



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

May 11, 2017

John L. O'Brien, Jr.
31 Apple Blossom Lane
Lynn, MA 01904

Re: Public Education Letter

Dear Mr. O'Brien,

As you know, the State Ethics Commission conducted a preliminary inquiry into allegations that you violated the conflict of interest law, G.L. c. 268A. The preliminary inquiry focused on allegations that, from 2011 to 2016, you used your Registrar position to obtain Registry employees' home addresses for your campaign mailing list; you solicited campaign donations from Registry employees over whom you have official authority; and you shared confidential information from Registry records – the home addresses of Registry employees – with your campaign committee.

On April 20, 2017, the Commission voted to find reasonable cause to believe that 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 other public employees will benefit from a public discussion of the facts revealed by the preliminary inquiry and an explanation of how the Commission will apply Chapter 268A to the facts. The Commission expects that by resolving this matter publicly through a Public Education Letter, you and other public employees in similar positions and circumstances will have a clearer understanding of the conflict of interest law and how to comply with it.

The Commission and you have agreed that 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.

I. Facts

You currently serve as the Registrar of Deeds at the Southern Essex District Registry of Deeds ("Registry"). You have been serving as Registrar of Deeds since 1976, and intend to seek re-election after your current six-year term ends in 2018. Currently, there are about 38

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employees employed at the Registry. All Registry employees are classified as employees of the Secretary of State's Office. All Registry employees report either directly to you or to an employee who reports directly to you.

You have a campaign committee, the John O'Brien Campaign Committee (the "Committee"). The Committee consists of you and members of your family, namely your wife, who is the treasurer, your daughter, your niece, and your sister. The Committee operates out of your home. You often help with the Committee's mailings by stuffing envelopes and looking up addresses.

In 2011, the Committee sent a flier ("2011 mailing") to everyone on the Committee's mailing list, advertising a fundraising event to be held on September 29, 2011 at a pizza shop. Tickets to attend this fundraising event were \$100 each. The mailing list used to send the 2011 mailing included, among others, all Registry employees and their home addresses.

In 2016, the Committee, in lieu of hosting a fundraising event, sent a letter to individuals on its mailing list asking for donations. Of the thirty-eight Registry employees, thirty-six Registry employees and their home addresses were on the Committee's 2016 mailing list. The Committee also sent a follow-up letter to individuals who did not contribute after the first letters were sent.

In a sworn interview, you described to the Commission two ways by which you obtained Registry employees' home addresses for use by your campaign committee. The first way was when you interviewed an individual for potential employment at the Registry, and the individual provided her resume and contact information to you. You obtained several addresses in this manner and had them added to your campaign mailing list.

The second way you obtained the home addresses of Registry employees was through the Registry's Human Resources Department. At times, you, in your Registrar position, would need to contact employees at their homes – for example, when you wanted to send them a get-well card or provide work-related notifications. In such instances, you would ask the human resources director for an employee's home address. You would then note the address, sometimes by jotting it down on a piece of paper, for purposes of including it on your Committee's mailing list. You also told us that sometimes when obtaining an employee's address from Human Resources, you would notice that an employee's address had been updated. You would use that information to update your own Committee's mailing list.

The evidence shows that, through your Committee, you sent campaign mailings to nearly all Registry employees. The Commission, however, is unaware of evidence of any adverse consequences in fact suffered by any Registry employee for refusing to contribute to your campaign. You have indicated that you will not send campaign mailings to any Registry employees in the future.

II. Discussion

As the Southern Essex District Registrar of Deeds, you are a state employee. As such, you are subject to the conflict of interest law, G.L. c. 268A. Discussed below are three issues that your conduct raises under the conflict of interest law.

The first issue is whether you violated § 23(b)(2)(ii) by using your position to obtain the home and mailing addresses of Registry employees for purposes of compiling a mailing of list of potential contributors to your campaign.

Section 23(b)(2)(ii) prohibits a public employee from, knowingly or with reason to know, using or attempting to use his official position to secure for himself or others an unwarranted privilege or exemption of substantial value not properly available to similarly situated individuals. The Commission has determined that, in general, a public employee may not use his public position to engage in political activity, because a public employee who does so is using his official position to secure for himself or others (such as a candidate) unwarranted privileges of substantial value that are not properly available to similarly situated persons.

Based on the evidence, the Commission found reasonable cause to believe that you violated § 23(b)(2)(ii) because you used your Registrar position to obtain Registry employees' home addresses to compile your mailing list for purposes of sending out campaign-related solicitations, in order to give yourself and your campaign an unwarranted privilege of substantial value.

You used your Registrar position to obtain Registry employees' mailing addresses when you collected that information while conducting informational interviews with potential candidates for employment at the Registry; and by requesting that information from the Human Resources Department, even if you also had a work-related need for that information. By giving the Registry employees' mailing addresses, which you obtained by using your position, to your campaign committee, you were giving yourself a privilege of substantial value. This privilege was unwarranted because the Public Records Law prohibited you from sharing employees' home addresses, which are confidential, with your campaign committee. Furthermore, the Commission has consistently interpreted §23(b)(2)(ii) to prohibit public employees from using public resources for private purposes. The Registry's employee records are a public resource, and cannot be used in campaign fundraising, which is a private purpose. Finally, the privilege was not available to other similarly situated individuals – that is, other potential candidates running for the Registrar position, who would not have access to the Registry's employee records.

The second issue is whether you violated § 23(b)(2)(ii) by sending to Registry employees mailings soliciting donations to your and other political candidates' campaigns.

Section 23(b)(2)(ii) restricts the ability of public employees to engage in private dealings with persons over whom they have official authority. Such private dealings are inherently coercive, and therefore violate § 23(b)(2)(ii), because the person or entity under the public employee's official authority, or with whom the public employee has official dealings, may not feel free to decline to enter into a private business relationship, or may feel obliged to give the public employee favorable treatment.

In certain circumstances, where certain safeguards are present, private dealings between public employees and those under their official authority are permissible only when: (1) the private business relationship or other private dealing is initiated by the person or entity under the public employee's authority, or with whom the public employee has or expects to have official dealings, and not by the public employee; (2) the private business relationship or other private dealing is entirely voluntary; (3) the private business relationship or other private dealing does not involve special or favorable treatment given to the public employee because of his official position; and (4) the private business relationship or other private dealing is disclosed publicly in writing by the public employee.

A public employee's immediate subordinates, as well as their subordinates, are under the public employee's official authority. See EC-COI-95-9, 92-7, 84-61. All of the employees at the Registry were under your official authority. By soliciting donations to a private cause, such as your own campaign, you were engaging in private dealings with your subordinates. See *In re Travis*, 2001 SEC 1014 (state representative found to have violated § 23(b)(2) by requesting that an entity with whom he had official dealings donate to a non-profit entity). You were prohibited from initiating such private dealings with your subordinates, the Registry employees. By doing so, you created an inherently coercive situation.

The evidence shows that you initiated private dealings with your subordinates by, through your campaign committee, sending targeted campaign fundraising solicitations to all or most Registry employees. Therefore, the Commission found reasonable cause to believe that you violated § 23(b)(2)(ii).

The third issue is whether you violated § 23(c)(2) by disclosing Registry employees' home addresses obtained from Registry employee records to your campaign committee.

Section 23(c)(2) prohibits a public employee from improperly disclosing material or data within the exemptions to the definition of public records as defined by § 7 of chapter four and acquired by him in the course of his official duties, and from using such information to further his personal interest.

Pursuant to G.L. c. 4, § 7, cl. 26 (o), the following is exempted from the definition of public records:

the home address [...] of an employee of [...] an agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, [...] in the custody of a government agency which maintains records identifying persons as falling within those categories [...]

Applications from prospective employees who are subsequently hired as employees, and the mailing addresses of employees maintained by the Human Resources Department, are records that are in the custody of the Registry. The Registry maintains these records as records of its employees. Therefore, the home addresses contained in Registry records, are exempted from the

definition of public records. You admitted that you obtained the contact information for Registry employees from Registry records and disclosed it to your campaign committee.

Therefore, the Commission found reasonable cause to believe that you violated § 23(c)(2) because you improperly disclosed data within the exemptions to the definition of public records and acquired by you in the course of your official duties, and used such information to further your personal interest.

III. 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. Public officials should understand that they may not send campaign fundraising solicitations to employees under their official responsibility, use public resources to benefit their campaign efforts, or share confidential information maintained by public agencies for agency operational purposes with campaign committees. The purpose of this Public Education Letter is to ensure understanding of these restrictions.

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