

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 11-0068

IN THE MATTER

OF

JOHN BARRANCO

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 August 15, 2011, the Commission (a) found reasonable cause to believe that John Barranco ("Barranco") repeatedly violated G.L. c. 268A, §§ 19, 23(b)(2) and 23(b)(3) by, as a Merrimack Special Education Collaborative employee, among other actions, securing for Richard W. McDonough ("McDonough") public compensation and benefits he was not entitled to; and (b) authorized the initiation of adjudicatory proceedings.

FACTS

3. The Merrimack Special Education Collaborative ("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 administrative and transportation services to the Collaborative and a license to the Collaborative to use certain real property owned by the Center.

5. Barranco has been the Center's executive director since approximately 1993.

6. Barranco also served as the Collaborative's executive director from January 1993 to August 31, 2005, when he purportedly retired as the Collaborative's executive director. Barranco continued to serve as the Center's executive director.

7. From September 1, 2005 through at least December 31, 2008, as the Center's executive director, Barranco continued to exercise substantial control over the Collaborative's activities.

8. Between 1964 and 1983, McDonough worked in various state jobs earning approximately 11 years of creditable public pension service. However, in 1984, McDonough, by taking out his monetary contributions to that pension, lost those years of creditable service.

9. McDonough has been a registered lobbyist in Massachusetts since the late 1980s.

10. In 2001, McDonough began registering with the Secretary of State's Office as a lobbyist for the Center. He continued to list the Center as a client through 2008.

11. In or about November 2003, Barranco, as the Collaborative's executive

director, put McDonough on the Collaborative's payroll as the Collaborative's Director of Public Affairs and Governmental Relations ("Public Affairs Director").

12. In July 2005, as the Collaborative's executive director, Barranco renewed McDonough's contract of employment as Public Affairs Director.

13. In July 2007 and July 2008, as the Center's executive director exercising control over the Collaborative's activities, Barranco renewed McDonough's Public Affairs Director contracts.

14. In hiring McDonough and renewing McDonough's contracts as Public Affairs Director rather than retaining him as the Center's outside lobbyist, Barranco shifted the cost of McDonough's compensation from the Center to the Collaborative.

15. McDonough remained on the Collaborative's payroll as Public Affairs Director until on or around December 31, 2008.

16. While on the Collaborative's payroll, McDonough received the following from the Collaborative:

- a. compensation reflecting a starting annual salary of \$80,000 in 2003 and increasing each year to an annual salary of approximately \$109,000 in 2008;
 - b. the medical benefits provided to full-time Collaborative employees;
 - c. the dental benefits provided to full-time Collaborative employees;
- and

- d. approximately five years of creditable service toward his public pension.

17. At no time during the above-described 2003 to 2008 period did McDonough work full-time as a Collaborative employee.

18. In fact, McDonough did almost no work as a Collaborative employee. In that regard, McDonough did not have an office or workspace at the Collaborative's offices. He did not have a telephone extension at the Collaborative.

19. Barranco was aware that McDonough did not work full-time as a Collaborative employee.

20. Barranco was aware that McDonough did almost no work as a Collaborative employee.

21. Notwithstanding the foregoing knowledge, Barranco, in his capacity as the Collaborative executive director and/or as the Center's executive director exercising substantial control over the Collaborative's activities, repeatedly approved the renewal of McDonough's Public Affairs Director contracts and continued to allow McDonough to receive or accrue from the Collaborative significant compensation and/or full-time benefits, including but not limited to medical, dental and/or pension benefits as the Public Affairs Director.

22. At no time did Barranco disclose this Public Affairs Director arrangement with McDonough to either the Collaborative's or the Center's board of directors.

23. At all times relevant to the violations alleged herein, Barranco and

McDonough had a significant social relationship.

24. At no time did Barranco disclose this social relationship to either the Collaborative's or the Center's board of directors.

25. On December 18, 2008, McDonough wrote a check for \$38,046.59 to the State Board of Retirement, buying back the approximately 11 years of public pension creditable service he had previously earned. Then, on or about December 31, 2008, McDonough left his Public Affairs Director position.

26. In or around May 2009, McDonough began receiving a public pension of approximately \$30,000 per year. This amount was based on statements in his retirement application regarding his years of creditable service as a public employee (including approximately five years with the Collaborative) with an average salary of approximately \$95,000 during his three highest earning years of service. Those three years were 2006, 2007, and 2008, when McDonough was on the Collaborative's payroll.

27. Without the creditable service with the Collaborative, McDonough would not have been eligible for a public pension because, having taken out his public pension contributions in 1984, McDonough needed to earn at least two additional years of full-time service before he qualified for buying back his previous 11 years of service.

28. In addition, if McDonough's pension had been based on the average of his highest three years of the 11 prior years of public service, his annual pension would have been approximately \$6,000 rather than approximately \$30,000.

LAW

29. As executive director of the Collaborative and executive director of the Center while directing significant activities of the Collaborative, Barranco was a municipal employee within the meaning of G.L. c. 268A.

Section 23(b)(2)

30. General Laws chapter 268A, § 23(b)(2), as in effect in 2003 through 2008, prohibited a municipal employee from knowingly or with reason to know using or attempting to use his official position to secure an unwarranted privilege or exemption of substantial value for himself or others, which was not properly available to similarly situated individuals.

31. McDonough's accrual and/or receipt from the Collaborative of significant compensation, full-time medical and dental benefits and full-time retirement benefits were all privileges.

32. Each privilege McDonough accrued and/or received worth \$50 or more was of substantial value.

33. More specifically, each time McDonough accrued and/or received Collaborative compensation of \$50 or more, and/or received or accrued \$50 in value as to the medical, dental and/or pension benefits described above, he received a privilege of substantial value.

34. Barranco used his Collaborative and Center executive director positions,

the latter through his control over the Collaborative after he retired, to secure the compensation, full-time medical benefits, full-time dental benefits and full-time retirement benefits for McDonough.

35. Barranco's securing for McDonough compensation, full-time medical benefits, full-time dental benefits, and full-time retirement benefits were all unwarranted because McDonough did not work the requisite hours and/or performed little or no services to merit these privileges.

36. These unwarranted privileges were not otherwise properly available to similarly situated municipal employees.

37. Thus, Barranco knowingly, or with reason to know, used his official position as executive director of the Collaborative and as executive director of the Center through the control he had over the Collaborative, to secure for McDonough unwarranted privileges of substantial value not properly available to similarly situated individuals, thereby repeatedly violating G.L. c. 268A, § 23(b)(2).

Section 23(b)(3)

38. 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 writing to his appointing authority all of the relevant circumstances which would otherwise create the appearance of conflict.

39. From approximately November 1, 2003, to December 31, 2008, Barranco repeatedly authorized McDonough to be on the Collaborative payroll as the Public Affairs Director, and as such receive and/or accrue the compensation and full-time benefits that went with that position.

40. Whenever he so acted, Barranco had a significant social relationship with McDonough.

41. Barranco made no disclosure of these facts to either the Collaborative's or the Center's board of directors.

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

Section 19

43. Section 19 of G.L. c. 268A prohibits a municipal employee from participating as such an employee in a particular matter in which, to his knowledge, a business organization by which he is employed has a financial interest.

44. The decisions to hire and renew contracts for McDonough as the Collaborative's Public Affairs Director were particular matters.
45. Barranco participated in those particular matters by making the decisions.
46. The Center was a business organization because much of its income was derived from providing services for a fee.
47. The Center, Barranco's private entity employer, had a financial interest in these particular matters because they shifted the cost of McDonough's lobbying contracts from the Center to the Collaborative.
48. When he participated in these particular matters, Barranco knew of that financial interest.
49. Therefore, by acting as described above, Barranco repeatedly violated § 19.

WHEREFORE, Petitioner asks that the Commission:

1. find that Barranco repeatedly violated G.L. c. 268A, §§ 19, 23(b)(2) 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. ordering Barranco under G.L. c. 268A, § 21 to make restitution to the Collaborative and/or any other injured third party of the unwarranted compensation, full-time medical benefits, full-time dental benefits, and full-time retirement benefits paid to and/or made on behalf of McDonough; and/or

- b. authorizing a civil action against Barranco under G.L. c. 268A, § 21 relating to his G.L. c. 268A violations concerning the unwarranted compensation, full-time medical benefits, full-time dental benefits, and full-time retirement benefits paid to and/or made on behalf of McDonough; and
- c. authorizing a civil action under G.L. c. 268A, § 9 to have the State Retirement Board rescind or cancel any retirement benefits being paid to McDonough.

Respectfully Submitted,

Petitioner State Ethics Commission
By its attorney,



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