

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 12-0005

IN THE MATTER

OF

JAMES McCORMICK

ORDER TO SHOW CAUSE

1. The State Ethics Commission (“Commission”) is authorized by G.L. c. 268B to enforce G.L. c. 268A, the state conflict of interest law, and in that regard, to initiate and conduct adjudicatory proceedings.

2. On May 18, 2012, the Commission (a) found reasonable cause to believe that James McCormick (“McCormick”) violated G.L. c. 268A, §§ 19 and 23(b)(3); and (b) authorized the initiation of adjudicatory proceedings.

FACTS

3. The Merrimack Special Education Collaborative (the “Collaborative”) is a public agency established in 1976, pursuant to G.L. c. 40, § 4E, to provide its member municipalities with, among other services, educational, vocational, and therapeutic programs for persons with special needs.

4. The Merrimack Education Center, Inc. (the “Center”) is a private, non-profit corporation that provides various educational programs and services including administrative and transportation services to the Collaborative and a license to the Collaborative to use certain real property owned by the Center. The Collaborative pays

the Center for these programs, services and property rentals. Much of the Center's income was derived from providing these programs and services for a fee.

5. McCormick served on the Collaborative's Board of Directors from in or about 1993 through June 2006.

6. McCormick served on the Center's Board of Directors from in or about 1993 through June 2006.

7. McCormick was the North Middlesex Regional School District ("North Middlesex") superintendent from 1992 until June 30, 2006.

8. On June 5, 2006, the Collaborative board, with McCormick participating, voted 5-0 to approve a Settlement Agreement between the Collaborative and the Center under which the Collaborative agreed to pay \$5.5 million to the Center. The Settlement Agreement called for an immediate payment to the Center by the Collaborative of \$4 million, followed by six additional annual payments of \$250,000 each.

9. At the time McCormick voted to approve the payment of \$5.5 million from the Collaborative to the Center, he was negotiating with or had an arrangement concerning prospective employment with the Center.

10. McCormick did not file a written disclosure with his appointing authority indicating that he was both a Collaborative and a Center board member and/or that he was negotiating with or had an arrangement concerning prospective employment with the Center and/or that he had a personal financial interest in the matter before voting to approve the payment of \$5.5 million by the Collaborative to the Center.

11. McCormick did not obtain a written determination from his appointing authority in advance of the June 5, 2006 vote authorizing him to participate in this vote notwithstanding the Center's and his own financial interests in the vote.

12. McCormick became an employee of the Center beginning July 1, 2006.

LAW

13. As a Collaborative board member and as the North Middlesex superintendent, McCormick was a municipal employee within the meaning of G.L. c. 268A.

Section 19

14. Section 19(a) prohibits a municipal employee from participating as such in a particular matter in which, to his knowledge, he, his immediate family or partner, a business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest.

Was a Board Member of both the Collaborative and the Center at the Time of the June 5, 2006 Vote

15. The Collaborative board's June 5, 2006 vote to approve the payment of \$5.5 million by the Collaborative to the Center was a particular matter.

16. McCormick participated in that particular matter by voting as a Collaborative board member to approve the payment of \$5.5 million by the Collaborative

to the Center.

17. The Center was a business organization because much of its income was derived from providing programs and services for a fee.

18. At the time he voted as a Collaborative board member to approve the payment to the Center, McCormick also served as a board member of the Center.

19. The Center had a financial interest in the vote because it was the recipient of the \$5.5 million.

20. When he participated in this vote, McCormick was aware of the Center's financial interest in that decision.

21. Therefore, by voting as a Collaborative board member to approve the payment of \$5.5 million to the Center while he was also a Center board member and knew that the Center had a financial interest in the vote, McCormick violated § 19.

Was Negotiating for Employment or had an Arrangement Concerning Prospective Employment with the Center at the Time of the June 5, 2006 Vote

22. The Collaborative board's June 5, 2006 vote to approve the payment of \$5.5 million by the Collaborative to the Center was a particular matter.

23. McCormick participated in that particular matter by voting as a Collaborative board member to approve the payment of \$5.5 million by the Collaborative to the Center.

24. The Center was an organization.

25. At the time McCormick voted to approve the payment of \$5.5 million by

the Collaborative to the Center, he was negotiating with or had an arrangement concerning prospective employment with the Center.

26. The Center had a financial interest in the vote because it was to be the recipient of the \$5.5 million.

27. When he participated in this vote, McCormick was aware of the Center's financial interest in the decision.

28. Therefore, by voting as a Collaborative board member to approve the payment of \$5.5 million to the Center while he was negotiating with or had an arrangement concerning prospective employment with the Center and while he knew that the Center had a financial interest in the vote, McCormick violated § 19.

McCormick Had His Own Financial Interest in the June 5, 2006 Vote

29. The Collaborative board's June 5, 2006 vote to approve the payment of \$5.5 million by the Collaborative to the Center was a particular matter.

30. McCormick participated in that particular matter by voting as a Collaborative board member to approve the payment of \$5.5 million by the Collaborative to the Center.

31. At the time McCormick voted to approve the payment of \$5.5 million by the Collaborative to the Center, he was negotiating with or had an arrangement concerning prospective employment with the Center.

32. McCormick had a financial interest in the decision because the Center, his

likely or future employer, was to be the recipient of the \$5.5 million, and, therefore, would be in a stronger financial position after receipt of the \$5.5 million. Thus, the Center would be better situated to provide its employees, including McCormick, with enhanced financial benefits including salaries and bonuses.

33. When he participated in this decision, McCormick was aware of his own financial interest in that decision.

34. Therefore, by voting as a Collaborative board member to approve the payment of \$5.5 million to the Center while he knew he had a financial interest in that decision, McCormick violated § 19.

Section 23(b)(3)

35. Section 23(b)(3) prohibits a municipal employee from, knowingly or with reason to know, acting in a manner which would cause a reasonable person, knowing all of the facts, to conclude that anyone can improperly influence or unduly enjoy that person's 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. This subsection goes on to provide that it is unreasonable to draw such a conclusion if the municipal employee discloses in advance in writing to his appointing authority all of the relevant circumstances which would otherwise create the appearance of conflict.

36. On June 5, 2006, McCormick voted as a Collaborative board member to approve the payment of \$5.5 million by the Collaborative to the Center.

37. When he acted in his capacity as a Collaborative board member, McCormick was also a Center board member and was also negotiating with or had an arrangement concerning prospective employment with the Center.

38. McCormick made no written disclosure of these facts to his appointing authority.

39. Therefore, McCormick knew or had reason to know that he was acting in a manner which would cause a reasonable person, knowing all of the relevant facts, to conclude that the Center could improperly influence or unduly enjoy McCormick's favor in the performance of his official duties as a municipal employee or that he was likely to act or fail to act as a result of the undue influence of the Center. Consequently, McCormick violated § 23(b)(3).

WHEREFORE, Petitioner asks that the Commission:

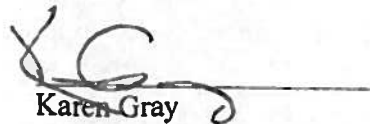
1. find that McCormick violated G.L. c. 268A, §§ 19 and 23(b)(3) as described above; and
2. levy such fines, issue such orders and grant such other relief as may be appropriate, including, but not limited to:
 - a) under G.L. c. 268A, § 21(a) as is currently in effect, ordering additional remedies as the interests of the municipality and innocent third persons shall require;

- b) under G.L. c. 268A, § 21(b) as is currently in effect, ordering McCormick to pay to the Commission on behalf of the municipality damages in the amount of the economic advantage he obtained in violating G.L. c. 268A; restitution to an injured third party; and/or if determined by the Commission to be merited, authorizing a civil action against McCormick to recover such damages; and/or
- c) under the predecessor of G.L. c. 268A, § 21(a) as was in effect during the period from 2006 through September 28, 2009, ordering additional remedies as the interests of the municipality and innocent third persons shall require; and/or

d) under the predecessor of G.L. c. 268A, § 21(b) as was in effect during the period from 2006 through September 28, 2009, ordering McCormick to pay to the Commission on behalf of the municipality damages in the amount of the economic advantage he obtained in violating G.L. c. 268A; restitution to any injured third party; and/or if determined by the Commission to be merited, authorizing a civil action against McCormick to recover such damages.

Respectfully Submitted,

Petitioner State Ethics Commission
By its attorney,



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Dated: June 4, 2012