

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 11-0017

IN THE MATTER

OF

RICHARD W. MCDONOUGH

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 Richard W. McDonough ("McDonough") repeatedly violated G.L. c. 268A, § 23(b)(2) by using his official position as Merrimack Special Education Collaborative Director of Public Affairs and Governmental Relations to obtain 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. 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.

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

7. 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.

8. John Barranco ("Barranco") was the Center's executive director during the 2001 through 2008 period.

9. 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.

10. 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").

11. McDonough remained on the Collaborative's payroll as Public Affairs

Director until December 31, 2008.

12. 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.

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

14. 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.

15. 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.

16. 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.

17. Without the creditable service with the Collaborative, McDonough would not have been eligible for a public pension because, having taken out his own 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.

18. 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

19. General Laws chapter 268A, § 23(b)(2), as in effect in 2003 through 2008, prohibited a municipal employee from 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.

20. As the Public Affairs Director, McDonough was a municipal employee within the meaning of G.L. c. 268A.

21. 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.

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

23. 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.

24. McDonough used his Public Affairs Director position to secure the compensation, full-time medical benefits, full-time dental benefits and full-time retirement benefits.

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

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

27. Thus, McDonough knowingly, or with reason to know, used his official position as the Public Affairs Director, to secure for himself unwarranted privileges of substantial value not properly available to similarly situated individuals, thereby repeatedly violating G.L. c. 268A, § 23(b)(2).

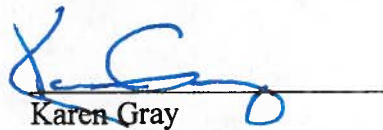
WHEREFORE, Petitioner asks that the Commission:

1. find that McDonough repeatedly violated G.L. c. 268A, § 23(b)(2) 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 McDonough under G.L. c. 268A, § 21 to pay to the Commission on behalf of the Collaborative damages in the amount of the economic advantage McDonough received in violating G.L. c. 268A or \$500, whichever is greater;
 - b. ordering McDonough 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
 - c. authorizing a civil action against McDonough 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

- d. 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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