

RECEIVED
STATE ETHICS COMMISSION

COMMONWEALTH OF MASSACHUSETTS
2022 FEB 17 AM 9:06 STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 22-0001

IN THE MATTER

OF

ROBERT O'BRIEN

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 September 15, 2021, the Commission: (1) found reasonable cause to believe that Robert O'Brien ("O'Brien") violated G.L. c. 268A, §§ 17(a), 17(c), 19, 20, 23(b)(2)(ii) and 23(b)(4); and (2) authorized the initiation of adjudicatory proceedings.

FACTS

3. O'Brien was appointed by the Town of Sandisfield ("Town" or "Sandisfield") Board of Selectmen ("BOS") as the Town's Highway Road Superintendent on an interim basis on October 26, 2015.
4. O'Brien was appointed by the BOS as Sandisfield's Highway Road Superintendent on a permanent basis on January 25, 2016.
5. O'Brien was at all relevant times the Sandisfield Highway Road Superintendent and a Sandisfield municipal employee.
6. In his private capacity, O'Brien solely owns a business called P&R

Construction LLC (“P&R”).

P&R Snowplowing and Equipment Rental Business with the Town

7. Prior to O’Brien becoming Highway Road Superintendent in October 2015, Sandisfield paid P&R for snowplowing services.

8. After O’Brien became Highway Road Superintendent, Sandisfield continued to pay P&R for snowplowing services and began paying P&R for equipment rental services.

9. Sandisfield and P&R did not have a contract relating to equipment rental services prior to October 2015.

10. As Highway Road Superintendent, O’Brien decided when to hire P&R for snowplowing and equipment rental services.

11. Between October 26, 2015, and April 30, 2018, O’Brien, as Highway Road Superintendent, decided to hire or otherwise participated in hiring P&R for snowplowing services on 23 occasions and for equipment rentals on 19 occasions. P&R was paid a total of approximately \$55,300 by Sandisfield for these services.

Excavator Rentals

12. In May 2017, the Sandisfield Highway Department (“Highway Department” or “Department”) sought to rent an excavator.

13. O’Brien, as Highway Road Superintendent, solicited quotes for the excavator rental.

14. Three quotes dated May 11, 2017, including one from P&R, were submitted to the Highway Department.

15. O’Brien, acting as or for P&R, submitted P&R’s quote after reading the

two other bidders' quotes.

16. P&R's quote of \$1,150 per week/\$4,000 per month, signed by O'Brien as or for P&R, was the lowest of the three quotes.

17. O'Brien, as Highway Road Superintendent, decided to rent an excavator for the Highway Department from his own business, P&R.

18. Between May 2017, and December 2017, Sandisfield paid P&R approximately \$20,000 for excavator rentals.

O'Brien's Submission of P&R Invoices and Approval of Highway Department Warrants for Payment

19. As Highway Road Superintendent, O'Brien each week approved the Highway Department's weekly warrants for submission to the BOS for payment.

20. O'Brien, acting as or for P&R, submitted P&R invoices to the Highway Department for payment by leaving the invoices on the Department's secretary's desk.

21. After compiling the weekly warrants and accompanying invoices, the Department's secretary gave them to O'Brien for his approval as Highway Road Superintendent.

22. O'Brien, as Highway Road Superintendent, signed each warrant and invoice that included payment to P&R.

23. The Department's secretary then submitted the documents to the BOS for payment.

24. Between November 23, 2015, and April 2, 2018, O'Brien approved 35 Highway Department warrants that included payments to P&R totaling over \$50,000. These Town payments to P&R included approximately \$30,000 for equipment rental

services and approximately \$22,000 for snowplowing services.

Excavator Rental Double Billing for Period of June 19, 2017, through July 10, 2017.

25. On July 17, 2017, Sandisfield paid P&R \$4,000 for an excavator rental for the period between June 19, 2017, through July 14, 2017. O'Brien, as Highway Road Superintendent, approved the warrant for this payment.

26. On August 7, 2017, Sandisfield again paid P&R \$4,000 for an excavator rental for the period between June 10, 2017, through July 10, 2017. O'Brien, as Highway Road Superintendent, approved the warrant for this second payment.

27. During the period between June 10, 2017, and July 10, 2017, P&R rented to Sandisfield only one excavator. P&R was paid twice by Sandisfield for a single excavator rental for the period between June 19, 2017, and July 10, 2017.

28. When O'Brien, as Highway Road Superintendent, approved the warrant authorizing the August 7, 2017, payment to P&R he knew, or should have known, that his actions would result in P&R being paid twice for the same excavator rental for the period between June 19, 2017, and July 10, 2017.

**O'Brien's Work on P&R Paving Jobs on
Town Time**

29. On August 28, 2018, and August 29, 2018, O'Brien, acting for or as P&R, paved a private driveway.

30. On September 7, 2018, O'Brien, acting for or as P&R, paved the driveway of A&M Auto Repair (A&M), a private business. O'Brien performed all or part of this private work during his Town-paid Highway Road Superintendent worktime.

31. At a BOS meeting on September 10, 2018, O'Brien said he had worked a

half day as Highway Road Superintendent on September 7, 2018.

32. On his Sandisfield employee timesheet, O'Brien indicated he had worked eight hours as Highway Road Superintendent on September 7, 2018.

33. O'Brien's contract with the Town for employment as Highway Road Superintendent, dated May 7, 2018, required him to be at work during regular business hours Monday through Friday and, as of July 1, 2018, compensated him at an annual salary of \$66,464.00.

34. In 2018, O'Brien ordered asphalt for two P&R private paving jobs from Century Aggregates, Inc. and charged the \$1783.33 cost of the asphalt to the Town.

35. In 2018, O'Brien hired Irish Trucking to haul the asphalt for two P&R private paving jobs and told the owner of Irish Trucking to charge the Town for the hauling.

36. On both August 28, 2018, and August 29, 2018, Irish Trucking's driver met O'Brien at the Sandisfield Highway garage and O'Brien had the driver follow him to the private home where O'Brien would pave the driveway as or for P&R.

37. On September 7, 2018, Irish Trucking delivered asphalt to A&M, which was used by O'Brien, acting as or for P&R, to pave the private business' driveway.

38. As directed by O'Brien, Irish Trucking billed Sandisfield \$1,657.60 for delivering the asphalt used by O'Brien and P&R to privately pave A&M's driveway.

Erosion Control Subcontract

39. In 2017, the Tennessee Gas Pipeline ("TGP") expanded and caused damage to certain Sandisfield town roads. TGP informally agreed with the Town to repair Cold Spring Road and hired Henkels & McCoy, Inc., ("H&M") to oversee the work.

H&M in turn contracted with All State Asphalt, Inc. (“All State”) to chip seal Cold Spring Road in 2018.

40. The Town actively observed the progress of the work. O’Brien, as Highway Road Superintendent, was charged by the Town with monitoring the project.

41. In or around summer 2018, O’Brien, as Highway Road Superintendent, met with All State representative, Huck House (“House”), to discuss the Cold Spring Road repair. At the end of the meeting, House told O’Brien that All State would have to subcontract the erosion control work for the project. O’Brien responded that P&R could do the work.

42. A P&R proposal for the erosion control work was submitted to All State on August 13, 2018.

43. A written contract between P&R and All State was signed on September 13, 2018. Under the contract, All State was to pay P&R \$16,000 to install 2,200 linear feet of wattles (straw-filled synthetic sacks used for erosion control) on Cold Spring Road. P&R was required to supply all required materials.

44. On August 16, 2018, the Highway Department ordered 84 units of 25-foot straw waddles, totaling 2,100 linear feet, and 16 24-inch grade stakes (used to drive waddles into the ground), at a cost of \$2,606.13 from R.I. Baker Co., Inc (“R.I. Baker”).

45. R.I. Baker delivered the wattles to Cold Spring Road on August 17, 2018. O’Brien met the R.I. Baker driver and instructed him where to place the wattles.

46. A P&R invoice, dated September 20, 2018, was submitted to All State in the amount of \$16,000 for the labor and materials, including the wattles, used in the erosion control work on Cold Spring Road.

Law

47. As Sandisfield's interim and permanent Highway Road Superintendent, O'Brien was a municipal employee as that term is defined in G.L. c. 268A, § 1(g).

Section 17

48. General Laws chapter 268A, § 17(a) prohibits a municipal employee from, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receiving or requesting compensation from anyone other than the municipality in relation to any particular matter in which the same municipality is a party or has a direct and substantial interest.

49. General Laws chapter 268A, § 17(c) prohibits a municipal employee from, otherwise than in the proper discharge of his official duties, acting as agent or attorney for anyone other than the municipality in connection with any particular matter in which the same municipality is a party or has a direct and substantial interest.

Section 17(a) Violation

50. As the sole owner of P&R, O'Brien directly or indirectly received compensation from All State to perform the erosion control subcontract on the Cold Spring Road project in 2018.

51. Sandisfield's decision to allow TGP to repair Cold Spring Road was a particular matter.

52. The matter was of direct and substantial interest to the Town, as the Town is responsible for maintaining the road.

53. Receiving compensation from All State to perform the erosion control

subcontract for the Cold Spring Road project was otherwise than as provided by law for the proper discharge of O'Brien's official duties as Highway Road Superintendent.

54. Therefore, by receiving compensation from All State in relation to P&R's completion of the erosion control subcontract on the Cold Spring Road project, O'Brien otherwise than as provided by law for the proper discharge of official duties directly or indirectly received compensation from someone other than the Town in relation to a particular matter in which the same Town is a party or has a direct and substantial interest. In so doing, O'Brien violated G.L. c. 268A, § 17(a).

Section 17(c) Violations

Acting as Agent for P&R on Erosion Control Job

55. When O'Brien offered P&R's erosion control services following a meeting with an All State representative in or about August 2018, he acted as agent for P&R.

56. Sandisfield's decision allowing TGP to repair Cold Spring Road was a particular matter.

57. The matter was of direct and substantial interest to the Town, as the Town is responsible for maintaining the road.

58. Offering P&R's services to obtain a \$16,000 subcontract for his private business was not within the proper discharge of O'Brien's duties as Highway Road Superintendent.

59. Therefore, by acting as agent for P&R to solicit and secure an erosion control subcontract from All State for his private business on the Cold Spring Road project, O'Brien, otherwise than as provided by law for the proper discharge of his official

duties, acted as agent for someone other than the Town in relation to a particular matter in which the Town was a party and had a direct and substantial interest. In so doing, O'Brien violated G.L. c. 268A, § 17(c).

Submitting P&R Invoices for Snowplowing and Equipment Rental Services

60. By submitting thirty-five invoices between approximately November 23, 2015, and April 30, 2018, on behalf of P&R for snowplowing and equipment rental services to the Town, O'Brien acted as P&R's agent.

61. Each hiring by O'Brien as Highway Road Superintendent of P&R to provide snowplowing and equipment rental services to the Town was a contract between Sandisfield and P&R and a particular matter.

62. Sandisfield had a direct and substantial interest in the snowplowing and equipment rental services contracts between P&R and the Town because the services were for the Town and were paid for by the Town.

63. Submission of P&R invoices to the Highway Department was not within the proper discharge of O'Brien's official duties as Highway Road Superintendent.

64. Therefore, by repeatedly submitting invoices on behalf of P&R for services rendered to the Town, O'Brien otherwise than as provided by law for the proper discharge of his official duties acted as agent for someone other than the Town in relation to a particular matter in which the same Town is a party or has a direct and substantial interest. In so doing, O'Brien violated G.L. c. 268A, § 17(c).

Section 19

65. 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

Excavator Bid Solicitations

66. The Town's decision to rent an excavator in May 2017, was a particular matter.

67. O'Brien participated as Highway Road Superintendent in the particular matter by soliciting and reviewing all three quotes, each dated May 11, 2017, including the quote submitted by P&R, and then choosing P&R's quote as the low bid.

68. O'Brien knew he had a financial interest in the particular matter because he intended to submit a bid on behalf of his private business for the excavator rental.

69. Therefore, by as Highway Road Superintendent deciding to rent an excavator for the Highway Department from his own business, P&R, O'Brien participated as a municipal employee in a particular matter in which to his knowledge he had a financial interest. In so doing, O'Brien violated G.L. c. 268A, § 19.

Decisions to Hire P&R

70. Each of the forty-two decisions O'Brien made to hire and authorize payment to P&R for snowplowing and/or equipment rental services between October 26, 2015, and April 30, 2018, were particular matters.

71. O'Brien knew he had a financial interest in each of these particular matters because he was the owner of, and did business as, P&R.

72. As Highway Road Superintendent, O'Brien participated in each of these particular matters by repeatedly deciding to hire P&R for snowplowing and/or equipment rental services.

73. Therefore, by as Highway Road Superintendent, repeatedly authorizing and approving the hiring of P&R to provide snowplowing and equipment rental services to the Town, O'Brien participated as a municipal employee in particular matters in which to his knowledge he had a financial interest. In so doing, O'Brien violated G.L. c. 268A, § 19.

Approving Warrants for Payments to P&R for Submission to BOS

74. Each of the thirty-five decisions O'Brien made between November 23, 2015, and April 2, 2018, to approve, as Highway Road Superintendent, warrants for payments to P&R for submission to the BOS was a particular matter.

75. O'Brien knew he had a financial interest in each decision to approve payments to P&R.

76. O'Brien, as Highway Road Superintendent, participated in the particular matters by signing the warrants and invoices listing payments to P&R.

77. Therefore, by as Highway Road Superintendent repeatedly approving, signing, and submitting pay warrants to the Town, for services provided by P&R, O'Brien participated as a municipal employee in particular matters in which to his knowledge he had a financial interest. In so doing, O'Brien violated G.L. c. 268A, § 19

Section 20

78. General Laws chapter 268A § 20 prohibits a municipal employee from, directly or indirectly, having a financial interest in a contract made by a municipal agency of the same town, in which the town is an interested party, of which financial interest he has knowledge or has reason to know.

Section 20 Violations

79. Each equipment rental to Sandisfield by P&R between October 26, 2015, and April 30, 2018, was a contract made by a Sandisfield municipal agency, the Highway Department, in which the Town was an interested party.

80. As the sole owner of P&R, O'Brien had a financial interest in these contracts of which he had knowledge.

81. Therefore, by while Sandisfield Highway Road Superintendent, repeatedly renting equipment to the Town through his business P&R, O'Brien knowingly had a direct or indirect financial interest in multiple contracts made by a municipal agency of the Town, in which the Town was an interested party. In so doing, O'Brien violated G.L. c. 268A § 20.

Section 23(b)(2)(ii)

82. General Laws chapter 268A, § 23(b)(2)(ii) prohibits a public employee from knowingly, or with reason to know, using his official position to secure for himself or others an unwarranted privilege of substantial value that is not properly available to similarly situated individuals.

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

Excavator Bids and Contract

83. O'Brien, as a public employee, knowingly or with reason to know solicited and/or reviewed excavator rental bids in May 2017 when he intended to submit a bid for an excavator rental for his private business, P&R.

84. The opportunity to participate in soliciting and/or reviewing competing excavator rental bids prior to submitting a bid for his private business, was an unwarranted

privilege.

85. The unwarranted privilege was of substantial value because it allowed O'Brien to ensure that P&R submitted the lowest bid and was awarded the contract which paid \$1,150 per week and/or \$4,000 per month to P&R.

86. The unwarranted privilege was not available to similarly situated individuals.

87. O'Brien used his position as Highway Road Superintendent to secure the unwarranted privilege.

88. Therefore, by as Highway Road Superintendent, reviewing other bidders' excavator rental bids prior to submitting P&R's bid, O'Brien knowingly or with reason to know used his official position to ensure P&R was awarded the excavator rental contract, which was an unwarranted privilege of substantial value, not available to similarly situated individuals. In so doing, O'Brien violated G.L. c. 268A, § 23(b)(2)(ii).

Double Payments for Excavator Rental

89. O'Brien, as Highway Road Superintendent, knowingly or with reason to know submitted two pay warrants to the Town for the same one-month excavator rental from P&R during the period of June 19, 2017, through July 10, 2017.

90. Being paid twice for a single one-month excavator rental is an unwarranted privilege.

91. The unwarranted privilege was of substantial value as the extra payment was for \$4,000.

92. The unwarranted privilege was not available to similarly situated individuals.

93. Therefore, by as Highway Road Superintendent, submitting two pay warrants to the Town for one monthly excavator rental from P&R during the period of June 2017 through July 2017, O'Brien knowingly or with reason to know used his official position to secure for P&R and/or himself an unwarranted privilege of substantial value not available to similarly situated individuals. In so doing, O'Brien violated G.L. c. 268A, § 23(b)(2)(ii).

Private P&R Purchases Charged to the Town

94. In or about August 2018, and September 2018, O'Brien, as Highway Road Superintendent, knowingly or with reason to know charged or attempted to charge the Town for materials and services, including asphalt, trucking delivery services, and erosion control materials to be used in P&R's private jobs.

95. The ability to charge the Town for asphalt, trucking delivery services, and erosion control materials for P&R's private jobs was an unwarranted privilege.

96. The unwarranted privilege was of substantial value as the value of the asphalt was over \$1,700, the value of the trucking delivery services was over \$1,600, and the value of the erosion control materials was over \$2,600.

97. The unwarranted privilege was not properly available to similarly situated individuals.

98. Therefore, by repeatedly using his position as Highway Road Superintendent to submit pay warrants to the Town for materials and services purchased for and used by P&R on its private jobs, O'Brien knowingly or with reason to know used his official position to secure for himself and/or P&R an unwarranted privilege of substantial value, not properly available to similarly situated individuals and violated G.L.

c. 268A, § 23(b)(2)(ii).

Receiving Compensation from the Town for Hours Not Worked

99. O'Brien, as Highway Road Superintendent, knowingly or with reason to know, received compensation from the Town for four hours he did not work on September 7, 2018.

100. Being paid by one's municipal employer for hours not worked is an unwarranted privilege.

101. The unwarranted privilege was of substantial value as the compensation for the four hours he did not work was in excess of \$50.

102. The unwarranted privilege was not available to similarly situated individuals.

103. Therefore, by using his position as Highway Road Superintendent to be paid by the Town for four hours he did not work, O'Brien knowingly or with reason to know used his official position to secure for himself an unwarranted privilege of substantial value not properly available to similarly situated individuals. In so doing, O'Brien violated G.L. c. 268A, § 23(b)(2)(ii).

Soliciting Erosion Control Subcontract

104. O'Brien, as Highway Road Superintendent, solicited an erosion control subcontract for his private company from All State when he met with All State regarding the Cold Spring Road project in or around the Summer of 2018.

105. Soliciting and obtaining a private job for one's private company while acting in one's public capacity is an unwarranted privilege.

106. The unwarranted privilege was of substantial value as the erosion control

subcontract was worth \$16,000.

107. The unwarranted privilege was not available to similarly situated individuals.

108. Therefore, O'Brien used his position as Highway Road Superintendent to secure an erosion control subcontract for P&R on the Cold Spring Road project, thereby knowingly or with reason to know using his official position to secure for himself and/or others an unwarranted privilege of substantial value not properly available to similarly situated individuals. In so doing, O'Brien violated G.L. c. 268A, § 23(b)(2)(ii).

Section 23(b)(4)

109. General Laws chapter 268A, § 23(b)(4) prohibits a public employee from, knowingly or with reason to know, presenting a false or fraudulent claim to his employer for any payment or benefit of substantial value.

Section 23(b)(4) Violations

Submitting Two Pay Warrants for One Monthly Excavator Rental

110. O'Brien's employer was the Town.

111. O'Brien presented a false or fraudulent claim to the Town when he submitted two pay warrants to the Town for one monthly excavator rental from P&R during the period of June 19, 2017, through July 10, 2017, which included payment for a period of time for which P&R had already been paid.

112. The false or fraudulent claim for payment was of substantial value because the value of the payment was \$4,000. O'Brien knew or had reason to know that his claim was false or fraudulent at the time he presented it.

113. Therefore, as Highway Road Superintendent, O'Brien, knowingly or with

reason to know, presented a false or fraudulent claim to his employer for a payment or benefit of substantial value by submitting two pay warrants to the Town for one monthly excavator rental from P&R during the period of June 2017 through July 2017 and violated G.L. c. 268A, § 23(b)(4).

Timesheet for Hours Not Worked

114. O'Brien presented a false or fraudulent claim to the Town when he submitted his timesheet indicating he worked eight hours on September 7, 2018, when he did not work at least four of those hours.

115. The false claim was of substantial value because it was a request for payment of \$50 or more for work which O'Brien had not performed. O'Brien knew or had reason to know that his claim was false at the time he presented it.

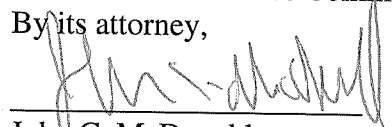
116. Therefore, as Highway Road Superintendent, O'Brien, knowingly or with reason to know, presented a false or fraudulent claim to his employer for a payment or benefit of substantial value by submitting timesheets to the Town for hours during which he had not worked for the Town. In so doing, O'Brien violated G.L. c. 268A, § 23(b)(4).

WHEREFORE, Petitioner asks that the Commission:

1. find that O'Brien violated G.L. c. 268A, §§ 17(a), 17(c), 19, 20, 23(b)(2)(ii) and 23(b)(4); and
2. impose a civil penalty and grant such other relief as may be appropriate.

Respectfully submitted,

Petitioner State Ethics Commission
By its attorney,



John C. McDonald
Assistant Agency Counsel
Enforcement Division
State Ethics Commission
One Ashburton Place, Room 619
Boston, MA 02108
(617) 371-9500
BBO# 567524
john.c.mcdonald@mass.gov

Date: February 17, 2022