



Office of the
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Commonwealth of Massachusetts

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Advisory for Local Officials:
Control and Use of Public
Equipment and Resources

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Municipalities Must Ensure that Internal Controls Exist to Prevent Fraud, Waste, and Abuse

Advisory for Local Officials: Control and Use of Public Equipment and Resources

During the past few years, municipalities have had to contend with numerous cases of fraud, waste, and abuse by local officials. These cases range from the recent alleged theft of public works equipment in Ashland, to the bid-rigging scandal in the Everett public schools, to the abuse of expense accounts in the Wachusett Regional School District. Municipal officials and oversight agencies like the Office of the Inspector General routinely receive allegations of employee misconduct. These allegations include reports of employees regularly leaving work early, employees pilfering supplies, employees' unauthorized use of municipally-owned vehicles, and officials steering contract work to friends and relatives.

A common thread amongst almost all allegations proven to be true is that the employee or official had the opportunity to commit fraud, waste, or abuse. Having an opportunity means that the employee had no fear or limited fear of being caught because no employee, manager, governing body, auditor, computer or other system could readily identify and/or question the fraud, waste, or abuse. An employee might ask his/herself: Who would know if I took this laptop computer? How would anybody find out I filled my gas tank at the DPW pump? Who will notice on the reimbursement request that I took my uncle to lunch?

According to fraud experts, opportunity is the biggest contributor to fraud.

Your jurisdiction can decrease the chances of fraud, waste, and abuse, by eliminating opportunity. This can be done by ensuring that adequate internal controls and safeguards exist. Having controls and actively enforcing adherence to these controls can assist management in creating a culture with limited tolerance for fraud, waste, and abuse.

Jurisdictions should institute controls in many areas. The obvious place for controls is any process involving financial transactions and the use of public funds. Unfortunately, an area often overlooked for instituting and enforcing controls is the use of public assets such as equipment and supplies. The recent case of the Ashland DPW Director allegedly stealing tens of thousands of dollars worth of equipment and supplies is a case in point.

Local officials should create public equipment and resource use policies as a first step towards instituting internal controls. This advisory presents ideas for creating policies but is not intended to be all-inclusive. Your jurisdiction may find that the practices detailed in this advisory are not applicable in all situations. However, all local jurisdictions should have an equipment and resource use policy.

Introduction to Public Equipment and Resource Use Policies

Public employees have daily access to public equipment and resources which include anything owned, controlled, managed, or used by a jurisdiction, such as, computers, telephones, fax machines, postage machines, copiers, vehicles, snowplows, equipment, tools, garage facilities, supplies of any kind, uniforms, and/or official seals. Public employees have a legal and ethical responsibility to maintain the public's trust. The misuse of public equipment and resources breaches this trust.

Personal use of public equipment and resources also may violate the law. According to M.G.L. c.268A, the conflict of interest law, a public employee should never "use or attempt 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." Massachusetts courts and the State Ethics Commission have established that any privilege or exemption valued at \$50 or more is considered to be of "substantial value."

Additionally, the State Ethics Commission's Advisory No. 05-01 states: "using public equipment and resources for personal business is using an official position to obtain an

unwarranted privilege of substantial value not properly available to others. Thus, the use of public resources valued at \$50 or more for personal, private or political purposes violates the conflict of interest law.”

If your jurisdiction lacks a specific public equipment and resource use policy, it may be vulnerable to waste and abuse. Without a clear policy, jurisdictions may not be able to hold employees accountable for misuse of public equipment and resources. Jurisdictions must also ensure that employees at all levels are familiar with the policies and the appropriate ethics and conflict of interest laws.

This office has previously issued best practice policy recommendations for telephone and computer use, which are available at www.mass.gov/ig.

Use of Public Equipment and Resources

Public equipment and resource use policies should clearly state that public assets are public property and should be used for public purposes only. At no time should any employee, while on-duty or off-duty, use public assets for personal use or gain. Nor should any employee allow the use of public equipment or resources for the personal use or gain of any other individual or organization. Public equipment and resources should only be used by employees in the performance of their duties as authorized by the jurisdiction.

Additionally, if someone is injured while using equipment borrowed from your jurisdiction, a number of legal, financial, and liability issues may arise. Your jurisdiction may avoid these issues by not allowing employees or others to borrow publicly owned equipment. For example, your jurisdiction should not allow employees to borrow tools from the DPW for personal use or to use equipment, such as, plows to plow their own driveways or the driveways of others.

Asset Management

A jurisdiction's equipment and resources are public assets. Accordingly, it is part of the jurisdiction's responsibility to properly manage its inventory of public equipment and resources. Proper asset management assures that you maintain reasonable custody and care of public equipment and resources and that loss due to improper use, theft, and/or failure to follow required procurement procedures is minimized. The responsibility for properly managing the assets of your jurisdiction should be assigned to one department or staff position. Proper asset management includes assigning a bar code or other inventory control number to each resource or piece of equipment, performing physical audits of your jurisdiction's supplies, and ensuring the instructions for proper use and maintenance are easily accessible. The department or staff person assigned to asset management must ensure that the inventory is used, maintained, and accounted for properly. The penalties for unauthorized use of equipment and resources should be clear. Management is responsible for ensuring that inventory is properly managed and that audits of public equipment and resources are completed.

Public Vehicles

For the purpose of this advisory, a public vehicle includes any car, pickup truck, van, bus, snowplow, backhoe, garbage truck, dump truck or any other motorized vehicle owned or operated by a public jurisdiction. The use of public vehicles during non-working hours should be defined in the employment contract of individual staff and in a public vehicle usage policy. In general, this office advises each jurisdiction to establish a written vehicle use policy that clearly identifies a fleet administrator, a single employee who is responsible for monitoring vehicle use, and information for employees on the proper use of municipal vehicles. Vehicle use should be for official public purposes only; it should not include personal use, use by anyone not assigned to the vehicle, or use during non-business hours. For more specific information see this office's *Guide to Administering and Complying with Vehicle Management Policies*, available at www.mass.gov/ig.

Use of Public Facilities

Public facilities are under the jurisdiction of each local government and are meant for government use and other public purposes. Your jurisdiction may choose to allow a private citizen, non-profit organization, or private business to use a public facility provided that your jurisdiction is adequately compensated, the use is approved in advance by the governing body, and the use is completed through contract, lease, or other legal agreement and in accordance with the provisions of M.G.L. c.30B, §16, if applicable. Under no circumstances should an employee use a public facility to conduct personal business. The State Ethics Commission fined a public works chairman \$2,000 in 2004 for permitting a DPW garage, staff, and resources to be used to do repair work on his personal vehicle. This was deemed to be in violation of M.G.L. c.268A, §23(b)(2), the conflict of interest law.

Personal Business

Some public employees use vacation and compensatory time in hourly increments during a normal work day for outside business activities. We strongly discourage this practice. At the very least, this creates the appearance that staff is performing private work while on the public payroll. It would be legitimate for a taxpayer to ask why a DPW employee is repairing a roof in the middle of the day. The employee's time sheet may reflect the use of leave time. But this creates public relations, bookkeeping, and ethical questions that your jurisdiction will be forced to address.

If your jurisdiction allows employees to do private work during normal business hours by using leave time, the jurisdiction must: 1) require that the employee receives written pre-authorization from a supervisor; 2) ensure that the use of this time is clearly and adequately documented; 3) maintain policies that clearly address the use of this time; and 4) ensure that the use of this leave time does not trigger overtime or compensatory time for an employee when attempting to complete their public work.

Additionally, your jurisdiction should remind employees that any outside business interests must be disclosed to the jurisdiction and should make employees aware of the

state's ethics rules that govern outside activities. If the employee or jurisdiction believes that there is a potential for a conflict of interest or has questions regarding an employee's outside work, use of leave time, etc., the employee or his or her manager should seek guidance from your municipal attorney and the state ethics commission.

List of Resources for Developing Effective Public Equipment and Resource Use Policies

General Laws of Massachusetts

Chapter 268A. Conflict of Interest Law.
www.mass.gov/legis/laws/mgl/gl-268a-toc.htm

Chapter 30B. Uniform Procurement Act
www.mass.gov/legis/laws/mgl/gl-30b-toc.htm

Massachusetts State Ethics Commission

Introduction to the Conflict of Interest Law for Public Officials and Public Employees.
www.mass.gov/ethics/public_sector.html

Commission Advisory No. 05-01: The Standards of Conduct (Section 23).
www.mass.gov/ethics/adv0501.htm

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Recommended Code of Conduct for Public Employees, (August 1998).
www.mass.gov/ig/publ/code.pdf

Guide to Administering and Complying with Vehicle Management Policies, (December 2004).
www.mass.gov/ig/publ/vmadv.pdf

Advisory to Local Officials: Telephone Usage Policies, (May 2005).
www.mass.gov/ig/publ/teleadv.pdf

Advisory to Local Officials: Computer Usage Policies, (May 2005).
www.mass.gov/ig/publ/compadv.pdf

Municipal, County, District, and Local Authority Procurement of Supplies, Services, and Real Property, (October 2000).
www.mass.gov/ig/publ/30bmanl.pdf