



# **Wearing Multiple Hats Separation of Municipal Duties Regionalization Issues**

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## **Laws and Best Practices Governing Separation of Municipal Duties Regionalization Issues**

### **Workshop C 2019**

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## Discussion Questions

1. Anytown is a small town with a single-member elected board of assessors. The single assessor in Anytown, who has been doing a great job for the last 20 years, is about to retire. Anytown is finding it difficult to attract qualified people to run for election as his replacement. To make the position more attractive, the board of selectmen would like to appoint an assistant assessor. Can the selectboard do that? G.L. c. 41, § 25A. Opinion letter 2002-529
2. A board of assessors has just appointed one of its members to the position of assistant assessor when that position became vacant. As an elected assessor the member receives a stipend of \$5,000 set and appropriated by the town at its annual town meeting under G.L. c. 41, § 108. The assistant assessor's salary is appropriated in the personal services line of the board's annual budget, which is used to pay the assistant and the part-time assessor's clerk pursuant to amounts established in a collective bargaining agreement. Currently that amount is \$85,000 for the assistant. Is the appointment permitted under the municipal finance law? The conflict of interest law? Assuming the appointment is permitted, may the assessor/assistant receive the \$85,000 salary provided in the collective bargaining agreement for the assistant as well as the \$5,000 stipend as assessor? G.L. c. 41, § 4A; G.L. c. 268A, § 20, 21A; Opinions 2002-529 and 95-550; EC-COI-93-18
3. How does a municipality combine its elected treasurer position with its elected collector position into one position and make it an appointed position? G.L. c. 41, § 1B
4. The town of Dana is adjacent to Anytown and is larger and has a three-member appointed board of assessors. Additionally, the Dana assessing board has an appointed full-time assistant assessor under G.L. c. 41, § 25A to assist them with their assessing duties. At a recent county assessing meeting, the assessors from both towns were seated at the same table and, over a lunch of chicken and rice, discussed the challenge that Anytown is facing in finding a suitable person to be its assessor. Fortunately, one of the assessors had recently attended a DLS training about regionalization of assessing offices and suggested that the two towns look into doing this. G.L. c. 41, § 30B. DLS Handout Inter-Municipal Assessing Agreements.
  - Is regionalization of assessing positions and duties allowed?
  - What are the options for regionalizing assessing offices under G.L. c. 41, § 30B?
  - What happens to the existing boards of assessors in each town?
  - What are some other considerations?
  - What is the process for approving a regional assessing agreement?
  - Why can't a municipality simply enter into an inter-municipal agreement under G.L. c. 40, § 4A – that way, DOR approval is not required?
  - Have any communities followed this process?

5. As the fiscal year is closing, the town accountant receives a request from the school department to pay to several employees who are retiring a check in the amount of \$15,000. The only notation on the request was “sick leave buy-back.” The accountant contacted the school department and asked for a copy of the contract and provision showing entitlement to the payment and substantiation that the individual had the remaining sick leave accrued and unused to his credit. When the board of selectmen heard that the accountant had requested this information and was withholding payment until he received the requested documentation, the board adopted a policy that the town accountant not request any information from the school department and process its requests expeditiously. Is the Board of Selectmen’s policy legally enforceable? What if the policy were to be approved by town meeting in the form of a bylaw? G.L. c. 41, §§ 52, 56 – 57. Home Rule Amendment, Article 89, Mass. Constitution.
6. Must a town have a town accountant? G.L. c. 41, §§ 1 and 55.
7. May a town contract with a firm to provide accounting services? If so, does it still have to have a person designated as town auditor or accountant? G.L. c. 41, § 55 (town accountant) and § 1 (auditor). G.L. c. 41, §§ 15 and 107.
8. The appointed town treasurer has resigned and the selectboard wants to appoint the town accountant to temporarily perform the treasurer’s duties as the town accountant is very good with figures. Is this acceptable? G.L. c. 41, §§ 40, 55; G.L. c. 268A, § 20
9. Can my town contract with a single consultant for both accounting services and treasurer services? G.L. c. 41, § 55; G.L. c. 268A, § 20
10. The tax collector is on an extended leave of absence. May the selectmen appoint one of the assessors as temporary collector. The assessors have a pretty good idea of what the collector does as his job also relates to taxes. G.L. c. 41, § 24.
11. The Town of Waterbury’s full-time assistant assessor is an appointed constable in the same town, who collects fees for service of court papers to private residents of the town. Does the state's conflict of interest law, G.L. c. 268A, and any other law permit serving in both positions? G.L. c. 41, §§ 39 and 91A, G.L. c. 268A, § 20, SEC Opinion COI-86-10
12. An appointed Assistant Assessor in the Town of Chilbridge is considering running in the next town election for a seat on the Board of Assessors. Can she hold both positions? G.L. c. 268A, § 20; G.L. 268A, § 21A; Opinion 1997-536
13. The Town of Scarborough, Massachusetts at its last local election did not vote in favor of a proposed Proposition 2 ½ override. The Town is now left with a shortfall that must be resolved through employee layoffs. The Board of Selectmen is considering consolidating

departments and creating one or more combined clerk position(s) whose job descriptions will be to provide services to more than one department. The Board is faced with laying off two of the following clerks from the following positions: the Town Clerk's clerk, the Assessors' clerk, the Treasurer's clerk and the Collector's clerk. May an Assessor's clerk who abates bills work in the Collector and Treasurer's office? May the Treasurer's clerk and Collector's clerk work in the Assessors' office? Conflicts? G.L. c. 41, § 24; G.L. c. 268A, § 20; Email 2009-518

14. The Town Accountant of the Town of Portlandale asks for advice on whether she may take a paid position as School Business Manager for the School Department. The hours for performing both positions would not conflict. May she serve in both roles? G.L. c. 41, § 55; G.L. c. 71, § 37M; G.L. c. 268A, § 20; Opinion 2000-327
15. The Town of Camberville's three-member Board of Assessors has a pending abatement application. One board member is the son-in-law of the abatement applicant, while another board member is also the son-in-law of the applicant. May all members vote on the application? G.L. c. 268A, § 19; Opinion 1999-108; SEC Advisory – Rule of Necessity
16. The Town Accountant of the Town of Sweetwater receives an extra stipend of \$3,000 to administer the Town's Retirement Board. Last year, the Retirement Board, on which the Town Accountant is an ex-officio member, created and funded the new position of Executive Director of the Retirement Board, at a salary of \$12,000. Before the vote establishing the new position, the Board discussed appointing the Town Accountant to the position. The Town Accountant participated in the discussion and the vote to create the new position. The Board then voted, with the Town Accountant abstaining, to appoint the Town Accountant to the position of Executive Director. The Town Accountant served as both the paid Town Accountant and paid Retirement Board Executive Director for three years before he retired. Was the holding of both positions in compliance with ethics rules? Any other violations? G.L. c. 268A, § 20; SEC Disposition Agreement, October 13, 2006
17. Two families, members of which served in numerous paid and volunteer positions with the Town of Muenster, population 298, resign from their Town positions and retire to Florida. The loss of the two families leaves a number of unfilled positions in the Town, preventing quorums in the Board of Assessors, the Zoning Board of Appeals and other boards, as well as vacancies in the office of Town Treasurer. The only potential qualified replacements already serve in paid Town positions. What issues must the Board of Selectmen consider in replacing the unfilled positions? G.L. c. 41, § 24; G.L. c. 41, § 55; G.L. c. 268A, § 20; SEC Advisory, Rule of Necessity
18. A Surf City City Council member is the finalist for a financial management position with the Surf City Housing Authority. The member contends that the Housing Authority is

not a Surf City municipal agency because it is funded by the Commonwealth of Massachusetts. May she take the position? G.L. c. 121B, § 7; G.L. c. 268A, §§ 20, 23; SEC Decision and Order, June 25, 1987

19. The selectboard of the Town of Oakbury, a three-member body, is seeking to save money in the administration of the Town's assessment functions, and to have a policy role in assessment decisions. The Board of Assessors is charged with performing statutory assessing functions – assessing and apportioning the value of real and personal property, granting exemptions and abatements, issuing commitments for the collection of taxes, appointing an assistant assessor and other pertinent duties. The members of the selectboard were successful in obtaining approval from town meeting and the voters, under G.L. c. 41, § 21, to change the mode of selection of its Board of Assessors from elected positions to appointed positions. The members of the selectboard voted to appoint two of its own members to the three-member Board of Assessors and voted to appoint a resident of the town to serve as the remaining member of the Board of Assessors. The selectboard also voted to contract with a private firm to provide assessing services. What is the status of the Town's assessment functions?  
G.L. c. 41, §§ 4A and 21; G.L. c. 41, § 25A; G.L. c. 268A, § 21A
20. The towns of Ripton and Chebeague are each facing retirements of long-term town administrators. The selectboards of each town have been meeting together monthly on ways by which the two towns may effect efficiencies through the joint purchase of goods and services to be shared by the towns, in accordance with an inter-municipal agreement, pursuant to G.L. c. 40, § 4A. Seeing an opportunity to share their first employee, the towns decided to amend their inter-municipal agreement to allow the joint hiring of a chief administrative officer to handle the duties previously assigned to their individual town administrators. The towns were able to attract talented candidates for the position of chief administrative officer, as the salary for one chief administrative officer was higher than the salary for the two individual town administrator positions, and the rural nature of the region allowed for lower housing costs than the nearby urban region. The new chief administrative officer utilized her previous experience and education to facilitate efficient government administration in each town. Based upon the success of the sharing of the services of the chief administrative officer, the selectboards of both towns now wish to explore sharing other town functions. The selectboards have formed a regional dispatch group and requested the chief administrative officer to research the development of shared police dispatch and fire alarm monitoring services. What are the issues involved in the chief administrative officer's research of coordination of police dispatch and alarm monitoring services? G.L. c. 268A, § 17; SEC Opinion, Ashburnham, March 2, 2012; St. 2016, c. 304
21. The city of Croninville's Department of Public Works ("DPW") operates a municipal landfill. It utilizes large DPW motor vehicles, such as dump trucks, graders and backhoes on occasion to service the municipal landfill. The neighboring town of

Huntsville is facing imminent closure of its landfill due to capacity issues. The mayor of the city of Croninville, sensing an opportunity to share costs of its landfill operation, offered to enter into a joint agreement with the town of Huntsville to share and operate its landfill. The two municipalities decided to formalize their shared operation of the landfill by entering into a Joint Powers Agreement, pursuant to G.L. c. 40, § 4A½. The Joint Powers Act, authorizing Joint Powers Agreement, was created by the Municipal Modernization Act, St. 2016, c. 218, § 20. The Joint Powers Act allows two or more units of local government to jointly perform municipal services through the creation of a new regional entity. Here, the two municipalities entered into the Joint Powers Agreement, with approval of the city council and the selectboard, and agreed to create a new regional entity to operate the landfill and, among other things, to contribute several large motor vehicles to the operation from their respective DPW fleets. Both municipalities realized significant cost savings in their landfill operations budgets. Prior to the end of the first year of operations of the Joint Powers Agreement, a rogue tornado ripped through both municipalities, causing extensive damage to both municipalities from fallen buildings and trees. The mayor and the selectboard, in responding to their respective emergencies, ordered the board of directors of the landfill created under the Joint Powers Agreement to release the landfill's heavy equipment vehicles to respond to emergency cleanup operations in both municipalities. The board of directors refused to honor the municipalities' requests, stating that emergency cleanup would significantly damage the vehicles transferred by the Joint Powers Agreement to the regional landfill operation. What recourse do the two municipalities have relative to their request for the equipment? G.L. c. 40, § 4A½

22. The towns of Belgium, Allandale and Bishop obtained special legislation some time ago to create the Apple Valley Regional Fire District ("District"). It is a district as described in G.L. c. 40, § 1A. The District is governed by a prudential committee. The prudential committee is now proposing to invite a new community, the Town of Koty, to enter into a shared services agreement with the District. Due to a long-standing high school rivalry, the Town of Allandale strongly objects to the District's offer to the Town of Koty to enter into a shared services agreement with the District. Allandale is now requesting that the selectboards of Belgium, Allandale and Bishop vote on whether Koty should be allowed to enter into a shared services agreement with the District. How may Koty enter into an agreement with the District? Can the District sign an Inter-municipal Agreement ("IMA") absent an enabling vote from each district member's selectboard? G.L. c. 40, § 1A; G.L. c. 40, § 4A
23. The towns of Blake and Hartville are in discussions relative to entering into a joint services agreement to hire specially-trained personnel to monitor compliance by licensed medical and recreational marijuana providers to assure they are in compliance with their host community agreements and other provisions governing the operations of their facilities. The towns each utilize the services of Attorney Willard Scott as their respective town counsel. How may the towns enter into such an agreement? May the

two towns utilize Attorney Scott to provide legal services relative to the agreement? G.L. c. 40, § 4A; G.L. c. 40, § 4A½; G.L. c. 268A, § 17; G.L. c. 268A, § 20



## **HOME RULE AMENDMENT**

### **Mass. Const. Amend. Article 89**

*Section 6. Governmental Powers of Cities and Towns.* - Any city or town may, by the adoption, amendment, or repeal of local ordinances or by-laws, exercise any power or function which the general court has power to confer upon it, which is not inconsistent with the constitution or laws enacted by the general court in conformity with powers reserved to the general court by section eight, and which is not denied, either expressly or by clear implication, to the city or town by its charter. This section shall apply to every city and town, whether or not it has adopted a charter pursuant to section three.

*Section 8. Powers of the General Court.* - The general court shall have the power to act in relation to cities and towns, but only by general laws which apply alike to all cities or to all towns, or to all cities and towns, or to a class of not fewer than two, and by special laws ... This section shall apply to every city and town whether or not it has adopted a charter pursuant to section three.

## **DISTRICT DEFINED**

### **General Laws Chapter 40, § 1A**

Section 1A. Except as otherwise expressly provided, the word "district", as used in this chapter, shall mean a fire, water, sewer, water pollution abatement, refuse disposal, light, or improvement district, or any other district, howsoever named, formed for the purpose of carrying out any of the aforementioned functions, whether established under general law or special act.

## **GOVERNMENTAL UNITS; JOINT OPERATION OF PUBLIC ACTIVITIES; TERMINATION OF AGREEMENT; "GOVERNMENTAL UNIT" DEFINED; FINANCIAL SAFEGUARDS**

### **General Laws Chapter 40, § 4A**

Section 4A. The chief executive officer of a city or town, or a board, committee or officer authorized by law to execute a contract in the name of a governmental unit may, on behalf of the unit, enter into an agreement with another governmental unit to perform jointly or for that unit's services, activities or undertakings which any of the contracting units is authorized by law to perform, if the agreement is authorized by the parties thereto, in a city by the city council with the approval of the mayor, in a town by the board of selectmen and in a district by the prudential committee; provided, however, that when the agreement involves the expenditure of funds for establishing supplementary education centers and innovative educational programs, the agreement and its termination shall be authorized by the school committee. Any such agreement shall be for such maximum term, not exceeding twenty-five years, and shall establish such maximum financial liability of the parties, as may be specified in the authorizing votes of the parties thereto. A governmental unit, when duly authorized to do so in accordance with the provisions of law applicable to it, may raise money by any lawful means, including the incurring

of debt for purposes for which it may legally incur debt, to meet its obligations under such agreement. Notwithstanding any provisions of law or charter to the contrary, no governmental unit shall be exempt from liability for its obligations under an agreement lawfully entered into in accordance with this section. For the purposes of this section, a "governmental unit" shall mean a city, town or a regional school district, a district as defined in section 1A, a regional planning commission, however constituted, a regional transit authority established under chapter 161B, a water and sewer commission established under chapter 40N or by special law, a county, or a state agency as defined in section 1 of chapter 6A.

All agreements put into effect under this section shall provide sufficient financial safeguards for all participants, including, but not limited to: accurate and comprehensive records of services performed, costs incurred, and reimbursements and contributions received; the performance of regular audits of such records; and provisions for officers responsible for the agreement to give appropriate performance bonds. The agreement shall also require that periodic financial statements be issued to all participants. Nothing in this section shall prohibit any agreement entered into between governmental units from containing procedures for withdrawal of a governmental unit from said agreement. A decision to enter into an - agreement under this section, or to join a regional entity, shall be solely subject to the approval process of the towns' elected bodies.

All bills and payrolls submitted for work done under any such agreement shall be plainly marked to indicate that the work was done under authority thereof. Any reimbursement for or contribution toward the cost of such work shall be made at such intervals as the agreement provides. The amount of reimbursement received under any such agreement by any governmental unit shall be credited on its books to the account of estimated receipts, but any funds received under the provisions of section fifty-three A of chapter forty-four for contribution toward the cost of such work may be expended in accordance with the said provisions. The equipment and employees of a governmental unit while engaged in performing any such service, activity or undertaking under such an agreement shall be deemed to be engaged in the service and employment of such unit, notwithstanding such service, activity or undertaking is being performed in or for another governmental unit or units.

## **JOINT POWERS AGREEMENTS**

### **General Laws Chapter 40, § Section 4A $\frac{1}{2}$**

Section 4A $\frac{1}{2}$ . (a) For purposes of this section, the following words shall, unless the context requires otherwise, have the following meanings:—

"Governmental unit", a city, town or a regional school district, a district as defined in section 1A, a regional planning commission, however constituted, the Hampshire council of governments, a regional transit authority established pursuant to chapter 161B, a water and sewer commission established pursuant to chapter 40N or by special law, a county, or a state agency, as defined in section 1 of chapter 6A.

"Joint powers agreement", a contract specifying the terms and conditions of the joint exercise of powers and duties entered into by participating governmental units pursuant to the laws governing any such unit and this section.

"Region", any geographically-designated area within which the powers and duties provided in a joint powers agreement shall be exercised.

(b) The chief executive officer of a city or town, or a board, committee or officer authorized by law to execute a contract in the name of a governmental unit may, on behalf of the unit, enter into a joint powers agreement with another governmental unit for the joint exercise of any of their common powers and duties within a designated region; provided, however, that the joint powers agreement shall not apply to veterans' services in any city or town or districts and municipal veterans' services and departments shall be subject to chapter 115. The joint powers agreement shall be authorized by the parties thereto in the following manner: in a city, by the city council with the approval of the mayor; in a town, by the board of selectmen; and in a district, by the prudential committee. A decision to enter into a joint powers agreement pursuant to this section, or to join an existing region, shall not be subject to bargaining pursuant to chapter 150E.

(c) The joint powers agreement shall specify the following: (1) the purpose and the method by which the purpose sought shall be accomplished; (2) the services, activities or undertakings to be jointly performed within the region; (3) the specific organization, composition and nature of the entity created thereby to perform the services, activities or undertakings within the region, and the specific powers and duties delegated thereto; provided, however, that such entity shall be a body politic and corporate created pursuant to subsection (d) whose funds shall be subject to an annual audit and a copy of such audit shall be provided to the member governmental units and to the division of local services in the department of revenue; (4) the manner of: (i) financing the joint services, activities or undertakings within the region, (ii) establishing and maintaining a budget therefore and (iii) authorizing borrowing pursuant to subsection (e), including any limitations on the purposes, terms and amounts of debt the entity may incur to perform such services, activities or undertakings; (5) any procedures related to the termination of the joint powers agreement, the withdrawal of any participating governmental unit and the addition of any new governmental units; and (6) its duration.

(d) An entity established by a joint powers agreement shall be a body politic and corporate with the power to: (1) sue and be sued; (2) make and execute contracts and other instruments necessary for the exercise of the powers of the region; (3) make, amend and repeal policies and procedures relative to the operation of the region; (4) receive and expend funds; (5) apply for and receive grants from the commonwealth, the federal government and other grantors; (6) submit an annual report to each member governmental unit, which shall contain a detailed financial statement and a statement showing the method by which the annual charges assessed against each governmental unit were computed; and (7) any such other powers as are necessary to properly carry out its powers as a body politic and corporate.

(e) An entity created pursuant to this section shall be governed by a board of directors comprised of at least 1 member representing each participating governmental unit. Each member of the board of directors shall be entitled to a vote. No member of the board of directors shall receive an additional salary or stipend for their service as a board member. The board of directors shall coordinate the activities of the entity and may establish any policies and procedures necessary to do so. The board of directors shall establish and manage a fund to which all monies contributed by the participating governmental units, and all grants and gifts from the federal or state government or any other source shall be deposited. The board of directors shall appoint a treasurer who may be a treasurer of 1 of the participating governmental units. No member of the board of directors or other employee of the entity shall be eligible to serve concurrently as treasurer. The treasurer, subject to the direction and approval of the board of directors, shall be

authorized to receive, invest and disburse all funds of the entity without further appropriation. The treasurer shall give bond for the faithful performance of his duties in a form and amount as fixed by the board of directors. The treasurer may make appropriate investments of the funds of the entity consistent with section 55B of chapter 44.

The board shall appoint a business officer who may be a city auditor, town accountant or officer with similar duties, of 1 of the participating governmental units. The business officer shall have the duties and responsibilities of an auditor or accountant pursuant to sections 52 and 56 of chapter 41 and shall not be eligible to hold the office of treasurer.

The board of directors may borrow money, enter into long or short-term loan agreements or mortgages and apply for state, federal or corporate grants or contracts to obtain funds necessary to carry out the purposes of the entity. The borrowing, loans or mortgages shall be consistent with the joint powers agreement, standard lending practices and sections 16 to 28, inclusive, of chapter 44. The board of directors may, subject to chapter 30B, enter into contracts for the purchase of supplies, materials and services and for the purchase or lease of land, buildings and equipment, as considered necessary by the board of directors.

(f) The entity shall be a public employer. The board of directors may employ personnel to carry out the purposes of the joint powers agreement and establish the duties, compensation and other terms and conditions of employment of personnel.

(g) A participating governmental unit shall not be liable for the acts or omission of another participating government unit or the region or any entity created by the joint powers agreement, unless the participating governmental unit has agreed otherwise in the joint powers agreement.

(h) A regional school district, superintendency union, educational collaborative, charter school or commonwealth virtual school may only be formed as provided in the applicable provisions of the General Laws, and no joint powers agreement made pursuant to this section may, in substance, create such a district, union, collaborative, charter school or virtual school, irrespective of how the entity created pursuant to a joint powers agreement may be characterized or named. A joint powers agreement relating to public schools may only be entered into by the school committee, or other governing board, as applicable.

## **TOWN OFFICERS TO BE ELECTED; TENURE**

### **General Laws Chapter 41, § 1**

Section 1. Every town at its annual meeting shall in every year when the term of office of any incumbent expires, and except when other provision is made by law or by charter, choose by ballot from its registered voters the following town officers for the following terms of office:

A town clerk for the term of one or more years.

A town treasurer for the term of one or more years.

One or more collectors of taxes for the term of one or more years, unless the town votes otherwise or votes to authorize its treasurer to act as collector.

Three or more selectmen for the term of not more than three years, subject to the provisions of section twenty-one.

One or more assessors for the term of not more than three years.

One or more auditors for the term of one or more years, except where such office is abolished as provided in section fifty-five.

One or more highway surveyors for the term of one or more years; or one or more road commissioners for the term of one or more years.

One or more sewer commissioners for the term of one or more years if the town has provided for such officers, unless the town by vote authorizes its road commissioners to act as sewer commissioners.

A tree warden for the term of one or more years, unless the town by vote or by-law provides that he shall be appointed.

One or more constables for a term of one or more years, unless the town by vote provides that they shall be appointed.

Three or more members of the school committee for terms of not more than three years.

Three or more assistant assessors, if the town so votes, for the term of not more than three years.

Three or more members of the board of health for the term of one or more years if the town provides for such board, otherwise the selectmen shall act as a board of health.

All other town officers shall be appointed by the selectmen unless other provision is made by law or by vote of the town.

In any town or district in which the election date of the officers, authorized under this section, is changed, the officers currently serving shall continue to hold their offices until the appointment or election and qualification of their successors.

In any case where three or more members of a board are to be elected for terms of more than one year, as nearly one-third as may be shall be elected annually.

The provisions of this section or any of the following sections of this chapter which authorize or require the fixing of the terms of office of members of any board, commission or body in such a manner that all such terms would not expire at the same time shall not apply with respect to such board, commission or body after the town has voted under section two of chapter fifty-four A to elect the members thereof by the proportional representational method of election. In no case shall the term of any officer exceed five years.

## **APPOINTED TOWN OFFICES AND BOARDS; ACCEPTANCE BY VOTERS**

### **General Laws Chapter 41, § 1B**

Section 1B. Any office or board, except the board of selectmen and the school committee, elected under the provisions of section 1 may become an appointed position or board by a majority vote of the annual or special town meeting and acceptance by the voters of the town at the annual town elections; provided, however, that any vote by a special town meeting taken under the provisions of this section shall take place at least 60 days prior to the acceptance of the voters at the annual town election. For purposes of this section, the positions of town treasurer and collector of taxes, elected pursuant to section 1, may be combined into 1 position and become an appointed position in the manner provided in this section. Such acceptance by the voters shall be in the form of the following question, to be placed on the official ballot:

Shall the town vote to have its elected (Title(s) of office or board) become an appointed (Title(s) of office or board) of the town?

Yes \_\_\_ No \_\_\_

If a majority of votes cast in answer to said question is in the affirmative, said office or board shall become appointed in accordance with the provisions of this section.

Any incumbent of such office or board serving at the time of acceptance by the voters shall continue to hold said office and to perform the duties thereof until the expiration of the term for which said individual was elected or until said individual otherwise vacates such office; provided, however, that any individual elected to an office or board which becomes an appointed office or board at the same election, under the provisions of this section, shall hold said office and perform the duties thereof until the appointment to said office is otherwise made under the provisions of this section.

Such appointment shall be made by the board of selectmen for a term not to exceed three years, unless such mode of appointment or term is otherwise provided by law.

## **MEMBERS OF TOWN AND DISTRICT BOARDS ELIGIBLE TO HOLD OTHER OFFICES; SALARY**

### **General Laws Chapter 41, § 4A**

Section 4A. Except as otherwise expressly provided, a district board, if authorized by vote of the district at an annual district meeting, or a town board may, if authorized by vote of the town at an annual town meeting, appoint any member thereof to another town or district office or position for the term provided by law, if any, otherwise for a term not exceeding one year. The salary of such appointee shall be fixed by vote of the town or district, notwithstanding the provisions of section one hundred and eight. In this section, the word "town" shall not include city.

## **TOWN CLERKS; POWERS AND DUTIES**

### **General Laws Chapter 41, § 15**

Section 15. The town clerk shall record all votes passed at town meetings held during his term of office. He shall administer the oaths of office to all town officers who apply to him to be sworn, and shall make a record thereof and of the oaths of office taken before justices of the peace of which certificates are filed. He shall, immediately after every annual election of town officers, transmit to the state secretary, on blanks to be furnished by him, a complete list of all town officers elected and qualified and shall promptly report to the secretary any changes in such officers. He shall, except in the county of Suffolk, within seven days after the qualification of a constable make return of his name to the clerk of the courts and to the sheriff of the county. He shall make and keep an index of instruments entered with him required by law to be recorded, which shall be divided into five columns, with appropriate headings for recording the date of reception, the names of parties and the book and page on which each instrument is recorded. It shall be open to public inspection.

## **AUTHORIZATION FOR SELECTMEN TO ACT AS OR APPOINT OTHER TOWN OFFICERS**

### **General Laws Chapter 41, § 21**

Section 21. By vote of a town meeting called for the purpose in any town at least sixty days before an annual meeting, or upon request by petition of ten per cent of the qualified voters of any town filed with the selectmen thereof at least sixty days before an annual town meeting, asking that the selectmen act as a water and sewer board, water commissioners, water and municipal light commissioners, municipal light board, sewer commissioners, park commissioners, board of public works, board of health, assessors, or commission of public safety, or perform the duties of such boards or officers or any of them or that cemetery commissioners, assessors, a superintendent of streets, a chief of the police and fire departments or board of health be thereafter appointed by the selectmen, the selectmen of such town shall include in the warrant for such annual meeting for submission to the voters such question or questions in the following form, to be placed on the official ballot in towns using such ballot:—

Shall the town vote to have its selectmen act as \_\_\_\_\_?

Shall the town vote to have its selectmen appoint \_\_\_\_\_?

If a town, in which the selectmen are elected for terms of one year, shall vote in accordance with this section that its selectmen shall act as or perform the duties of any of the aforesaid boards or officers, it shall, at the next annual meeting, elect one selectman for one year, one for two years and one for three years, or, if five are to be elected, one for one year, two for two years and two for three years, and thereafter in either event shall elect them for terms of three years. Upon the election and qualification of the selectmen at such next annual meeting, and upon the appointment and qualification by oath of the officers herein authorized to perform the duties of any existing town board or officer, the term of office of such existing board or officer shall thereupon terminate, and all the duties, powers and obligations of said boards and officers shall be transferred to and imposed upon their successors.

## **ASSESSORS; NUMBER; METHOD OF SELECTION; TENURE**

### **General Laws Chapter 41, § 24**

Section 24. There shall be one, three, five, seven or nine assessors in every city and one, three or five assessors in every town. The assessors in every city and town shall be elected or appointed as otherwise provided by law; but as nearly one third of their number as may be shall be elected or appointed annually, each to hold office for three years and thereafter until his successor is duly elected or appointed. As soon as may be after such annual election or appointment, the assessors of every city and town shall organize by choosing one of their number as chairman and another as secretary or clerk of their board. None of the foregoing provisions shall apply to the city of Boston. In no city or town, including Boston, shall an assessor hold the office of collector of taxes or deputy collector of taxes, whether said deputy is appointed under the provisions of section thirty-seven of this chapter or section ninety-two of chapter sixty.

## **APPOINTMENT BY SELECTMEN; TENURE OF OFFICE**

### **General Laws Chapter 41, § 25**

Section 25. In towns which accept this section or have accepted corresponding provisions of earlier laws, the selectmen shall appoint suitable citizens of the town assessors for a term of not more than three years, and may remove them at any time for cause after a hearing. Upon the qualification of persons so appointed the term of existing assessors of such town shall terminate.

## **ASSISTANT ASSESSORS; APPOINTMENT BY ASSESSORS; DUTIES; COMPENSATION; TENURE**

### **General Laws Chapter 41, § 25A**

Section 25A. The assessors may appoint as assistant assessors such number of suitable citizens as they deem necessary, and may remove them. Such assistant assessors shall perform such duties as the assessors may require for such time as they may determine and shall receive compensation only for duties performed as so required. Every such assistant assessor shall hold office for the period of one year from the date of his appointment, unless sooner removed; provided, that, in the case the assessors fail to appoint a successor to any such assistant assessor during the month preceding the expiration of his term, he shall continue to serve during the following period of one year, unless sooner removed. This section shall apply in all cities and towns, except Boston, notwithstanding any provision of special law.

## **OATH OF OFFICE; PENALTY FOR FAILURE TO TAKE OATH**

### **General Laws Chapter 41, § 29**

Section 29. Any person chosen to assess taxes or to determine or to assist in determining the value of property for the purpose of taxation shall, before entering upon the performance of his duties, take the following oath:



I, having been chosen to assess taxes and estimate the value of property for the purpose of taxation for the town (or city) of for the year (or years) ensuing, do swear that I will truly and impartially, according to my best skill and judgment, assess and apportion all such taxes as I may during that time assess; that I will neither overvalue nor undervalue any property subject to taxation, and that I will faithfully perform all the duties of said office.

If he neglects to take such oath before entering upon the performance of his duties, he shall forfeit not more than fifty dollars.

**AGREEMENTS FOR JOINT AND COOPERATIVE  
ASSESSMENT, CLASSIFICATION AND VALUATION OF  
PROPERTY  
General Laws Chapter 41, § 30B**

Section 30B. (a) Notwithstanding any general or special law or municipal charter, vote, by-law or ordinance, 2 or more cities and towns, by vote of the city council with the approval of the mayor, in a city, and by vote of the board of selectmen, in a town, may enter into an agreement, for a term not to exceed 25 years, for joint or cooperative assessing, classification and valuation of property.

The agreement shall provide for:

- (1) the division, merger or consolidation of administrative functions between or among the parties or the performances thereof by 1 city or town on behalf of all the parties;
- (2) the financing of the joint or cooperative undertaking;
- (3) the rights and responsibilities of the parties with respect to the direction and supervision of the work to be performed and with respect to the administration of the assessing office, including the receipt and disbursement of funds, the maintenance of accounts and records and the auditing of accounts;
- (4) annual reports of the assessor to the constituent parties;
- (5) the duration of the agreement and procedures for amendment, withdrawal or termination thereof; and
- (6) any other necessary or appropriate matter.

(b) An agreement under this section may also provide for the formation of a single assessing department for the purpose of employing assistant assessors and necessary staff and for performing all administrative functions. An agreement may also vest in 1 person, the board of assessors of 1 of the parties or a regional board of assessors comprised of at least 1 representative from each of the parties and selected in the manner set forth in the agreement all of the powers and duties of the boards of assessors and assessing departments of the parties. In that case, the existing boards of assessors of the other parties, or of all the parties if their assessors' powers and duties are vested in 1 person, shall terminate in accordance with section 2 for the duration of the

agreement. Unless the agreement provides for the board of assessors of 1 of the parties to serve as the assessors for all of the parties, or for 1 city or town to act on behalf of all parties, the agreement shall designate an appointing authority representing all of the parties. That appointing authority shall be responsible for the appointment of an assessor, assistant assessors, and other staff, and in the case of withdrawal or termination of the agreement, shall determine the employment of any employee of 1 of the parties that became part of a single assessing department. Subject to the rules and regulations established by the commissioner of revenue pursuant to section 1 of chapter 58, the agreement shall provide for qualifications, terms and conditions of employment for the assessor and employees of the assessor's office. The agreement may provide for inclusion of the assessor and the assessor's employees in insurance, retirement programs and other benefit programs of 1 of the constituent parties, but all parties to the agreement shall be pay a proportionate share of the current and future costs of benefits associated with the appointment or employment of all persons performing services for them during the duration of the agreement. A city or town party to such an agreement shall include employees under the joint assessing agreement in such programs in accordance with the terms of the agreement.

(c) A city or town may become a party to an existing agreement with the approval of the other parties.

(d) No agreement or amendment to an agreement for joint or cooperative assessing made pursuant to this section shall take effect until it has been approved in writing by the commissioner of revenue.

## **COLLECTION OF TAXES BY CONSTABLE**

### **General Laws Chapter 41, § 39**

Section 39. If a person appointed to collect taxes in a town refuses to serve, or if no person is elected or appointed a collector of taxes, the constables of the town shall be the collectors of taxes.

## **TEMPORARY TOWN OFFICERS**

### **General Laws Chapter 41, § 40**

Section 40. If the office of town treasurer, town collector of taxes, town accountant or auditor in a town having but one is vacant or if any such officer, because of disability or absence, is unable to perform his duties, the selectmen may in writing signed by them or by a majority of them, which shall be filed in the office of the town clerk, appoint a temporary officer to hold such office and exercise the powers and perform the duties thereof until another is duly elected or appointed and has qualified according to law or the officer who was disabled or absent resumes his duties. Any such temporary officer shall be sworn and give bond for the faithful performance of his duties in accordance with the provisions of law applying to the officer whose place he fills, and if he fails so to do within ten days after his appointment the selectmen shall rescind the appointment and appoint another. If a tree warden, highway surveyor, or road commissioner in a town having but one road commissioner, because of disability or absence, is unable to perform his duties, the selectmen may, in like manner, appoint a temporary officer to hold his office, who

shall have like powers and duties until such tree warden, highway surveyor or road commissioner resumes his duties or his successor is elected or appointed, as the case may be. This section shall not apply to cities.

## **APPROVAL OF BILLS**

### **General Laws Chapter 41, § 52**

Section 52. All accounts rendered to or kept in the departments of any city shall be subject to the inspection of the city auditor or officer having similar duties, and in towns they shall be subject to the inspection of the selectmen. The auditor or officer having similar duties, or the selectmen, may require any person presenting for settlement an account or claim against the city or town to make oath before him or them, in such form as he or they may prescribe, as to the accuracy of such account or claim. The wilful making of a false oath shall be punishable as perjury. The auditor or officer having similar duties in cities, and the selectmen in towns, shall approve the payment of all bills or pay rolls of all departments before they are paid by the treasurer, and may disallow and refuse to approve for payment, in whole or in part, any claim as fraudulent, unlawful or excessive; and in that case the auditor or officer having similar duties, or the selectmen, shall file with the city or town treasurer a written statement of the reasons for the refusal; and the treasurer shall not pay any claim or bill so disallowed. The board of selectmen may designate any 1 of its members for the purpose of approving bills or payrolls under this section; provided, however, that the member shall make available to the board, at the first meeting following such action, a record of such actions. This provision shall not limit the responsibility of each member of the board of selectmen in the event of a noncompliance with this section. This section shall not abridge the powers conferred on town accountants by sections fifty-five to sixty-one, inclusive.

## **TOWN ACCOUNTANT; TENURE; POWERS AND DUTIES**

### **General Laws Chapter 41, § 55**

Section 55. Any town may authorize the selectmen to appoint a town accountant, who shall perform the duties and possess the powers of town auditors as defined in sections fifty to fifty-three, inclusive. In towns so authorizing the appointment of a town accountant the office of town auditor may, if the town so vote, be abolished. In towns which have accepted chapter thirty-one or corresponding provisions of earlier laws, the appointment of the town accountant shall be subject to the civil service rules. The town accountant shall be sworn to the faithful performance of his duties, shall hold no other town office involving the receipt or disbursement of money, shall hold office for three years and until a successor is qualified; provided, however, that at the discretion of the appointing authority, a person may be appointed to the position of town accountant for a term of not more than five years and until a successor is qualified. The town clerk, if he holds no other office involving the receipt or disbursement of money, may be appointed to the position of town accountant.

## **WARRANTS FOR PAYMENT OF BILLS**

### **General Laws Chapter 41, § 56**

Section 56. The selectmen and all boards, committees, heads of departments and officers authorized to expend money shall approve and transmit to the town accountant as often as once each month all bills, drafts, orders and pay rolls chargeable to the respective appropriations of which they have the expenditure. For purposes of this section, the board of selectmen and any other board, committee or head of department consisting of more than 1 member authorized to expend money, may designate any 1 of its members to approve all bills, drafts, orders and payrolls; provided, however, that the member shall make available to the board, committee or other department head, at the first meeting following such action, a record of such actions. This provision shall not limit the responsibility of each member of the board in the event of a noncompliance with this section. Such approval shall be given only after an examination to determine that the charges are correct and that the goods, materials or services charged for were ordered and that such goods and materials were delivered and that the services were actually rendered to or for the town as the case may be; provided, however, that such approval may be given to any bill received from a state agency for the town's share of the costs of a federal urban planning assistance program, established under the provisions of section 701 of Public Law 83-560, as amended, before any goods, materials or services ordered or to be ordered under such a program have been delivered or actually rendered, as the case may be. The town accountant shall examine all such bills, drafts, orders and pay rolls, and, if found correct and approved as herein provided, shall draw a warrant upon the treasury for the payment of the same, and the treasurer shall pay no money from the treasury except upon such warrant approved by the selectmen. If there is a failure to elect or a vacancy occurs in the office of selectman, the remaining selectman or selectmen, together with the town clerk, may approve such warrant. The town accountant may disallow and refuse to approve for payment, in whole or in part, any claim as fraudulent, unlawful or excessive, and in such case he shall file with the town treasurer a written statement of the reasons for such refusal. The treasurer shall not pay any claim or bill so disallowed by the town accountant. So far as apt this section shall apply to cities.

## **BOOKS OF ACCOUNT AND FINANCIAL RECORDS**

### **General Laws Chapter 41, § 57**

Section 57. The town accountant shall keep a complete set of books wherein shall be entered the amount of each specific appropriation, the amounts and purposes of expenditures made therefrom, the receipts from each source of income, the amount of each assessment levied, and the abatements made; and he shall keep his accounts, so far as practicable, in conformity with the classifications and forms prescribed by the director of accounts in accordance with section forty-three of chapter forty-four and in conformity with any systems, classifications, forms and designations prescribed pursuant to regulations of the board of education for use by school committees. The town accountant shall have custody of all contracts of the town, shall keep a register of the sureties on all bonds of indemnity given to the town, shall keep a detailed record of the town debt, showing the purpose for which it was incurred, when incurred, when due, the rate of interest and the provisions made for the payment of the debt.

## **CONSTABLES; APPOINTMENT IN TOWNS**

### **General Laws Chapter 41, § 91A**

Section 91A. The selectmen in any town may from time to time appoint, for terms not exceeding three years, as many constables as they deem necessary.

## **OATH OF OFFICE; BEGINNING OF TERM**

### **General Laws Chapter 41, § 107**

Section 107. A person who is elected town clerk shall be sworn either by the moderator or by a justice of the peace, and shall enter upon the performance of his duties on the seventh day succeeding his election or as soon thereafter as he is qualified and shall hold office during the term fixed by law, which shall begin on the seventh day succeeding his election, and until another person is qualified in his stead. Every person elected as a moderator of a town or district or to any other town office designated by name in section one, or as an officer of a district, which district includes two or more towns, before entering upon his official duties shall be sworn to the faithful performance thereof either by the town clerk in the case of a moderator, and in all other cases by the moderator, or by the town clerk in the town in which he resides, and, unless other provision is specifically made by law, shall enter upon the performance of his duties on the day after his election, or as soon thereafter as he is qualified, and shall hold office during the term fixed by law, which shall begin on the day after said election, and until another person is qualified in his stead. Every other elected member and every appointed member of every board or commission of a town, and every other elected officer and every appointed officer of a town, shall also, before entering upon his official duties, be sworn to the faithful performance thereof.

## **COMPENSATION**

### **General Laws Chapter 41, § 108**

Section 108. The salary and compensation of all elected officers of a town shall be fixed annually by vote of the town at an annual town meeting, but said salary or compensation may be revised by a two-thirds vote of any special town meeting called to conduct business later in the same fiscal year for which said salary or compensation was originally fixed; provided, however, that such salary revision occurs prior to the establishment of the tax rate of the town in said fiscal year. Except as provided in section four A and section one hundred and eight A, and except in any city in which salaries and wages are fixed by special law or by ordinance in accordance with the provisions of any general or special law, all boards or heads of departments of a town shall, as soon as may be after the passage of the annual budget, fix the salary or compensation of all officers or employees appointed or employed by them, subject to the provisions of section thirty-one of chapter forty-four. The provisions of this section shall be operative notwithstanding the provisions of sections thirteen and thirty-four of said chapter forty-four. A city may by ordinance prescribe that all fees, charges or commissions allowed by law to any officer thereof shall be paid into the city treasury and belong to the city, and in such case shall pay such officer such compensation as the city council may determine.

**CONSOLIDATED DEPARTMENT OF MUNICIPAL FINANCE;  
PETITION SUMMARY; ORDINANCE OR BY-LAW  
General Laws Chapter 43C, § 11**

Section 11. (a) The following shall be the summary inserted in the petition described in section five:

"Section eleven of chapter forty-three C of the General Laws authorizes the legislative body to provide, by ordinance or by law, for a consolidated department of municipal finance which may include the offices of accountant, auditor or comptroller, treasurer, collector and assessors."

Notwithstanding any provision of law to the contrary, in any city or town which accepts the provisions of this section by vote of the people, the legislative body, subject to all applicable provisions of the city or town charter, shall have the authority to adopt an ordinance or by-law providing for a consolidated department of municipal finance.

Any ordinance or by-law adopted pursuant to the provisions of this section shall provide for (i) a director of municipal finance who shall be appointed by and shall be responsible to the chief executive officer or to the chief administrative officer of the city or town as the ordinance or by-law shall specify, (ii) the director of municipal finance to serve, ex-officio, as the accountant, auditor, comptroller, treasurer, collector or treasurer-collector of the city or town; provided, however, that no director of municipal finance shall serve, ex-officio, as both accountant, auditor or comptroller and treasurer, collector or treasurer-collector and (iii), the term of the office of the director of municipal finance which shall not be less than three nor more than five years, subject to removal as may be otherwise provided in the charter of such city or town.

Any ordinance or by-law adopted pursuant to the provisions of this section may include, but need not be limited to, the following: (i) coordination of all financial services and activities, (ii) maintenance of all accounting records and other financial statements, (iii) payment of all obligations, (iv) receipt of all funds due, (v) assistance to all other city or town departments and offices in any matter related to financial affairs, (vi) monitoring of the expenditure of all funds, including periodic reporting to appropriate agencies on the status of accounts, (vii) supervision of all purchases of goods, materials and supplies and maintenance of inventory controls, (viii) supervision of all data processing facilities and, (ix) any other matter relating to municipal finance as may be determined necessary or desirable in such ordinance or by-law.

Any ordinance or by-law adopted pursuant to the provisions of this section shall provide for the appointment of all other personnel necessary to staff the department as constituted in the ordinance or by-law. Unless some other provision is made in the city or town charter for the appointment of officers and employees the director of municipal finance shall appoint all personnel under his direction and control subject to the approval of the appointing authority as provided for his office.

## **PUBLIC FUNDS ON DEPOSIT; LIMITATIONS; INVESTMENTS**

### **General Laws Chapter 44, § 55**

Section 55. A city, town, or district or regional school district shall not at any one time have on deposit in a bank or trust company or banking company an amount exceeding sixty per cent of the capital and surplus of such bank or trust company or banking company, unless satisfactory security is given to it by such bank or trust company or banking company for such excess. The treasurer of any city, town, district or regional school district shall not deposit funds for which he is accountable in any bank, trust company or banking company with which such treasurer is associated as an officer or employee or has been associated as an officer or employee at any time during the three years immediately preceding the date of any such deposit. For the purpose of paying the principal or interest due on any bond, note or other obligation of the city of Boston, which is payable or requested to be paid in the city of New York, the city of Boston may keep on deposit in any national bank or trust company in the city of New York a sum not exceeding in the aggregate twenty-five thousand dollars; provided, that for a period of two weeks prior to the date of any such payment or payments, said amount may be increased by a sum or sums sufficient to cover the same. A treasurer of a city, town, district or regional school district may invest or deposit the portion of revenue cash as the treasurer shall deem not required to pay expenses until the cash is available, and all or any part of the proceeds from the issue of bonds or notes, prior to their application to the payment of liabilities incurred for the purposes for which the bonds or notes were authorized in: (1) term deposits or certificates of deposit having a maturity date from date of purchase of up to 3 years; (2) trust companies, national banks, savings banks, banking companies or cooperative banks; (3) obligations issued or unconditionally guaranteed by the United States government or any agency thereof, having a maturity from date of purchase of 1 year or less; (4) United States government securities or securities of United States government agencies purchased under an agreement with a trust company, national bank or banking company to repurchase at not less than the original purchase price of said securities on a fixed date, not to exceed 90 days; (5) shares of beneficial interest issued by money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as amended, operated in accordance with Section 270.2a-7 of Title 17 of the Code of Federal Regulations, that have received the highest possible rating from at least 1 nationally recognized statistical rating organization and the purchase price of shares of beneficial interest purchased pursuant to this section shall not include any commission that these companies may charge; or (6) participation units in a combined investment fund under section 38A of chapter 29; provided, however, that no temporary notes in anticipation of revenue shall be issued under section 4 as long as any revenue cash, exclusive of revenue sharing or other revenue cash the use of which is restricted to purposes other than current maintenance expenses, remains so invested.

## **CONSOLIDATION OF ADMINISTRATIVE FUNCTIONS WITH CITY OR TOWN**

### **General Laws Chapter 71, § 37M**

Section 37M. (a) Notwithstanding the provisions of chapter forty-one or chapter seventy-one or any other special or general law to the contrary, any city or town which accepts the provisions of this section may consolidate administrative functions, including but not limited to financial, personnel, and maintenance functions, of the school committee with those of the city or town; provided, however, that such consolidation may occur only upon a majority vote of both the

school committee and in a city, the city council, with approval of the mayor required by law or in a town, the annual town meeting or in a town with no town meeting, the town council.

(b) Notwithstanding any general or special law to the contrary, a decision to consolidate functions pursuant to paragraph (a) of this section may be revoked by a majority vote of either the school committee of the city or town, or the city or town, or both as such vote is described in said paragraph (a).

## **OFFICERS AND EXECUTIVE DIRECTOR OF HOUSING AND REDEVELOPMENT AUTHORITIES; COMPENSATION OF MEMBERS**

### **General Laws Chapter 121B, § 7**

Section 7. A housing or redevelopment authority shall elect from among its members a chairman and a vice-chairman, and may employ counsel, an executive director who shall be ex officio secretary of the authority, a treasurer who may be a member of the authority and such other officers, agents and employees as it deems necessary or proper, and shall determine their qualifications, duties and compensation, and may delegate to one or more of its members, agents or employees such powers and duties as it deems necessary or proper for the carrying out of any action determined upon by it. So far as practicable, a housing or redevelopment authority shall make use of the services of the agencies, officers and employees of the city or town in which such authority is organized, and such city or town shall, if requested, make available such services, except, that in the city of Boston, the housing authority may contract with said city for the assignment of thirty-seven police officers of the police department of said city to police the buildings and grounds owned by said authority with the proviso that said authority shall reimburse said city for one third of the cost thereof.

A housing authority may compensate its members for each day spent in the performance of their duties and for such other services as they may render to the authority in connection with projects commenced prior to July first, nineteen hundred and sixty-five. Such compensation shall not exceed fifty dollars a day for the chairman and forty dollars a day for a member other than the chairman, provided that the total sum paid to all the members in any one month or year shall not exceed two per centum of the gross income of the housing authority during such month or year, respectively, nor shall the total sum paid in any year exceed twelve thousand five hundred dollars in the case of the chairman or ten thousand dollars in the case of a member other than the chairman. Such compensation shall be allocated by the housing authority among its various projects commenced prior to July first, nineteen hundred and sixty-five, in such manner and amounts as it deems proper. Members of a housing authority shall be allowed, or be reimbursed for, all expenses properly incurred by them within or without the city or town in the discharge of their duties. Such expenses shall be allocated by the housing authority among its various projects in such manner and amounts as it deems proper.

For the purposes of chapter two hundred and sixty-eight A or paragraph (7) of section forty-four D of chapter one hundred and forty-nine, each housing and redevelopment authority shall be considered a municipal agency and, without limiting the power of a city council or board of aldermen or board of selectmen to classify additional special municipal employees pursuant to said chapter, each member of such an authority, and any person who performs professional



services for such an authority on a part-time, intermittent or consultant basis, such as those of architect, attorney, engineer, planner, or construction, financial, real estate or traffic expert, shall be considered a special municipal employee.

Any compensation paid to a tenant member of a housing authority for services as a member shall be included as income in determining rent, and the tenant shall be subject to appropriate rent increases, as provided for in authority policy and as regulated by the department; provided, however, that such compensation shall not be considered income for purposes of determining continued occupancy.

## **DEFINITIONS**

### **General Laws Chapter 268A, § 1**

Section 1. In this chapter the following words, unless a different meaning is required by the context or is specifically prescribed, shall have the following meanings:—

- (a) "Compensation", any money, thing of value or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.
- (b) "Competitive bidding", all bidding, where the same may be prescribed by applicable sections of the General Laws or otherwise, given and tendered to a state, county or municipal agency in response to an open solicitation of bids from the general public by public announcement or public advertising, where the contract is awarded to the lowest responsible bidder.
- (c) "County agency", any department or office of county government and any division, board, bureau, commission, institution, tribunal or other instrumentality thereof or thereunder.
- (d) "County employee", a person performing services for or holding an office, position, employment, or membership in a county agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis.
- (e) "Immediate family", the employee and his spouse, and their parents, children, brothers and sisters.
- (f) "Municipal agency", any department or office of a city or town government and any council, division, board, bureau, commission, institution, tribunal or other instrumentality thereof or thereunder.
- (g) "Municipal employee," a person performing services for or holding an office, position, employment or membership in a municipal agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis, but excluding (1) elected members of a town meeting and (2) members of a charter commission established under Article LXXXIX of the Amendments to the Constitution.
- (h) "Official act", any decision or action in a particular matter or in the enactment of legislation.

(i) "Official responsibility", the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and whether personal or through subordinates, to approve, disapprove or otherwise direct agency action.

(j) "Participate", 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.

(k) "Particular matter", 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.

(l) "Person who has been selected", any person who has been nominated or appointed to be a state, county or municipal employee or has been officially informed that he will be so nominated or appointed.

(m) "Special county employee", a county employee who is performing services or holding an office, position, employment or membership for which no compensation is provided; or who is not an elected official and (1) occupies a position which, by its classification in the county agency involved or by the terms of the contract or conditions of employment, permits personal or private employment during normal working hours, provided that disclosure of such classification or permission is filed in writing with the State Ethics Commission and the office of the county commissioners prior to the commencement of any personal or private employment, or (2) in fact does not earn compensation as a county employee for an aggregate of more than eight hundred hours during the preceding three hundred and sixty-five days. For this purpose compensation by the day shall be considered as equivalent to compensation for seven hours per day. A special county employee shall be in such a status on days for which he is not compensated as well as on days on which he earns compensation.

(n) "Special municipal employee", a municipal employee who is not a mayor, a member of the board of aldermen, a member of the city council, or a selectman in a town with a population in excess of ten thousand persons and whose position has been expressly classified by the city council, or board of aldermen if there is no city council, or board of selectmen, as that of a special employee under the terms and provisions of this chapter; provided, however, that a selectman in a town with a population of ten thousand or fewer persons shall be a special municipal employee without being expressly so classified. All employees who hold equivalent offices, positions, employment or membership in the same municipal agency shall have the same classification; provided, however, no municipal employee shall be classified as a "special municipal employee" unless he occupies a position for which no compensation is provided or which, by its classification in the municipal agency involved or by the terms of the contract or conditions of employment, permits personal or private employment during normal working hours, or unless he in fact does not earn compensation as a municipal employee for an aggregate of more than eight hundred hours during the preceding three hundred and sixty-five days. For this purpose compensation by the day shall be considered as equivalent to compensation for seven hours per day. A special municipal employee shall be in such status on days for which he is not compensated as well as on days on which he earns compensation. All employees of any city or town wherein no such classification has been made shall be deemed to be "municipal

employees" and shall be subject to all the provisions of this chapter with respect thereto without exception.

(o) "Special state employee", a state employee:

(1) Who is performing services or holding an office, position, employment or membership for which no compensation is provided, or

(2) Who is not an elected official and

(a) occupies a position which, by its classification in the state agency involved or by the terms of the contract or conditions of employment, permits personal or private employment during normal working hours, provided that disclosure of such classification or permission is filed in writing with the state ethics commission prior to the commencement of any personal or private employment, or

(b) in fact does not earn compensation as a state employee for an aggregate of more than eight hundred hours during the preceding three hundred and sixty-five days. For this purpose compensation by the day shall be considered as equivalent to compensation for seven hours per day. A special state employee shall be in such a status on days for which he is not compensated as well as on days on which he earns compensation.

(p) "State agency", any department of state government including the executive, legislative or judicial, and all councils thereof and thereunder, and any division, board, bureau, commission, institution, tribunal or other instrumentality within such department, and any independent state authority, district, commission, instrumentality or agency, but not an agency of a county, city or town.

(q) "State employee", a person performing services for or holding an office, position, employment, or membership in a state agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent or consultant basis, including members of the general court and executive council. No construction contractor nor any of their personnel shall be deemed to be a state employee or special state employee under the provisions of paragraph (o) or this paragraph as a result of participation in the engineering and environmental analysis for major construction projects either as a consultant or part of a consultant group for the commonwealth. Such contractors or personnel may be awarded construction contracts by the commonwealth and may continue with outstanding construction contracts with the commonwealth during the period of such participation; provided, that no such contractor or personnel shall directly or indirectly bid on or be awarded a contract for any construction project if they have participated in the engineering or environmental analysis thereof.

**MUNICIPAL EMPLOYEES; GIFT OR RECEIPT OF  
COMPENSATION FROM OTHER THAN MUNICIPALITY;  
ACTING AS AGENT OR ATTORNEY  
General Laws Chapter 268A, § 17**

Section 17. (a) No municipal employee shall, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receive or request compensation from anyone other than the city or town or municipal agency in relation to any particular matter in which the same city or town is a party or has a direct and substantial interest.

(b) No person shall knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly give, promise or offer such compensation.

(c) No municipal employee shall, otherwise than in the proper discharge of his official duties, act as agent or attorney for anyone other than the city or town or municipal agency in prosecuting any claim against the same city or town, or as agent or attorney for anyone in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest.

Whoever violates any provision of this section shall be punished by a fine of not more than \$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or both.

A special municipal employee shall be subject to paragraphs (a) and (c) only in relation to a particular matter (a) in which he has at any time participated as a municipal employee, or (b) which is or within one year has been a subject of his official responsibility, or (c) which is pending in the municipal agency in which he is serving. Clause (c) of the preceding sentence shall not apply in the case of a special municipal employee who serves on no more than sixty days during any period of three hundred and sixty-five consecutive days.

This section shall not prevent a municipal employee from taking uncompensated action, not inconsistent with the faithful performance of his duties, to aid or assist any person who is the subject of disciplinary or other personnel administration proceedings with respect to those proceedings.

This section shall not prevent a municipal employee, including a special employee, from acting, with or without compensation, as agent or attorney for or otherwise aiding or assisting members of his immediate family or any person for whom he is serving as guardian, executor, administrator, trustee or other personal fiduciary except in those matters in which he has participated or which are the subject of his official responsibility; provided, that the official responsible for appointment to his position approves.

This section shall not prevent a present or former special municipal employee from aiding or assisting another person for compensation in the performance of work under a contract with or for the benefit of the city or town; provided, that the head of the special municipal employee's department or agency has certified in writing that the interest of the city or town requires such aid or assistance and the certification has been filed with the clerk of the city or town. The certification shall be open to public inspection.

This section shall not prevent a municipal employee from giving testimony under oath or making statements required to be made under penalty for perjury or contempt.

This section shall not prevent a municipal employee from applying on behalf of anyone for a building, electrical, wiring, plumbing, gas fitting or septic system permit, nor from receiving compensation in relation to any such permit, unless such employee is employed by or provides services to the permit-granting agency or an agency that regulates the activities of the permit-granting agency.

## **MUNICIPAL EMPLOYEES, RELATIVES OR ASSOCIATES; FINANCIAL INTEREST IN PARTICULAR MATTER**

### **General Laws Chapter 268A, § 19**

Section 19. (a) Except as permitted by paragraph (b), a municipal employee who participates as such an employee in a particular matter in which to his knowledge he, his immediate family or partner, a business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest, shall be punished by a fine of not more than \$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or both.

(b) It shall not be a violation of this section (1) if the municipal employee first advises the official responsible for appointment to his position of the nature and circumstances of the particular matter and makes full disclosure of such financial interest, and receives in advance a written determination made by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee, or (2) if, in the case of an elected municipal official making demand bank deposits of municipal funds, said official first files, with the clerk of the city or town, a statement making full disclosure of such financial interest, or (3) if the particular matter involves a determination of general policy and the interest of the municipal employee or members of his immediate family is shared with a substantial segment of the population of the municipality.

## **MUNICIPAL EMPLOYEES; FINANCIAL INTEREST IN CONTRACTS; HOLDING ONE OR MORE ELECTED POSITIONS**

### **General Laws Chapter 268A, § 20**

Section 20. (a) A municipal employee who has a financial interest, directly or indirectly, in a contract made by a municipal agency of the same city or town, in which the city or town is an interested party of which financial interest he has knowledge or has reason to know, shall be punished by a fine of not more than \$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or both.

This section shall not apply if such financial interest consists of the ownership of less than one per cent of the stock of a corporation.

This section shall not apply (a) to a municipal employee who in good faith and within thirty days after he learns of an actual or prospective violation of this section makes full disclosure of his financial interest to the contracting agency and terminates or disposes of the interest, or (b) to a municipal employee who is not employed by the contracting agency or an agency which regulates the activities of the contracting agency and who does not participate in or have official responsibility for any of the activities of the contracting agency, if the contract is made after public notice or where applicable, through competitive bidding, and if the municipal employee files with the clerk of the city or town a statement making full disclosure of his interest and the interest of his immediate family, and if in the case of a contract for personal services (1) the services will be provided outside the normal working hours of the municipal employee, (2) the services are not required as part of the municipal employee's regular duties, the employee is compensated for not more than five hundred hours during a calendar year, (3) the head of the contracting agency makes and files with the clerk of the city or town a written certification that no employee of that agency is available to perform those services as part of their regular duties, and (4) the city council, board of selectmen or board of aldermen approve the exemption of his interest from this section, or (c) to a special municipal employee who does not participate in or have official responsibility for any of the activities of the contracting agency and who files with the clerk of the city or town a statement making full disclosure of his interest and the interests of his immediate family in the contract, or (d) to a special municipal employee who files with the clerk of the city, town or district a statement making full disclosure of his interest and the interests of his immediate family in the contract, if the city council or board of aldermen, if there is no city council, board of selectmen or the district prudential committee, approve the exemption of his interest from this section, or (e) to a municipal employee who receives benefits from programs funded by the United States or any other source in connection with the rental, improvement, or rehabilitation of his residence to the extent permitted by the funding agency, or (f) to a municipal employee if the contract is for personal services in a part time, call or volunteer capacity with the police, fire, rescue or ambulance department of a fire district, town or any city with a population of less than thirty-five thousand inhabitants; provided, however, that the head of the contracting agency makes and files with the clerk of the city, district or town a written certification that no employee of said agency is available to perform such services as part of his regular duties, and the city council, board of selectmen, board of aldermen or district prudential committee approve the exemption of his interest from this section or (g) to a municipal employee who has applied in the usual course and is otherwise eligible for a housing subsidy program administered by a local housing authority, unless the employee is employed by the local housing authority in a capacity in which he has responsibility for the administration of such subsidy programs or (h) to a municipal employee who is the owner of residential rental property and rents such property to a tenant receiving a rental subsidy administered by a local housing authority, unless such employee is employed by such local housing authority in a capacity in which he has responsibility for the administration of such subsidy programs.

This section shall not prohibit an employee or an official of a town from holding the position of selectman in such town nor in any way prohibit such employee from performing the duties of or receiving the compensation provided for such office; provided, however, that such selectman shall not, except as hereinafter provided, receive compensation for more than one office or position held in a town, but shall have the right to choose which compensation he shall receive; provided, further, that no such selectman may vote or act on any matter which is within the purview of the agency by which he is employed or over which he has official responsibility; and,

provided further, that no such selectman shall be eligible for appointment to any such additional position while he is still a member of the board of selectmen or for six months thereafter. Any violation of the provisions of this paragraph which has substantially influenced the action taken by any municipal agency in any matter shall be grounds for avoiding, rescinding or cancelling the action on such terms as the interest of the municipality and innocent third parties may require.

This section shall not prohibit any elected official in a town, whether compensated or uncompensated for such elected position, from holding one or more additional elected positions, in such town, whether such additional elected positions are compensated or uncompensated.

This section shall not prohibit an employee of a municipality with a city or town council form of government from holding the elected office of councillor in such municipality, nor in any way prohibit such an employee from performing the duties of or receiving the compensation provided for such office; provided, however, that no such councillor may vote or act on any matter which is within the purview of the agency by which he is employed or over which he has official responsibility; and provided, further, that no councillor shall be eligible for appointment to such additional position while a member of said council or for six months thereafter. Any violation of the provisions of this paragraph which has substantially influenced the action taken by a municipal agency in any matter shall be grounds for avoiding, rescinding or cancelling such action on such terms as the interest of the municipality and innocent third parties require. No such elected councillor shall receive compensation for more than one office or position held in a municipality, but shall have the right to choose which compensation he shall receive.

This section shall not prohibit an employee of a housing authority in a municipality from holding any elective office, other than the office of mayor, in such municipality nor in any way prohibit such employee from performing the duties of or receiving the compensation provided for such office; provided, however, that such elected officer shall not, except as otherwise expressly provided, receive compensation for more than one office or position held in a municipality, but shall have the right to choose which compensation he shall receive; provided further that no such elected official may vote or act on any matter which is within the purview of the housing authority by which he is employed; and provided further that no such elected official shall be eligible for appointment to any such additional position while he is still serving in such elective office or for six months thereafter. Any violation of the provisions of this paragraph which has substantially influenced the action taken by the housing authority in any matter shall be grounds for avoiding, rescinding, or cancelling the action on such terms as the interest of the municipality and innocent third parties may require.

This section shall not prohibit an employee in a town having a population of less than three thousand five hundred persons from holding more than one appointed position with said town, provided that the board of selectmen approves the exemption of his interest from this section.

[There is no subsection (b).]

## **MEMBERS OF MUNICIPAL COMMISSION OR BOARD; RESTRICTIONS ON APPOINTMENTS TO CERTAIN POSITIONS**

### **General Laws Chapter 268A, § 21A**

Section 21A. Except as hereinafter provided, no member of a municipal commission or board shall be eligible for appointment or election by the members of such commission or board to any office or position under the supervision of such commission or board. No former member of such commission or board shall be so eligible until the expiration of thirty days from the termination of his service as a member of such commission or board.

The provisions of this section shall not apply to a member of a town commission or board, if such appointment or election has first been approved at an annual town meeting of the town.

## **OPINIONS OF CORPORATION COUNSEL, CITY SOLICITOR OR TOWN COUNSEL**

### **General Laws Chapter 268A, § 22**

Section 22. Any municipal employee shall be entitled to the opinion of the corporation counsel, city solicitor or town counsel upon any question arising under this chapter relating to the duties, responsibilities and interests of such employee. All requests for such opinions by a subordinate municipal employee shall be made in confidence directly to the chief officer of the municipal agency in which he is employed, who shall in turn request in confidence such opinion of the corporation counsel, city solicitor or town counsel on behalf of such subordinate municipal employee, and all constitutional officers and chief officers or heads of municipal agencies may make direct confidential requests for such opinions on their own account. The town counsel or city solicitor shall file such opinion in writing with the city or town clerk and such opinion shall be a matter of public record; however, no opinion will be rendered by the town counsel or city solicitor except upon the submission of detailed existing facts which raise a question of actual or prospective violation of any provision of this chapter.

## **SECTION 23: SUPPLEMENTAL PROVISIONS; STANDARDS OF CONDUCT**

### **General Laws Chapter 268A, § 23**

Section 23. (a) In addition to the other provisions of this chapter, and in supplement thereto, standards of conduct, as hereinafter set forth, are hereby established for all state, county, and municipal employees.

(b) No current officer or employee of a state, county or municipal agency shall knowingly, or with reason to know:

(1) accept other employment involving compensation of substantial value, the responsibilities of which are inherently incompatible with the responsibilities of his public office;



(2) (i) solicit or receive anything of substantial value for such officer or employee, which is not otherwise authorized by statute or regulation, for or because of the officer or employee's official position; or (ii) use or attempt to use such official position to secure for such officer, employee or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals;

(3) act 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. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion; or

(4) present a false or fraudulent claim to his employer for any payment or benefit of substantial value.

(c) No current or former officer or employee of a state, county or municipal agency shall knowingly, or with reason to know:

(1) accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority;

(2) improperly disclose materials or data within the exemptions to the definition of public records as defined by section seven of chapter four, and were acquired by him in the course of his official duties nor use such information to further his personal interest.

(d) Any activity specifically exempted from any of the prohibitions in any other section of this chapter shall also be exempt from the provisions of this section. The state ethics commission, established by chapter two hundred and sixty-eight B, shall not enforce the provisions of this section with respect to any such exempted activity.

(e) Where a current employee is found to have violated the provisions of this section, appropriate administrative action as is warranted may also be taken by the appropriate constitutional officer, by the head of a state, county or municipal agency. Nothing in this section shall preclude any such constitutional officer or head of such agency from establishing and enforcing additional standards of conduct.

(f) The state ethics commission shall adopt regulations: (i) defining substantial value; provided, however, that substantial value shall not be less than \$50; (ii) establishing exclusions for ceremonial privileges and exemptions; (iii) establishing exclusions for privileges and exemptions given solely because of family or friendship; and (iv) establishing additional exclusions for other situations that do not present a genuine risk of a conflict or the appearance of a conflict of interest.

**AN ACT RELATIVE TO A MUNICIPAL EMPLOYEE IN THE  
TOWN OF LEE, THE TOWN OF LENOX OR THE TOWN OF  
STOCKBRIDGE ACTING IN RELATION TO AN  
INTERMUNICIPAL AGREEMENT  
St. 2016, c. 304**

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. Notwithstanding section 17 of chapter 268A of the General Laws or any other general or special law to the contrary, a municipal employee of the town of Lee, the town of Lenox or the town of Stockbridge shall not be prohibited from receiving or requesting compensation from, or from acting as an agent or attorney for, the town of Lee, the town of Lenox or the town of Stockbridge, provided that the employee is acting within the scope of the employee's official duties pursuant to an intermunicipal agreement entered into pursuant to section 4A of chapter 40 of the General Laws.

SECTION 2. This act shall take effect upon its passage.

Approved, November 3, 2016



November 19, 2002

Susan L. Koziara  
Board of Assessors  
Newton Memorial Town Hall  
Lanesborough MA 01237

Re: Assistant Assessor  
Our File No. 2002-529

Dear Ms. Koziara:

You asked for comments on the creation of an assistant assessor position for fiscal year 2004. You state the town currently has a three member elected board of assessors. All of the members appear to be considered part-time, although one member does work more hours.

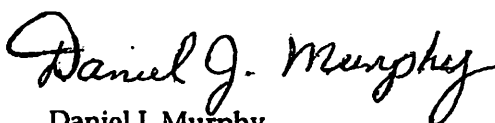
Assuming no special acts or charter provisions apply, the position could be accomplished merely by appropriation votes in the next year's annual budget, *i.e.*, by voting a separate line item for an assistant assessor, or if the town uses a single line item format for all salaries within each department, by including the extra monies in the salary item. The actual salary would be fixed by the assessors within the appropriation, unless town meeting is required to fix the salary under G.L. Ch. 41 §4A as explained below. The power to appoint an individual to the new position belongs exclusively to the board of assessors. G.L. Ch. 41 §25A. The reason is that assistant assessors are specifically authorized to assist the assessors in their statutory valuation responsibilities. G.L. Ch. 41 §28.

You also asked if it was possible for a board member to be appointed to the position. Both the conflict of interest law and municipal finance law govern appointments by municipal boards of members to other positions within their departments. You should seek the advice of your town counsel or the state ethics commission with respect to the conflict of interest law requirements, but it appears the assessors would have to be designated as "special municipal employees" and various votes and disclosures would need to be made. The affected member could not vote on the matter.

In addition, G.L. Ch. 41 §4A applies. Under that statute, the board of assessors may appoint a member to a position under its authority for a one-year term if authorized by annual town meeting to do so. The annual salary of any such appointee must also be "fixed" by annual town meeting vote at a specified amount. Generally, this would be done by a separate vote similar to that usually taken to fix the annual salaries of elected officials. G.L. Ch. 41 §108. An appropriation to fund the appointee's annual salary as fixed by town meeting would also have to be made as discussed above.

If you have any further questions, please do not hesitate to contact me again.

Very truly yours,

  
Daniel J. Murphy  
Chief, Property Tax Bureau

DJM/KC



MASSACHUSETTS DEPARTMENT OF REVENUE  
DIVISION OF LOCAL SERVICES

P.O. Box 9655  
Boston, MA 02114

(617) 626-2300  
FAX (617) 626-2330

MITCHELL ADAMS  
Commissioner

LESLIE A. KIRWAN  
Deputy Commissioner

September 27, 1995

June M. Poland  
P.O. Box 57  
Berlin, MA 01503-0057

Re: Compensation for Multiple Positions  
Our File No. 95-550

Dear Ms. Poland:

You have asked several questions concerning the ability to pay certain municipal officers/employees from different line items in the budget. Your first question concerns the propriety of paying an elected assessor a salary for such position, as well as a salary as assistant assessor and a separate hourly wage for revaluation work. Payment of this employee comes from line item 12 141 Assessors, Salary, line item 13 Assistant, Salary and line item 16 142 Revaluation, all under the control of the Board of Assessors. Your second question concerns the propriety of paying other town officers, elected and appointed, from more than one line item, for separate jobs in the town.

Under G.L. Ch. 41, §4A and G.L. Ch. 268A, §21A a board of assessors may appoint one of their members to the position of assistant assessor or other position under its authority for a one year term, if annual town meeting authorizes such appointment(s) and the salary of such appointee is fixed by vote of the town. In addition, the State Ethics Commission has determined in the case of an elected part-time assessor in another town that under G.L. Ch. 268A, §20 the assessor would have to be designated a special municipal employee by the board of selectmen and file a financial disclosure with the town clerk of his interest in the assistant assessor employment contract in order to hold that second position.

Although the specific requirements in that ethics commission opinion do not apply to Berlin, a town which has less than 3500 inhabitants, the board of selectmen must nevertheless approve the exemption of the employee's job interest from Section 20. We are informed that some form of written disclosure of the employee's financial interest in the employment must nevertheless still be made to the board of selectmen. The ethics commission opinion did state, however, that if the town were to merge the duties of Assistant Assessor into one of the Assessor's positions and pay the person on a single paycheck, it could fix that Assessor's

compensation at a higher amount without running afoul of these statutory provisions. See also Teed v. Randolph, 347 Mass. 652 (1964).

In a written opinion Berlin town counsel reached the conclusion that the assistant assessor could be elected as an assessor under the ethics laws, but could not participate in any reappointment to the assistant position. Town counsel was not asked about the procedure once the position of assistant assessor came up for reappointment. In our opinion, compliance with G.L. Ch. 41, §4A and G.L. Ch. 268A, §§20 & 21A would then appear to be required.

On the issue of whether the assessor can receive an hourly wage performing revaluation work, we have serious doubts about the legal authority to do so. Generally, elected officers receive a salary "fixed" by annual town meeting under G.L. Ch. 41, §108. We have interpreted this statute as prohibiting the receipt of an indefinite hourly wage by an elected assessor for work performed as assessor. Assuming the revaluation work were performed in a separate position, the receipt by the assessor of payment from the revaluation account on an hourly basis would also appear to be prohibited by G.L. Ch. 41, §4A. Under that section "the salary of such appointee shall be fixed by vote of the town ..." (emphasis added).

The most apparent reason that an hourly rate is not permitted by the statute is that allowing such a rate with the number of hours subject to the discretion of the appointing body could put the appointed member in constant conflict with other members over his or her own compensation. Although the revaluation account, being a generic salary/expense account, could be used to pay salary or wages for such employment, we do not think that it could be used to pay hourly wages to an assessor performing revaluation work. We also think the other assessor performing clerk or revaluation duties and paid from other accounts must also comply with G.L. Ch. 41, §4A and G.L. Ch. 268A, §§20 & 21A. Thus, any additional salary for such positions would have to be fixed by annual town meeting vote.

The treasurer, accountant and fire chief require different analyses, however, as each situation is unique. We first lay out the factual issues concerning these three situations. You have indicated that the elected treasurer and appointed accountant recommended increases in their salaries in FY96 to cover the additional work they would have to do in cooperating with an audit, which had a separate appropriation. Some \$1100 for each was requested in addition to the salaries voted. However, it appears that the board of selectmen or finance committee was concerned that if these amounts were added to the salaries, but no audit actually occurred, then the employees would be receiving the extra income without performing the additional work. They therefor separated those amounts out and placed them in a single item in the treasurer's budget entitled Audit, Salary (Item #19). The appointed fire chief has apparently for years received a fixed salary as chief but has also been paid an hourly wage when he responds as a call firefighter, from a separate wage line item.

With respect to the elected treasurer, we believe compensation is limited to a fixed salary set by town meeting for performing the duties of treasurer, under G.L. Ch. 41, §108. No additional amounts may be paid on an hourly basis while acting as treasurer. In addition, line item #19 in the treasurer's budget appears to provide a "salary" for the "audit" work, not hourly wages.

Whether authorizing a salary or wage, however, this line item certainly implies that the treasurer has authority to contract with someone to perform those "audit" duties as a separate employment. If the treasurer performed those duties she would have to appoint herself to the position under her own supervision. This does not fit within G.L. Ch. 41, §4A or G.L. Ch. 268A, §21A which only applies to appointments of board members to positions by the board or under the supervision of the board in which they are members. Any such employment clearly raises a conflict of interest question, either at common law or under G.L. Ch. 268A.

The difficulty with this situation is that it appears that only the treasurer [or perhaps someone in the treasurer's department] can perform the duties contemplated by this "Audit, Salary" line item. The compensation intended is for work providing auditors with necessary documentation and information about the operation of the department, which only the treasurer may know. This would appear to be within the incidental duties of the treasurer. To the extent these are such duties, they should be built into the treasurer's salary established by town meeting, in our opinion.

The town accountant presents a slightly different case. First, the accountant position is appointed and thus the salary need not be fixed by town meeting under G.L. Ch. 41, §108. The board of selectmen presumably may fix the compensation of the accountant under that statute, subject to the appropriation voted at town meeting. See also G.L. Ch. 44, §31. Nor is this a case of an officer appointing herself to another position. Since line item #19 is in the treasurer's budget, presumably the treasurer may decide who to employ in the endeavor. The accountant presumably must comply with G.L. Ch. 268A, §20 and get an exemption from that section from the board of selectmen, after notice to the board of her interest. There is also the problem associated with whether this appropriation, as a salary item, permits an hourly wage. We think it more appropriate to treat it as salary only, given the distinction in other line items between salary and wage accounts.

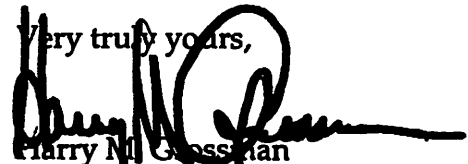
These issues with respect to the town accountant would all be irrelevant, if, as we believe, the work contemplated by that item is actually an incidental responsibility of the town accountant. As such the compensation therefor should be included in the town accountant's salary by the appointing authority after town meeting appropriation, under G.L. Ch. 41, §108.

Finally, we turn to the issue of the fire chief, as an appointed officer and department head, authorizing payment of additional wages to himself when he responds to fires as a call firefighter. This situation would seem to involve conflict of interest concerns best addressed by town counsel or the state ethics commission.

We do not call into question the good faith of all parties concerned in providing a payment mechanism that provides for salary of the fire chief for his chief's duties not directly associated with fighting fires and additional compensation for call firefighter work. Nevertheless, there may be occasions when the chief may be expected to appear at a fire in his capacity as chief, rather than as a call firefighter. Indeed, it may be expected that the chief appear regularly at fires in his capacity as chief, making the distinction between the duties as chief and as call firefighter particularly blurred. Even if the payment method were deemed

not to violate the conflict of interest laws, it would seem more appropriate to provide a single salary for the chief who is expected to use his professional judgment about which fire calls require his attendance, if no specific town policy on that issue has been adopted.

We hope this addresses your concerns. If you have any further inquiry, please do not hesitate to contact us again.

Very truly yours,  
  
Harry M. Grossman  
Chief, Property Tax Bureau

Opinion EC-COI-93-18

DATE: 08/09/1993

ORGANIZATION:

State Ethics Commission

A full-time municipal employee is not ordinarily eligible for "special municipal employee" status, even where his hours are not 9-5. A full-time "regular" municipal employee who does not fulfill all of the requirements of section 20(b) may not hold a second position with the same municipality.

#### Facts

You represent a municipal agency (Agency A) in the Town. Mr. X [1] is a full-time employee at Agency A. His normally scheduled hours at Agency A are 7:30 a.m. to 3:30 p.m., Monday through Friday. He is also on call one weekend per month. Mr. X also has a part-time post with the Town, assigned to a second municipal agency (Agency B). His work hours at Agency B are normally scheduled after 4 p.m. on weekdays and during the day on weekends, for an average of 20 hours per week. The position at Agency B is designated as a "special municipal employee" post. When Mr. X is on call for Agency A, he is required to respond, even if he is working at Agency B.

#### Questions

1. Can Mr. X be designated as a "special municipal employee" in his position with Agency A?
2. Can Mr. X hold both municipal positions simultaneously?

#### Answers

1. No, as he works full-time in that position.
2. No, unless he reduces the number of hours he works at Agency B to no more than 500 hours per year.

#### Discussion

##### 1. Special Municipal Employee Status

The term "employee" at each level of government (state, county and municipal) is defined in G.L. c. 268A very expansively. One is considered an employee of a particular level of government if he performs services for the government or holds any office, position, employment or membership in any of its agencies or instrumentalities [2]. An individual is a government employee whether he is paid or unpaid, or whether he works full-time or part-time. Individuals working on an intermittent basis, or as consultants, are also defined as government employees. However, certain provisions of the conflict of interest law distinguish between regular employees and "special" employees. The distinction is important since those provisions of the conflict law apply in a less restrictive fashion for "special" employees.

A municipal employee [3] can be designated as a "special municipal employee" only if one of the following conditions exists:

1. He is unpaid, or
2. By its classification in the municipal agency involved or by the terms of the contract or conditions of employment, the employee is permitted "personal or private employment" during "normal working hours", or
3. He did not earn compensation for more than 800 hours in the position during the preceding 365 days [4]. G.L. c. 268A, s. 1(n).

You have urged that we read s. 1(n) to permit a full-time employee who works on other than a 9 a.m. to 5 p.m. schedule to attain special employee status [5]. To achieve this result, you would have us interpret the phrase "normal working hours" to mean employment from 9 a.m. to 5 p.m. In this way, you argue, Mr. X would be



entitled to special employee status because the conditions of his employment with Agency A (specifically, his 7:30 a.m. to 3:30 p.m. schedule) would "permit . . . personal or private employment during normal working hours." We decline to accept your proposed construction, however, for the following reasons.

While the phrase "normal working hours" is neither defined in c. 268A nor discussed in its legislative history, we note that the phrase was adopted by the legislature nearly thirty years ago, when flex-time was not as prevalent as it is today. Then, it was more often the case that in most agencies (other than institutions, and the like, which are run on a 24 hour per day basis) the work day ran from 9 a.m. to 5 p.m., and employees were given little or no flexibility to shift their hours from that norm. With that historical reality in mind, we are not persuaded that the main object to be accomplished in s. 1(n) was to create a device that would allow a full-time employee to work odd hours so as to facilitate multiple municipal office holding. Indeed, the simplest reason for concluding that s. 1(n) is inapplicable to Mr. X's situation is that the employment outside of the "normal working hours" of one's public service contemplated by s. 1(n) is "personal and private employment." That language, according to its usual and accepted usage, cannot reasonably be interpreted to embrace Mr. X's public employment at Agency B. Thus, interpreting that language alone, we conclude that Mr. X may not enjoy special employee status in his position at Agency A.

An additional basis for this conclusion, however, may be found when one examines the words "normal working hours" in light of the legislative history and purpose of s. 1(n). Our examination of the legislative history and early commentary on the statute leads us to conclude that special employee status was primarily intended for those individuals whose public activities were not a substantial portion of their work day. In this way, the Commonwealth could enjoy the part-time services of these individuals, without penalizing them by unnecessarily restricting their private activity.

In 1962, a special commission completed an extensive study of conflict of interest issues. G.L. c. 268A was the product of that study. In the Final Report of the Special Commission, House Doc. No. 3650, at p. 12, it was noted that the proposed conflict of interest bill "defined special employees . . . as those who serve without compensation or those whose condition of employment permits some personal and private activities on the part of the . . . employee" (emphasis added). The Special Committee pointed out that, without the classification, it would be "impossible for the Commonwealth to have the service of specialists or other capable people for specific assignments in departments or agencies." *Id.* Thus, the critical consideration is whether the employee is permitted outside employment in the course of his municipal employment, and not whether such outside employment is carried on "in the nighttime, or at some other odd hours, [as] 'normal working hours' should be determined . . . not by an arbitrary notion of which hours of the day are 'normal' for work." Buss, "The Massachusetts Conflict-of-Interest Statute: An Analysis" 45 Boston L. Rev. 299, 314, n. 94.

Here, it is plain that Mr. X's full-time position with Agency A does not permit personal or private employment during his workday there. Indeed, so extensive is Mr. X's connection with the Agency A that his on-call status with that agency requires that he respond there, even if at that very moment he is assigned to be at work for Agency B. That the completion of Mr. X's full workday with the Agency A is before 5:00 p.m., or at such a time that there remain hours in the day in which he can work, is not dispositive. Rather, the interpretation of s. 1(n) that is most consistent with its legislative history is the one which recognizes that "employment 'during normal working hours' means, generally, during all or a predominant part of such hours." Buss at 314. On the other hand, "when a substantial portion of the normal working day, or working week, are taken up with the employee's public duties, the relevant test is, under the third alternative, based on total compensated hours [6]." *Id.* Quite obviously, as a full-time employee, Mr. X is unable to meet that test.

Finally, we note that an examination of prior versions of s. 1(n) also indicates that special municipal employee status was not contemplated to embrace full-time employment under most circumstances. Specifically, prior to April 27, 1965, s. 1(n) defined a special municipal employee as "a municipal employee whose position has been expressly classified . . . as that of a special employee under the terms and provisions of this chapter." Responding to inquiries from municipal officials concerning the factors to be considered in assigning such

classification, the attorney general issued a memorandum outlining the relevant standards [7]. That memorandum included as one of the six factors to be considered the "amount of compensation [received] in relation to that of a full-time employee." Braucher, *Conflict of Interest in Massachusetts*, in *Perspectives of Law, Essays for Austin Wakeman Scott* 12 (1964). Clearly, therefore, special employee status was thought to be something other than full-time employment.

In short, viewing the plain language of s. 1(n) in its entirety and with attention to its main objective, we conclude that the stated prerequisites of s. 1(n) (i.e. an employee who volunteers his time, or who is paid but works for a mere fraction of a year -- 800 hours a year or less -- or who is allowed private employment during his normal working hours) all embrace a character of employment that is different from ordinary full-time employment [8]. Therefore, we believe that, absent special circumstances, full-time employees are regular employees, and cannot be designated as "special." [9].

Since Mr. X cannot be designated as a "special municipal employee" in his Agency A position, he will be subject to the restrictions on multiple office holding contained in s. 20(b) of G.L. c. 268A.

## 2. Multiple office holding at the local level

Section 20 prohibits a municipal employee from having a financial interest, directly or indirectly, in a contract made by any municipal agency of the same city or town, in which the city or town is an interested party, unless an exemption applies. As noted above, Mr. X does not qualify for designation as a "special" as employee of Agency A. Thus, he must meet all of the following conditions under s. 20(b) to also work at Agency B, as s. 20(b) is the only exemption available to "regular" municipal employees:

1. The second job must be with a completely independent agency, department or board. The individual may not participate in or have official responsibility for any of the activities of the second agency, and the first agency must not regulate activities of the second agency;
2. the position is publicly advertised;
3. the individual files a statement disclosing the second job with the city or town clerk;
4. the second job will be performed outside of the normal working hours of the first position;
5. the services performed in the second job are not part of the employee's duties in the first job;
6. the employee is not compensated in the second position for more than 500 hours per year [10];
7. the head of the second agency, department or board, certifies that no employee of that agency is available to do this work as part of their regular duties; and
8. the city or town council, board of aldermen, or board of selectmen give their approval of this exemption from s. 20.

Mr. X does not currently fulfill all of these s. 20(b) requirements. Since he works approximately 20 hours per week at Agency B, unless he works less than a full year, he will exceed the yearly time limit. Mr. X may not receive compensation in the Agency B post for more than 500 hours per year in order to qualify for a s. 20(b) exemption. Thus, as Mr. X does not qualify for a s. 20(b) exemption, he may not hold the full-time Agency A and part-time Agency B posts simultaneously.

However, if Mr. X were to be paid for 500 hours or less per year in his Agency B post, he may be eligible for a s. 20(b) exemption if he can fulfill the remainder of the s. 20(b) conditions. Specifically, Mr. X will need the

certification described above by the head of Agency A, and approval of this exemption by the Board of Selectmen.

[1] Mr. X has authorized this opinion request.

[2] Agency One is a "municipal agency" for purposes of the conflict of interest law. A "municipal agency," is defined as any department or office of a city or town government and any council, division, board, bureau, commission, institution, tribunal or other instrumentality thereof or thereunder. G.L. c. 268A, s. 1(f).

[3] "Municipal employee," a person performing services for or holding an office, position, employment or membership in a municipal agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis, but excluding (1) elected members of a town meeting and (2) members of a charter commission established under Article LXXXIX of the Amendments to the Constitution. G.L. c. 268A, s. 1(g).

[4] Approximately 20 weeks at 40 hours/week or 15 hours/week for a full year of employment.

[5] For convenience, we will refer to this type of work schedule as "flex-time."

[6] The "third alternative" refers to the portion of s. 1(n) which allows for "special" designation where the employee does not earn compensation for more than 800 hours in the position during the preceding 365 days.

[7] Edward W. Brooke, Attorney General, Memorandum re Classification Under Chapter 779 of the Acts of 1962 (March 8, 1963).

[8] See, e.g., Buss, 45 Boston Univ. L. Rev. 299, 314 (1965) ("It is clear that the special classification is intended to be reserved for those who in fact have limited contact with their level of government.")

[9] Those who are permitted to have private employment during normal working hours may include consultants whose contracts do not include scheduled work hours, attorneys allowed to engage in the private practice of law during normal working hours, or full/part-time teachers at educational institutions who are expressly allowed time to do private research or study. These examples are not meant to be all inclusive.

[10] Approximately 9.5 hours per week.

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## INTER-MUNICIPAL ASSESSING AGREEMENTS

### G.L. c. 41, § 30B

#### **BACKGROUND**

Generally, cities and towns may enter into inter-municipal agreements to perform jointly any services, activities or undertakings which they are authorized by law to perform, or to have one or more of them perform them on behalf of the others. G.L. c 40, § 4A.

Inter-municipal agreements regarding assessing services or functions, however, are governed by G.L. c. 41, § 30B. Cities and towns may share assessing functions through common boards and administrative staff, or have one city or town perform the assessing function on behalf of all other parties to the agreement. An agreement executed under G.L. c. 41, § 30B supersedes any inconsistent general or special law, municipal charter, local vote, by-law or ordinance.

#### **A. IMPLEMENTATION REQUIREMENTS**

Minimum requirements for approving or amending an inter-municipal assessing agreement are:

1. The agreement or amendment must be approved in a city by vote of the city council with the approval of the mayor and, in a town, by vote of the board of selectmen.
2. The agreement or amendment must be approved in writing by the Department of Revenue and is not effective until approved.

#### **B. STRUCTURE**

In an inter-municipal assessing agreement, municipalities may divide, merge or consolidate assessing department administrative tasks and statutory powers of boards of assessors.

##### **Administrative Tasks**

Administrative tasks carried out by assessing department staff may be:

1. Performed by one municipality's assessing department on behalf of other parties.
2. Performed by a new assessing department formed to employ staff and carry out all tasks on behalf of all parties.

##### **Board of Assessors**

The statutory powers and duties of the boards of assessors of the parties may be:

1. Retained by each party.
2. Vested in a board of assessors of one of the parties.
3. Vested in a single person.
4. Vested in a regional board of assessors representing all of the parties. The method for selecting the members of a regional board of assessors must be set out in the agreement and must provide

for at least one representative for each member city or town. Each town's representative(s) may be locally elected or appointed.

If the parties vest the statutory powers and duties in one person, the board of one of the parties or a regional board, all local boards relinquish their powers and terminate while their municipalities is a party to the agreement. Municipalities may share administrative assessing tasks and still retain their boards, even if one department is performing those tasks on behalf of all other parties.

### **C. MANDATORY AGREEMENT TERMS**

An inter-municipal assessing agreement must address, at a minimum, each of the following:

1. The term of the agreement, which may not exceed 25 years.
2. The procedures for the parties to amend or terminate the agreement.
3. The procedure for a party to withdraw from the agreement.
4. The specific division, merger or consolidation of administrative functions between or among the parties, or the performance of functions by one municipality on behalf of all other parties.
5. The financing of the joint or cooperative undertaking, including costs of employee compensation and benefits during the duration of the agreement.
6. The rights and responsibilities of the parties regarding the direction and supervision of work performed, the administration of the assessing office, the maintenance of accounts and records and the auditing of accounts.
7. The annual or other reports to be prepared and provided to the parties.

### **D. FINANCING THE JOINT OR COOPERATIVE VENTURE**

The allocation of shared costs under an inter-municipal assessing agreement and the appropriation and expenditure of funds can be structured in several ways:

1. Purchase of services. A municipality buys particular assessing services from another municipality for a specific price under a contract for which it has an appropriation.
2. Host community. One of the municipalities to the assessing agreement is the host and appropriates the full cost of the shared assessing operation in its annual budget. It is reimbursed by the other parties according to a formula in the agreement. The other parties appropriate their reimbursements in their annual budgets. The reimbursements are general fund revenue of the host and offset its budgeted expenses for the shared operation.
3. Independent district or regional operation. Members are assessed for the services they receive from the district or regional operation according to a formula in the agreement. Members appropriate their assessments in their annual budgets.

If there is a host community, independent district or regional operation, the agreement must include the formula for determining the cost of the services and allocating the cost among the parties. All operational and capital expenses, if any, associated with the shared assessing services should be clearly defined in any agreement, particularly employee salaries and benefits.

The Official Website of the State Ethics Commission

## State Ethics Commission

Home Opinions & Rulings Advisory Opinions Holding a 2nd Public Position EC-COI-86-10

### EC-COI-86-10

May 20, 1986

All identifying information has been deleted from this opinion as required by Chapter 268B, section 3(g).

#### FACTS:

You are both the full-time police chief and an appointed constable in the same town.

#### QUESTION:

Does the state's conflict of interest law, G.L. c. 268A, permit you to serve in both positions?

#### ANSWER:

No.

#### DISCUSSION:

As a police chief, you are considered a municipal employee for purposes of the conflict of interest law, and are consequently subject to the provisions of that law. G.L. c. 268A, s. 1 et seq. Section 20 prohibits a municipal employee from having a financial interest, directly or indirectly, in a contract made by the same municipality. You clearly have a financial interest in your constable appointment since you receive fees for performing constable duties. The issue remaining is whether serving as a constable results in a contract between the appointee and the town within the meaning of G.L. c. 268A, s. 20.

The Commission recently decided a similar "issue at the state level. See *in the Matter of Robert J. Quinn*, 1986 Ethics Commission. The issue in *Quinn* was whether serving as a bail commissioner resulted in a contract between the appointee and the Superior Court [the appointing authority] within the meaning of G.L. c. 268A, s. 7 [the state equivalent to s. 20]. In *Quinn*, the Commission concluded, *inter alia*, that serving as a bail commissioner results in a contract between the state and the bail commissioner as the word "contract" (which is undefined in G.L. c. 268A) is used in traditional contract law of offer, acceptance, and consideration.<sup>1/</sup> "The state offers the opportunity to be appointed and to serve as bail commissioner subject to regulation and supervision by the Superior Court. Acceptance occurs on each occasion a bail commissioner agrees to perform those services subject to applicable regulation."<sup>2/</sup>

In analyzing the "contract" in *Quinn*, the Commission considered six standards, including whether:

- (1) the appointment confers upon the appointee the powers normally associated with public office;
  - (2) the duties are similar or identical to the duties performed by public employees;
  - (3) there is any choice in who will receive his services;
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- (4) the place for provision of the services is on public property;
  - (5) the procedures and work product of the appointee are substantially regulated by a public agency or by law;
  - (6) compensation for providing the services is specifically and substantially regulated by a public agency or by law.

In a given fact pattern, some of these standards may be given more or less weight. Each factual situation must also be viewed in light of the purpose of the conflict of interest law. One of the underlying policies of section 20 is to prevent municipal employees from using their positions to obtain contractual benefits or additional appointments from the municipality and to avoid any public perception that municipal employees have an "inside track" on such opportunities. See generally *Buss, The Massachusetts Conflict of Interest Statute: An Analysis*, 45 B.U.L. Rev. 299 (1965). On the basis of the above standards, particularly standards (1), (2), (5) and (6), the Commission concludes that your serving as an appointed constable in exchange for fees results in a contract within the meaning of G.L. c. 268A, §20 between you and the Town.

Constables in your town are appointed by the Board of Selectmen as "town officers." See G.L. c. 41, § 1; G.L. c. 41, §91A. While most constables spend the substantial majority of their time serving process in civil and criminal cases pursuant to G.L. c. 41, §94, appointment to the position of constable confers upon them a broad range of statutory powers normally associated with public office. For instance, constables "have the powers of sheriffs to require aid in the execution of their duties." G.L. c. 41, s. 94. If no one is elected or appointed as tax collector, or if the appointee refuses to serve, constables serve in that capacity on behalf of the town. G.L. c. 41, s. 39. Constables also possess the power of arrest without a warrant under a number of circumstances, including: violation of the election laws (G.L. c. 56, s. 57); illegal manufacture, sale or transport of alcohol (G.L. c. 138, s. 56); trespassing, after notice, upon a house, building, boat, wharf, etc. (G.L. c. 266, s. 120); playing

games in a public place for money or other property (G.L. c. 271, s. 2); and keeping a house, room or place for prostitution. (G.L. c. 272, s. 10). Other instances in which constables have the statutory power of arrest include breaches of the peace and health law violations. The breadth of constabulary powers of arrest is evidenced by the fact that both the local and state police derive much of their power from constables: "... [police officers] shall have all the powers and duties of constable except serving and executing civil process." G.L. c. 41, s. 98. See also G.L. c. 22, s. 9A. In summary, the Commission finds that among the statutory powers available to a constable upon appointment are powers and duties similar or identical to those of other public employees.

The fees constables may charge for their services are specifically set out by statute. G.L. c. 262, s. 8. Constables are also required to make an annual accounting of the fees they collect. *Id.* Thus, while constables secure their own clients and have discretion as to what services within their authority they will provide, their duties and compensation are regulated by statute. The Commission concludes that you have a contract with the town each time you perform services as a constable, because you carry the statutory authority to perform governmental functions such as arrest and your fee schedule is regulated by statute. Your financial interest in such a contract, i.e., your receipt of fees for performing constable services, violates s. 20.

The sole exemption under s. 20 available to a full-time municipal employee with a financial interest in a contract made by the same municipality is s. 20(b), which exempts:

a municipal employee who is not employed by the contracting agency or an agency which regulates the activities of the contracting agency and who does not participate in or have official responsibility for any of the activities of the contracting agency, if the contract is made after public notice or where applicable, through competitive bidding, and if the municipal employee files with the clerk of the city or town a statement making full disclosure of his interest and the interest of his immediate family; and if in the case of a contract for personal services:

- (1) the services will be provided outside the normal working hours of the municipal employee,
- (2) the services are not required as part of the municipal employee's regular duties, the employee is compensated for not more than five hundred hours during a calendar year,
- (3) the head of the contracting agency makes and files with the clerk of the city or town a written certification that no employee of that agency is available to perform those services as part of their regular duties, and
- (4) the city council, board of selectmen or board of aldermen approve the exemption of his interest from this section.

You do not qualify for this exemption. In previous opinions, the Commission has considered the nature of both a police chief's and a fire chief's duties in a municipality. See *ECCOI-85-64; 85-65; 85-83*. The Commission concluded that the general supervisory responsibilities such individuals possess over department matters require that they be on call twenty four hours a day.

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Because your position as chief of police is considered a 24-hour a day job, you are rendered incapable of meeting the requirement that your constabulary services be provided outside your normal working hours.

DATE AUTHORIZED: May 20, 1986

1/ The fact that a bail commissioner receives fees from someone other than the state was held to be irrelevant. "Section 7 prohibits a financial interest in a contract made by a state agency, not in one funded by the state. It is the existence of compensation, not the identity of its source, that is the issue." *Quinn, supra*. The opportunity to earn compensation from third persons is sufficient to support a contract. *Id. (cites omitted)*.

2/ See footnote 5 in *Quinn, supra*.

3/ Because your receipt of fees for performing constable services violates s. 20, the Commission does not reach the issue of whether your police chief salary would qualify for a s. 20 exemption if the position of constable was expressly classified as a "special municipal employee" position by the Board of Selectmen.

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End of Opinion



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Commonwealth of Massachusetts

Department of Revenue

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Mitchell Adams

Commissioner

October 22, 1997

Charles E. Demers, Chairman  
Board of Assessors  
Town Hall  
Somerset, MA 02726

Re: Clerk/Board Member  
Our File No. 97-536

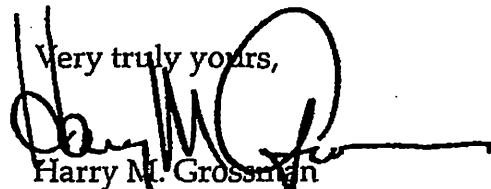
Dear Mr. Demers:

You have asked for a legal opinion concerning a perceived conflict of interest by a clerical employee under the supervision of a manager appointed by the board. This clerical employee has run for election to the board on at least two occasions but has not yet been elected. Nevertheless, the board is concerned about the potential conflict if this employee were to win election and attempt to retain her paid clerical position.

This question is primarily one to be answered by officers with the jurisdiction over conflict of interest issues, the State Ethics Commission or town counsel. Any request for an opinion on this issue should be directed to those officers. The only statute on such conflicts which appears in the municipal finance laws is G.L. Ch. 41, §4A, which permits a board of assessors to appoint one of their members to a position under its authority for a one year term, if annual town meeting authorizes such appointment and fixes the salary. The statute does not address the issue of a person who is employed by the board and runs for election to the office of assessor. See also G.L. Ch. 268A, §21A which is similar. If the person is so elected and comes up for reappointment, we believe that the provisions of G.L. Ch. 41, §4A would apply at that time.

To the extent we were able to respond, we hope this addresses your concerns. Please do not hesitate to contact us again.

Very truly yours,



Harry M. Grossman  
Chief, Property Tax Bureau

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**Division of Local Services**

**Joseph J. Chessey Jr., Deputy Commissioner**

Post Office Box 9655, Boston, MA 02114-9655 Tel: 617-626-2300 Fax: 617-6262330  
<http://www.state.ma.us/dls>

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**From:** Hinchey, Christopher M on behalf of DOR DLS Law

**Sent:** Wednesday, April 15, 2009 3:07 PM

**To:** 'Lisa Berg'

**Subject:** 2009-518 RE: Conflict

Any conflict of interest issues under Ch.268A would have to be resolved by the ethics commission or the town counsel.

So far as the municipal finance laws are concerned, Ch.41 §24 prohibits an assessor from serving as a collector or deputy collector, but we know of no similar prohibition relating to assessors' and collectors' clerical staff. Assessors' clerks can't abate tax bills; they may assemble the relevant documentation and make recommendations, but legally, only the assessors can actually abate a tax.

Chris Hinchey Tax Counsel  
Bureau of Municipal Finance Law  
PO Box 9569  
Boston, MA 02114-9569  
617-626-2400  
[dlslaw@dor.state.ma.us](mailto:dlslaw@dor.state.ma.us)

This e-mail response is intended to provide general information about the application of municipal tax and finance laws and Department of Revenue policies and procedures. It is not a public written statement, as defined in 830 CMR 62C.3.1, and does not state the official position of the Department on the interpretation of the laws pertaining to local taxes and finance. It should be considered informational only.

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**From:** Lisa Berg [mailto:[lisab@dudleyma.gov](mailto:lisab@dudleyma.gov)]

**Sent:** Tuesday, April 14, 2009 2:42 PM

**To:** DOR DLS Law

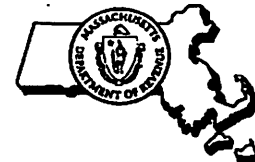
**Subject:** Conflict

Hi,

As with many other towns, the Town of Dudley is in the proces of consolidating departments. They want to lay off two (2) of the following clerks, the town Clerk's Clerk, Assessors Clerk, Treasurer's Clerk & the Collector's Clerk. The two clerks that will remain, will cover all four offices. My question is, can an assessors clerk who abates bills work in the collector & treasurer's office, as well as the treasurer Clerk & Collector's clerk working in the Assessors Office? If you do not know, could you please direct me to someone that I can contact.

Thank you for your help.

Lisa L. Berg, MAA  
Principal Assessor  
Town of Dudley  
[lisab@dudleyma.gov](mailto:lisab@dudleyma.gov)  
508-949-8006  
508-949-2223 (fax)



June 13, 2000

Lorraine A. Garrant  
Town Accountant  
242 Church Street  
Clinton, MA 01510

Re: Conflict of Interest - Holding Two Town Positions  
Our File No. 2000-327

Dear Ms. Garrant:

You have asked whether you would have a conflict of interest as town accountant if you were to take a part-time position as Coordinator of Financial Affairs in the School Department. That position would include many of the duties normally associated with a school business manager or administrator. We are not aware of any provision of municipal finance law that would make serving in such a dual capacity a prohibited practice, provided the hours of performing each service do not conflict. In fact, if the school committee and the town agree and the town accepts G.L. c. 71, §37M, the financial functions of the schools and the town could be consolidated. [Note that while the school committee has authority to provide a special benefit contract for its business administrator for up to six years, the board of selectmen may enter into such a contract with the town accountant for a term up to five years. See G.L. c. 71, §41, G.L. c. 41, §§55 & 108N.]

The only statutory prohibition relating specifically to town accountants holding other positions is found in G.L. c. 41, §55. That section provides that a town accountant cannot hold any position (except town clerk) that involves the receipt of money. Based on the job description submitted, the Coordinator of Financial Affairs does not appear to receive or disburse funds. If, however, you would be required to receive any funds in that position, such as grants, fees or gifts, you would not be able to hold both positions.

Other statutory provisions and agencies, however, might determine that a conflict exists under other law. For example, the State Ethics Commission enforces the conflict of interest statute. See G.L. c. 268A. In addition, town counsel is authorized to issue opinions to employees who believe they may have a potential conflict. Finally, in some towns local by-laws may restrict multiple holding of positions. Again, town counsel is in a better position to answer such a question.

If we may be of further assistance, please do not hesitate to contact us again.

Very truly yours,

Bruce H. Stanford, Chief  
Property Tax Bureau



September 7, 1999

Daniel H. Zdonek, Jr.  
Assistant Assessor  
Town Offices  
100 Middle Street  
Hadley, MA 01035

Re: Abatement Procedures – Conflicts of Interest  
Our File No. 99-108

Dear Mr. Zdonek:

This is in reply to your letter requesting information as to the proper procedure for addressing an application for abatement where two of the three elected assessors must abstain from voting thereon. In the situation presented, one board member is the son-in-law of the applicant, while another board member is a brother-in-law of the applicant. These relationships leave only a single assessor available to act upon the abatement request.

As this issue relates to the Conflict of Interest law, G.L. Chapter 268A, we contacted the State Ethics Commission (617-727-0060) for guidance and were referred to a Guideline of their office explaining the "Rule of Necessity", which appears applicable in the circumstances presented. I have enclosed a copy of this information for your perusal. If applicable, the rule would allow all board members to participate in the action provided the Board complies with all necessary procedures.

I hope this information proves helpful. If I may be of any additional assistance in this or any other matter, please do not hesitate to contact me.

Very truly yours,

Bruce H. Stanford  
Chief, Property Tax Bureau

BHS/jeb  
Enclosure

## ADVISORY

Advisory 05-05: The Rule of Necessity

DATE: 05/16/2019

ORGANIZATION:

State Ethics Commission

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### Introduction

#### I. Requirements for Use of the Rule of Necessity by Elected Board Members

#### II. Procedure for Invoking the Rule of Necessity by an Elected Board

#### III. Use of the Rule of Necessity by Individual Elected Officials

### Introduction

An elected member of a city or town board is ordinarily disqualified by the conflict of interest law from participating in a matter before the board that involves his own financial interest or that of an immediate family member, a business partner, a business organization with which he has certain affiliations, or a person or organization with whom he is negotiating or has any arrangement concerning future employment.<sup>1/</sup> See G.L. c. 268A, § 19. In some cases, especially when more than one member is disqualified due to a conflict of interest, an elected board cannot act because it does not have the minimum required number of members to take a vote, i.e. a quorum.

Under very limited circumstances, an elected board may be able to use the rule of necessity to permit the participation of the otherwise disqualified member(s) in order to allow the board to act. The rule of necessity may be used only when it is legally necessary for an elected board to act – for example, when a statute requires an action to be taken, or sets a deadline for action to be taken. The rule of necessity may not be used when a board merely has discretion to act or wants to act. The rule of necessity may be used only as a last resort. Invoking the rule of necessity does not require all previously disqualified members to participate; it merely permits their participation.

In appropriate, similarly limited circumstances, individual elected officials, such as the mayor of a municipality, may be able to use the rule of necessity in order to carry out legally-required actions that otherwise would be prohibited by the conflict of interest law.

The rule of necessity should be used only upon advice from town or city counsel or the State Ethics Commission because improper use of the rule may result in a violation of the conflict of interest law. The advice should be obtained in writing, if feasible.

#### I. Requirements for Use of the Rule of Necessity by Elected Board Members

1. The rule of necessity may be used only when an elected board is legally required to act on a matter and it lacks enough members to take valid official action solely due to board members being disqualified by conflicts of interest from participating in the matter.

Example: All five elected select board members are present at a meeting. State law requires municipalities to decide immediately whether to adopt a new municipal health plan that will cover town employees and this decision can be made only by the select board. Three select board members will be insured by the health plan. A quorum of three members is necessary for a decision. The two members without conflicts do not constitute a quorum. The board cannot act. The rule of necessity may be invoked to permit all members to participate in that matter.

Example: The five-member elected planning board has a meeting and all members are present. A quorum is three members. A statute sets a deadline by which the planning board must act on a special permit, and a vote by four of the five board members is necessary for an affirmative decision. This action may be taken only by the planning board. Two board members have conflicts. Although a quorum is available, the required four votes needed for this particular matter cannot be obtained without the participation of one or both of the members with conflicts. The rule of necessity may be invoked, and all five board members may participate.

Example: A subcommittee of the city council is considering whether to recommend adoption of an ordinance that would increase the fee for inspections of day care centers by \$30. The subcommittee includes five city councilors. One city councilor owns a day care center. Two city councilors have parents who own day care centers. The subcommittee does not have a quorum that is disinterested. There is no legal requirement to adjust the fee for these types of inspections. The rule of necessity cannot be invoked to reach a quorum.

2. If an elected board cannot act because one or more members have a conflict that can be addressed under the conflict of interest law by making a written disclosure or using an exemption, the rule of necessity may not be invoked.

Example: One member of a three-member elected board has a daughter who is an applicant for a police officer position. That board member cannot participate in the board's hiring decision because his daughter is an immediate family member and she has a financial interest in the matter. A second member has a niece who is an applicant for the same position. Because a niece is not an "immediate family" member, the second member may choose either to: (1) make a disclosure about his niece pursuant to section 23(b)(3) to dispel the appearance of a conflict of interest and then may participate in the matter, or (2) abstain from the matter. The third member has no conflict. The third member may act, and the second member may act if she files a disclosure. If the second member chooses to abstain instead of filing a disclosure, the board may not invoke the rule of necessity.

Example: A three-member elected water commission is legally required to vote annually to establish the water rates for all residential property owners in the town. A quorum to act requires two commissioners. An exemption under section 19(b)(3) allows a municipal employee to participate in a determination of general policy if his financial interest and the financial interest of his immediate family in the matter is shared with more than 10% of the population of the town.<sup>2/</sup> More than 10% of the town's population, including all three commissioners, own residential property. All three members who own residential property may use the section 19(b)(3) exemption to participate in setting the water rates. There is no need to invoke the rule of necessity.

3. Before invoking the rule of necessity, every effort must be made to find another board or other authority in the municipality with the legal power to act in place of the elected board that could not obtain a quorum due to conflicts of interest. Municipal counsel should be consulted to identify another municipal board or authority to act.

4. The rule of necessity may not be invoked for mere convenience. The lack of a quorum because of illness or absence of a member does not permit the rule of necessity to be invoked. However, when a board is legally required to take action by a certain time that is about to expire and is unable to do so because of the lack of a quorum due to illness or absence of a member, the rule of necessity may be invoked.

Example: A statute requires the select board to approve payroll warrants on a weekly basis. One member of the three-member board is disqualified because an immediate family member works for the town. Another member is absent. The rule of necessity may be invoked so the select board can meet the weekly deadline.

5. Once a quorum of board members has been obtained, the rule of necessity may not be used to break a tie vote.

Example: A five-member elected board has a meeting involving a matter in which the board is legally required to act, and all members are present. One member has a conflict and is unable to participate. The vote is a 2-2 tie. The rule of necessity may not be used to break the tie. In general, a tie vote defeats the issue being voted on and will maintain the status quo.

## II. Procedure for Invoking the Rule of Necessity by an Elected Board

The rule of necessity may be invoked by the chairperson of the elected board, if the chairperson is not disqualified due to a conflict of interest (and is therefore disinterested), after receiving advice, preferably written, from town or city counsel or the State Ethics Commission. If the chairperson is disqualified, then the rule of necessity may be invoked by a disinterested board member. (If all board members are conflicted, then the chairperson should invoke the rule of necessity.) When the rule of necessity is invoked, each board member who has a conflict must disclose the facts that create the conflict, and then may participate in the matter.

If it is proper for the rule of necessity to be used, the minutes of the meeting should:

- state that the board lacked a sufficient number of members necessary to take a valid vote as a result of disqualification of members due to conflicts of interest;
- include the facts disclosed by each disqualified member which created his or her conflict;
- identify the legal requirement necessitating board action at that meeting; and
- record that, as a last resort, the rule of necessity was invoked so that those who were disqualified could participate.

Example: Two members of a three-member elected board have conflicts of interest that prohibit them from participating in a matter involving property owned by a private school for which they serve as trustees. No other board or agency can act on the matter. After consulting with town counsel, the chairperson (if disinterested) or one of the disinterested board members should invoke the rule of necessity, state the legal requirement necessitating that the board act, and direct that such information be included in the minutes. Both board members who had been prohibited from participating should disclose the fact that they serve as trustees and then may participate in the matter.

## III. Use of the Rule of Necessity by Individual Elected Officials

While the rule of necessity is most commonly invoked by elected multi-member boards, it is also applicable to individual elected officials, such as the mayor of a municipality. For an individual elected official to be able to use the rule of necessity, the same requirements explained above apply: the official must be legally required to act on a matter and is disqualified by a conflict of interest from acting, and there is no one else legally qualified to act on that matter. In that situation, the individual elected official may invoke the rule of necessity to the minimum extent necessary to allow him to take the required action otherwise prohibited by the conflict of interest law.

If the legal duty to act permits the official to delegate that duty, then the official may invoke the rule of necessity for the limited purpose of designating another person to carry out the required action. If a delegation is made, the elected official then may not otherwise participate in the matter. However, if the legal duty to act is non-delegable, then the individual elected official may invoke the rule of necessity to take all actions required legally of him. Any such invocation of the rule should be documented by the elected official in a writing filed publicly with the municipal clerk, or, if the elected official holds a state or county office, with the State Ethics Commission.

Example: The General Laws confer upon a mayor the sole power to act as her city's bargaining representative for purposes of negotiating a collective bargaining agreement with the city's firefighters, but permit the mayor to select a "designated representative" to negotiate such an agreement in her place. The mayor's spouse is a firefighter who has a financial interest in his union's collective bargaining agreement with the city. Section 19 of the conflict of interest law would prohibit the mayor from participating in the firefighters' collective bargaining agreement. The mayor may invoke the rule of necessity to designate an alternate to serve as the city's collective bargaining representative with the firefighter's union. Once she does so, the mayor may not otherwise participate in the matter.

Example: The General Laws require a mayor to take a variety of actions with respect to making changes to the health insurance coverage that the city offers to its employees, and do not contain any provision authorizing anyone to act in the place of the mayor or permitting the mayor to delegate those duties. The mayor himself is a subscriber to his city's health insurance, and he would be disqualified by section 19 of the conflict of interest law from participating in matters relating to the city's coverage, because he has a financial interest in those matters. The mayor may invoke the rule of necessity and take all actions required legally of him in his official capacity under the General Laws with respect to changes to the city's health insurance coverage.

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For more information about the state conflict of interest and financial disclosure laws (G.L. c. 268A & c. 268B), including the subjects discussed in this Advisory, please contact:

State Ethics Commission  
One Ashburton Place, Room 619  
Boston, MA 02108  
(617) 371-9500

ISSUED: March 1987  
REVISED: January 1991  
REVISED: February 1993  
REVISED: December 2005 [as an Advisory]  
REVISED: October 17, 2013  
REVISED: May 16, 2019

1/ While this Advisory focuses on the use of the rule of necessity by elected municipal boards and officials, the rule also may be used by elected state and county boards and by individual elected state and county officials who are disqualified by G.L. c. 268A, § 6 or § 13 from participating in particular matters because of financial interests.

2/ Section 19(b)(3) applies to municipal employees. See EC-COI-92-34. A similar exemption is available to state employees pursuant to 930 CMR 6.25.

**REFERENCED SOURCES:**

2005 Ethics Commission Rulings



# STATE ETHICS COMMISSION

## In The Matter of Harry Gannon

Date: October 13, 2006  
DISPOSITION AGREEMENT

The State Ethics Commission and Harry Gannon enter into this Disposition Agreement pursuant to Section 5 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, s. 4(j).

On July 25, 2006, the Commission initiated, pursuant to G.L. c. 268B, s. 4 (a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Gannon. The Commission has concluded its inquiry and, on September 13, 2006, found reasonable cause to believe that Gannon violated G.L. c. 268A.

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

### Findings of Fact

1. In 1985, Gannon became the paid, appointed Maynard town accountant.
2. Prior to 1999, the town accountant administered the Maynard Retirement Board's ("Board") functions and received an extra \$3,000 annually for the services.
3. In 1999, the Board, with Gannon serving ex officio as town accountant, created and funded a new position of executive director of the retirement board.
4. Gannon participated in the Board's actions to create and fund the position. The salary was set at \$12,000 per year. When Gannon so participated he knew he would likely be appointed to fill this position.
5. The Board then voted, with Gannon abstaining, to appoint the town accountant (Gannon) as the executive director, a position he continues to serve in currently. In effect, this action by the Board resulted in an annual salary increase for Gannon of \$9,000.
6. Gannon then served as both the paid town accountant and paid retirement board executive director from September 2000 until December 31, 2002, when he retired as town accountant.

### Conclusions of Law

7. As the Maynard town accountant, Gannon was a municipal employee as defined by G.L. c. 268A, s. 1.
8. Except as otherwise permitted, s. 20 of G.L. c. 268A prohibits a municipal employee from having a financial interest, directly or indirectly, in a contract made by a municipal agency of the same city or town, in which the same city or town is an interested party of which financial interest the employee has knowledge or reason to know.
9. Gannon's paid appointment as executive director of the retirement board in September 2000, while he was already serving as the paid town accountant gave him an ongoing prohibited financial interest in a contract made by the town of Maynard in which the town was an interested party.
10. Gannon knew or had reason to know of his financial interest in that contract.
11. Thus, by serving as the paid retirement board executive director while being the town accountant, Gannon repeatedly violated s. 20.[1]

Resolution: In view of the foregoing violations of G.L. c. 268A by Gannon, 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 Gannon:

- (1) that Gannon pay to the Commission the sum of five thousand dollars (\$5,000.00) as a civil penalty for repeatedly violating G. L. c. 268A s. 20;
- (2) that Gannon pay to the Commission the sum of twenty thousand dollars (\$20,000) as a civil forfeiture of the compensation that he received in violation of s. 20; and
- (3) that Gannon waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

### STATE ETHICS COMMISSION

By:  
/s/ Peter Sturges, Executive Director  
November 14, 2006

/s/ Harry Gannon  
October 13, 2006

I, Harry Gannon, have personally read the above Disposition Agreement. I understand that it is a public document and that by signing it, I will have agreed to all of the terms and conditions therein including payment of twenty five thousand dollars (\$25,000) to the State Ethics Commission.

/s/ Harry Gannon

October 13, 2006

[1] The Commission's statute of limitations (930CMR 1.02 (10)) prevents the Commission from proceeding on Gannon's participation in 1999 in the creation of the retirement board executive director position.  
End Of Decision

## **STATE ETHICS COMMISSION**

Hickson, Paul T., Docket No. 316

Docket No. 316

In the Matter of Paul T. Hickson

June 25, 1987

Decision and Order

Appearing:

Robert A. Levite, Counsel for Petitioner  
State Ethics Commission

Anthony C. Bonavita, Counsel for Respondent  
Paul T. Hickson

Commissioners:

Diver, Ch., Basile, Burns, Epps, Gargiulo

### **DECISION AND ORDER**

#### **I. Procedural History**

The Petitioner filed an Order to Show Cause on December 29, 1986 alleging that the Respondent, Paul T. Hickson, was in violation of G.L. c. 268A, s.20[1] by serving as an elected city councillor for the City of Westfield (City) and as a maintenance worker for the Westfield Housing Authority (WHA). In lieu of an adjudicatory hearing, the Petitioner and Respondent stipulated to the relevant facts, submitted briefs, and orally argued before the full Commission on June 8, 1987. Based upon a review of the evidence and arguments presented by the parties, the Commission makes the following findings and conclusions.

#### **II. Findings**

##### **A. Jurisdiction**

The parties have stipulated that the Respondent, in his capacity as an elected city councillor, is a municipal employee within the meaning of G.L. c. 268A, s.1(g).[2]

##### **B. Findings of Fact**

1. The Respondent has been employed as a WHA maintenance worker for approximately four years and is paid \$20,000 annually.
2. The Respondent has also served as an elected city councillor in the City for approximately three years and is paid \$4,000 annually.
3. On September 10, 1985 the Westfield City Solicitor rendered an opinion stating that there is "no express prohibition or inherent wrong in a maintenance employee of the Housing Authority being a member of the City Council..." Opinion of the City Solicitor, September 10, 1985.
4. On July 22, 1986, the Commission advised the Respondent through a compliance letter, [3] that as an elected city councillor and a maintenance worker for the WHA, he had a prohibited financial interest in

a contract made by a municipal agency of the same city, in which the city is an interested party. The Commission noted that the city solicitor's advice was incorrect under s.20 of the conflict of interest law. The Commission informed the Respondent that the violation could be cured if he resigned one of his municipal positions within thirty days.

5. Notwithstanding receipt of the Commission's compliance letter, the Respondent has continued to maintain both positions.

### III. Decision

The Respondent, as a municipal employee, is prohibited by G.L. c. 268A, s.20 from having a financial interest, directly or indirectly, in a contract made by a municipal agency of the same city in which the city is an interested party. The Respondent stipulates that he is a municipal employee in his capacity as city councillor. He also has a financial interest in his employment contract with the WHA, a municipal agency, since he is compensated to work pursuant to that contract. The WHA's municipal agency status is plainly articulated in its enabling statute, G.L. c. 121B, s.7. Consequently, the Respondent has a prohibited financial interest in his employment contract with the WHA, a municipal agency. By maintaining his position as a maintenance worker for the WHA while also serving as a city councillor for the City, we conclude that the Respondent has violated and continues to violate G.L. c. 268A, s.20.[4]

This result is consistent with the Commission's conclusion in a nearly identical case, In the Matter of Kenneth R. Strong, 1984 SEC 195, in which an elected common councillor violated s.20 by also serving as a maintenance worker for the city housing authority.[5]

The Respondent makes five arguments in support of his contention that he has not violated G.L. c. 268A: 1) WHA is not a municipal agency because it is funded by the state; 2) the Respondent does not knowingly have a financial interest in his employment contract with a municipal agency; 3) the City is not an interested party in any contract he may have with the WHA; 4) the Commission's application of G.L. c. 268A, s.20 deprives him of his right to be elected under Part I, Art. 9 of the Massachusetts Constitution thus depriving him of equal protection of the law; and 5) that the Order to Show Cause contains various procedural and constitutional defects. For the following reasons, none of the contentions set forth above persuades us to overrule the principles which we articulated in Strong and reaffirm today.

1. The enabling statute which establishes housing authorities, G.L. c. 121B, provides that: For the purposes of chapter two hundred and sixty-eight A, each housing and redevelopment authority shall be considered a municipal agency ... Prior to the enactment of G.L. c. 121B and before the creation of the State Ethics Commission, the Attorney General ruled that housing authorities are municipal agencies for the purposes of G.L. c. 268A. Attorney General Conflict Op.25 (April 16,1963). G.L. c. 121B codified this conclusion. The plain language of G.L. c. 121B is conclusive as a matter of law that the WHA is a municipal agency. The Respondent's assertion that the source of the funding for his DHA salary is federal and state money does not alter this conclusion. The Legislature enacted G.L. c. 121B with the presumed knowledge that housing authorities received funds from various sources, including the state and federal government. Respondent's argument that the source of funding for his WHA salary renders the WHA something other than a municipal agency is an argument the Respondent has with c. 121B, not with the application of the conflict law.

2. The Respondent is employed by the WHA, a municipal agency, and is paid \$20,000 annually. To the extent that the Respondent claims that he had no knowledge of his financial interest in a municipal contract, this question was definitively resolved when the Commission notified him in July of 1986 that he was in violation of G.L. c. 268A, s.20. To the extent that he claims he did not have knowledge because his employment was not a contract made by a municipal agency, we have previously addressed this question in 1.[6]

3. In the Strong decision, we held that the City is also an interested party to contracts the [housing authority] enters into with Respondent, a municipal employee of the City. The nature of the establishment and operation of a housing authority demonstrate that the City is an interested party in the activities of the (housing authority). Its enabling statute provides that no housing authority may transact business or exercise its powers until a need for the authority has been determined by city officials. Four of the five housing authority members are appointed by the mayor. G.L. c. 121B, s.5. The City's status as an interested party is also reflected in its statutory responsibility to provide safe and sanitary dwellings for families or elderly persons of low income. See G.L. c. 121B, s.3. Strong at 196. This conclusion applies equally here. The Respondent has offered no argument which rebuts this reasoning nor are we aware of any facts in this case which would warrant a different conclusion.

4. The Respondent also challenges the application of G.L. c. 268A on constitutional grounds, arguing that Chapter 268A, s.20 deprives the Respondent of his right to hold elective office under Part 1, Art. 9 of the Mass. Constitution. This argument was addressed and definitively resolved in Strong. In Strong, we noted that the right "to be elected" is not absolute. See, Opinion of the Justices, 375 Mass. 805,811(1978). The conflict of interest law does not interfere with Hickson's right to be elected. Rather, it requires that, if elected, the City Councillor "refrain from contracting with an agency of the same municipality." Conley v. Ipswich, 352 Mass. 201, 205(1967). Strong, supra at 196-197.

5. The Respondent has raised certain constitutional claims and argues various procedural defects in the Commission's Order to Show Cause, although he neither pursued these claims in his brief nor in oral argument. These contentions are addressed briefly. The Respondent argues that the Order to Show Cause is barred by the statute of limitations.[7] Irrespective of the Respondent's argument, the statute does not bar enforcement actions against ongoing violations of the law. Hickson presently is violating the law, and the petitioner's case against Hickson is based on these continuing violations.[8]

#### IV. Penalty

Following a finding of a violation of G.L. c. 268A, the Commission is authorized by G.L. c. 268B, s.4(j) to issue an order requiring the violator to cease and desist from such violation and requiring the violator to pay a civil penalty of not more than \$2,000 for each violation of G.L. c. 268A. The Respondent has been aware since July 22, 1986 of the consequences under s.20 of his retaining his position as a city councillor in the City and as maintenance worker for the WHA. The Respondent has been collecting two paychecks, one of which he was not entitled to and by which he has profited in violation of the law. In addition, the Commission has precedent squarely on point, in the Matter of Kenneth R. Strong, 1984 SEC 195, which definitively concluded that an individual may not be paid simultaneously to be a city councillor and housing authority employee. However, the Respondent did rely, at least up until July, 1986, on incorrect legal advice and, therefore, the Commission will not levy a maximum penalty. Nonetheless, the Commission orders the following sanctions to reflect the seriousness with which it views the Respondent's continuing violation of the statute, in light of the ample notice given to the Respondent, and in consideration of the city solicitor's earlier opinion.

## V. Order

Pursuant to its authority under G.L. c. 268B, s.4(j), the Commission orders the Respondent to:

1. Cease and desist from violating G.L. c. 268A, s.20 by either resigning as a city councillor or terminating his financial interest in his employment contract as a maintenance worker for WHA within thirty (30) day's of the date of this Decision and Order; and
2. pay five hundred dollars (\$500) to the Commission as a civil penalty for violating G.L. c. 268A, s.20.

[1] G.L.c. 268A, s.20 prohibits a municipal employee from having a financial interest, directly or indirectly, in a contract made by a municipal agency of the same city in which the city is an interested party of which financial interest the employee has knowledge or reason to know.

[2] "Municipal employee" is defined as a person performing services for or holding an office, position, employment or membership in a municipal agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent or consultant basis, but excluding (1) elected members of a town meeting and (2) members of a charter commission established under Article LXXXIX of the Amendments to the Constitution. G.L. c. 268A, s.1(g).

[3] A compliance letter is issued in certain cases in which the Commission concludes that there are sufficient facts to warrant a finding of reasonable cause to believe the law has been violated but in which a formal adjudicatory proceeding may not be appropriate at that time. The letter notifies the individual that any further acts in violation of the law may be pursued in the context of a formal proceeding. See State Ethics Commission Enforcement Procedures, s.12 Compliance letters.

[4] None of the exemptions provided by G.L. c. 268A, s.20 to special municipal employees is available to the Respondent. Specifically, G.L. c. 268A s.1(n) expressly prohibits a member of a city council from being designated a special municipal employee.

[5] This conclusion was affirmed by the Superior Court. *Strong v. State Ethics Commission*, Suffolk Superior Court Civil Action No. 72374 (April 30, 1985). The Superior Court decision was later vacated on jurisdictional grounds which are no longer relevant in light of the enactment of St. 1986 c. 12.

[6] We find no persuasive reason to conclude that c. 121B only applies to a limited number of housing authority employees.

[7] The Conflict of Interest Statute of Limitations provides that an Order to Show Cause must be issued within three years of the date upon which a disinterested person learned of the violation. 930CMR 1.02(10)(a).

[8] We address the other procedural defects raised by Hickson by noting that the Order to Show Cause articulates the elements of a s.20 violation, thereby stating a claim upon which relief can be granted, G.L. c. 268B, s.3(i) gives the Commission jurisdiction to act as the civil enforcement agency for conflict of interest violations and although Hickson claims that the Commission is estopped from enforcing its Order to Show Cause, there is no factual or legal basis for this contention. Hickson has not demonstrated that his right to due process has been infringed as a result of the petitioner's maintaining the confidentiality of the complainant's identity. Moreover, the parties have stipulated to all the facts which form the basis of the petitioner's case, and the identity of the complainant is irrelevant now.

Commonwealth of Massachusetts  
**STATE ETHICS COMMISSION**

John W. McCormack Office Building - One Ashburton Place - Room 619  
Boston, Massachusetts 02108-1501  
PHONE: 617-371-9500 or 888-485-4766 FAX: 617-723-5851  
[www.mass.gov/ethics](http://www.mass.gov/ethics)

March 2, 2012

Doug Briggs  
Town Administrator  
Town of Ashburnham  
Town Hall, 32 Main St.  
Ashburnham, MA 01430

Dear Mr. Briggs,

This is in response to your request for advice under the conflict of interest law, G.L. c. 268A. You are employed as the Ashburnham town administrator. In addition, pursuant to an agreement between the towns of Ashburnham and Ashby, you also serve as the town administrator of Ashby. The towns' agreement provides that Ashburnham is your employer for various purposes, but that you will divide your time equally between the two towns, and that Ashby will contribute a stated amount towards your salary on a monthly basis. You ask for advice under c. 268A with respect to your service on a group that is reviewing the opportunities for a regional dispatch center that would be located in Ashburnham but would cover both towns.

As the town administrator for the towns of Ashburnham and Ashby you are a municipal employee of both towns for purposes of the conflict of interest law. The conflict of interest law does not prohibit you from working for the two towns at the same time (restrictions in the law on having two municipal jobs relate to having two jobs with the same town), but it will place some restrictions on what you can do in both roles.

Section 17 of the conflict of interest law prohibits a municipal employee from acting as agent for anyone other than his employing town, in any matter in which the town is a party or has a direct and substantial interest. Contacting or communicating with municipal employees on behalf of some other entity is considered to be acting as an agent, and so is acting as the spokesman for another entity before the municipality and its employees. Section 17 also prohibits municipal employees from being paid by anyone other than the employing town to act in such a matter.

Section 17 will place restrictions on what you can do in matters in which both Ashburnham and Ashby are involved, because you cannot act as Ashburnham's agent in a matter in which Ashby has an interest. The reverse is also true: you cannot act as

Doug Briggs  
March 2, 2012  
Page 2

Ashby's agent in matters in which Ashburnham has an interest. This principle has direct applicability to the specific question you raise, about whether you may serve on the regional dispatch center review group. Since the center would cover both towns, both towns have a direct, substantial interest in it. Therefore, Section 17 prohibits you from acting as agent for either town in connection with the regional dispatch center. I recommend that you withdraw from serving on that review group, and that you also avoid participating in any other matters in which both towns have an interest. Examples of such matters would be discussions between the two towns about regionalizing services or cooperating to repair roads, or any other matter in which both towns have a direct, substantial interest.

I hope that this advice is helpful. You are free to disclose this letter to anyone you wish. The Ethics Commission is required by law to keep your request and this letter confidential; under our regulations, the only circumstances in which we would not keep an advice letter confidential would be if the contents of this letter were materially misrepresented by you, or we were required by court order to produce the letter. Please do not hesitate to contact me at (617) 371-9509 if you have further questions.

Very truly yours,

Deirdre Roney  
General Counsel



February 13, 1998

Gary L. Brougham  
Town Administrator  
Lawrence Memorial Hall  
2 Jabish Street - P.O. Box 670  
Belchertown, MA 01007-0670

Re: Appointed Assessor  
Our File No. 98-89

Dear Mr. Brougham:

You informed us that you recently received a citizen's petition requesting the town to accept the provisions of G.L. 41 §25, a local acceptance statute which converts the board of assessors from elected to appointed. Since the Legislature recently enacted a new statute relating to the conversion of local boards and officers from elected to appointed, *viz.*, Chapter 149 of the Acts of 1997, codified as G.L. Ch. 41 §1B, you inquired which statute takes precedence.

Ch. 41 §25 pertains only to boards of assessors. It provides:

"In towns which accept this section..., the selectmen shall appoint suitable citizens of the town assessors for a term of not more than three years, and may remove them at any time for cause after a hearing. Upon the qualification of persons so appointed the term of existing assessors of such town shall terminate."

Ch. 41 §1B, on the other hand, applies more broadly. It pertains to "[a]ny office or board, except the board of selectmen and the school committee, elected under the provisions of [Ch. 41] section 1." These officers include town clerks, treasurers, tax collectors, assessors, assistant assessors, auditors, highway surveyors, road commissioners, sewer commissioners, tree wardens, constables, and board of health members."

The two laws present the not uncommon case of a general statute and a specific statute which cannot be reconciled. In such circumstances, the rules of statutory construction have established the basic principle that the general statute must yield to the specific statute.



Most frequently, courts have advanced this rule of construction in cases in which the more specific provision was enacted after the general statute. For example, in Jaworski v. Earth Removal Board of Millville, 35 Mass. App. Ct. 795 (1994), the court said, "A general statute must yield to a specific statute, especially if the specific statute was enacted after the general statute." See also Lukes v. Election Commissioners of Worcester, 423 Mass. 826 (1996).

However, courts have not limited application of the rule in this way. Indeed, in Moysey v. Andrus, 481 F. Supp. 850 (1979), the United States District Court for the District of Columbia, citing 1A Sutherland Statutory Construction, §23.09 at 230 N.12 (4th ed.1972), said:

"Where one statute is broader than the other, both occupying the same field, the specific controls the general to the extent of the conflict whether enacted before or after the broader statute." (Emphasis supplied.)

Similarly, in Llewellyn v. Iowa State Commerce Commission, 200 N.W.2d 881 (1972), the court stated:

"When a general statute is in conflict with a specific statute, the latter generally prevails whether enacted before or after the general statute." (Emphasis supplied.)

The rules of statutory construction provide, also, that a court should interpret a statute to give it the effect intended by the legislature. In the present case, we think the Legislature's intent in enacting Ch. 41 §1B was not to alter the Ch. 41 §25 process by which towns can change elected assessors to appointed. Rather, we think the purpose was to give to towns the authority to convert other boards and officers, also, from elected to appointed, without requiring the towns to seek the passage of special legislation under the Home Rule Procedures Act, Ch. 43B.

During the past several years, the Legislature has been burdened with an abundance of bills whereby one or another town has sought to change this or that board or officer from elected to appointed. None of these bills related to assessors; the General Laws already provided a means to convert these officers to appointed. Rather, the bills dealt with the various other officials for whom the General Laws did not provide a local means to make such a change.

In sum, we do not think it was the Legislature's intent to invalidate Ch. 41 §25 with its enactment of Ch. 41 §1B. Furthermore, since Ch. 41 §25 is the more specific statute with respect to altering boards of assessors from elected to appointed, we think it takes precedence over Ch. 41 §1B. We believe the newer statute pertains only to the other boards and officers enumerated in Ch. 41 §1.

Gary L. Brougham  
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If you have any additional questions on this matter, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in black ink, appearing to read "Harry M. Grossman". The signature is fluid and cursive, with a large, stylized "H" and "G".

Harry M. Grossman, Chief  
Property Tax Bureau



# DLS

DIVISION OF LOCAL SERVICES  
MA DEPARTMENT OF REVENUE

## *Pursuing Successful Partnerships*

Massachusetts Selectmen's Association  
Leadership Conference June 8, 2019

## Technical Assistance Bureau

### Mission

- ❖ Provide guidance & practical advice to improve financial management
- ❖ Develop & circulate best practice materials
- ❖ Encourage performance, accountability & internal control standards
- ❖ Promote strategic, long-term thinking and emerging innovations

### Projects include

- ✓ Financial forecasts
- ✓ Capital planning studies
- ✓ Financial indicator dashboards & benchmarking
- ✓ Policy manuals
- ✓ Budget documents
- ✓ Government / management structure analyses

## Best Sharing Scenarios

- ▶ Select Board Leadership
  - ▶ Network with your counterparts and direct your administrators to do so as well
  - ▶ Establish a town policy to consider cost/benefits of sharing opportunities
  - ▶ Take advantage of grant funding and regional, state & federal resources
  - ▶ Educate yourself as proposal progresses to sell it well to officials, employees & residents
- ▶ Be clear about objectives
  - ▶ Not always driven by cost reduction
  - ▶ Enhanced services, mandates, risk mitigation, and sustainability are all valid motivators

## Best Sharing Scenarios(cont'd)

- ▶ Timing
  - ▶ Upcoming officeholder vacancies
  - ▶ Changes in statutes and regulations
  - ▶ Expiring contracts
  - ▶ Grant program deadlines
- ▶ Geography & History
  - ▶ Seek natural partners
  - ▶ Often a good idea to start small and then build on successes
  - ▶ Consider joining agreements that already exist among other towns your area
  - ▶ Helps to have Town Manager/Admin or other local change agent to shepherd complex proposals

## Lee, Lenox and Stockbridge Proposal: Shared Town Administrator

### ► Motivations:

- Declining & aging population, rising fixed costs, and increasing pressure on services
- How to continue modernizing operations most efficiently and effectively?
- Already shared: Health, Animal Control, Bldg Inspection, some capital equipment
- Administrative Review Committee formed to explore more sharing opportunities
- Lee's and Stockbridge's Town Administrators were approaching retirement

## Considerations

- Risk of losing local autonomy, identity, and services
- Town Manager vs. Administrators
- Mix of elected & appointed positions
- Need to resolve statutory conflict of interest question
- Can one person adequately serve 3 communities?

## TAB's Recommendations

- ▶ Special act & town meeting approval
- ▶ Joint advisory board of select board chairs
- ▶ 3 shared positions:
  - ▶ Chief Administrative Officer
  - ▶ HR Director & CPO, at the assistant level
- ▶ Worked with State Rep to sponsor bill making exception to the existing MGL statute on conflict of interest

Acts (2016)

Chapter 304

AN ACT RELATIVE TO A MUNICIPAL EMPLOYEE IN THE TOWN OF LEE, THE TOWN OF LENOX OR THE TOWN OF STOCKBRIDGE ACTING IN RELATION TO AN INTERMUNICIPAL AGREEMENT.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:*

SECTION 1. Notwithstanding section 17 of chapter 268A of the General Laws or any other general or special law to the contrary, a municipal employee of the town of Lee, the town of Lenox or the town of Stockbridge shall not be prohibited from receiving or requesting compensation from, or from acting as an agent or attorney for, the town of Lee, the town of Lenox or the town of Stockbridge, provided that the employee is acting within the scope of the employee's official duties pursuant to an intermunicipal agreement entered into pursuant to section 4A of chapter 40 of the General Laws.

SECTION 2. This act shall take effect upon its passage.

*Approved, November 3, 2016*

## So what happened?

- ▶ Stockbridge opted out due to:
  - ▶ BOS membership change
  - ▶ Timing gap related to Town Administrator's retirement
  - ▶ Town's horizontal govt structure
- ▶ Lee & Lenox appointed shared CAO and one Asst CAO position
- ▶ Annually renewed, 3-year IMA with June 2020 expiration date
- ▶ Town meetings could then vote on an extended IMA
- ▶ Both positions are Lenox employees with Lee paying 50% of salaries and benefits
- ▶ DLS proposing revision to conflict of interest statute to remove this impediment

## DLS Support for Shared Service Initiatives

- ▶ Municipal Finance Law Bureau
  - ❑ Attorney-of-the-day
- ▶ Bureau of Local Assessment
  - ❑ Review & approve regional assessing agreements
- ▶ Municipal Databank
  - ❑ Socioeconomic data
  - ❑ EQV figures
  - ❑ Comparative budgetary data
- ▶ TAB
  - ❑ Facilitate discussions
  - ❑ Conduct analytical reviews of proposals
  - ❑ Provide guidance material

## More Information

[mass.gov/dls](https://mass.gov/dls)

Tara Lynch, Senior Project Manager  
Technical Assistance Bureau  
617-626-4205  
[lyncht@dor.state.ma.us](mailto:lyncht@dor.state.ma.us)

## Regionalization / Shared Services Statutes

TYPE	CITATION	CREATION	GOVERNANCE	FINANCES	OTHER NOTES
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### GENERAL PROVISION: INTERMUNICIPAL AGREEMENTS

Intermunicipal agreement (IMA)	40:4A	<p>IMA by CEOs of governmental units with approval of selectmen, mayor &amp; council, or prudential committee</p> <p>Contracting units include cities, towns, regional school districts, improvement districts, regional planning commissions, water &amp; sewer commissions, counties, and state agencies</p> <p>School committee approval needed when involves supplementary education centers or innovative educational programs</p>	By agreement	By agreement	<p>Units may jointly perform, or have one perform on behalf of the others, any service, activity or undertaking that any unit can perform</p> <p>25-year maximum</p> <p>Per 43C:15, consolidated municipal departments (e.g., finance, inspections) may participate in IMAs.</p>
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### GENERAL GOVERNMENT

Collective purchasing	7:22A, 22B	<p>§ 22A – Allows joint purchases with the state and/or other municipalities through a state purchasing agent</p> <p>§ 22B - Allows joint purchases by municipalities with one serving as lead purchasing agent</p>		Each unit remains solely responsible for its share of payment to vendor.	
Regional procurement of health care coverage	32B:12	Acceptance of c. 32B by agreement of of 2 or more governmental units' "appropriate public authorities," defined in 32B:2 as mayor in city, selectmen in town, governing board in district, county commissioners in county (except Worcester), trustees of charter school, and directors of educational collaborative			
Regional retirement system	34B:19	Statutory successor to an abolished county retirement system	Regional retirement board	Assessment by regional retirement board	Regional retirement board advisory council consisting of the treasurers of each member community.
Regional charter commission; council of government	34B:20	Regional charter commission established by acceptance by legislative bodies. Commission develops proposal for structure of a regional council of government (RCG). Council charter proposal must be approved by majority referendum of voters in a community for it to participate.	RCG created by charter	Annual assessment of members	



TYPE	CITATION	CREATION	GOVERNANCE	FINANCES	OTHER NOTES
Regional assessing	41:30B	Agreement approved by city council with mayor's approval or by select board and approved by the Commissioner of Revenue	May have single assessing department and share all departmental staff and perform all administrative functions; may designate one person, one of the boards of assessors, or a regional board of assessors to act as the assessors for all communities. Other boards end for duration of agreement	Fair allocation of expenses between communities per terms of approved agreement. Annual appropriation of funds.	Approval and oversight of local agreements by the Commissioner of Revenue

## PUBLIC EDUCATION

Education collaborative	40:4E	Agreement by school committees	Board of directors, 1 appointed by each school committee	Not determined by statute	
Regional school district	71:14-16I	Per 71:15, acceptance of 71:16-16I by votes of municipalities' legislative bodies, under agreement approved by the Dept of Elementary & Secondary Education (DESE)	Regional School Committee (RSC) chosen in accordance with agreement	Budget adopted by RSC, approved by 2/3 of member communities in 3 or more member districts, or by both members in 2-member districts	
Joint director of occupational guidance	71:38D	District formed by vote of towns (not school committees) to employ joint director of occupational guidance & placement	Joint committee of member towns' school committees	Joint committee annually appoints director, fixes salary & apportions cost among members.	
School superintendency union	71:61-64	Agreement of school committees of towns each with <\$2.5m valuation & aggregate # of schools between 25 and 75. DESE can form or adjust union without regard to valuation or # of schools.	Joint committee of member towns' school committees fixes salary & benefits of superintendent.	Costs allocated among members in accordance with 71:65 (which has been repealed, so presumably by agreement).	Need 2/3 vote of joint committee & DESE approval to fire the superintendent. Also need DESE approval to dissolve union.

## PUBLIC HEALTH

Regional health district	111:27A-27C	By vote of municipalities' boards of health and vote of city council & mayor approval, city council in a Plan E city, or select board. (Barnstable County communities excluded under § 27A.)	<p>§ 27A: Joint health committee of the member towns' boards of health, or 1 or more members from each board</p> <p>§ 27B: Single regional board of health, members appointed by each municipality by whatever method it chooses</p>	<p>§ 27A: Joint committee develops &amp; allocates budget, which members raise in tax levy without appropriation.</p> <p>§27B: Regional board adopts budget and apportions cost among members according to choice of formulas in statute. Assessments raised in levy without appropriation.</p>	
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## PUBLIC LIBRARIES

Joint public library	78:11	The board of any library, for the purpose of improving services, may enter into an agreement with the board or boards of any neighboring library or libraries.	By the terms of the agreement.	Per the agreement terms. In addition, 78:19A provides for state aid to joint libraries.	
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TYPE	CITATION	CREATION	GOVERNANCE	FINANCES	OTHER NOTES
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## PUBLIC SAFETY

Regional dispatch (i.e., emergency communication center / public safety answering point)	6A:18A-18J; 166:14A	Agreement between governmental bodies in regional areas determined by the state 911 department	None specified in legislation; presumably as provided in the agreement	Not specified in the statutes; presumably from general fund revenues in proportion to the governmental bodies as specified in the agreement	Established pursuant to a statewide plan for emergency dispatching services & enhanced 911 provided locally or regionally.
Mutual police aid program	40:8G	Agreement established between communities that have accepted 40:8G	Governed by agreement's terms	Financed by general municipal revenues as per mutual aid agreement	Agreements can include cities / towns in states contiguous with MA.
Regional police district	41:99B-99K	Approval of a majority referendum of the voters of the member towns in towns that use official ballots at town elections; otherwise by majority vote of annual town meeting.	Regional police commission organized by member towns' boards of selectmen, each appointing 2 commission members	Regional police commission determines its budget and assesses member towns using statutory formula based on each member town's EQV, population and road miles.	
Fire district	48:60-80 (see §§ 67 & 79)	Vote of town meetings to organize the fire district and department and establish boundaries of the district by petition or residents of proposed district	Elected prudential committee as CEO & district meeting as legislative body	District property tax assessed by member town assessors, collected by town collectors, and turned over to district treasurer	

## PUBLIC UTILITIES

Regional municipal water supply system	21:9A, 20	Two or more municipalities by vote of the legislative body	Town meeting vote or vote of town council or city council	Appropriation by each local community	
Regional water pollution abatement district	21:28	District proposed by the Dept. of Environmental Protection's Div. of Water Pollution Control (DWPC) and approved by Water Resources Commission.  If communities' legislative bodies do not approve district w/in 90 days of receiving a DWPC proposal, DWPC Director will hold public hearing on its necessity. If found needed to control pollution, state may declare district formed (mandatory district).	District commission made up of 2 members of each town, appointed by select board  Commission of a mandatory district made up of 3 members appointed by DWPC Director  Commission appoints executive director	District plan for water pollution abatement facilities submitted to DWPC. It must include formula DWPC finds equitable for allocating operating and capital costs. May be based on 2 or more factors (population, EQV, waste volume and type, or other factor DWPC considers appropriate).	Act of legislature required to dissolve district
Regional water/sewer district commission	40N:25	Vote of town meeting, town council & mayor approval, or city council & city manager approval	Regional district commission	In accordance with the regional district agreement	
Sewer district contract services	83:1	Vote of sewer department in each member community, if authorized by ordinance or bylaw, to contract with another community's sewer district for services.	Each member community's sewer department	Appropriation in accordance with contract terms	Contract may not exceed 20 years
Regional recycling program	40:8H	Vote of town meeting, town council or city council	In accordance with agreement	In accordance with agreement	
Regional refuse disposal district	40:44A-44L	Vote of select board, town council or city council	Regional refuse disposal district committee	Annual assessments as determined by district committee	

TYPE	CITATION	CREATION	GOVERNANCE	FINANCES	OTHER NOTES
Municipal Light Plant Cooperative	164:47C	Votes of municipal lighting plants	Board of not less than 3 directors elected by and from cooperative's members	In accordance with agreement	
Municipal Group Electric Load Aggregation	164:134	Vote of town meeting, town council, or city council with mayor's or manager's approval	In accordance with plan approved by Department of Energy Resources	Appropriation by members in accordance with service agreement	
Energy Cooperative	164:136	Vote of town meeting, town council, or city council	Board of not less than 3 directors elected by and from the members of the cooperative	In accordance with agreement	
Group Utility Purchasing	164:137	Vote of town meeting, town council or city council	In accordance with group purchasing agreement	In accordance with agreement	

## PUBLIC WORKS

Joint road maintenance	84:5	Agreement between communities with common highways to construct, repair, maintain, and improve roads and to share road machinery	Governed by terms of town meeting votes and appropriations	Funding per terms of town meeting votes and appropriations	
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## RECREATION &amp; CULTURE

Regional cultural council	10:58	Any group of cities and towns may form regional council with approval of MA Cultural Council	Regional council has equal # of members appointed by mayor, manager, or selectmen. By 2/3 vote, the regional council can adopt proportional representation based on community populations. Council members serve for staggered 3-year terms.	Regional council disburses arts lottery funds, other "allocable" receipts (including gifts and grants), and interest earned on the portion of council money, which is invested. Appropriation not required (revolving fund).	
Regional beach district	40:12B-12G	District formed by vote of legislative bodies of 2 or more contiguous cities or towns to acquire, develop, maintain, and operate beaches	Commission appointed by a "joint committee," including mayor & city council president of each city and select board chair in each town. Joint committee also determines # and terms of commission members.	Not specified in statute - presumably by agreement	Treasurer of 1 of member community acts as treasurer for the district
Cooperative recreation facility or program	45:14	Vote of legislative bodies of 2 or more towns	Authorized recreation departments establish the cooperative arrangements	Expenses to maintain & support facilities and programs apportioned by recreation depts	

## REGULATORY FUNCTIONS

Regional planning district	40B	District established by vote of legislative bodies of 2 or more cities or towns.  Other cities & towns may apply for admission. Acceptance by 2/3 vote of the representatives of the member cities and towns.	District planning commission made up of 1 member from planning board of each participating community. Commission elects officers from among its members annually. 2/3 vote of district planning commission may establish an executive committee.	District commission prepares annual budget & apportions it among member municipalities, subject to per capita limits adopted by members' legislative bodies. Commission certifies each community's share of the budget to the assessors to be levied without appropriation.	40B:5B - by vote of members' legislative bodies, district may act as economic development regional commission  40B:8 - District may borrow in anticipation of revenue from members, by majority vote of district commission
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TYPE	CITATION	CREATION	GOVERNANCE	FINANCES	OTHER NOTES
Joint air pollution control district	111:142C	Joint request by cities and towns to the state's DPH to form district. DPH. must approve. District similar to Metropolitan Air Pollution Control District of 111:142B	DPH may regulate "air contamination sources" and set up "air sampling stations" within the pollution control district	Participating cities and towns must reimburse the state for the cost of pollution control activities. State treasurer issues warrant to assessors in district communities to assess taxes, based half on assessed valuations & half on population	

## TRANSPORTATION

Regional transit authority	161B	<p>Authority formed by contiguous communities with approval of selectmen, city manager in a Plan E city, or council &amp; mayor in other city and notice to the Governor. Communities with MBTA bus service are excluded.</p> <p>Cities / towns without MBTA bus service may join existing authority by approval of selectmen, city manager in a Plan E city, or council &amp; mayor in other city and the approval of the authority's advisory committee.</p>	<p>Advisory board made up of mayor, city manager, select board chair, or town manager / administrator (or designees). Each community has 1 vote, plus additional votes in proportion to state assessments on members. One representative from disabled commuter population and one from rider population appointed to board on a rotation through each member community.</p> <p>Advisory board bylaws can establish an executive committee.</p> <p>Advisory board appoints authority administrator as CEO.</p>	<p>Annual budget prepared by administrator and approved by advisory board</p> <p>Budget not covered by operating revenues funded by cherry sheet assessments on member communities based on attributable costs incurred</p>	
Joint airport enterprise	90:51N	<p>By vote of the city council with mayor's approval or by vote of town meeting, 2 or more municipalities may establish, maintain &amp; operate an airport as joint enterprise.</p> <p>Within 30 days after the votes, mayor &amp; city council and selectmen must meet to draft agreement. Agreement must be approved by the airport commission and the Director of Accounts and be agreed to by the mayor &amp; city council of each participating city and the town meeting of each participating town.</p>	<p>Agreement shall establish a joint airport commission &amp; joint airport fund and specify the proportionate interest of each participating municipality in the airport and its proportionate share of expenses</p> <p>Joint airport commission acts as agent of all municipalities in operating airport. Joint commission chooses the officers to maintain and operate the joint enterprise.</p>	<p>Joint airport commission determines the amounts needed to run the airport.</p> <p>Apportions amount needed above the amount available in joint fund to participating municipalities as per the agreement.</p> <p>Sends apportionment notices to mayors and selectmen.</p>	

TYPE	CITATION	CREATION	GOVERNANCE	FINANCES	OTHER NOTES
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## OTHER SERVICES

Regional veterans' district	115:10-15	District formed by votes of the legislative bodies of 2 or more municipalities (only 1 of which may be a city) to provide veterans with information about & assist with obtaining benefits	District board made up of mayor, select board chair, or town manager if town council form of government (or their designees). Board appoints director of veterans' services to perform duties of veterans' agent in each member city/town. Board also designates a 1 community's treasurer as district treasurer.	District board determines expenses & apportions them on members based on EQV, federal census, or other means determined by unanimous vote. Board notifies local treasurers of apportionment. They certify amount to assessors, who raise in tax levy without appropriation.	
Regional housing authority	121B:3A	Operating agreement approved by municipal officers of cities and towns and Dept. of Housing and Community Development. 121B:1 defines municipal officers as: city council with mayor's approval in city, selectmen with town manager's approval, if any, in town.	Regional housing authority. Powers & obligations as set out in the operating agreement.	Appropriations by cities and towns, presumably based on operating agreement	