



Office of the Inspector General

Commonwealth of Massachusetts

Gregory W. Sullivan
Inspector General

Investigation Leads to State Ethics Commission Fine for Greenfield Police Chief

June 2003

Investigation Leads to State Ethics Commission Fine for Greenfield Police Chief

In 2001, the Office of the Inspector General received information that Greenfield Police Chief David F. McCarthy may have violated state law by engaging in behavior that was related to the supervision, discipline, overtime and job assignment, and promotion of his son S. Daniel McCarthy, an employee of the Greenfield Police Department. After reviewing the allegations and obtaining corroborative materials, the Office reported its findings to the Enforcement Division of the Massachusetts State Ethics Commission. The State Ethics Commission evaluated the facts provided by the Office's investigation and gathered further information. The State Ethics Commission concluded that Chief McCarthy had violated the state's conflict of interest law and recommended a Disposition Agreement to resolve the matter. On April 17, 2003, Chief McCarthy signed a Disposition Agreement with the State Ethics Commission admitting that he violated the conflict of interest law and agreeing to pay a civil penalty of \$4,000.

Inspector General Gregory W. Sullivan commended the State Ethics Commission for its work, noting: "Public service is a sacred trust. All of us who serve in the public sector should remember that we work for the people of the Commonwealth and not betray that trust." The State Ethics Commission's response to the Office's referral and the Disposition Agreement between the State Ethics Commission and Chief McCarthy are attached.



Commonwealth of Massachusetts
STATE ETHICS COMMISSION

John W. McCormack Office Building - One Ashburton Place - Room 619
Boston, Massachusetts 02108-1501

May 30, 2003

Edward M Quinn
Office of the Inspector General
One Ashburton Place, Room 1311
Boston, MA 02108

Dear Mr. Quinn:

We have reviewed the information that you furnished to this Commission on June 4, 2001. Based upon an evaluation of the facts presented, and information that we developed on our own, the Commission has decided that it would be appropriate to resolve this matter by way of a public agreement in which Chief McCarthy admits that he violated the conflict of interest law and has agreed to pay a \$4000 fine. A copy of this agreement is enclosed.

We appreciate your concern in referring such matters to us.

Very truly yours,

A handwritten signature in black ink, appearing to read "David Giannotti".

David Giannotti
Senior Investigator

Enclosure





Commonwealth of Massachusetts **STATE ETHICS COMMISSION**

John W. McCormack Office Building - One Ashburton Place - Room 619
Boston, Massachusetts 02108-1501

FOR IMMEDIATE RELEASE

May 28, 2003

Contact: Carol Carson
(617) 727-0551 x 3325

Massachusetts State Ethics Commission Fines Greenfield Police Chief David F. McCarthy \$4,000 For Involvement in His Son's Promotion

The Massachusetts State Ethics Commission today fined Greenfield Police Chief David F. McCarthy \$4,000 for violating the state's conflict of interest law. In a Disposition Agreement released today, Chief McCarthy admitted that he violated G.L. c. 268A, §19 by participating in personnel matters affecting his son, Daniel McCarthy. Section 19 of the conflict law generally prohibits a municipal employee from officially participating in matters in which an immediate family member has a financial interest.

According to the Disposition Agreement, Daniel was one of five Greenfield patrol officers on the civil service list for a sergeant vacancy. The list was set to expire in October 2000. Chief McCarthy knew, from previous advice he had received from the Ethics Commission, that he could not participate in filling any sergeant vacancy because his son was a candidate. Nevertheless, he sought support for Daniel's candidacy from Lt. Martin Carter in late 1999. Lt. Carter stated that he would not support Daniel.

In response to the retirement of the deputy chief in July 2000, the Chief decided to recommend to selectmen that the department be reorganized, which would create a sergeant vacancy. When he learned that Sgt. Viorel Bobe did not support Daniel's candidacy, the Chief lobbied him, asking Bobe to "be fair" and noting that the Chief had promoted Bobe to sergeant despite opposition. In August 2000, the Chief recommended to selectmen that two additional sergeant positions be created as part of the reorganization. Before selectmen considered his recommendation, the Chief approached one selectman and asked him not to oppose or postpone the promotions. Daniel was promoted to one of the three sergeant positions on August 22, 2000. In August 2001, the Chief denied a grievance regarding the pay rate of the newly appointed sergeants and formulated an offer to instead pay each sergeant a one time, lump sum amount of \$439. The sergeants rejected the offer and an arbitrator eventually decided the matter.

The Disposition Agreement notes that Chief McCarthy received advice about the conflict law on three previous occasions. On each occasion, the Chief was advised not to participate in any matters involving his son's financial interest.

"Few things undercut the public's confidence in government more than the actions of a high ranking law enforcement official who chooses to ignore the law to further his family's financial interests," said Executive Director Peter Sturges. "Even when a promotion is warranted, the involvement of a family member in the process erodes that confidence."

- 30 -

Full text of the Disposition Agreement (7 pages) is available upon request.
To request a copy, contact Carol Carson at ccarson@eth.state.ma.us or 617-727-0551 x 3325.



RECEIVED
STATE ETHICS COMMISSION

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

03 APR 18 PM 12:02

SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 682

IN THE MATTER

OF

DAVID F. MCCARTHY

DISPOSITION AGREEMENT

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

On June 25, 2002, the Commission initiated, pursuant to G.L. c. 268B, 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by McCarthy. The Commission has concluded its inquiry and, on April 16, 2002, found reasonable cause to believe that McCarthy violated G.L. c. 268A, 19.

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

Findings of Facts

1. McCarthy is the Town of Greenfield police chief. As such, he is a municipal employee as that term is defined in G.L. c. 268A, 1.

2. Scott Daniel McCarthy, one of the Chief's sons, has been a Greenfield police officer since July 1, 1992.

3. In Greenfield the chief recommends and the selectmen appoint all new hires and promotions.

4. Beginning in March 1999, Daniel was one of five Greenfield patrol officers who were on the civil service list for any sergeant vacancy that would occur in the department. Daniel's score placed him second on the list, although he was slightly more senior in service in the department than the other four. The list was set to expire in or about October 17, 2000.

5. Chief McCarthy knew, from previous advice he had received from the State Ethics Commission (see below) that because his son was a candidate for a sergeant's promotion, he as Chief would not be able to participate in filling any sergeant vacancy. Instead, that process would be turned over to his deputy. Nevertheless, in late 1999, Chief McCarthy spoke with Lt. Martin Carter – one of the two lieutenants under the then deputy chief – and asked whether Carter would consider supporting Daniel being promoted to sergeant when a vacancy occurred. Lt. Carter stated that he would not.

6. The Deputy Chief abruptly retired in late July 2000. Shortly thereafter, Chief McCarthy decided to recommend a department reorganization, which would include various promotions, including promoting a sergeant to lieutenant, thereby creating

a sergeant vacancy, and adding two new sergeant positions. Any such reorganization had to be approved by the selectmen.

7. Aware that the Chief's son was on the sergeant's list and that the deputy chief's resignation would result in a sergeant vacancy, the town manager in late July or early August 2000, asked Lt. David Guilbault to decide on whom to recommend to fill the sergeant positions.

8. In or about early to mid-August 2000, Lt. Guilbault asked all sergeants and lieutenants for their recommendations as to whom should be appointed to sergeant.

9. At about the same time, Chief McCarthy asked Sgt. Viorel Bobe to accompany him on a ride. During the course of the ride the Chief told Sgt. Bobe that he had heard that Bobe was not supporting making Daniel a sergeant. The Chief asked Bobe to be fair regarding Daniel, noting that others had opposed Bobe's promotion to sergeant, and that the Chief had promoted Bobe despite that opposition.

10. In an August 16, 2000 memo to the selectmen, Chief McCarthy laid out his formal recommendations for the reorganization. In that memo he recommended that the selectmen add two new sergeants in addition to filling the sergeant vacancy, and he noted that the civil service sergeants list was set to expire within a month, and another list would not be created for at least a year.

11. In an August 22, 2000 memo from Chief McCarthy to Selectmen Chairman John Mackin, the Chief recommended that Lt. Guilbault be promoted to captain and a sergeant be promoted to lieutenant. The memo then states, "Lt. David Guilbault will make the presentation for the sergeant recommendations."

12. Just prior to the August 22, 2000 board of selectmen meeting, Chief McCarthy approached a selectman at his place of employment and asked him not to oppose the promotions. The selectman had asked the Chief to delay the promotions so that the process could be reviewed and a more public process implemented given that the Chief's son was one of the sergeant candidates, but the Chief refused, stating that the sergeants list was set to expire. The Chief again asked the selectman to support the appointments, and instead offered at some later time to review the manner in which future promotions would occur.

13. At the August 22, 2000 Selectmen's meeting, Lt. Guilbault recommended to the selectmen that three of the patrolmen who were on the sergeants' list, including Daniel McCarthy, be promoted to sergeant positions.

14. At their August 22, 2000 meeting the selectmen approved the reorganization and made the recommended appointments/promotions.

15. As a result of his promotion to sergeant, Daniel's salary increased from \$667.80 to \$739.20 per week.

16. In August 2001, one of the newly appointed sergeants filed a grievance regarding the pay rate for the new sergeants. The Chief participated in denying the grievance by meeting with department personnel and formulating an offer to instead pay each sergeant a one time, lump sum amount of \$439. The sergeants rejected the offer, and the matter was eventually decided by an arbitrator.

Conclusions of Law

17. Section 19 of G.L. c. 268A prohibits a municipal employee from participating¹ as such an employee in a particular matter² in which, to his knowledge, he or an immediate family member³ has a financial interest.⁴

18. The decisions to reorganize the department, including promoting a sergeant to lieutenant thereby creating a sergeant vacancy and adding two additional sergeant positions, and to lobby officers behind the scenes to support his son's promotion, were particular matters. In addition, the decisions to deny the grievance over that pay rate and to offer \$439 to each sergeant, were each particular matters.

19. Chief McCarthy participated in each of those particular matters as is described above.

20. As Chief McCarthy's son, Daniel is a member of the Chief's immediate family.

¹ Participate means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, 1(j).

² Particular matter means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, 1(k).

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

⁴ Financial interest means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. See *Graham v. McGrail*, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. See *EC-COI-84-98*. The interest can be affected in either a positive or negative way. *EC-COI-84-96*.

21. Daniel had a financial interest in each of the above particular matters because each would likely affect his salary.

22. Accordingly, by participating in each of the foregoing particular matters concerning his son, Chief McCarthy violated § 19.

Prior Notice

23. In 1992, town counsel provided Chief McCarthy with a written opinion regarding how § 19 would apply to the Chief's conduct vis-à-vis his son as a police officer in his department. The letter explained that §19 prohibited the Chief from participating as such in any particular matter involving his son's financial interests.

24. By letter dated August 28, 1997, the Commission's Legal Division responded to Chief McCarthy's request for advice regarding appointing his son as a K-9 officer. Because the Chief's request referred to past conduct, the letter gave only general advice, but in considerable detail, as to §19 prohibiting the Chief from participating as such in any particular matter involving his son's financial interest.

25. By letter dated December 2, 1997, the Commission's Enforcement Division warned Chief McCarthy that his involving himself in a personnel decision in which his son had a financial interest, a K-9 officer appointment, appeared to violate 19.

Resolution

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

- (1) that McCarthy pay to the Commission the sum of \$4000 as a civil penalty for violating G.L. c. 268A, 19; and
- (2) that McCarthy waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

STATE ETHICS COMMISSION

By:


Peter Sturges
Executive Director

5/28/03
Date


David F. McCarthy

4/17/03
Date

I, David McCarthy, have personally read the above Disposition Agreement. I understand that it is a public document and that by signing it, I will have agreed to all of the terms and conditions therein including payment \$4,000 to the State Ethics Commission.


David F. McCarthy

4/17/03
Date