handwritten edit on of the drafts between her and Antonelli.) The final contract was in CBLP's name and did not go out to bid. The 32-month minimum was dropped in favor of a 36-month term, apparently at the DPW commissioner's request because he determined that such a minimum was in the city's interests.

9. Once the contract was drafted, it went to CBLP and the DPW commissioner for execution. In or about late December 1998 those parties signed the con-

tract. The contract was for three years at $60,000 per year, a total of $180,000. It then went to the city auditor in early January 1999.

10. In early January 1999, MacDonald began providing project management services regarding the library work even though the contract had not yet been approved by the auditor, city solicitor or the acting mayor (by this point Mayor Capuano had resigned).

11. The auditor refused to sign the contract as drafted. She questioned several aspects of the contract, primarily a clause relating to reimbursement for expenses and whether the contract need not go out to bid, a concern shared by some of Langsam's subordinates in the city's law department.

12. Later in January 1999 Langsam advised members of her legal staff that the contract did not have to go out to bid. She also selected one of her subordinates to address the auditor's concerns.

13. On February 11, 1999, after returning from a four-week trial in federal court, Langsam disclosed in writing to the acting mayor her husband's financial interest in the contract and that her office had reviewed the contract "only as to form" and that her "signature on contracts indicates that my department has reviewed them and is satisfied that they meet all necessary legal requirements." By letter dated February 22, 1999, the acting mayor made a written determination that Langsam could participate in determining whether "the contract meets all legal requirements," since her role did "not extend to any evaluation of the business benefits of a particular contract or the desirability of the particular terms negotiated by the department involved." The contract was thereafter executed by the acting mayor. It was ultimately repudiated by Mayor Capuano's elected successor in June 1999.

14. Ultimately, on February 22, 1999, the law department provided the auditor with a letter informing her that her authority was limited to certifying that adequate funds were available. The auditor then agreed to sign the contract.

Conclusions of Law

15. Section 19 of G.L. c. 268A, except as otherwise permitted in that section, prohibits a municipal employee from participating as such in particular matters in which he or an immediate family member has a financial interest (None of the exemptions applies here.)

16. As Somerville's solicitor, Langsam was a municipal employee as that term is defined in G.L. c. 268A, §1.

17. The decisions to draft a boilerplate contract for MacDonald's type of project manager position, and then more particularly as to MacDonald's contract to have the city engage him in his corporate rather than individual capacity, to not put the contract out to bid, and to include a minimum term for the contract, were each particular matters.[1]

18. Langsam participated[2] in each of these particular matters by providing substantive legal advice to Antonelli.

19. MacDonald was a member of Langsam's immediate family.[3]

20. MacDonald had a financial interest in each of these particular matters. The decision to draft a boilerplate contract would set the basic generic terms and conditions for any contract that MacDonald would end up signing. The decision to include a minimum term could have guaranteed MacDonald a minimum payment of $160,000 on the contract. The decision to not put the contract out to bid guaranteed that MacDonald would get the contract, and the decision to contract with MacDonald in his corporate capacity protected MacDonald from individual liability. Langsam knew of MacDonald's interest in each of these particular matters at the time she participated in each of these decisions.

21. By providing advice as city solicitor as to each of these particular matters, Langsam participated in each of those matters. When Langsam so participated, she knew on each occasion that her husband had a financial interest in the matter. Therefore, by so acting, Langsam violated §19.

22. The contract review performed by the city was also a particular matter.

23. MacDonald had a financial interest in the successful completion of that review process.

24. Langsam knew of MacDonald's interest in the successful completion of the contract review.

25. Langsam participated in the contract review process by advising lawyers in her own department that the contract need not be put out to bid, and by selecting the subordinate to address the auditor's concerns.

26. Therefore, by participating as city solicitor in each of the forgoing particular matters as part of the contract review process knowing that her husband had a financial interest in those matters, Langsam violated §19.

27. According to Langsam, she believed that her filing her written disclosure of her husband's financial interest in the contract and her obtaining a written determination from the acting mayor as described above pro-

tected her under the §19(b)(1) exemption.[4] Langsam's disclosure is not a defense, however, because it occurred after her participation in the drafting and review of the contract, and, in any event, failed to disclose that participation. This in turn prevented her appointing authority from having the opportunity to make an informed written judgment as to whether he was willing to permit that degree of participation notwithstanding her husband's financial interest in those particular matters. All that the disclosure she filed and written determination she received allowed her to do was sign the contract "as to form."

Resolution

In view of the foregoing violations of G.L. c. 268A by Langsam, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Langsam:

(1) that Langsam pay to the Commission the sum of $3500 as a civil penalty for violating G.L. c. 268A, §19 by participating as described above in the drafting of and the law department's review of the library renovation project manager contract

(2) that she waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: October 18, 2001

[1]"Particular matter" means 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 enactment of general legislation by the general court and petitions by cities, towns, counties and districts for special laws related to their governmental organizations, power, duties, finances and property.

[2]"Participate" means to 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. G.L. c. 268A, §1(j).

[3]"Immediate family member" means the employee and his spouse, and their parents, children, brothers and sisters. G.L. c. 268A, §1(e).

[4]Section 19(b)(1) provides that it shall not be a violation of '19 "if the municipal employee first advises the official responsible for appointment to his position of the nature and circumstances of the particular matter and makes full disclosure of such financial interest, and receives in advance a written determination made by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee."

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss.COMMISSION ADJUDICATORY DOCKET NO. 645

IN THE MATTER OF PETER VALLIANOS

DISPOSITION AGREEMENT

The State Ethics Commission and Peter Vallianos enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On January 17, 2001, the Commission initiated, pursuant to G.L. c. 268B, §4(j), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Vallianos. The Commission has concluded its inquiry and, on April 11, 2001, found reasonable cause to believe that Vallianos violated G.L. c. 268A.

The Commission and Vallianos now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Vallianos was, during the time relevant, the chairman of the Monterey Zoning Board of Appeals ("ZBA"). As such, Vallianos was a municipal employee as that term is defined in G.L. c. 268A, §1.

2. Vallianos is a private attorney. He was hired by Monterey residents Georgianna and Daniel Eschen to assist them in the purchase of a cottage in Monterey.

3. The Eschens sought a ZBA special permit to expand the cottage at 11 Sylvan Road by creating an addition that would connect to the existing structure and become the new living quarters for the family. The existing structure would be renovated and be used to display the family's collection of ocean liner memorabilia. The existing structure was on a non-conforming lot.

4. The ZBA scheduled July 7, 2000 as the hearing date for the Eschens' special permit application. At some point prior to the hearing date, Vallianos informed the ZBA secretary that he should not be scheduled to participate in the hearing because he was the Eschens' attorney. The secretary scheduled an alternate ZBA member to take Vallianos' place at the hearing. Vallianos attended the hearing. Vallianos became significantly involved in the hearing. During the public comment portion of the meeting, Vallianos stated that because he was the

Eschens' attorney, he knew he could not represent them during this hearing. Vallianos then stated that he would be available to ZBA members to answer any questions they might have. Vallianos subsequently contributed extensively to the discussion preceding the vote. In response to questions from board members, Vallianos informed the ZBA of the existing structure's dimensions and then discussed with the board the size of the lot and the proposed addition, and the set-back requirements. The discussion lasted approximately 20 minutes.

5. Vallianos was not compensated for his appearance at the ZBA hearing.

Conclusions of Law

6. Section 17(c) of G.L. c. 268A prohibits a municipal employee, otherwise than in the proper discharge of official duties, from acting as attorney for anyone other than the municipality in relation to a particular matter in which the town has a direct and substantial interest.

7. The ZBA's decision whether to grant a special permit was a particular matter in which the town had a direct and substantial interest.

8. By appearing before the ZBA and advocating on the Eschens' behalf regarding their application, Vallianos acted as the Eschens' attorney.

9. Vallianos' appearance was in relation to the permit, which is a particular matter.

10. Vallianos' appearance was not within the proper discharge of official duties.

11. Therefore, by acting as the Eschens' attorney in relation to a particular matter in which the town had a direct and substantial interest, Vallianos violated §17(c).

12. It is no defense that Vallianos, as described above, stated, prior to his participating at the July 7, 2000 meeting, that although he was the Eschens' attorney, he was not there to represent them. Vallianos had been retained by the Eschens to act as their attorney regarding the purchase of the cottage and the subsequent permitting issues. He attended the meeting because he had that attorney-client relationship and interjected himself significantly into the ZBA discussion of the permit. He had no independent interest in the matter separate from his role as attorney. Under the totality of the circumstances, therefore, he acted as the Eschens' attorney. Vallianos cannot avoid the conclusion that he acted as the Eschens' attorney merely by stating that he was not there to represent them when, in fact, that was what he was doing.

Resolution

In view of the foregoing violations of G.L. c. 268A by Vallianos, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Vallianos:

(1) that Vallianos pay to the Commission the sum of $1,250 as a civil penalty for violating G.L. c. 268A, §17(c): and

(2) that Vallianos waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: October 22, 2001

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY DOCKET NO. 646

IN THE MATTER OF RICHARD SEVENEY

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Richard Seveney pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On August 8, 2001, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Seveney. The Commission has concluded its inquiry and, on October 16, 2001, found reasonable cause to believe that Seveney violated G.L. c. 268A, §19.

The Commission and Seveney now agree to the following findings of fact and conclusions of law:

Findings of Fact

Hiring Brother-in-Law as Audiovisual/Computer Technician

1. At all relevant times, Seveney was employed as the high school principal for the Town of Ware. As such, Seveney was a municipal employee as that term is defined in G.L. c. 268A, §1(g).

2. In spring 1998, the Ware School District sought to hire a full-time audio-visual/computer technician at a starting salary of $33,000 per year. The superintendent of schools was the ultimate hiring authority for the position. A three-person screening committee, which included Seveney, was charged with reviewing applications, interviewing candidates, and recommending a candidate for hire to the superintendent.

3. One of the applicants for the position was Seveney's brother-in-law, Francis Mitus (Seveney's wife's brother).

4. Seveney did not attend Mitus' interview but he attended and participated in the interviews of the two other candidates. Seveney participated in the screening committee discussion of the other two candidates, but did not make any comments about Mitus. The other two committee members recommended Mitus for the position. Without any further action by Seveney, that became the Committee's recommendation.

5. In a May 27, 1998 letter to the superintendent, on behalf of the selection committee, Seveney recommended that Mitus be appointed to the audio-visual/computer technician position. In his letter Seveney wrote that "due to a conflict of interest" he abstained from the Mitus interview and the committee's recommending Mitus. In the concluding paragraph, Seveney wrote:

> Mr. Mitus would bring to this position over twenty-five years of technical experience in both computers and audiovisual equipment. His strong background and experience in training both students and faculty in the Springfield School System is another asset he would bring to the Ware School System.

6. The superintendent was aware that Mitus was Seveney's brother-in-law.

7. The superintendent appointed Mitus to the position.

Hiring Daughter as Suspension Monitor

8. In or about January 2000, the school district sought to hire an in-school suspension monitor for the remainder of the 1999-2000 school year. The position paid $25,000 per year, with the salary to be pro-rated for the remainder of the school year.

9. Three individuals, including Seveney, served on the screening committee. The committee received 17 applications and interviewed six applicants, including Seveney's daughter, Amy Wnek.

10. Seveney did not attend Wnek's interview, but he attended and participated in the interviews of the other candidates. Seveney participated in the screening committee discussion of the other candidates, but did not make any comments about his daughter. The committee, without further participation by Seveney, decided to recommend Wnek.

11. On February 7, 2000, Seveney sent a letter to the superintendent recommending that Wnek be appointed to the suspension monitor position stating:

> The [assistant principal] and [guidance counselor] interviewed the six applicants with myself taking part in five of the interviews. Their candidate of choice was Amy Wnek. I would concur with this decision and recommend her for the position of in-school suspension monitor.

12. The superintendent was aware that Wnek was Seveney's daughter.

13. The superintendent appointed Wnek to the position.

Conclusions of Law

14. Section 19 of G.L. c. 268A, except as permitted by paragraph (b) of that section, prohibits a municipal employee from participating as such an employee in a particular matter in which to his knowledge an immediate family member[1/] has a financial interest. None of the exceptions contained in §19(b) apply in this case.[2]

15. The determinations as to whom to hire as the audio-visual/computer technician and the suspension monitor were particular matters.[3/]

16. Seveney participated[4/] as the high school principal in those hiring determinations by reviewing applications and conducting interviews and evaluations regarding the candidates other than his brother-in-law and daughter, and by writing memos to the superintendent recommending his brother-in-law be hired as the audio-visual/computer technician and his daughter be hired as the sus-

pension monitor.[5] (If Seveney had merely communicated the committees' decisions, without elaboration, such ministerial acts may not have been "participation." Here, however, in each letter he added his own endorsement above and beyond conveying the simple fact of the committees' decisions.)

17. Mitus, as an applicant for the audio-visual/computer technician position, and Wnek, as an applicant for the suspension monitor position, each had a financial interest in their respective appointments. Seveney knew of his brother-in-law's and his daughter's financial interests at the time he participated in the hiring processes.

18. Accordingly, by participating in the hiring processes for the audio-visual/computer technician and the suspension monitor, as set forth above, Seveney participated in his official capacity in particular matters in which he knew immediate family members had a financial interest, thereby violating G.L. c. 268A, §19 on both occasions.

19. Seveney cooperated with the Commission's investigation.

Resolution

In view of the foregoing violations of G.L. c. 268A by Seveney, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Seveney:

(1) that Seveney pay to the Commission the sum of $1,000 as a civil penalty for violating G.L. c. 268A as stated above;[6] and

(2) that Seveney waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: October 24, 2001

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[1] "Immediate family" means the employee and his spouse, and their parents, children, brothers and sisters.

[2] Section 19(b)(1) provides an exemption when:

> the municipal employee first advises the official responsible for appointment to his position of the nature and circumstances of the particular matter and makes full disclosure of such financial interest, and receives in advance a written determination made by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee.

While the superintendent was aware of the family relationship between Seveny and the applicants, no written disclosures or determinations were made nor did the superintendent know of the extent of Seveney's participation in the hiring processes.

[3] "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 enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, '1(k).

[4] "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. G.L. c. 268A, '1(j).

[5] Abstaining from a family member's interview is not enough where the other applicants are competitors for the same position.

[6] The Commission has previously resolved violations through public disposition agreements where public officials were involved in hirings affecting immediate family members even where the public officials have limited their involvement to reviewing applications and conducting interviews of only the candidates other than their family member. See Larkin, 1990 SEC 490 (MBTA manager involved in interviewing process violated §6 even though he did not interview his daughter).

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION
SUFFOLK, ss.COMMISSION ADJUDICATORY
DOCKET NO. 647

IN THE MATTER
OF
ADELLE REYNOLDS

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Adelle Reynolds pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On May 8, 2001, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Reynolds. The Commission has concluded its inquiry and, on November 13, 2001, found reasonable cause to believe that Reynolds violated G.L. c. 268A, §23(b)(3).

The Commission and Reynolds now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Since July 1997 Reynolds has been the Town of Douglas full-time building inspector.

2. Between July 1997 and January 2000, Reynolds issued building permits and conducted all inspections pursuant to those permits.

3. GBI Builders ("GBI") in Douglas has been engaged in the modular home business for 30 years. GBI sells pre-fabricated, modular houses to customers. Typically, the customer owns the site and contracts with GBI to prepare the site, build a foundation, and then place an agreed upon modular home on that foundation.

4. Reynolds, as the building inspector, conducted the inspections of the foundation and stairs of the modular homes GBI sold in Douglas.

5. Between September 1998 and January 2000, Reynolds approved 8 GBI building permit applications and performed at least 17 inspections of GBI homes in Douglas.

6. In late 1998, Reynolds approached Louis Tascino, owner of GBI, and asked him to build Reynolds and her parents a modular home on a lot Reynolds owned in the town of Webster. Tascino informally agreed and quoted Reynolds a price.

7. On July 21, 1999, GBI submitted a written proposal to Reynolds that stated that GBI would build Reynolds and her parents a modular Cape Style house with "extras" for $144,000, excluding the price of the land. GBI was scheduled to complete the house on the Webster lot in November 1999.

8. In January 2000 the modular home was finished and Reynolds, with her parents, bought the house at the agreed price. The purchase price was consistent with the prices of similar modular homes built by GBI.

9. As noted above, between Reynolds initial conversation with GBI's owner regarding the modular house in the fall or winter 1998 until she moved into her home in January 2000, Reynolds approved at least eight GBI building permit applications and performed at least 17 inspections of GBI homes in Douglas. (Reynolds was the building inspector in the town of Douglas and therefore she did not have any jurisdiction over, nor did she perform any, inspections of her GBI modular home built in the town of Webster.)

10. Reynolds never made a public, written disclosure to the board of selectmen of her private commercial arrangements with GBI. According to members of the Board of Selectmen and the town administrator, however, they were aware of Reynolds' private commercial arrangement with GBI.

Conclusions of Law

11. As a building inspector, Reynolds was during the relevant time a municipal employee as that term is defined in G.L. c. 268A, §1.

12. Section 23(b)(3) of G.L. c. 268A prohibits a municipal employee from knowingly, or with reason to know, acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

13. By approving 8 GBI building permit applications and performing at least 17 inspections of GBI homes in Douglas during the period that Reynolds was in discussions with GBI about building her and her parents a $144,000 modular home or GBI was building that home, Reynolds knowingly or with reason to know, acted in a manner which would cause a reasonable person, having knowledge of all the relevant circumstances, to conclude that GBI could unduly enjoy Reynolds' favor in the performance of her official duties. Therefore, in so acting, Reynolds violated G.L. c. 268A, §23(b)(3).

Resolution

In view of the foregoing violations of G.L. c. 268A by Reynolds, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Reynolds:

(1) that Reynolds pay to the Commission the sum of $1,000 as a civil penalty for violating G.L. c. 268A, §23(b)(3); and

(2) that Reynolds waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: November 20, 2001

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY
DOCKET NO. 648

IN THE MATTER
OF
ROBERT MANZELLA

DISPOSITION AGREEMENT

The State Ethics Commission and Robert Manzella enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On October 16, 2001, the Commission initiated, pursuant to G.L. c. 268B, §4(j), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Manzella. The Commission has concluded its inquiry and, on November 13, 2001, found reasonable cause to believe that Manzella violated G.L. c. 268A.

The Commission and Manzella now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Manzella was, during the time relevant, a member of the Rockland Zoning Board of Appeals ("ZBA"). As such, Manzella is a municipal employee as that term is defined in G.L. c. 268A, §1.

2. Manzella & DiGrande Incorporated is a Massachusetts family-operated property management firm. At all times relevant herein, Manzella served as the assistant vice-president, Manzella's father as president and treasurer, and Manzella's mother as vice-president and clerk. The business is located in an office/warehouse park it owns in Rockland called Town Line Park.

3. On May 30, 1997, Manzella & DiGrande filed a petition with the ZBA for a public hearing so that the corporation could seek a special permit for the construction of a cellular tower at Town Line Park.

4. On July 9, 1997, the ZBA held a public hearing on special permits. Manzella participated in the hearings until the Manzella & DiGrande special permit application came before the ZBA. At that point, Manzella stated that Manzella & DiGrande was his family's business and that he was recusing himself. Manzella left the meeting table and sat in the audience. Manzella went to the podium and presented Manzella & DiGrande's petition. He also answered questions posed by the ZBA members about the matter. The discussion lasted approximately 20 minutes.

5. The ZBA voted unanimously to grant the special permit. (Consistent with his having recused himself, Manzella did not vote on this permit.)

6. In April 1998, Bell Atlantic entered into a contract with Manzella & DiGrande to construct a cellular tower at Town Line Park. The 20-year contract called for Bell Atlantic to pay Manzella & DiGrande a monthly rental fee of $1,100 per month, with a three-percent yearly increase in rent built into the contract.

7. Manzella cooperated with the Commission's investigation.

Conclusions of Law

8. Section 17(c) of G.L. c. 268A prohibits a municipal employee, otherwise than in the proper discharge of official duties, from acting as agent for anyone other than the municipality in relation to a particular matter in which the town has a direct and substantial interest.

9. The ZBA's decision whether to grant a special permit for a cellular communications tower was a particular matter in which the town had a direct and substantial interest.

10. By appearing before the ZBA and advocating on behalf of Manzella & DiGrande regarding the special permit application particular matter, Manzella acted as Manzella & DiGrande's agent.

11. Manzella's appearance was in relation to the particular matter, the ZBA's decision regarding the special permit application.

12. Manzella's appearance was not within the proper discharge of his official duties.

13. Therefore, by acting as Manzella & DiGrande Inc.'s agent in relation to a particular matter in which the town had a direct and substantial interest, Manzella violated §17(c).[1]

Resolution

In view of the foregoing violations of G.L. c. 268A by Manzella, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Manzella:

(1) that Manzella pay to the Commission the sum

of $2,000 as a civil penalty for violating G.L. c. 268A, §17(c): and

(2) that Manzella waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: November 28, 2001

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[1]It should be noted that on the May 30, 1997 petition, Manzella wrote, "If the town of Rockland is awarded a personal wireless facility at #490 Market Street, Rockland, MA, (where a new police station was to be constructed) this special permit will be withdrawn." According to Manzella, several communications companies considered constructing a cellular tower at the police station site. Manzella stated he would withdraw his petition and allow the town to receive the rental fees from a communications company for siting a cellular tower on town property. [Ultimately, no communications company sought to build a cellular tower at the police station site because it was located in a residential area.] While Manzella's willingness to forego the potential permit and alternatively allow the town to receive the rental fees from a cellular tower suggests civic-mindedness, it is not a defense to a conflict of interest violation.

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY
DOCKET NO. 649

IN THE MATTER
OF
KENNETH WALLEY

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Kenneth Walley pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On September 16, 2001, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Walley. The Commission has concluded its inquiry and, on November 13, 2001, found reasonable cause to believe that Walley violated G.L. c. 268A, §§19 and 17.

The Commission and Walley now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Walley is employed as a City of Revere assistant electrical inspector. As such, Walley is a municipal employee as that term is defined in G.L. c. 268A, §1.

2. Walley's official duties as an assistant electrical inspector include the issuing of permits for electrical work being done in the city and through inspections ensuring that all work performed pursuant to such permits complies with local codes.

3. Walley also performs private electrical work as Kenneth R. Walley Co., Inc.

4. In December 1999, Walley was hired to wire the basement and install an additional electric meter at the house at 26 Wave Avenue, Revere.

5. On January 14, 2000, Walley applied for a permit for this work.

6. In or about February 2000, Walley performed the work at 26 Wave Avenue.

7. On December 18, 2000, Walley, as assistant electrical inspector, inspected and approved the work he performed at 26 Wave Avenue.

8. Walley was paid $200 for the work he did at 26 Wave Avenue.

9. In December 2000, Walley was hired to rewire the house at 574 Proctor Avenue, Revere.

10. On December 8, 2000, Walley applied for a permit for this work.

11. On December 8, 2000, Walley performed the work at 574 Proctor Avenue.

12. On January 31, 2001, Walley, as assistant electrical inspector, inspected and approved the work he performed at 574 Proctor Avenue.

13. Walley was paid $4,500 for the work he did at 574 Proctor Avenue.

Conclusions of Law

Chapter 268A, §17(c)

14. Section 17(c) of G.L. c. 268A prohibits a municipal employee, otherwise than in the proper discharge of official duties, from acting as agent or attorney for anyone other than the municipality in relation to a particular matter in which the town has a direct and substantial interest.

15. Decisions to issue electrical permits are particular matters.

16. The city has a direct and substantial interest in these matters because those permits involve activities that may significantly affect public health and safety.

17. By applying for electrical permits for work done at 26 Wave Avenue and 574 Proctor Avenue, Walley acted as agent for individuals other than the city (both his corporation and the owners of each site) in relation to particular matters in which the city had a direct and substantial interest.

18. Walley's actions in applying for permits were not within the proper discharge of his official duties.

19. Therefore, by applying for electrical permits for work done at 26 Wave Avenue and 574 Proctor Avenue, Walley acted as agent for individuals other than the city in relation to particular matters in which the city had a direct and substantial interest, and thereby violated §17(c) on each occasion.

Chapter 268A, §17(a)

20. Section 17 (a) of G.L. c. 268A prohibits municipal employees from otherwise than as provided by law for proper discharge of official duties directly or indirectly receiving or requesting compensation from anyone other than their city, town or municipal agency in relation to a particular matter in which the same city or town is a party or has a direct and substantial interest.

21. Walley received $200 and $4,500 for the electrical work he performed at 26 Wave Avenue and 574 Proctor Avenue, respectively.

22. The decisions to issue city permits for electrical work and the inspections pursuant to those permits are particular matters.

23. The compensation Walley received for performing the electrical work was in relation to particular matters in which the city had a direct and substantial interest.

24. Walley's receipt of compensation for work he performed privately was not within the proper discharge of his official duties.

25. Therefore, by receiving compensation in relation to particular matters in which the city had a direct and substantial interest, Walley violated §17(a) on each occasion.

Chapter 268A, §19

26. Section 19 of G.L. c. 268A prohibits municipal employees from participating in their official capacity in particular matters in which they know they have a financial interest.

27. The inspection of the electrical work at 26 Wave Avenue and 574 Proctor Avenue involves determinations as to whether the work done complied with the code. These determinations were particular matters.

28. By conducting these inspections, Walley participated, in his official capacity, in the aforementioned particular matters.

29. Walley had a financial interest in the particular matters as he had performed the electrical work at 26 Wave Avenue and 574 Proctor Avenue and received $200 and $4,500, respectively.

30. Walley knew of the aforementioned financial interests when he conducted the inspections.

31. Therefore, by conducting the inspections of the electrical work he performed at 26 Wave Avenue and 574 Proctor Avenue, Walley participated in particular matters in which he had a financial interest, thereby violating §19 on each occasion.

Resolution

In view of the foregoing violation of G.L. c. 268A by Walley, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Walley:

(1) that Walley pay to the Commission the sum of $2,500.00 as a civil penalty for violating G.L. c. 268A, §§17(a), 17(c) and 19; and

(2) that Walley waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: November 29, 2001

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss. COMMISSION ADJUDICATORY
DOCKET NO. 650

IN THE MATTER
OF
MATTHEW J. O'NEIL

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Matthew J. O'Neil pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On August 8, 2001, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by O'Neil. The Commission has concluded its inquiry and, on November 13, 2001, found reasonable cause to believe that O'Neil violated G.L. c. 268A, §20.

The Commission and O'Neil now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. In spring 1999, O'Neil was the Chief of Staff of the Boston Redevelopment Authority ("BRA").

2. In May 1999, O'Neil signed a Purchase and Sale Agreement to purchase Unit 17 in the Charlestown Navy Yard Rowhouses ("Unit 17") for $158,462.

3. The property on which the Charlestown Navy Yard Rowhouses are located was conveyed to developers by the BRA in 1989. In connection with that original conveyance, Unit 17 was subject to a deed restriction enforceable by the BRA. That deed restriction precluded sellers including O'Neil from conveying a unit for more than a "maximum resale price" set by the BRA. (The "maximum resale price" was the purchase price plus five percent per annum.) But for the "maximum resale price" restriction, Unit 17's fair market value would have been no less than twice the amount that O'Neil paid for the unit.

4. As part of the BRA's arrangement to ensure that units are not sold for amounts in excess of the maximum resale price, the BRA requires that all unit purchasers execute a BRA Note. That note obligates buyers to disgorge 30 percent of their monetary gain if they sell their unit for an amount in excess of the maximum resale price. So that the BRA may secure its interest in the BRA Note, purchasers must also execute a BRA Mortgage.

5. The BRA Note and the BRA Mortgage are both contracts between the BRA and the purchaser. But for the execution of these two agreements, the purchase and sale of the unit cannot be consummated. O'Neil signed both contracts.

6. In or about May 1999, the BRA's general counsel advised O'Neil that he should obtain legal advice from the Ethics Commission before proceeding with the Unit 17 purchase. O'Neil did not seek such advice.

Conclusions of Law

7. Section 20 of G.L. c. 268A prohibits a municipal employee from having a financial interest, directly or indirectly, in a contract made by a municipal agency of the same city or town, in which the same city or town is an interested party of which financial interest the employee has knowledge or reason to know. (There are a number of exemptions in §20, but none are applicable here.)

8. As the BRA's Chief of Staff, O'Neil was in Spring 1999 a municipal employee as that term is defined in G.L. c. 268A, §1. More particularly, he was a city of Boston municipal employee.

9. The BRA Note and the BRA Mortgage were contracts made by the BRA, a municipal agency of the city of Boston in which the City of Boston was an interested party. O'Neil had a financial interest in these contracts for two reasons: one, but for his signing these contracts he would not have been able to purchase Unit 17; and two, they exposed him to the possibility of certain future legal actions by the BRA that could result in significant financial forfeitures.

10. O'Neil knew of his financial interests in the two contracts between him and the BRA.

11. Therefore, by as a city of Boston employee entering into the BRA Note and the BRA Mortgage with a city of Boston agency, while knowing of his financial interest in those two contracts, O'Neil violated §20.

Resolution

In view of the foregoing violation of G.L. c. 268A by O'Neil, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by O'Neil:

(1) that O'Neil pay to the Commission the sum of $2,000.00 as a civil penalty for violating G.L.c.

268A, §20;

(2) that O'Neil (*i*) sell Unit 17 at no profit (i.e., at a price no higher than the sum of his original purchase price plus the cost of those capital improvements which he is permitted to recover under Section 9.4 of the Charlestown Navy Yard Rowhouses Master Deed) to a bona fide purchaser,[1] (*ii*) vacate the premises, and (*iii*) terminate any financial interest in Unit 17, either direct or indirect, all within 180 days of executing this agreement;[2]

(3) that O'Neil waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: December 20, 2001

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[1] A bona fide purchaser is a purchaser who is neither related to O'Neil, nor a friend of O'Neil's, nor an individual or individuals with whom he has a prior business relationship.

[2] O'Neil will provide the Commission with an affidavit attesting to his compliance with this paragraph (2) within ten (10) days of selling Unit 17. The affidavit shall be in a form agreeable to both the parties to this agreement.

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss.COMMISSION ADJUDICATORY DOCKET NO. 651

IN THE MATTER OF BARRY VINTON

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Barry Vinton pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On November 13, 2001, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Vinton. The Commission has concluded its inquiry and, on December 19, 2001, found reasonable cause to believe that Vinton violated G.L. c. 268A, §19.

The Commission and Vinton now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Vinton is the police chief in the town of Plympton.

2. In March 1998, Vinton recommended to the Board of Selectmen ("BOS") that the board hire his wife, Carol, as the police department clerk at a wage $6.75 per hour, for a maximum of 19 hours per week. The position was not posted. The BOS voted to hire Carol for the position.

3. In spring 1999, Vinton appeared before the BOS and recommended that the clerk position be funded for 25 hours per week. Vinton's budget request submitted to the BOS and the Finance Committee ("FinCom") included funding for the clerk position at 25 hours per week. The budget was subsequently approved by the BOS and the FinCom, but the clerk's position was funded at 22 hours per week. Plympton municipal employees must work at least 20 hours per week to receive benefits. The increase to 22 hours enabled Carol to receive town benefits.

4. In spring 2000, Vinton recommended to the BOS that the clerk's position be increased to 40 hours per week for fiscal year 2001. Vinton's budget request submitted to the BOS and the FinCom included a salary increase for the clerk's position but did not specify an amount of weekly hours. The budget was subsequently approved by the BOS and the FinCom, but the clerk's position was funded at 32 hours per week. Effective July 1, 2001, Carol began working 32-hour weeks.

5. From March 1998, through early March, 2000, Vinton signed payroll warrants that included his wife's salary.

Conclusions of Law

6. Section 19 of G.L. c. 268A prohibits municipal employees from participating in their official capacity in particular matters in which, to their knowledge, they or an immediate family member have a financial interest.

7. As the police chief, Vinton is a municipal employee as that term is defined in G.L. c. 268A, §1.

8. The decisions to hire Carol as the police department clerk, fund her position, increase her hours, and approve the payroll warrants enabling her to be paid, were all particular matters.

9. By making the recommendations to the BOS that Carol be hired and, subsequently, that her hours be increased, as well as submitting budget requests that would fund these increased hours, and signing payroll warrants enabling her to be paid, Vinton participated in his official capacity in these particular matters.

10. Vinton's wife is an immediate family member[1/] as that term is defined in G.L. c. 268A, §1.

11. Vinton's wife had a financial interest in each of these particular matters as each involved her compensation.

12. Vinton knew of his wife's financial interest in these personnel decisions when he participated.

13. Therefore, by making the recommendations to the BOS that Carol be hired and that her hours be increased, as well as submitting budget requests funding her position and signing payroll warrants enabling her to be paid, Vinton participated as police chief in particular matters in which he knew his immediate family member had a financial interest, thereby violating §19 on each occasion.

Resolution

In view of the foregoing violation of G.L. c. 268A by Vinton, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Vinton:

(1) that Vinton pay to the Commission the sum of $2,000 as a civil penalty for his course of conduct in violating G.L. c. 268A, §19:

(2) that he waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: December 27, 2001

[1/] "Immediate family" means the employee and his spouse, and their parents, children, brothers and sisters.

State Ethics Commission
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