



Commonwealth of Massachusetts STATE ETHICS COMMISSION

One Ashburton Place - Room 619
Boston, Massachusetts 02108

Hon. Barbara A. Dortch-Okara (ret.)
Chair

David A. Wilson
Executive Director

July 26, 2017

Ms. Vicki Banas
c/o Charles E. Dolan, Esquire
Raipher, P.C.
265 State Street
Springfield, MA 01103-2008

Re: Public Education Letter

Dear Ms. Banas:

As you know, the State Ethics Commission conducted a preliminary inquiry into whether you, as a Department of Developmental Services ("DDS") Program Manager, violated §§ 6, 23(b)(2)(ii) and 23(b)(3) of G.L. c. 268A, the conflict of interest law, by hiring a company in which you or an immediate family member had a financial interest, and by hiring the company of a close and longtime family friend, to perform work for DDS.

On May 18, 2017, the Commission voted to find reasonable cause to believe you violated G.L. c. 268A. Rather than initiating adjudicatory proceedings against you, however, the Commission chose to resolve this matter through this Public Education Letter because: (1) DDS investigated the matter and demoted you to a non-managerial position, which resulted in a reduction in your pay; and (2) the Commission expects that, by resolving this matter through a Public Education Letter, you and other public employees in similar circumstances will have a clearer understanding of the conflict of interest law and how to comply with it.

The Commission and you have agreed there will be no formal proceedings against you in this matter, and you have chosen not to exercise your right to a hearing before the Commission.

Facts

On September 23, 1984, you were hired as a recreational therapist at the Monson Developmental Center. In 1987, you were promoted to program director, a management position. As a program director, you were responsible for planning and directing activities for DDS clients, such as cooking classes. In or about 2011, you became a program manager responsible for overseeing the center's carpenters, grounds crew and other maintenance personnel.

During the relevant period, your appointing authority was the DDS Central/West Regional Director.

Closure of Monson Developmental Center

In 2008, Governor Deval Patrick's administration announced plans to close four state developmental centers as part of its "Community First Olmstead Plan" agenda. The plan identified four developmental centers for closure: Fernald, Monson, Templeton and Glavin. The Division of Capital Asset Management and Maintenance ("DCAMM") provided funding and technical support for the closures.

During the relevant period, 2012-2014, your spouse worked for Banas Sand and Gravel, a family-owned concrete business. Your spouse was an hourly employee, did not earn commissions, and did not have any ownership interest in the company. Your father-in-law was the company's president and treasurer, and had an ownership interest in the company. You were aware of your father-in-law's status with the company and of his ownership interest in it.

S&K Lawn Care is a landscaping company owned and operated by a close and longtime friend of your family. S&K Lawn Care is on a statewide contract for landscaping and related services.

In or about 2012, you were assigned to coordinate the closure of Monson Developmental Center. It is not clear who assigned you this task. The closure required the decommissioning of three swimming pools. DCAMM provided you with the specifications for the pool closures, which included filling the pools with clean sand or gravel.

In May 2012, a Monson maintenance manager obtained three quotes, including a quote from S&K Lawn Care, to close the three swimming pools. You signed off the purchase order for the work to begin and confirmed completion of the work so that S&K Lawn Care could receive payment. S&K Lawn Care charged \$6,750 for the work and received payment in that amount.

You did not disclose your family's close and longtime friendship with the owner and operator of S&K Lawn Care to your DDS appointing authority.

The closure of the Monson center also required placement of concrete blocks around the perimeter of the 350-acre site. You solicited and received quotes from three companies, including Banas Sand and Gravel. You directly contacted your spouse by telephone in order to obtain Banas Sand and Gravel's quote, which was the lowest quote. You informed a DCAMM project manager that you had secured a quote from your spouse's company to supply concrete blocks, and asked whether it would be a problem. The DCAMM project manager responded that he did not know DDS's requirements but that at DCAMM, as long as there were quotes from three parties, there was no issue.

Thereafter, you signed off on the purchase order for delivery of the concrete blocks by Banas Sand and Gravel and confirmed delivery so that Banas Sand and Gravel could receive

payment. Banas Sand and Gravel charged \$4,310 for supplying and delivering the concrete blocks and received payment in that amount.

You did not disclose to your appointing authority or the State Ethics Commission that your immediate family had a financial interest in the contract to supply the concrete blocks for the Monson center.

Closure of the Glavin Developmental Center Pool

The Glavin Developmental Center was located in Shrewsbury, Massachusetts. In February 2013, Glavin maintenance workers sought vendors to decommission the Glavin swimming pool. A Glavin maintenance worker secured two quotes in the amounts of \$17,500 and \$14,665.¹ The worker contacted S&K Lawn Care, but the company declined to submit a quote because of the distance to Glavin.

In or about June 2013, you were assigned to close the Glavin pool and to contact S&K Lawn Care for a quote. It is not clear who assigned you this task. Our information is that there was a push to close the pool prior to the end of the fiscal year, June 30, 2013.

You asked the owner of S&K Lawn Care to reconsider his decision not to submit a quote on the Glavin pool closure and to submit a quote under \$10,000. You believed a quote over \$10,000 would trigger a longer process that would impede your ability to close the pool before the end of the fiscal year. When the owner of S&K Lawn Care declined to submit a quote because of the distance, you suggested that he contact your spouse for recommendations as to companies near Shrewsbury to supply the fill for the pool.

After talking with your spouse, S&K Lawn Care submitted a quote of \$9,876.45 to decommission the Glavin pool. In order to document that three quotes for the pool closure had been obtained, you added S&K Lawn Care's quote to the quote sheet containing the two quotes secured earlier by Glavin maintenance employees. The quote from S&K Lawn Care was not, however, in response to the same specifications as the earlier two quotes. The scope of work you provided to S&K Lawn Care required removal of a fence and the pool liner, and filling the pool with clean sand or gravel. By contrast, the earlier quotes were based on specifications provided by DDS maintenance workers requiring removal of the existing in-ground pool, filling the hole left after the pool's removal, and adding substantial landscaping, including spreading 50 yards of loam, fertilizing and planting grass seed.

S&K Lawn Care was awarded the contract for the Glavin pool closure. Banas Sand and Gravel was the subcontractor. Banas Sand and Gravel used its trucks to transport fill from a dealer near the Glavin center. Banas Sand and Gravel charged S&K Lawn Care \$5,000.

You approved the purchase order for S&K Lawn Care to close the Glavin pool. S&K Lawn Care submitted a \$9,876.45 invoice for the work. You approved the invoice. S&K Lawn

¹ DDS received a third quote but did not consider it because the vendor was not under statewide contract.

was paid \$9,876.45, and, in turn, paid Banas Sand and Gravel \$5,000.

You did not disclose to your appointing authority or the State Ethics Commission that your immediate family had a financial interest in the Glavin pool-decommissioning contract or that S&K Lawn Care was owned and operated by a close and longtime friend of your family.

Additional Official Dealings with S&K Lawn Care

In November 2013, you assembled quotes for landscaping and snow removal at the Glavin center. You emailed five vendors under statewide contract, including S&K Lawn Care, and copied DCAMM and DDS staff on the email. S&K Lawn Care submitted the lowest quote and was awarded the contract.

In Spring 2014, you advocated for Spring cleanup and mowing services at the Glavin center and the Monson center cemeteries, among other parcels. You were advised that DDS would be reducing the landscaping and lawn services. You repeatedly requested lawn care services for the Glavin cemetery asking whether DDS should seek new quotes or use S&K Lawn Care.

Again, you did not disclose to your appointing authority that the owner and operator of S&K Lawn Care was a close and longtime friend of your family.

Legal Analysis

As a DDS Program Manager, you were a "state employee" as that term is defined by G.L. c. 268A, § 1(q), because you were employed by a state agency. Your conduct involving the Monson and Glavin closures raises concerns under §§ 6, 23(b)(2)(ii) and 23(b)(3) of G.L. c. 268A, the conflict of interest law.

Your conduct first raises concerns under § 6, which prohibits a state employee from participating as such in a particular matter in which, to her knowledge, she or her immediate family has a financial interest. The purpose of § 6 is to avoid self-dealing and nepotism. Where the state employee's duties require her to participate in a particular matter in which, to her knowledge, a member of her family has a financial interest, she must first advise her appointing authority and the State Ethics Commission in writing of the nature and circumstances of the particular matter and make full disclosure of such financial interest. Thereafter, the appointing authority shall either (1) assign the particular matter to another employee; (2) assume responsibility for the particular matter; or (3) make a written determination that the financial interest is not so substantial as to be deemed likely to affect the integrity of the services which the Commonwealth may expect from the employee.

The contract to supply concrete blocks for the Monson closure was a particular matter. You participated in that contract personally and substantially as a state employee by, as a DDS program manager, obtaining quotes, approving the purchase order for Banas Sand and Gravel to

supply the concrete blocks and confirming delivery of the concrete blocks in order for Banas Sand and Gravel to receive payment.

“Immediate family” includes the public employee’s spouse “their parents, children, brothers and sisters.” G.L. c. 268A, § 1(e). Your father-in-law is a member of your “immediate family” as that term is defined under § 1(e) because he is your spouse’s father. Your father-in-law had an ownership interest in Banas Sand and Gravel and, thus, a financial interest in the Monson concrete blocks contract. You were aware of your father-in-law’s ownership interest in Banas Sand and Gravel and his financial interest in the company’s contract to supply the concrete blocks to close the Monson center.² Thus, the Commission found reasonable cause to believe you violated § 6 by participating as a state employee in a particular matter in which an immediate family member had, to your knowledge, a financial interest. Rather than participating in the matter, you were required by § 6 to make the above-described written disclosures to your appointing authority and the State Ethics Commission, and wait to receive further direction from your appointing authority in accordance with the statute. The DCAMM project manager to whom you disclosed your relationship to Banas Sand and Gravel was not your appointing authority.

The Commission also found reasonable cause to believe your conduct involving the Glavin pool violated § 6. The contract to decommission the Glavin pool was a particular matter. You participated in that particular matter as a state employee by, as a DDS program manager, (1) recommending S&K Lawn Care contact Banas Sand and Gravel, (2) approving the purchase order for the work, and (3) approving the invoice once the work was complete. Based on the facts, it is more likely than not that you knew Banas Sand and Gravel would be a subcontractor if DDS awarded the pool-decommissioning contract to S&K Lawn Care. As stated earlier, your father-in-law is your immediate family and he had a financial interest in Banas Sand and Gravel and thus, the Glavin pool contract. Therefore, there was reasonable cause to believe you violated § 6 with respect to the Glavin contract.

Your conduct also raises concerns under § 23(b)(2)(ii). This section prohibits a public employee from knowingly, or with reason to know, using her official position to secure an unwarranted privilege of substantial value that is not properly available to similarly situated individuals.

The opportunity to enter into a contract with DDS to close the Glavin pool was a privilege. Your award of this privilege to S&K Lawn Care was unwarranted because it was based on the company’s response to specifications that you provided solely to S&K Lawn Care and not to any other vendor. You also directed S&K Lawn Care to submit a quote under \$10,000. To avoid securing for S&K Lawn Care this unwarranted privilege, you should have used the same specifications, including the price requests, for all of the vendors.

Accordingly, you used your position as a DDS program manager charged with closing

² Our information is that your husband did not have a financial interest in the company and his employment was not connected to any DDS contract.

the Glavin pool to secure an unwarranted privilege for S&K Lawn Care. This unwarranted privilege was of substantial value, as the contract was worth nearly \$10,000, and was not properly available to the other companies that submitted quotes on the project. Therefore, there was reasonable cause to believe you violated § 23(b)(2)(ii) by awarding the contract to S&K Lawn Care.

Finally, your conduct raises concerns under § 23(b)(3), which prohibits a public employee from knowingly, or with reason to know, acting in a manner that would cause a reasonable person, knowing the relevant facts, to conclude the public employee is likely to act or fail to act because of kinship, position or undue influence. This section deals with the appearance of undue influence or favoritism. A public employee may avoid an appearance problem by making a full written disclosure to her appointing authority of the facts that would lead to an appearance of undue influence or favoritism.

At no point did you make any written disclosures to your appointing authority that Banas Sand and Gravel was owned by your spouse's family or that the owner and operator of S&K Lawn Care was a close and longtime friend of your family. Each time you acted officially as to these companies while having a significant undisclosed relationship with them, you created the appearance of undue influence or favoritism. Therefore, the Commission found reasonable cause to believe you violated § 23(b)(3) in taking these official actions.

Disposition

The Commission is authorized to resolve violations of G.L. c. 268A with civil penalties of up to \$10,000 for each violation, except that a civil penalty of up to \$25,000 may be imposed for G.L. c. 268A, § 2 violations (bribes). The Commission, however, has chosen to resolve this matter with this Public Education Letter because it believes the public interest would best be served by doing so.

Based upon its review of this matter, the Commission has determined that your receipt of this Public Education Letter should be sufficient to ensure your understanding of and future compliance with the conflict of interest law.

This matter is now closed.

Very truly yours,



David A. Wilson
Executive Director