

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. *23-0001*

IN THE MATTER

OF

MICHAEL BYRNE

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 December 15, 2022, the Commission (a) found reasonable cause to believe that Michael Byrne (“Byrne”) violated G.L. c. 268A, §§ 19, 23(b)(2)(ii), 23(b)(3) and 26, and (b) authorized the initiation of adjudicatory proceedings.

FACTS

3. Byrne was the Town of Arlington, Massachusetts (“Arlington”) Inspectional Services Department (“ISD”) Director, a full-time salaried position, from 1997 through 2021.

4. As ISD Director, Byrne was responsible for the enforcement of the Commonwealth of Massachusetts building, wiring and plumbing codes in Arlington.

Trademark Plumbing Work Bryne Allowed Without Plumbing Permits or Inspections

5. Massachusetts Code 248 CMR 3.05(1)(c), requires plumbing permits for work beyond routine repairs. Massachusetts Code 248 CMR 3.05(3)(a) requires inspection of all work where a plumbing permit is required.

6. In Arlington, the plumbing permit fee is based on the cost of the project, \$24 per \$1,000 of the estimated cost or portion thereof, up to the first \$10,000, and \$6.00 per \$1000 thereafter. The permit fee is tripled for work commenced without permit.

7. In his private capacity, Byrne owned and operated Trademark Plumbing, a limited liability corporation with its principal office located in Arlington.

8. Trademark Plumbing engaged in the installation and repair of plumbing and gas in residential and commercial buildings.

9. Byrne operated Trademark Plumbing in Arlington and surrounding communities.

10. During the period 2016 through 2020, Byrne, in his capacity as ISD Director, knowingly allowed Trademark Plumbing to perform plumbing work without obtaining plumbing permits at the following Arlington locations:

Year(s)	Location	Amount
2016	Florence Ave.	\$26,000
2016	Marathon Street	\$23,000
2016	Gray Street	\$6,400
2016	Brantwood Road	\$7,500
2016	Varnum Street	\$13,000
2016	Shawnee Drive	\$13,000
2016	Wachusets Ave.	\$7,000
2016	Florence Ave.	\$3,000
2016	Richfield Road	\$7,700

2016	Summer Street	\$4,000
2016	Kilsythe Road	\$7,000
2016	Avon Place	\$5,500
2016-2017	Washington Street	\$33,200
2016-2017	Mass Avenue	\$113,803
2016-2017	Park Street	\$31,000
2016-2017	Regis Road	\$20,070
2017	Campbell Road	\$25,000
2017	Kensington Park	\$20,500
2017	Rockmont Road	\$27,000
2017	Schouler Court	\$12,400
2017	Standish Road	\$7,150
2017	Glenburn Road	\$14,150
2017-2018	Lillian Lane	\$64,500
2018	Crosby Street	\$41,145
2018	Mountain Ave.	\$37,720
2018	Mass Ave.	\$1,800
2019	Broadway	\$5,000
2019	Broadway	\$2,160
2019	Broadway	\$5,000
2019	Broadway	\$5,000
2019	Old Mystic Street	\$27,000

2019	Park Ave.	\$5,000
2019	Sherborn Street	\$32,000
2019	Spy Pond Parkway	\$15,000
2019-2020	Alton Street	\$59,600
2020	Rublee Street	\$30,000
2020	Spy Pond Parkway	\$34,000

11. Byrne, through Trademark Plumbing, charged at least \$1,800 and as much as \$113,803 per plumbing project.

12. During the period 2016 through 2020, Byrne, in his capacity as ISD Director, knowingly allowed Trademark Plumbing to perform plumbing work without inspection at the following Arlington locations:

Alton Street
 Broadway
 Crosby Street
 Mass Ave.
 Park Ave.
 Schouler Court
 Spy Pond Parkway
 Sherborn Street

13. During the period 2016 through 2020, Byrne, in his capacity as ISD Director, performed plumbing inspections on work performed by Trademark Plumbing at the following Arlington locations:

Brantwood Road
 Marathon Street
 Regis Road
 Rockmont Road
 Washington Street
 Washington Street

Issuing Certificates of Occupancy

14. Massachusetts Code 780 CMR 111.1 mandates that no building or structure be used or occupied until the building commissioner or inspector of buildings inspects the building or structure and issues a certificate of occupancy. A certificate of occupancy certifies that a building or structure has had all of its final inspections and that the construction or rehabilitation is up to code.

15. In 2016 and 2017, Byrne, in his capacity as ISD Director, issued certificates of occupancy for the following Arlington properties where Trademark Plumbing had performed plumbing work: Park Street and Schouler Court.

Plumbing Permits Created by Byrne After Work Was Completed by Trademark Plumbing Under Names of Plumbers Unrelated to the Work

16. Massachusetts Code 248 CMR 3.05(1)(b)(2) requires applications for plumbing permits be made in writing before work commences.

17. Massachusetts Code 248 CMR 3.05(1)(b)(3) requires the plumbing permit application to contain the name of the plumber (or company) performing the work.

18. In 2020, Byrne, in his capacity as ISD Director, created eight false plumbing permits for work which had already been performed by Trademark Plumbing without permits.

19. Byrne inserted and/or caused the name of a licensed plumber to be inserted on each of the eight permits. None of the plumbers named on the eight permits were involved in the Trademark Plumbing projects.

Loans

20. In 2016, 2017 and 2018, a real estate property developer made loans to Byrne totaling \$25,000.

21. On August 31, 2017, Byrne, in his capacity as ISD Director, issued a certificate of occupancy for a property owned by the developer located on Irving Street, Arlington.

LAW

22. As Arlington's ISD Director, Byrne was at all relevant times a municipal employee as that term is defined in G.L. c. 268A, § 1(g).

Section 19

23. General Laws chapter 268A, § 19 prohibits a municipal employee from participating as such an employee in a particular matter in which to his knowledge he has a financial interest.

Section 19 Violations

Byrne Inspected Work Performed by Trademark Plumbing

24. The decision to inspect and the inspection of Trademark Plumbing's plumbing work in Arlington were particular matters.

25. As ISD Director, Byrne decided to inspect and inspected Trademark Plumbing's plumbing work on at least five occasions.

26. As owner and operator of Trademark Plumbing, Byrne had to his knowledge a financial interest in inspections of his company's plumbing work, including favorable inspections indicating the plumbing work was up to code.

27. Therefore, by as ISD Director deciding to inspect and inspecting plumbing

work performed by his private business, Trademark Plumbing, Byrne repeatedly participated as a municipal employee in particular matters in which to his knowledge he had a financial interest in violation of G.L. c. 268A, § 19.

Byrne Issued Certificates of Occupancy for Properties Where Trademark Plumbing Had Performed Work

28. The decision to issue and the issuance of certificates of occupancy for properties where Trademark Plumbing had performed plumbing work were particular matters.

29. As ISD Director, Byrne decided to issue and issued certificates of occupancy for such properties on at least two occasions.

30. As owner and operator of Trademark Plumbing, Byrne had a financial interest in certificates of occupancy indicating that the plumbing work performed by Trademark Plumbing passed inspection and was up to code.

31. Therefore, by as ISD Director repeatedly issuing certificates of occupancy for properties where his private business, Trademark Plumbing, had performed plumbing work, Byrne repeatedly participated as a municipal employee in particular matters in which to his knowledge he had a financial interest in violation of G.L. c. 268A, § 19.

Section 23(b)(2)(ii)

32. General Laws chapter 268A, § 23(b)(2)(ii) prohibits a municipal employee from knowingly, or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions of substantial value which are not properly available to similarly situated individuals.

Section 23(b)(2)(ii) Violations

Byrne Allowed Trademark Plumbing to Perform Work Without Plumbing Permits

33. Being allowed to perform plumbing work in Arlington without a plumbing permit when a permit is required by law is an unwarranted privilege or exemption.

34. During the relevant period, the unwarranted privilege or exemption of performing plumbing work in Arlington without obtaining plumbing permits was of substantial value because each permit would have cost \$50 or more based on the cost of the plumbing work.

35. The unwarranted privileges or exemptions of performing plumbing work without first obtaining plumbing permits was not properly available to other plumbers or owners and operators of plumbing companies.

36. By, while ISD Director, not requiring Trademark Plumbing to obtain plumbing permits for its work prior to that work, Byrne used his ISD Director position to secure for himself and Trademark Plumbing unwarranted privileges or exemptions given that, as ISD Director, Byrne was the head of the Arlington department that enforced the plumbing code and the requirement to obtain a permit prior to commencing plumbing work.

37. Therefore, each time Byrne allowed Trademark Plumbing to perform plumbing work in Arlington without first obtaining a plumbing permit and paying the required fee, he knowingly or with reason to know used his ISD Director position to secure unwarranted privileges or exemptions of substantial value not available to similarly situated individuals. In so doing, Byrne repeatedly violated G.L. c. 268A, § 23(b)(2)(ii).

Byrne Allowed Trademark Plumbing to Perform Work Without Inspections

38. By, while ISD Director, allowing Trademark Plumbing to perform plumbing work in Arlington without inspections, Byrne used his ISD Director position to secure unwarranted privileges or exemptions for himself and/or Trademark Plumbing.

39. The unwarranted privilege or exemption of performing plumbing work without inspections was of substantial value because it allowed Byrne to avoid the penalty of three times the original permit fees for having performed plumbing work without a permit.

40. The unwarranted privilege or exemption of performing plumbing work without inspections was not properly available to other plumbers or owners and operators of plumbing companies.

41. Therefore, each time Byrne while ISD Director allowed Trademark Plumbing to avoid the inspection of its plumbing work in Arlington, he knowingly, or with reason to know, used his ISD Director position to secure unwarranted privileges or exemptions of substantial value not available to similarly situated individuals. In so doing, Byrne repeatedly violated G.L. c. 268A, § 23(b)(2)(ii).

Byrne Created Plumbing Permits for Trademark Plumbing Work Performed Without Plumbing Permits

42. Plumbing permits for Trademark Plumbing projects created by Byrne after the plumbing work was completed were unwarranted privileges because (1) the post-work creation of the permits was contrary to the requirement of obtaining plumbing permits before commencing work; and (2) the permits were created despite the fact that the plumbers whose names were on the plumbing permit applications were not involved

in the projects.

43. Byrne used his ISD Director position to secure these unwarranted privileges for Trademark Plumbing and himself.

44. The unwarranted privileges of permits created by Byrne after the completion of plumbing work were of substantial value because they concealed the fact that Trademark Plumbing had performed plumbing jobs without permits, and avoided Trademark Plumbing being discovered to have performed plumbing jobs without permits, which could result in penalties of three times the original permit fees.

45. Byrne knew or had reason to know that the unwarranted privileges of creating the permits for Trademark Plumbing jobs after the fact were not properly available to him.

46. Therefore, each time Byrne as ISD Director created plumbing permits after Trademark Plumbing had performed plumbing work, inserting the names of plumbers who were not involved in the projects, Byrne used his ISD Director position to secure unwarranted privileges for himself that were not properly available to similarly situated individuals. In so doing, Byrne repeatedly violated G.L. c. 268A, § 23(b)(2)(ii).

Section 26

47. Section 26 provides that any person who violates § 23(b)(2) with fraudulent intent, shall be punished by a fine of not more than \$10,000, if the unwarranted privileges or exemptions have a fair market value in the aggregate of more than \$1,000 in any 12 month period.

48. Byrne violated § 23(b)(2)(ii) with fraudulent intent when he created

plumbing permits for work that had been performed by Trademark Plumbing because he knew (1) that Trademark Plumbing had performed the work without permits and (2) that the plumbers whom he identified on the plumbing permit applications had not performed the work.

49. The value of the unwarranted privileges and exemptions Bryne secured for Trademark Plumbing and himself through his use of his official position as described hereinabove, including the total value of the permit fees which were not paid before the Trademark Plumbing work was performed and the total value of triple fee penalty for Trademark Plumbing doing work without a permit that Bryne sought to avoid with the above-described false permits, far exceeded \$1,000.

Section 23(b)(3)

50. 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, 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.

51. By accepting loans from a private developer in 2016 and 2017, and then issuing a certificate of occupancy for a property owned by the developer, Byrne acted in a manner that would cause a reasonable person to conclude that the developer could unduly enjoy Byrne's favor in the performance of his public duties in violation of G.L. c. 268A,

§ 23(b)(3).

WHEREFORE, Petitioner asks that the Commission:

1. find that Michael Byrne violated G.L. c. 268A, §§ 19, 23(b)(2)(ii), 23(b)(3) and 26; and
2. levy such fines, issue such orders and grant such other relief as may be appropriate.

Respectfully submitted,
Petitioner State Ethics Commission
By its attorneys,



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