

930 CMR: STATE ETHICS COMMISSION

930 CMR 5.00: EXEMPTIONS FROM M.G.L. C. 268A AND M.G.L. C. 268B RELATED TO GIFTS

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5.01: Statutory Prohibitions Concerning Gifts to Public Employees

There are six sections of the conflict of interest and financial disclosure laws that relate to gifts to public employees. The terms gift, lobbyist, public employee, person, official acts, and substantial value are defined in 930 CMR 5.04 and 5.05. There is a glossary of all terms defined in 930 CMR 5.12. The six statutory sections that relate to gifts to public employees are summarized below:

- (a) M.G.L. c. 268A, § 2, which prohibits corrupt gifts, offers, and promises to influence official acts, referred to in 930 CMR 5.02 as bribery.
- (b) M.G.L. c. 268A, § 3, which prohibits gifts, offers, and promises of substantial value for or because of official acts performed or to be performed.
- (c) M.G.L. c. 268A, § 23(b)(2)(i), which prohibits public employees from soliciting or receiving anything of substantial value for or because of the public employee's official position.
- (d) M.G.L. c. 268A, § 23(b)(3), which prohibits a public 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 a result of kinship, rank, position or undue influence of any party or person.
- (e) M.G.L. c. 268A, § 26, which prohibits any person from, directly or through another, with fraudulent intent, violating M.G.L. c. 268A, § 23(b)(2); prohibits any person, with fraudulent intent, from causing any other person to violate M.G.L. c. 268A, § 23(b)(2); and prohibits any person, with fraudulent intent, from offering or giving any privileges or exemptions of substantial value in violation of M.G.L. c. 268A, § 23(b)(2), if the unwarranted privileges or exemptions have a fair market value in the aggregate of more than \$1,000 in any 12 month period.
- (f) M.G.L. c. 268B, § 6, which prohibits executive or legislative agents from knowingly and willfully offering or giving, to certain public employees and their immediate family members, any gift of any kind or nature, and also prohibits certain public employees and their immediate family members from knowingly and willfully soliciting or accepting from any executive or legislative agent any gift of any kind or nature.

5.02: No Exemption for Bribery, Corrupt Gifts, or Gifts Given with Fraudulent Intent

The State Ethics Commission (Commission) has statutory authority to promulgate exemptions from four of the six statutes listed in 930 CMR 5.01. Specifically, the Commission has authority to promulgate exemptions from M.G.L. c. 268A, §§ 3, 23(b)(2), and 23(b)(3), and M.G.L. c. 268B, § 6. It does not have authority to promulgate exemptions from M.G.L. c. 268A, §§ 2 and 26. Nothing in 930 CMR 5.00 shall be construed as creating any exemption from the prohibition against corrupt gifts and bribery set forth in M.G.L. c. 268A, § 2, or the prohibition against gifts given or solicited with fraudulent intent set forth in M.G.L. c. 268A, § 26.

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5.03: Statutory Authority to Promulgate Exemptions; Effect of Compliance with Regulation; No Inferences to be Drawn as to Conduct Not Specifically Exempted

M.G.L. c. 268A, §§ 3(f) and 23(f), and M.G.L. c. 268B, §§ 3(a)(2) and 6, give the Commission statutory authority to promulgate exemptions from M.G.L. c. 268A, §§ 3, 23(b)(2), and 23(b)(3), and M.G.L. c. 268B, § 6. M.G.L. c. 3, § 43, last paragraph, gives the Commission statutory authority to promulgate exemptions from that statute. Pursuant to that authority, the Commission is promulgating 930 CMR 5.00 to:

- (a) clarify situations in which the statutory prohibitions concerning gifts to public employees set forth in M.G.L. c. 268A, §§ 3, 23(b)(2), and 23(b)(3) do not apply; and
- (b) create exemptions in certain situations in which a gift to a public employee would otherwise be prohibited by M.G.L. c. 268A, §§ 3, 23(b)(2), 23(b)(3), or M.G.L. c. 268B, § 6, or M.G.L. c. 3, § 43, last paragraph, because the Commission has determined that allowing acceptance of the gift either serves a legitimate public purpose, or does not present a genuine risk of a conflict of interest or the appearance of a conflict of interest, or both.
- (c) A public employee who complies with the exemption requirements of 930 CMR 5.00 is deemed to be in compliance with those provisions of M.G.L. c. 268A, M.G.L. c. 268B, and M.G.L. c. 3 referenced in the relevant section of 930 CMR 5.00.
- (d) The establishment of these exemptions shall not be the basis for any inference that conduct not specifically exempted either is, or is not, prohibited by M.G.L. c. 268A, M.G.L. c. 268B, and M.G.L. c. 3.

5.04: Definitions; Disclosure Procedure

For purposes of the exemptions set forth in 930 CMR 5.00:

Disclosure is a written statement that sets forth all the relevant facts. Such a disclosure may be made on a form prescribed by the Commission or in another writing that discloses the relevant facts, unless use of a Commission form is explicitly required by 930 CMR 5.00. Such disclosures are public records. If a disclosure required by 930 CMR 5.00 will contain information required by law to be kept confidential, the public employee making the disclosure must follow the procedure set forth in 930 CMR 3.02: *Disclosures Containing Confidential Information*.

- (a) An appointed employee must make a disclosure to the employee's appointing authority before the relevant event occurs. An appointing authority is the individual official, board, commission, or other governmental body that has the legal authority to appoint the public employee, or, where permitted by 930 CMR 5.00, such authority's designee. A disclosure to an appointing authority that is a multi member body shall be made to the chairperson, and copied to the members of the body. Such multi member body, by valid vote of such body, may choose to delegate to the chairperson or other member of the body the authority to make any necessary determination in response to such disclosure on behalf of such body, which should then be copied to the members. Judges and judicial branch employees shall make disclosures required by 930 CMR 5.00 to the Chief Justice of their respective courts, or to his or her designee.
- (b) A state or county employee who does not have an appointing authority because that employee is elected, or for any other reason, must make a disclosure to the Commission, except that Members of the General Court may make a disclosure to the Senate or House Clerk, as appropriate, or to the Commission. Such a disclosure must be made before the relevant event occurs unless 930 CMR 5.00 states explicitly that a disclosure may be made after an event. A state or county employee who does not have an appointing authority and who is traveling or attending an event with staff members pursuant to an exemption created by 930 CMR 5.08 may make a single disclosure for all.
- (c) A municipal employee who does not have an appointing authority because that employee is elected, or for any other reason, must make a disclosure to the town or city clerk, and an elected regional school district employee must make a disclosure to the clerk or secretary of such regional school district. Such an employee must make a disclosure before the relevant event occurs unless 930 CMR 5.00 states explicitly that a disclosure may be made after an event. Such an employee who is traveling or attending an event with staff members pursuant to an exemption created by 930 CMR 5.08 may make a single disclosure for all.

Gift is anything of value that is given without something of equivalent fair market value being given in return.

5.04: continued

Lobbyist is a person who meets the definition of an Executive Agent under M.G.L. c. 3, § 39, or the definition of a Legislative Agent under M.G.L. c. 3, § 39.

Official Acts and Official Action are actions taken in one's capacity as a public employee.

Person is a business, individual, corporation, union, association, firm, partnership, committee, class, team, or other organization or group of persons acting together who share a common interest or purpose.

Public Employee is any state, county, or municipal employee, and any special state, county, or municipal employee, as defined in M.G.L. c. 268A, § 1. The term includes full and part time public employees. It applies regardless of how the public employment began, and includes public employees who were appointed or elected to their positions, or hired by a public agency, or those who provide services to a public agency pursuant to an express or implied contract. It also applies to persons serving in both compensated and uncompensated positions. The definition set forth in 930 CMR 5.04: Public Employee is for purposes of these exemptions only, and not for purposes related to M.G.L. c. 268B, § 5.

5.05: Substantial Value; How Determined

Substantial value is \$50 or more. The value of a gift is its fair market value at the time of the gift, cost, or face value, whichever is greater. In determining substantial value, the Commission may aggregate all gifts offered or given by a person as defined in 930 CMR 5.04 to a public employee within any 365 day period. If a gift is given to multiple recipients, the value to each public employee shall be the total value of the gift divided by the number of recipients. To determine the value of attendance at an event, the Commission will consider the admission fee, or ticket price, or per person cost to the sponsor, or will divide the actual cost of the event by the number of attendees. The actual cost of an event includes the per person cost of refreshments, entertainment, taxes, service charges, and tips. The actual cost of an event also includes overhead charges for the room and service when these are part of a set fee per person for the event, but does not include any extra fee or charge paid by the host to rent the event venue. Where the Commission has determined the value to a public employee of attendance at an event by dividing the actual cost by the number of attendees, the presumption that an attendee received a gift with a value that is a proportional share of the actual cost of an event may be rebutted as to a particular individual by evidence that the cost of the items ordered or consumed by that individual and any guests, plus tip, was less than \$50.

Example: The face value of a ticket to a sporting event is \$30 but the giver paid \$100. The value of the ticket is \$100, and it is a gift of substantial value.

Example: The face value of a ticket to a concert is \$40, but due to the scarcity of such tickets, the fair market value is \$500 at the time of the gift. The value of the ticket is \$500, and it is a gift of substantial value. A person who is given the opportunity to purchase, and does purchase, the ticket at face value has received a gift of \$460, which is of substantial value.

Example: The fair market value of meals and entertainment at a charitable event is \$40, but the face value or cost of a ticket to the event is \$150. The value of the ticket is \$150, and it is a gift of substantial value.

Example: The total cost, including tax and tip, for a dinner for ten people is \$750. Each public employee attending the dinner is presumed to have received a \$75 dinner, which is of substantial value. This presumption may be rebutted as to a particular individual by evidence that the cost of the items ordered or consumed by that individual and any guests, plus tip, was less than \$50.

Example: There is no admission charge to an event but the estimated per person cost of food and drink is \$90. The presumed value of the admission is \$90, and of substantial value. This presumption may be rebutted as to a particular individual by evidence that the cost of the items ordered or consumed by that individual and any guests, plus tip, was less than \$50.

Example: The host of an event pays a set fee of \$75 per person for a catered event. The \$75 per person cost includes all refreshments, taxes, service charges, and the rental of the banquet hall. The value of attendance to each attendee is \$75, and it is a gift of substantial value.

5.05: continued

Example: A company plans a training event to which public employees will be invited. The company pays a fee to rent an auditorium where the training will be held, and separately pays for refreshments to be served during the day. The value of attendance to the public employees who attend is determined by dividing the cost of the refreshments by the number of attendees. The auditorium rental fee is not included.

5.06: No Violation and No Exemption Needed: Gifts Unrelated to Official Action, Position, or Performance of Duties

Public employees may accept any gift that is entirely unrelated to official action by the public employee, and to the public employee's official position, and to the public employee's performance of official duties, from persons other than lobbyists, because these gifts are not prohibited by M.G.L. c. 268A, §§ 3, 23(b)(2), and 23(b)(3). No disclosure is required at the time of acceptance of these gifts, but if a matter involving the giver comes before the public employee during the six months following such acceptance, or if such a gift follows any official action by the employee involving the giver within six months, the employee must make a written public disclosure concerning the gift pursuant to M.G.L. c. 268A, § 23(b)(3), using the procedure explained in 930 CMR 5.07(2).

Example: A public employee may accept any gift from a member of the public employee's immediate family, other relative, intended spouse, or member of the public employee's household, as long as the gift is entirely unrelated to the employee's performance or nonperformance of official action or duties.

Example: A public employee may accept any rebate, discount, or promotional item available to a group that includes, but is not limited to, public employees, or to a geographically defined class that includes the public employee (10% off for Boston residents).

Example: A public employee may accept any commercially reasonable loan made in the ordinary course of business if the lender has no direct interest in the performance of the public employee's duties. A lender has a direct interest in the performance of a public employee's official duties if the lender is seeking or is likely to seek official action by the public employee. A public employee may accept a commercially reasonable loan made in the ordinary course of business from a lender who has a direct interest in the performance of the public employee's duties if the public employee first makes a disclosure as required by M.G.L. c. 268A, § 23(b)(3).

Example: A public employee may accept any reward or prize given to competitors or entrants in a random drawing open to the public, or any reward or prize given to all attendees at an event (1000th attendee at Topsfield fair gets a car).

Example: A public employee may accept gifts, meals, and events given and received for reasons entirely unrelated to the recipient's official actions or position, on holidays; occasions of religious significance, including bar mitzvahs and confirmations; occasions of personal significance, including weddings, engagements, birthdays, the birth or adoption of a child, illness, or a relative's illness or death; and occasions of professional significance, including hirings and promotions.

Example: A public employee may accept *honoraria* (voluntary, unsolicited payments) unrelated to the employee's official action, position, or duties, as long as the speech or service for which the *honorarium* was given was performed on the employee's own time and without the use of public resources. *Honoraria* related to official positions or actions are dealt with in 930 CMR 5.08(4)(d).

Example: A public employee may accept any inheritance unrelated to the employee's official position, or to the employee's performance or nonperformance of official actions or duties.

5.07: Gifts Worth Less Than \$50 Are Not Prohibited But a Disclosure May be Required

A public employee is not prohibited from accepting an unsolicited gift that is not of substantial value as defined in 930 CMR 5.05, unless a reasonable person, having knowledge of the relevant circumstances, would conclude that the public employee could unduly favor the giver or be influenced by the giver when performing official duties. If a gift could create such an appearance of a conflict of interest, pursuant to M.G.L. c. 268A, § 23(b)(3), the employee may accept the gift only if he or she makes a written public disclosure about the gift prior to taking any official action involving the donor. Below are examples of situations where a gift is not prohibited because it is not of substantial value, but must be disclosed because it could create an appearance of a conflict of interest:

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Example: A building inspector accepts a \$40 bottle of wine from a developer whose projects he frequently inspects. The inspector must make a disclosure.

Example: A business association's representatives meet regularly with city councilors to discuss association issues. Several weeks after the city council votes in favor of a significant association bill, the association sends a concert ticket worth \$30 to each to the councilors who voted in favor. Each councilor must make a disclosure before any subsequent meeting with or action involving the association.

Example: A public school teacher accepts a \$40 gift certificate from the parent of a current student. The teacher must make a disclosure.

Special rules apply to gifts from lobbyists. Public employees who hold certain types of positions, as defined in M.G.L. c. 268B, § 1, may not accept any gift at all from a lobbyist, even if it is not of substantial value, pursuant to M.G.L. c. 268B, § 6, and M.G.L. c. 3, § 43, last paragraph. Gifts from lobbyists prohibited by those statutes may be accepted only in accordance with 930 CMR 5.09.

5.08: Gifts Worth \$50 or More and Related to Official Action or Position: Exemptions

(1) A public employee is not prohibited from accepting a gift worth \$50 or more where the gift is related to the public employee's official action or position, without violating M.G.L. c. 268A, §§ 3, 23(b)(2), and 23(b)(3), if the gift falls within one of these exemptions, and if the public employee complies with all requirements imposed by the exemption. Nothing in 930 CMR 5.08 authorizes a public employee to accept any gift by a lobbyist that is prohibited by M.G.L. c. 268B, § 6, or M.G.L. c. 3, § 43, last paragraph. Gifts from lobbyists prohibited by those statutes may be accepted only in accordance with 930 CMR 5.09.

(2) Travel Expenses. 930 CMR 5.08(2) relates to payment of travel and related expenses for a public employee where the purpose of the travel is to engage in an activity that serves a legitimate public purpose. Payment of such expenses by one's employing agency is not a prohibited gift and does not require an exemption. Nothing in 930 CMR 5.08 authorizes a public employee to accept any gift by a lobbyist that is prohibited by M.G.L. c. 268B, § 6, or M.G.L. c. 3, § 43, last paragraph. Gifts from lobbyists prohibited by those statutes may be accepted only in accordance with 930 CMR 5.09.

(a) Definitions. For purposes of 930 CMR 5.00:

1. Travel Expenses. Travel expenses are necessary and reasonable expenses incurred by a public employee in order to engage in an activity that serves a legitimate public purpose, including air, train, bus, and taxi fare, rental car hire, the cost of meals and lodging, and expenses related to attendance at an event including costs of registration, admission, tickets, food, refreshments, instruction, materials, and entertainment.

2. Legitimate Public Purpose. An activity has a "legitimate public purpose" if it is intended to promote the interests of the Commonwealth, a county, or a municipality. Examples of activities with legitimate public purposes include, but are not limited to, the following:

Example: Activities that promote tourism, economic development, charitable, public health, environmental, or educational goals;

Example: Attendance at training and educational events and conferences designed to improve the efficiencies and effectiveness of public services, or to enhance the knowledge and skills of public employees relative to their official duties;

Example: Business travel necessary to make informed purchasing decisions, selections, and inspections;

Example: A class field trip that will enable students in a government class to observe proposed legislation being debated, or that will enable students in a Spanish class to hear the language spoken by native speakers;

Example: Any purpose defined by an agency's enabling legislation;

Example: Any purpose defined as a legitimate public purpose by the agency's governing body or, absent a governing body, chief executive officer, that is in furtherance of the agency's mission.

(b) Family Members. 930 CMR 5.08(2) does not authorize acceptance by a public employee of reimbursement, waiver, or payment of travel expenses for a family member or friend accompanying the public employee. Others may accompany a public employee accepting reimbursement, waiver, or payment of travel expenses only at their own expense, and may share the public employee's accommodations if that does not increase the expense, or if they pay any additional cost.

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(c) Travel Expenses Paid by Domestic Public Agency. A public employee is not prohibited from accepting reimbursement, waiver, or payment of travel expenses of substantial value, provided by any domestic public agency at the federal, state, county, municipal level, for any purpose in furtherance of the employing public agency's mission, and in accordance with the procedures of the employing agency. No disclosure is required. This exemption does not apply to payment of travel expenses by foreign governmental entities, and federally recognized tribes which is permitted, subject to compliance with 930 CMR 5.08(2)(d).

Example: A District Attorney sends employees to a training conference concerning sexual offenses against children. The District Attorney's sex offense unit typically works with an employee of the state Department of Children and Families (DCF) when it prosecutes such cases. The DCF employee may accept payment of her travel expenses by the District Attorney so that she may attend the conference. No disclosure is required.

Example: A law enforcement officer travels out of state to bring a fugitive back to the Commonwealth. The officer's travel expenses may be paid by a prosecutor's office. No disclosure is required.

(d) Travel Expenses Paid by Non-public or Foreign Entity or Federally Recognized Tribe. A public employee is not prohibited from accepting reimbursement, waiver, or payment of travel expenses of substantial value, provided by a non-public or foreign entity or federally recognized tribe, if a prior written determination is made as set forth in 930 CMR 5.08(2)(d)1. or 2. that such acceptance will serve a legitimate public purpose, and that such public purpose outweighs any special non-work related benefit to the employee, or to the person providing the reimbursement, waiver, or payment. Payment of travel expenses by domestic public agencies is permitted pursuant to 930 CMR 5.08(2)(c).

1. Non-elected Public Employees. A non-elected public employee is not prohibited from accepting reimbursement, waiver, or payment of travel expenses of substantial value, provided by any person other than a public agency or a lobbyist, if the public employee makes a prior written disclosure to the employee's appointing authority, and the appointing authority, or designee, determines in writing and prior to the date of any travel or attendance both that acceptance of such reimbursement, waiver, or payment of expenses will serve a legitimate public purpose, and that such public purpose outweighs any special non-work related benefit to the employee or the person providing the reimbursement, waiver, or payment. Such a disclosure must be made on a form prescribed by the Commission and as provided by 930 CMR 5.07(2).

2. Elected Public Employees. An elected public employee is not prohibited from accepting reimbursement, waiver, or payment of travel expenses of substantial value, provided by any person other than a public agency or a lobbyist, if the elected public employee determines in writing prior to any travel or attendance both that acceptance of such reimbursement, waiver, or payment will serve a legitimate public purpose, and that such public purpose outweighs any special non-work related benefit to the employee or to the person providing the reimbursement, waiver, or payment. Such a disclosure must be made on a form prescribed by the Commission and as provided by 930 CMR 5.07(2).

3. If the value of travel expenses accepted by a public employee exceeds what was previously disclosed by \$50 or more, the public employee shall submit a reconciliation statement within two weeks after the travel is completed, in the same manner as the original disclosure was made, on a form prescribed by the Commission.

4. In addition to the disclosure required at the time of acceptance of any such reimbursement, waiver, or payment, if a particular matter involving the giver comes before the public employee during the six months following such acceptance, the employee must make a written public disclosure pursuant to M.G.L. c. 268A, § 23(b)(3).

(e) In-state Travel for Educational Purposes. Except where the giver is a lobbyist, a public employee is not prohibited from accepting reimbursement, waiver, or payment of expenses of substantial value related to the public employee's attendance or participation, including as a panelist or speaker, at in-state educational programs involving professional or other continuing education, including in-state educational, training and planning sessions required by state or federal law, when the public employee has a good faith belief that his or her attendance will serve a legitimate public purpose, as defined in 930 CMR 5.08(2)(a)2., which outweighs any special non-work related benefit to the employee, or to the person providing the reimbursement, waiver, or payment. Educational events involving out-of-state travel are addressed in 930 CMR 5.08(2)(c) and (d). No disclosure is required, except that if a particular matter involving the giver either has come before the public employee in the six

5.08: continued

months prior to such acceptance, or comes before the public employee during the six months following such acceptance, the employee must make a written public disclosure pursuant to M.G.L. c. 268A, § 23(b)(3).

Example: Police, fire, and public works employees who would be first responders to emergency incidents involving natural gas may attend in-state training sessions sponsored by the natural gas companies, and may accept payment of travel expenses and hospitality of substantial value. The public employees are only required to make a disclosure if a matter involving the sponsoring utility has come before them in the six months prior to the training, or comes before them in the six months following the training.

(3) Incidental Hospitality That Serves a Public Purpose. Elected public employees, and their staff members, are not prohibited from accepting payment or waiver of expenses of substantial value (including cost of admission, refreshments, and transportation within the Commonwealth) related to attendance by the elected public employee or staff member at weekday informational programs during regular daytime business hours at which incidental hospitality is provided, as set forth in 930 CMR 5.08(3)(a). Elected and non-elected public employees are not prohibited from accepting payment or waiver of such expenses related to attendance at events at which their attendance serves a legitimate public purpose, as set forth in 930 CMR 5.08(3)(b). 930 CMR 5.08(3) does not authorize acceptance of gifts from lobbyists, which are treated separately below in 930 CMR 5.09, and it also does not eliminate any requirement imposed by M.G.L. c. 3. A disclosure is required in the circumstances set forth in 930 CMR 5.08(3)(b). Nothing in 930 CMR 5.08 authorizes a public employee to accept any gift by a lobbyist that is prohibited by M.G.L. c. 268B, § 6, or M.G.L. c. 3, § 43, last paragraph. Gifts from lobbyists prohibited by those statutes may be accepted only in accordance with 930 CMR 5.09.

(a) Elected Public Employees and Their Staff: No Disclosure Required for Attendance at Weekday Informational Programs at Which Incidental Hospitality is Provided. An elected public employee, and the staff of an elected public employee, are not prohibited from accepting payment or waiver of expenses of substantial value (including cost of admission, refreshments, and transportation within the Commonwealth) related to attendance at a weekday group program during regular daytime business hours, the primary purpose of which is to give the elected public employee or staff member information concerning current issues in the Commonwealth, and at which any related hospitality provided is incidental to the primary informational purpose, comparable to the examples below. No disclosure is required.

Example: A State Representative attends monthly Chamber of Commerce breakfast meetings in his district so as to keep informed about issues of interest to business owners in his district. Attending the meetings has substantial value because a number of small meetings sponsored by the same entity are aggregated. The Representative may accept the cost of refreshments at the breakfasts, and no disclosure is required.

Example: A legislative aide to a State Senator regularly attends State House programs sponsored by a variety of different groups, including constituents, business associations, and nonprofit organizations. Some or all of these groups may have an interest in legislation before the Senate. Pastries, sandwiches, drinks, and other refreshments are provided. The value may or may not be substantial. The aide attends these programs in order to be informed about the views of various entities on matters that may come before her Senator. The aide may accept the cost of refreshments at the State House programs, and no disclosure is required.

Example: Members of a legislative caucus are offered bus transportation to a manufacturing site, lunch, and a tour of the site. The purpose of the tour is to inform the members of the circumstances of a Commonwealth industry. The transportation, lunch and tour are of substantial value. The members may accept the costs of the transportation, lunch and tour, and no disclosure is required.

Example of What is Not Permissible: An individual legislator is invited to lunch by a partner at a law firm who is not a personal friend of the legislator. The cost of the lunch exceeds \$50. The two spend the majority of the time discussing pending legislation in which clients of the lawyer have an interest. This example does not fall within this exemption because it is a lunch, not a group informational program. The legislator may attend the lunch but must pay for his own lunch.

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(b) Non-elected and Elected Public Employees: Disclosure Required for Attendance at Events Where Attendance Serves a Legitimate Public Purpose. Non-elected and elected public employees are not prohibited from accepting payment or waiver of expenses of substantial value (including cost of admission, refreshments, and transportation within the Commonwealth) related to attendance at an event to which the public employee has been invited, if there is a written determination that attendance at such event serves a legitimate public purpose as defined in 930 CMR 5.08(2)(a)2., and that such public purpose outweighs any special non-work-related benefit to the employee, or to the person providing the payment or waiver of expenses. The determination of legitimate public purpose must be made on a form prescribed by the Commission, and filed as set forth in 930 CMR 5.04. An appointed employee must obtain such a determination from his or her appointing authority prior to attendance at any such event. Elected public employees, and public employees without an appointing authority, may make such a determination for themselves, and for their staff members, prior to the event or within ten business days after the event.

Example: A legislator is invited to attend a fundraiser dinner for a charitable organization. She is not asked to make the \$250 contribution that would otherwise be required for attendance at the dinner. The legislator is not certain until the day of the event whether her other commitments will permit her to attend, but she does in fact attend the dinner. Several days after the dinner, the legislator fills out the disclosure form required by 930 CMR 5.08(3)(b), in which she makes the determination that her attendance at the event will increase public awareness of the cause assisted by the charity, and that this will serve a legitimate public purpose. The legislator may accept the waiver of the attendance fee.

Example: A city councilor directs his aide to attend a basketball game to which the councilor has been invited, and for which an admission fee of \$75 is being charged to raise money for a local Boys & Girls Club. The fee is waived for the councilor and/or his aide. The councilor makes a written determination in advance of the event that the aide's attendance at the event will increase the visibility of charitable activities promoted by the Boys & Girls Club, and that this will serve a legitimate public purpose. The aide may attend the event, and may accept waiver of the admission fee.

(4) Legitimate Speaking Engagements. A public employee who is invited to participate in a legitimate speaking engagement, as defined in 930 CMR 5.08(4)(a), in whole or in part because of his official position or actions, is not prohibited from accepting reimbursement, waiver, or payment of reasonable travel expenses for the public employee and any staff necessary to carry out the speaking engagement. The travel expenses may cover only the day or days on which the public employee is actually speaking and the days on which the public employee must travel to the conference and return to the Commonwealth. A public employee who speaks only on the first day of a week-long conference can accept travel expenses in connection with the other days only subject to compliance with 930 CMR 5.08(2). Nothing in 930 CMR 5.08 authorizes a public employee to accept any gift by a lobbyist that is prohibited by M.G.L. c. 268B, § 6, or M.G.L. c. 3, § 43, last paragraph. Gifts from lobbyists prohibited by those statutes may be accepted only in accordance with 930 CMR 5.09.

(a) A legitimate speaking engagement means giving a speech or serving on a panel where the speech or panel:

1. is formally scheduled on the agenda of a meeting, conference, or event;
2. is scheduled in advance of the speaker's or panelist's arrival at the meeting, conference, or event;
3. is before an organization that would normally have speakers or panelists address its members at such meeting, conference, or event; and
4. significantly contributes to the meeting, conference, or event, taking into account such factors as the length of the speech or presentation, the expected size of the audience, and the extent to which the speaker is providing substantive information or commentary.

(b) Travel expenses include the expenses set forth in 930 CMR 5.08(2)(a)1. and, in addition, the provision of refreshments, food, and drink at the legitimate speaking engagement.

(c) Honoraria. A public employee who is invited to participate in a legitimate speaking engagement in whole or in part because of his official position or actions, is not prohibited from accepting an *honorarium*, (that is, a voluntary, unsolicited payment) customary to the practice of the entity awarding the *honorarium* only if:

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1. delivering the speech is not part of the public employee's official duties;
2. public resources are not used in the preparation of the speech;
3. public time is not taken for the preparation or delivery of the speech; and
4. neither the sponsor of the address nor the source of the *honorarium* is a person or entity with whom the public employee has had or reasonably expects to have dealings in his or her official duties; and
5. the public employee makes a prior written disclosure concerning the *honorarium*.

A public employee who may not accept an *honorarium* may request that the donor instead give it to charity, but may not identify any particular charity. If the public employee makes such a request, this exemption does not eliminate any possible tax consequences.

(5) Honorary Degrees. A public employee is not prohibited from accepting an honorary degree from a public or private educational institution given in whole or in part for the employee's official actions or position, provided that the degree does not include a monetary award of substantial value. The public employee who is receiving the degree may also accept payment or reimbursement of reasonable travel expenses related to any conferral ceremony given to the employee and guests accompanying the employee in accordance with the criteria and policies of the educational institution. If a particular matter involving the giver came before the public employee during the six months prior to such acceptance, or comes before the public employee during the six months following such acceptance, the employee must make a written public disclosure pursuant to M.G.L. c. 268A, § 23(b)(3).

(6) Awards for Meritorious Public Service or Lifetime Achievement. A public employee may accept an award for meritorious public service or lifetime achievement based in whole or in part on work done as a public employee, provided that the award is part of a program that makes such awards on a regular basis pursuant to established standards developed by the awarding entity.

The public employee who is receiving the award may also accept payment or reimbursement of reasonable travel expenses as defined in 930 CMR 5.08(2)(a)1. in connection with his or her attendance, and the attendance of his or her guests, at any award ceremony, and may accept any display item related to the degree or award (such as a trophy, plaque, bowl, desk ornament, or certificate) in accordance with the criteria and policies of the degree or award program. A public employee receiving an award pursuant to this exemption may accept a monetary award or stipend only if the public employee has not had, and does not reasonably expect to have, official dealings as a public employee with either the awarding entity or any sponsors of the award. If a particular matter involving the awarding entity, or a sponsor of the award, comes before the public employee during the six months following such acceptance, the employee must make a written public disclosure pursuant to M.G.L. c. 268A, § 23(b)(3). 930 CMR 5.08(6) does not authorize acceptance of testimonial dinners that would be prohibited by M.G.L. c. 268, § 9A. Nothing in 930 CMR 5.08 authorizes a public employee to accept any gift by a lobbyist that is prohibited by M.G.L. c. 268B, § 6, or M.G.L. c. 3, § 43, last paragraph. Gifts from lobbyists prohibited by those statutes may be accepted only in accordance with 930 CMR 5.09.

(7) Public Employee Discounts and Waived Membership Fees. A public employee may accept a public employee discount of substantial value, if the discount is available to a class consisting of all public employees, or to a class consisting of all public employees from a city or town, county, or state, or to a geographically defined class of public employees. A public employee may accept a reduced or waived membership fee offered by a professional organization, of substantial value, if the reduced or waived fee is available to a class of similarly situated public employees of that profession. A public school teacher may accept a discount available to teachers for purchase of items to be used for educational purposes.

(8) Gifts Among Public Employees.

(a) Public employees are not prohibited from giving to other public employees who are not their official superiors, and public employees are not prohibited from accepting from other public employees who are not their subordinates, gifts of substantial value, in recognition of holidays; occasions of religious significance; occasions of personal significance including weddings, engagements, birthdays, the birth or adoption of a child, illness, a relative's illness or death; occasions of professional significance including hirings, promotions, and noteworthy accomplishments or achievements; and occasions that terminate a professional working relationship, such as retirement, transfer, or resignation.

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(b) On an occasional basis, the following individual gifts to an official superior are not prohibited:

1. gifts other than cash or gift certificates that are valued at no more than \$10;
2. food and refreshments shared in the office;
3. personal hospitality in the employee's home that is the same as that customarily provided to personal friends;
4. gifts given in connection with the receipt of personal hospitality that are customary to the occasion, such as a bottle of wine to the host of a dinner party; and
5. transferred leave, provided that it is done in a way that prevents donors from targeting identified recipients, and recipients from learning the identity of donors.

(c) On special infrequent occasions a gift appropriate to that occasion to an official superior is not prohibited. These occasions include events of personal significance, such as marriage, illness, or the birth or adoption of a child, or occasions that terminate the subordinate-superior relationship, such as retirement, resignation, or transfer. Employees may solicit or contribute, on a strictly voluntary basis, nominal amounts of \$10 or less for a group gift to an official superior on a special infrequent occasion, and occasionally for items such as food and refreshments to be shared among employees at the office.

(d) Notwithstanding 930 CMR 5.08(8)(b) and (c), 930 CMR 5.08(8) does not authorize knowing acceptance of any gift made as a result of coercion or duress, which is never permissible.

(9) Ceremonial Gifts and Privileges. A public employee is not prohibited from accepting admission of substantial value to a public event from the sponsor or organizer of the event, where the public employee is expected to perform a ceremonial function. For purposes of 930 CMR 5.08(9), a ceremonial function means that the public employee will perform some action beyond simple attendance or speech that is integral to the event, and that is different from what is expected of other attendees. Examples of ceremonial functions include: providing opening remarks to welcome attendees at an event; making scheduled introductions of other persons that are part of the program, throwing the first pitch at a baseball game, cutting a ribbon at the opening of a bridge, turning over the first shovelful of dirt at a public construction project, bestowing wreaths on the winners of the Boston Marathon, and similar actions. A public employee may accept unsolicited gifts customary to the occasion (such as a baseball when throwing the first pitch, or an engraved shovel when breaking ground for a public project) after performing such a ceremonial function. Simply saying a few words or introducing oneself is not a ceremonial function for purposes of 930 CMR 5.08(9). Nothing in 930 CMR 5.08 authorizes a public employee to accept any gift by a lobbyist that is prohibited by M.G.L. c. 268B, § 6, or M.G.L. c. 3, § 43, last paragraph. Gifts from lobbyists prohibited by those statutes may be accepted only in accordance with 930 CMR 5.09.

Example: The Governor is invited to attend an evening event for a non-profit corporation. The event will honor the retiring director of the non-profit corporation. The event is open to the public and tickets cost \$100, but the sponsoring non-profit has offered to waive the cost of admission for the Governor. When the invitation is extended, the Governor is asked if he is willing to welcome the attendees and introduce the retiring director at the beginning of the event. The Governor has been asked to perform a ceremonial function, and may accept free admission to the event.

Example: A biotech firm has a luxury box at Fenway Park. The firm is hosting employees of a foreign firm with which it hopes to start a new venture. The biotech firm invites several officials from the town where it hopes to build the new venture to attend a game at Fenway with the foreign firm's employees. Comparable tickets to the game would otherwise cost \$200. The local officials are not asked to do anything other than be present and chat with the other attendees. The officials have not been asked to perform a ceremonial function, and should pay the cost of their tickets if they choose to attend.

(10) Retirement Gifts. A public employee is not prohibited from accepting gifts of substantial value appropriate to the occasion from members of the public with whom the public employee has worked in recognition of the public employee's impending retirement, provided that the giver is not a lobbyist, and that such gifts reflect general goodwill toward the retiring employee or recognize the employee's service generally, and are not intended as a reward for any specific past official action. 930 CMR 5.08(10) does not authorize acceptance of testimonial dinners that

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would be prohibited by M.G.L. c. 268, § 9A. No exemption is needed for retirement gifts given after a public employee has retired. Nothing in 930 CMR 5.08 authorizes a public employee to accept any gift by a lobbyist that is prohibited by M.G.L. c. 268B, § 6, or M.G.L. c. 3, § 43, last paragraph. Gifts from lobbyists prohibited by those statutes may be accepted only in accordance with 930 CMR 5.09. No exemption is needed for retirement gifts given after a public employee has retired.

(11) Unsolicited Perishable Items. A public employee is not prohibited from accepting unsolicited gifts of items that are perishable or otherwise impractical to return (such as flowers, plants, floral arrangements, and fruit baskets, or boxes of candy) if such item is made generally accessible to other persons in the employee's agency and to the general public to the extent possible, or given to charity.

(12) Admission to Political Campaign Events for Elected Officials and their Staff Members. A campaign is not prohibited from giving, and an elected public employee and his or her staff are not prohibited from accepting, admission to an event paid for with campaign funds, when the event is paid for in accordance with M.G.L. c. 55 and no public resources are used.

(13) Gifts Received and Held Temporarily as Part of Charitable Activities. A public employee participating as such in a public agency's charitable activities is not prohibited from receiving from a giver other than a lobbyist, and temporarily holding, items being collected as part of such effort, provided that the items are turned over to their ultimate recipients within a reasonable time, and that the ultimate recipient is informed of the source of the donation. Nothing in 930 CMR 5.08 authorizes a public employee to accept any gift by a lobbyist that is prohibited by M.G.L. c. 268B, § 6, or M.G.L. c. 3, § 43, last paragraph. Gifts from lobbyists prohibited by those statutes may be accepted only in accordance with 930 CMR 5.09. No exemption is needed for retirement gifts given after a public employee has retired.

Example: An office supply company wishes to donate backpacks of school supplies to needy children, and enlists the help of certain legislators in distributing the backpacks. The legislators may hold the backpacks temporarily while waiting to turn them over to their ultimate recipients, and must inform the ultimate recipients of the identity of the donor.

(14) Class Gifts to Teachers. A public school department employee is not prohibited from accepting a gift, or several gifts during the school year, from public school students and/or their parents and guardians, with an aggregated value of up to \$150, if the gift is identified only as being from the class, and the identity of givers and amounts given are not identified to the recipient. Parents may also give gifts to the classroom or the school in accordance with the rules of the school district. Gifts received pursuant to this exemption are not required to be disclosed because the givers are not identified to the teacher. Public school department employees must disclose gifts received from individual students, parents, and guardians that are not class gifts as explained in 930 CMR 5.07.

Example: A teacher has a class with 23 students. Parents of 20 of the students collect money and give the teacher a \$150 gift certificate to a book store, indicating that it is a class gift. One of the parents who did not contribute to the class gift gives the teacher a \$25 certificate to a spa. The teacher may accept the \$150 class gift certificate and no disclosure is required. The teacher may not accept any other gift from the parents who contributed to the class gift. The teacher may accept the \$25 spa certificate, but must file a disclosure pursuant to M.G.L. c. 268A, § 23(b)(3).

Example: A teacher has a class with 23 students. Parents of 13 of the students collect money and give the teacher a \$130 gift certificate to a book store, indicating that it is a class gift. Parents of the other ten students collect money and give the teacher a \$100 gift certificate to an office supply store, indicating that the gift is a gift to the classroom and that the teacher should use it to buy necessary classroom supplies. The teacher can accept the first gift on his own behalf and the second on behalf of the classroom. He must spend the \$100 office supply gift certificate on classroom supplies and should keep receipts documenting those purchases. Items purchased with money that is a gift to the classroom is the property of the school district. The teacher may not knowingly accept any additional gift from parents who participated in the class gift.

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(15) Passes to School Events. An employee of a public school department, a regional school district, an educational collaborative, or a school committee member is not prohibited from accepting a pass of substantial value given by the district to public school sports and entertainment events of the school district where the employee is employed.

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(16) Drawings. A public employee is not prohibited from accepting any reward or prize given to competitors or entrants in a random drawing in which the other competitors or entrants are public employees, including a drawing at an event where the public employee's agency paid for the employee to attend the event.

5.09: Gifts from Lobbyists Not Related to Official Action or Position

(1) Applicability. Lobbyists are prohibited by M.G.L. c. 268B, § 6 from giving gifts to any public official or public employee as those terms are defined in M.G.L. c. 268B, § 1, and to members of their immediate family. The definition of a public official and a public employee under M.G.L. c. 268B, § 1 are different from, and narrower than, the definition of a public employee as used elsewhere in 930 CMR 5.00. Under that narrower definition, the prohibition against lobbyists' gifts set forth in M.G.L. c. 268B, § 6 applies only to statewide elected officials, and persons required to file Statements of Financial Interest pursuant to M.G.L. c. 268B, § 5. Lobbyists are also subject to M.G.L. c. 3, § 43, last paragraph, which prohibits them from giving public officials and public employees gifts, meals, beverages, or other items to be consumed.

(2) Exemption. Lobbyists, as defined in 930 CMR 5.04, are not prohibited from giving, and Public officials and public employees, as defined in M.G.L. c. 268B, § 1, are not prohibited from accepting, the following from a lobbyist or the lobbyist's spouse, if the gift is purchased with the giver's personal funds and not with funds belonging to the giver's employer, client, or institution, the public employee reasonably believes that only the giver's personal funds were used, and the gift is given and received solely because of family or established personal friendship:

- (a) meals in the donor's home; and
- (b) gifts on occasions of religious significance including, for example, confirmations and bar mitzvahs; and occasions of personal significance including weddings, engagements, the birth or adoption of a child, and the illness or death of a relative. A birthday is not an "occasion of personal significance" for purposes of this exemption.

Example: A childhood friend of a State Representative is a lobbyist. Over the years, the two have exchanged gifts on the occasion of significant life events such as weddings and the births of their children. The lobbyist uses her personal funds to purchase two place settings, worth \$300, as a wedding present for the Representative's daughter. The gift is not prohibited.

- (c) A public employee may accept any gift or inheritance from a lobbyist who is a member of the public employee's immediate family, other relative, intended spouse, or member of the public employee's household, if the gift is purchased with the giver's personal funds and not with funds belonging to the giver's employer, client, or institution, and is given and received solely because of the family or comparable relationship.
- (d) 930 CMR 5.09 is an exemption from the prohibition against gifts by lobbyists contained in M.G.L. c. 3, § 43, last paragraph, as well as from M.G.L. c. 268A, §§ 3 and 23, and c. 268B, § 6.

5.10: Political Campaign Contributions: Exemption from Disclosure

A contribution made and reported in accordance with M.G.L. c. 55 is not required to be the subject of a separate, additional disclosure pursuant to M.G.L. c. 268A, § 23(b)(3). A person acting within this exemption remains subject to the other prohibitions of M.G.L. c. 268A, including, but not limited to, §§ 3 and 23(b)(2).

Example: A lawyer contributes to the campaign of a candidate for State Auditor, and the contribution is reported pursuant to M.G.L. c. 55. Later, the lawyer has a matter before the Auditor's office. The Auditor is not required to make an additional disclosure of the contribution pursuant to M.G.L. c. 268A, § 23(b)(3), because it has already been disclosed in compliance with the campaign finance law, but remains subject to the prohibition of M.G.L. c. 268A, § 23(b)(2) against using the Auditor's position to give the lawyer any unwarranted privilege of substantial value.

Example of What is Not Permitted: A candidate for Select Board asks the Town Manager to contribute to her reelection campaign. This is a solicitation of a contribution from a subordinate and is prohibited by M.G.L. c. 268A, § 23(b)(2).

5.11: Glossary of Defined Terms Used in Gift Exemption Regulations

Ceremonial Function, defined in 930 CMR 5.08(9), means that the public employee will perform some action beyond simple attendance that is different from what is expected of other attendees, such as throwing the first pitch at a baseball game, cutting a ribbon at the opening of a bridge, turning over the first shovelful of dirt at a public construction project, bestowing wreaths on the winners of the Boston Marathon, and similar actions.

Commission, defined in 930 CMR 5.02, means the State Ethics Commission.

Direct Interest in the Performance of a Public Employee's Official Duties, defined in 930 CMR 5.06, means that a person is seeking or is likely to seek official action by the public employee.

Disclosure, defined in 930 CMR 5.07(2), means a written statement that sets forth all the relevant facts. Such a disclosure may be made on a form prescribed by the Commission or in another writing that discloses the relevant facts. Such disclosures are public records.

(a) A non-elected public employee must make a disclosure to the employee's appointing authority. An appointing authority is the individual official, board, commission, or other governmental body that has the legal authority to appoint, hire, or contract for the services of the public employee, or, where permitted by 930 CMR 5.00, such authority's designee. A disclosure to an appointing authority that is a multi-member body shall be made to the chairperson or designee and copied to the members of the body. Such multi-member body may, by valid vote of such body, choose to delegate to the chairperson or designee the authority to make any necessary determination in response to such disclosure on behalf of such body, which should then be copied to the members. Judges and judicial branch employees make disclosures required by 930 CMR 5.00 to the Chief Justice of their respective courts, or to his or her designee.

(b) An elected state or county employee must make a disclosure to the Commission. Members of the General Court may make a disclosure to the Senate or House Clerk or to the Commission. An elected state or county employee who is attending an event with members of his or her staff may make a single disclosure for himself or herself and the staff members.

(c) An elected municipal employee must make a disclosure to the town or city clerk, and an elected regional school committee employee must make a disclosure to the clerk or secretary of such committee. An elected municipal or regional school employee who is attending an event with members of his or her staff may make a single disclosure for himself or herself and the staff members.

Gift, defined in 930 CMR 5.04, means anything of value that is given without something of equivalent fair market value being given in return.

Legitimate Public Purpose, defined in 930 CMR 5.08(2)(a)2., means that the activity is intended to promote the interests of the Commonwealth, a county, or a municipality; examples are given in the defining regulation.

Legitimate Speaking Engagement, defined in 930 CMR 5.08(4)(a), means giving a speech or serving on a panel where the speech or panel is formally scheduled on the agenda of a meeting, conference, or event; is scheduled in advance of the speaker's or panelist's arrival at the meeting, conference, or event; is before an organization that would normally have outside speakers or panelists address its members at such meeting, conference, or event; and significantly contributes to the meeting, conference, or event, taking into account such factors as the length of the speech or presentation, the expected size of the audience, and the extent to which the speaker is providing substantive information or viewpoints.

Lobbyist, defined in 930 CMR 5.04, means a person who meets the definition of an executive agent under M.G.L. c. 3, § 39, or the definition of a legislative agent under M.G.L. c. 3, § 39.

Official Action, defined in 930 CMR 5.04, means action taken in one's capacity as a public employee.

Person, defined in 930 CMR 5.04, means a business, individual, corporation, union, association, firm, partnership, committee, or other organization or group of persons acting together who share a common interest or purpose.

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Public Employee, defined in 930 CMR 5.04, means any state, county, or municipal employee, and any special state, county, or municipal employee, as defined in M.G.L. c. 268A, § 1. The term includes full and part time public employees. It applies regardless of how the public employment began, and includes public employees who were appointed or elected to their positions, or hired by a public agency, or those who provide services to a public agency pursuant to an express or implied contract. It also applies to persons serving in both compensated and uncompensated positions. 930 CMR 5.04: Public Employee is for purposes of these exemptions only, and not for purposes of M.G.L. c. 268B, § 5.

Substantial Value, defined in 930 CMR 5.05, is \$50 or more. 930 CMR 5.05 explains in detail how the Commission calculates substantial value.

Travel Expenses, defined in 930 CMR 5.08(2)(a)1., are necessary and reasonable expenses incurred by a public employee in order to engage in an activity that serves a legitimate public purpose, including air, train, bus, and taxi fare, rental car hire, the cost of meals and lodging, and expenses related to attendance at an event including costs of registration, admission, tickets, food, refreshments, instruction, materials, and entertainment.

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REGULATORY AUTHORITY

930 CMR 6.00: M.G.L. c. 268A, §§ 3(f), 23(f); c. 268B, §§ 3(a)(2) and (6) and c. 3, § 43, last paragraph.