

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 18 - 0005

IN THE MATTER

OF

ROBERT MACDONALD

DISPOSITION AGREEMENT

The State Ethics Commission (“Commission”) and Robert MacDonald (“MacDonald”) enter into this Disposition Agreement pursuant to Section 3 of the Commission’s *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On October 20, 2016, the Commission initiated a preliminary inquiry, pursuant to G.L. c. 268B, § 4(a), into possible violations of the conflict of interest law, G.L. c. 268A. On December 21, 2017, the Commission concluded its inquiry and found reasonable cause to believe that MacDonald violated G.L. c. 268A, §§ 19 and 23(b)(2)(ii).

The Commission and MacDonald now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. MacDonald, a resident of Dighton, was the Dighton Police Chief during the relevant time.
2. The Dighton Board of Selectmen is the appointing authority for the

Dighton Police Department (“DPD”).

3. In or about July 2015, there were two open full-time police officer positions in the DPD.

4. The starting weekly pay for a full-time DPD police officer was \$976.63 at \$26.16/hour. The hourly pay for a reserve officer was \$16.01/hour.

5. In July 2015, MacDonald’s son was living with him.

6. MacDonald knew his son had an interest in a full-time police officer position.

7. As of July 2015, the Town had no written policies and procedures for hiring police officers. The DPD’s unwritten but established practice was to post open full-time police officer positions internally. Interested candidates would then submit letters of intent documenting their interest in the positions.

8. MacDonald, as the Dighton Police Chief, decided not to post the two full-time police officer positions and instead directed a member of his command staff to call the eleven police officers on the DPD reserve officer list to inquire as to their interest in the positions. The DPD’s practice was to hire full-time officers from its reserve officers list.

9. MacDonald’s son was one of eleven reserve officers on the DPD reserve officers list.

10. At least six reserve officers expressed their interest in the open positions, however their interest in the positions was not documented by letters of intent submitted in accordance with the DPD’s unwritten but established practices.

11. No interviews were conducted for the two open full-time police officer

positions.

12. MacDonald, as the Dighton Police Chief, decided to recommend his son and another DPD reserve officer to the Board of Selectmen for appointment to the two full-time police officer positions. MacDonald personally presented the recommendation on September 30, 2015, and presented a memorandum, signed by him and the DPD's Command Staff of three sergeants, documenting the recommendation. The Board of Selectmen accepted the recommendation and appointed MacDonald's son and the other candidate to the full-time police officer positions.

Conclusions of Law

§ 19

13. As Dighton Police Chief, MacDonald was a municipal employee as that term is defined in G.L. c. 268A, § 1.

14. Except as otherwise permitted,¹ § 19 of G.L. c. 268A prohibits a municipal employee from participating² as such an employee in a particular matter³ in which, to his

¹ None of the exemptions applies. In order for MacDonald not to have violated § 19, a public written determination by the Selectmen under § 19 (b)(1) allowing MacDonald to participate in the hiring of his son would have to have been made before that participation, even if, as here, one or more Selectmen knew that the Chief's son was a candidate. No such determination was made by the Selectmen.

² "Participate" means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, § 1(j).

³ "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, § 1(k).

knowledge, he or an immediate family member⁴ has a financial interest.⁵

15. The decision to appoint and hire two full-time DPD police officers was a particular matter for which the Board of Selectmen was responsible.

16. MacDonald participated as the Dighton Police Chief in the particular matter of the appointment and hiring of the two police officers by deciding not to post the positions and instead directing a member of his command staff to call the reserve police officers, by deciding to recommend his son for appointment to a full-time police officer position, and by presenting that recommendation to the Board of Selectmen.

17. MacDonald's son is a member of MacDonald's immediate family.

18. MacDonald's son had a financial interest in the particular matter because of the compensation he would receive if he were appointed and hired as a full-time DPD police officer.

19. At the time of his participation, MacDonald knew that his son had a financial interest in his appointment and hiring as a full-time police officer.

20. Accordingly, by participating as the Dighton Police Chief in the appointment and hiring of his son as a full-time DPD police officer including by making a recommendation to the Selectmen, MacDonald violated § 19.

⁴ "Immediate family" means the employee and his spouse, and their parents, children, brothers and sisters. G.L. c. 268A, § 1(e).

⁵ "Financial interest" means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. See *Graham v. McGrail*, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. See *EC-COI-84-98*. The interest can be affected positively or negatively. *EC-COI-84-96*.

§ 23(b)(2)(ii)

21. Section 23(b)(2)(ii) of G.L. c. 268A 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, which are of substantial value,⁶ and which are not properly available to similarly situated individuals.

22. The appointment of MacDonald's son to a full-time DPD police officer position was a privilege.

23. Here, the privilege was unwarranted because the appointment was secured through a process that was contrary to the DPD's unwritten but established practices.

24. The privilege was of substantial value because the starting weekly pay for a full time DPD police officer was over \$50 more than the amount a DPD reserve officer would be paid for the same number of hours of work.

25. Here, the privilege was not properly available to similarly situated individuals because MacDonald recommended his son's appointment after MacDonald had failed to follow the DPD's unwritten but established practice of posting open positions and allowing interested candidates to submit letters of intent documenting their interest in the positions.

26. By deciding as the Dighton Police Chief not to follow the unwritten but established practice of posting the positions and allowing reserve officers to submit letters of intent documenting their interest in the positions, and instead directing the use of a telephone call process that did not document reserve officers' interest in the positions, MacDonald used his official position to secure his son's appointment. In so

⁶ The Commission has established a \$50.00 threshold to determine "substantial value." 930 CMR 5.05.


doing, MacDonald knowingly or with reason to know used his official position to secure for his son an unwarranted privilege of substantial value that was not properly available to similarly situated individuals and violated § 23(b)(2)(ii).


In view of the foregoing violations of G.L. c. 268A by MacDonald, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Robert MacDonald:

- (1) that MacDonald pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$7,000 as a civil penalty for violating G.L. c. 268A, §§ 19 and 23(b)(2)(ii); and
- (2) that MacDonald waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

By signing below, Robert MacDonald acknowledges that he has personally read this Disposition Agreement, that it is a public document, and that he agrees to all of the terms and conditions therein.

STATE ETHICS COMMISSION


Robert MacDonald Date
05/02/18


David A. Wilson Date
Executive Director 5/21/18