

Office of the Inspector General

Commonwealth of Massachusetts

Gregory W. Sullivan
Inspector General

Contractor Gifts to Reading Municipal Light Department Employees

October 2002

Contractor Gifts to Reading Municipal Light Department Employees

This Office issued a letter to the Reading Municipal Light Department (RMLD) on August 19, 2002 summarizing findings of fact and law resulting from an extensive documents review by this Office. (See attachment.) The letter issued by this Office informed the RMLD Board of Commissioners of numerous items of substantial value that were bestowed upon RMLD's acting general manager, former general manager, and chief engineer by vendors under contract with RMLD for professional services. The letter also informed the RMLD Board of Commissioners about the state conflict of interest law, which provides penalties for public officials who accept anything of substantial value from people with whom they conduct official business. Massachusetts Courts and the State Ethics Commission have held that substantial value is equivalent to \$50 or more.

This Office cited several instances of gifts bestowed upon RMLD employees from 1998 to 2002. For example, Power Line Models, Inc. (PLM), an electric power engineering firm with an office in Hopkinton, MA, paid for several golf outings and meals for RMLD employees. Consultants from R.W. Beck, Inc., an engineering and consulting firm with an office in Framingham, MA, also frequently dined with RMLD employees.

It should also be noted that in November 2001, this Office issued a 25-page report pertaining to RMLD credit card abuse by RMLD employees. This report, *Credit Card and Certain Other Spending Practices at the Reading Municipal Light Department*, may be downloaded from this Office's website at www.mass.gov/ig.

This Office recommended that the RMLD Board of Commissioners take measures to correct the practice of permitting vendor gratuities and the practice of credit card abuse by employees. This Office was informed that the RMLD Board of Commissioners accepted the resignation of the general manager and terminated the assistant general manager. The Board also hired a private accounting firm, Melanson, Heath & Company, P.C., to conduct a forensic audit and internal investigation. In addition, the

Reading Board of Selectmen formed an ad hoc committee to study the governance of RMLD and to determine whether to file legislation to address the issues raised in the Inspector General's report.



The Commonwealth of Massachusetts
Office of the Inspector General

August 19, 2002

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William J. Hughes, Jr.
Chairman of the Reading Municipal Light Board
Reading Municipal Light Department
230 Ash Street
Reading, MA 01867

Dear Mr. Hughes:

This letter concerns the conduct of certain vendors and employees of the Reading Municipal Light Department (RMLD). This Office received information from RMLD pursuant to a request for documents. The information summarized below is troubling to this Office and could possibly violate M.G.L. c. 268A, the Commonwealth's conflict of interest law. Two vendors, Power Line Models, Inc. (PLM) and R.W. Beck, Inc. (Beck) are the focus of this letter, but the concerns outlined herein inure to all RMLD vendors. The time period for this review spanned from January 1998 to December 2001.

M.G.L. c. 268A, §3(a) states:

“Whoever otherwise than as provided by law for the proper discharge of official duty, directly or indirectly, gives, offers or promises anything of substantial value to any present or former state, county or municipal employee . . . for or because of any official act performed or to be performed by such an employee . . . shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than two years, or both.”

M.G.L. c. 268A, §23(b) states in part:

“No current officer or employee of a state, county or municipal agency shall knowingly, or with reason to know:

(2) 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.

(3) act 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. . .”

Massachusetts courts and the State Ethics Commission have deemed “substantial value” to be \$50 or more. The State Ethics Commission has also determined the following to be gifts: waived fees, discounts, gift certificates and entertainment.¹ Private parties, and in this case RMLD vendors, who offer such inducements or rewards are also subject to penalties under the conflict law.²

Specifically, documents indicate numerous items of substantial value were bestowed upon RMLD’s former general manager and the current acting general manager (formerly the assistant general manager of operations) by PLM and Beck both of whom were under contract with RMLD for professional services. Many gifts from PLM and Beck were over the \$50 threshold. In other cases, gifts from PLM and Beck were received but the value of the gifts was not provided to this Office. However, even if the vendor gifts were less than \$50.00, the frequency of the gift giving is notable in light of the fact that the State Ethics Commission considers a pattern of bestowing gifts valued at less than \$50.00 to be a violation of M.G.L. c. 268A.

The conduct of RMLD employees in instances where gifts were accepted undermines the integrity of the working relationships between RMLD and its vendors. Moreover, ratepayers are not assured that objectivity is guiding RMLD contracting practices, or whether RMLD employees’ personal relationships with vendors have unduly influenced them.

Set forth below are several examples of questionable conduct:

1998:

On March 15th, the acting general manager dined at Morton’s of San Antonio, Texas with a PLM consultant and six other unidentified people. The cost of the dinner paid by PLM was \$434.00;

On March 16th, the acting general manager played golf at the Hyatt Hill Country Club in San Antonio, Texas with a PLM consultant and two other unidentified people. The cost of the golf outing paid by PLM was \$323.00;

On June 28th, the former general manager and acting general manager attended a golf outing at the Brae Burn Country Club, Newton, MA sponsored by PLM. The cost of the golf outing paid by PLM totaled \$12,350;

¹ Massachusetts State Ethics Commission pamphlet, “Guide to the Conflict of Interest Law for Municipal Employees.”

² Id.

On September 1st, RMLD's former general manager and a Beck employee had lunch at Finnerty's Restaurant in Wayland, MA. RMLD did not disclose to this Office the purpose, cost and who paid for the lunch;

On September 8th, RMLD's former general manager attended a Red-Sox game compliments of Energy New England, LLC. RMLD did not disclose to this Office the value of the tickets; and,

On November 13th, RMLD's former general manager and a Beck employee had breakfast at the Crown Plaza, Woburn, MA. RMLD did not disclose to this Office the cost, purpose and who paid for the breakfast.

1999:

On March 26th, RMLD's former general manager had lunch with a Beck employee. RMLD did not disclose to this Office the place, purpose, cost and who paid for the lunch; and,

On June 8th, RMLD's former general manager met a PLM consultant in Sterling, MA for a 1:00 p.m. appointment. The former general manager was gone from the office from 9:00 a.m. to 5:00 p.m. that day. RMLD provided no additional information. (It is worth noting that subsequent meetings attended by certain RMLD employees and PLM representatives in Sterling, MA involved golf, meals, and refreshments that were paid by PLM.)

2000:

On June 15th, RMLD's acting general manager played golf and dined with a PLM consultant and another unidentified person at the Sterling County Club in Sterling, MA. The golf outing paid by PLM totaled \$297.87;

On August 16th, RMLD's former general manager had lunch with a Beck employee in Framingham, MA. RMLD did not disclose to this Office the location, cost and who paid for the lunch; and,

In December 2000, RMLD's acting general manager attended the PLM Christmas party at the Brae Burn Country Club, Newton, MA. The cost of the party paid by PLM totaled \$15,411.44.

2001:

In March, RMLD's acting general manager and chief engineer, and a Beck employee and his wife had dinner while attending an American Public Power Plant Association conference in Myrtle Beach, South Carolina. RMLD did not disclose to this Office the purpose, cost or who paid for the dinner; and,

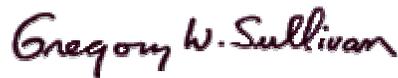
On May 10th, RMLD's acting general manager played golf and dined with a PLM consultant and four other unidentified people at the Sterling County Club in Sterling, MA. The golf outing and dinner paid by PLM totaled \$541.85.

This Office's review revealed that the Reading Municipal Light Board (Board) must provide more effective oversight on behalf of the ratepayers regarding compliance with Massachusetts law and avoiding appearances of impropriety. This Office recommends that the Board make its own inquiry into the propriety of conduct between RMLD vendors and employees. In addition, this Office recommends that the Board strengthen internal rules and policies pertaining to conduct with vendors by prohibiting the receipt of gifts by RMLD employees. This Office also recommends that the Board directly apprise RMLD vendors that RMLD employees are prohibited from accepting gifts.

For your review, I have attached the Massachusetts State Ethic Commission Fact Sheet for business and entertainment expenses and a sample Code of Conduct for Public Employees written by this Office.

If you have any questions regarding this letter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in dark ink that reads "Gregory W. Sullivan". The signature is written in a cursive style with a clear, legible font.

Gregory Sullivan
Inspector General

cc: Peter Hechenbleikner, Reading Town Manager
George Hines, Chairman of the Reading Board of Selectmen
The Massachusetts State Ethics Commission

The Commonwealth of Massachusetts State Ethics Commission

John W. McCormack State Office Building, Room 619
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COMMISSION FACT SHEET NO. 10

BUSINESS AND ENTERTAINMENT EXPENSES FOR PUBLIC OFFICIALS

In August of 1988, the Commission issued a Public Enforcement Letter to one bank and five municipal treasurers, spelling out strict limitations on meals and entertainment expenses offered to public officials by private persons and businesses who have official dealings with the public official. The Commission ruled:

- No meal or entertainment expense of "substantial value" (\$50 or more) incurred by a public official may be paid for by a private party, whether or not the expense involves a so-called "business lunch";
- Even where the cost of a single meal or other entertainment is less than \$50, a private business may not pay for the public official's tab on a regular basis;
- Likewise, even though the cost of a single meal may be less than \$50, the private party may not issue a "standing offer" to pick up the tab on behalf of public officials;
- If the cost of a meal or entertainment is less than \$50 for a public official, but more than \$50 when that official's guest is included, the entire bill will be attributed to the official and constitute a violation of the conflict law.

Section 3(a) of G.L. c. 268A prohibits the giving of anything of substantial value to public employees for or because of their official duties; Section 3(b) of the law prohibits public employees from accepting such gratuities.

Gratuities do not need to be given for or because of some specific, identifiable act performed or to be performed by the public employee for a Section 3 violation to occur: nor is it necessary to prove that any wrongdoing resulted from private individuals or businesses covering such expenses. All that is required is a connection between the motivation for the gift and the public employee's official duties. If the giver is in a position to benefit from the public employee's actions in his or her official capacity, the gift is prohibited.

Section 3 also prohibits a vendor or other individual from giving anything of substantial value to a public employee even to thank the employee for a job well done, to permitting public officials to get multiple remuneration for doing what they are already expected to do -- a good job.

The Commission has determined that gifts of substantial value to public employees are prohibited even in situations where friendship or a legitimate public purpose are motivating factors in offering the gift. Unless friendship or a legitimate public purpose is the motivating factor, the offering or acceptance of the gift violates the conflict law.

WHAT CONSTITUTES SUBSTANTIAL VALUE

The courts and the Commission have determined that meals and beverages costing \$50 or more are considered items of substantial value, and public employees are therefore prohibited from allowing private vendors to cover their expenses in such instances, even if the meal is a so-called "business lunch."

In addition, if an individual, business or company pays for a public official's meals on a regular basis, or pays for an official's guest in a situation where the official would otherwise pay for the guest's meal, the combined costs of all such expenses will be considered in determining substantial value.

The Commission has also ruled that gifts of tickets to theater and sporting events, and/or the payment of fees for recreational activities such as golf, are all items of substantial value if the individual or combined costs of such events amounts to \$50 or more.

Finally, the Commission has decided that waiving or reducing the admission price to a non-political fundraising event in an amount of \$50 or more also constitutes a gratuity of substantial value. Questions regarding attendance at political fundraising events should be reviewed by the Office of Campaign and Political Finance.

ISSUED: August 1988
REVISED: December 1992