

STATE
ETHICS
COMMISSION



MASSACHUSETTS

ANNUAL REPORT • FISCAL YEAR 1989

STATE ETHICS COMMISSION ANNUAL REPORT FISCAL YEAR 1989

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STATE ETHICS COMMISSION

This Report covers the activities of the Massachusetts State Ethics Commission during FY89. It is issued pursuant to the mandate of Section 2 (l) of Chapter 268B and is intended to serve as a guide to the responsibilities of the Commission and as a record of its major activities and decisions during FY89. Copies of the Annual Report provided to the Governor and General Court include a breakdown of the Commission's expenditures over the fiscal year.

INTRODUCTION TO THE COMMISSION

History

In 1978, the Massachusetts Legislature passed, and Governor Michael S. Dukakis signed, landmark legislation creating the State Ethics Commission. The enabling statute, Chapter 210 of the Acts and Resolves of 1978, revised and strengthened the existing conflict of interest law. In addition, it created a second law to provide for annual disclosure of private business associations and financial interests by certain public officials and employees. The new, independent Commission was empowered to interpret these two laws and to enforce them with civil penalties and sanctions.

General Laws c. 268A, the Massachusetts conflict of interest law, has regulated the conduct of public officials and employees in the Bay State since 1963. The law limits what public employees may do on the job, what they may do after hours or "on the side," and what they may do after they leave public service and return to the private sector. The conflict law also sets the standards of conduct required of all state, county and municipal employees in Massachusetts, articulating the premise that public employees owe undivided loyalty to the government they serve, and must act in the public interest rather than for private gain.

Until 1978, the conflict law was only enforced on the criminal level, under the jurisdiction of the Attorney General and District Attorneys. The Ethics Commission was established to serve as the primary civil enforcement agency for the conflict of interest and financial disclosure laws. The non-partisan Commission also provides education, advice and information to public officials and employees regarding these laws, and administers the financial disclosure process, which covers some 5,000 candidates, elected officials, and employees holding major policy-making positions in the legislative, executive and judicial branches of state and county government.

The Commission consists of five members appointed to staggered, five-year terms. Three of the commissioners are selected by the Governor, one by the Secretary of State and one by the Attorney General. No more than two of the gubernatorial appointments, and no more than three members in all, may be from the same political party. The commissioners serve part-time, are paid on a per diem basis, and employ a full-time staff.

The Commission staff is made up of four separate divisions: Legal, Enforcement, Statements of Financial Interest (SFI), and Public Education.

The Legal Division provides free, confidential legal advice regarding the conflict law, and issues both formal and informal opinions on how the law would apply to actual and specific future actions being considered by public employees. The Legal Division also represents the Commission in court. The Enforcement Division investigates alleged breaches of the laws, and represents the state at Commission hearings involving individuals charged with conflict violations. The SFI Division administers the financial disclosure law and inspects SFIs filed with the agency. The Public Education Division conducts free educational seminars for public employees and issues explanatory materials and other publications detailing the Commission's activities.

Annual Overview

In Fiscal Year 1989, the Ethics Commission saw a continued increase in all of its divisions' activities, as well as evidence of greater public awareness and understanding of the conflict law in general and the agency in particular. The most dramatic example of this increase in public knowledge was illustrated by the Enforcement Division's activities. While the Division saw only a modest increase in FY89 in the number of complaints it received, there was a dramatic increase in the number of potentially relevant complaints received -- the number of complaints closed because they were not within the Commission's jurisdiction went down 16 percent, while the number of cases opened increased 87 percent and resulted in a 20.5 percent increase in the number of formal inquiries authorized.

There was a six percent rise in the number of opinions sought from the Legal Division in FY89, and the topics of the Division's formal opinions continued to grow more sophisticated; subjects broached in FY89 included the receipt of privately paid-for discounts and travel expenses, permissible and prohibited types of multiple office holding, and clarification of the term "foreseeable" financial interest for purposes of the conflict law.

The Statements of Financial Interests Division saw a 23 percent increase in the number of filers who submitted their statements in a timely manner after notice of delinquency in FY89 than in FY88.

At least part of this increased awareness may be attributed to the efforts of the Public Education Division, which conducted 60 educational seminars for an estimated 2,550 state, municipal and county employees in FY89, and saw a 54 percent increase in the number of publications it distributed to the Commonwealth's public employees in the course of the Fiscal Year. The Public Education Division's current educational materials include five new summaries and fact sheets on the conflict law written during FY89, and its Bulletin newsletter, which in FY89 began to be delivered to all 351 city/town halls and administrative offices in Massachusetts.

MEMBERSHIP

During FY89 the members of the Commission were:

Edward F. Hennessey, Chairman
Former Chief Justice
Supreme Judicial Court of Massachusetts

Colin S. Diver, Chairman
Dean
Boston University School of Law

Joseph J. Basile, Jr.
Senior Counsel
United Technologies
Hartford, CT

Archie C. Epps
Dean of Students
Harvard College

Father F. Washington Jarvis
Headmaster
Roxbury Latin School

A. John Pappalardo
Chief
Criminal Bureau
Attorney General's Office

INVESTIGATION AND ENFORCEMENT

Introduction

The Commission may initiate a confidential inquiry into any alleged violation of the conflict of interest or financial disclosure law. Anyone may call, write or visit the Commission to make a complaint. Complaints that do not suggest problems within the Commission's jurisdiction or that are clearly not worth pursuing are not opened. The remaining complaints are reviewed by the staff in a screening process. Many complaints involve situations which raise concerns under the conflict law, but formal investigation and enforcement is not considered appropriate because of the nature of the violation or mitigating circumstances. In these cases, a private educational letter providing information to ensure future compliance with the law is sent to the subject of the complaint.

After the staff review or screening, if the staff determines a case should be investigated further, authorization is sought from the appointed Commissioners to conduct a formal investigation called a "Preliminary Inquiry." The Staff investigates the matter and prepares a report of its findings for the Commission to consider. If the inquiry indicates that there is "no reasonable cause to believe" that either law (G.L. c. 268A or 268B) has been violated, the Commission terminates the inquiry confidentially. On the other hand, if "reasonable cause" is found, the Commission has a number of enforcement options:

1. The Commission may authorize the issuance of an Order to Show Cause. The Order serves as a formal complaint and initiates an adjudicatory hearing to determine whether a violation of the law has occurred. After the hearing is held, the Commission issues a Decision and Order deciding the case.
2. The Commission may, in its discretion, enter into a Disposition Agreement. A Disposition Agreement is a negotiated document in which the subject admits to having violated the law and agrees to pay a civil fine. The Commission has the authority to impose up to a \$2,000 fine for each violation of either G.L. c. 268A or 268B.
3. The Commission may authorize the issuance of a Public Enforcement Letter, with the subject's consent. A Public Enforcement Letter lays out the facts of the case and violations of law. The subject, however, does not have to admit to having violated the law or pay a civil fine.
4. The Commission may sue in Superior Court to recover any economic advantage gained by individuals or businesses in violations of the conflict law and may seek to recover up to three times that amount in additional damages.
5. The Commission may refer any matter to the Attorney General, a district attorney or the United States Attorney for criminal investigation and prosecution.

Short of finding reasonable cause, and in lieu thereof, the Commission may issue a confidential compliance letter to advise an individual of violations and to explain the consequences of future misconduct. The issuance of a compliance letter is limited to situations which do not involve willful misconduct, significant economic advantage or gain by the subject, significant economic loss to the commonwealth, the use of undue influence or confidential information for personal gain, or the potential for serious impact on public confidence in government.

REVIEW OF FY89 ACTIVITIES

Complaints

In FY89, 771 complaints were brought to the Commission for investigation, a slight increase over the 762 complaints filed in FY88. There were 122 complaints from FY88 that were not opened until FY89; therefore, the following statistics will reflect a total of 893 complaints acted on during FY89.

702 (about 79%) of the 893 complaints alleged violations by municipal officials or employees, another 132 involved individuals work for the commonwealth, 27 complaints were made regarding county officials, 14 involved private individuals or corporations, 14 complaints involved combinations of the above and there were two complaints alleged against unknown individuals or groups.

Of the 893 complaints, 567 came from private citizens or public officials; 37 were referrals from law enforcement or other state, county or municipal agencies or officials; 60 were internally generated by Commission staff members or by public employees reporting their own alleged violations of the conflict law; 14 were generated by information obtained from the media; 17 resulted from staff review of financial disclosure forms and 198 were anonymous. The Commission addressed these complaints as follows:

- 363 complaints were closed because the allegations made in the complaint did not suggest sufficient facts within the Commission's jurisdiction;
- 341 cases were assigned to an attorney/investigator team in the Commission's Enforcement Division for "screening";
- 57 complaints were consolidated with existing cases because they alleged the same or additional violations by the same subject; and
- 132 complaints had not yet been acted upon as of June 30, 1989.

Screenings

In FY89 the staff closed 307 cases following informal staff screenings. Another 60 screenings led to a formal investigation. These screenings were based on complaints received during FY89 and previous years. As of June 30, 1989, there were 52 ongoing screenings.

Of the 307 cases closed after the screening:

- 154 cases were closed because the staff determined there clearly was no violation of the conflict law, or that there was so little likelihood of a violation that the matter was not worth pursuing further;
- 140 cases were closed because the situation was one in which a private educational letter was appropriate;
- 2 cases were closed for a combination of the abovementioned reasons; and
- 11 cases were dismissed, consolidated with existing cases or referred to other agencies.

Formal Investigations

The Commission authorized a total of 94 formal inquiries in FY89. These inquiries were based on complaints received during FY89 and previous years.

Of those 94 inquiries:

- 15 involved alleged violations of the financial disclosure law by:

- 14 state officials or employees
- 1 county official

- 79 involved alleged violations of the conflict of interest law by:

- 59 municipal officials or employees
- 15 state officials or employees
- 2 county officials or employees
- 3 private sector individuals or entities

The Enforcement Commission staff completed 48 formal inquiries during FY89. These inquiries included investigations initiated during FY89 and previous years.

These 48 cases resulted in the following findings:

- 23 "reasonable cause" findings that the law was violated (19 -- conflict law, 4 -- financial disclosure law);
- 6 Confidential Compliance Letters were approved (all conflict law);
- 1 Public Enforcement Letter and Confidential Compliance Letter issued to different subjects in lieu of finding "reasonable cause";
- 5 "no reasonable cause" findings that the law was violated (all conflict law);
- 3 "no reasonable cause" findings that the conflict law was violated with respect to certain allegations, accompanied by Confidential Compliance Letters for educational purposes with respect to other allegations; and
- 10 terminations without findings (all conflict law).

Public Resolutions

In FY89 32 "reasonable cause" findings from FY89 and previous years resulted in:

- 6 Decision and Orders involving a violation of the law (5 -- conflict law, 1 -- financial disclosure law);
- 11 Disposition Agreements involving violations of the conflict law;
- 8 Disposition Agreements involving a violation of the financial disclosure law;
- 5 Public Enforcement Letters involving violations of the conflict law;
- 1 "reasonable cause" matter being consolidated with an existing "reasonable cause" finding;
- 1 Conflict of Interest case being dismissed.

In addition, there were 22 reasonable cause findings that had not yet resulted in a public resolution or Confidential compliance Letter as of June 30, 1989.

As of June 30, 1989, there were three public proceedings pending for which an Order to Show Cause had been issued after a reasonable cause finding.

Penalties

In FY89 the Commission assessed civil penalties totaling \$15,500 from 23 individuals and one public entity found to have violated the conflict of interest or the financial disclosure law.

FY89 ENFORCEMENT ACTIONS

In the Matter of United States Trust Company, Albert Brunelli, Andrew Collas, Donald Croatti, Frank Lewis and Theodore Scaffidi (August 15, 1988)

The State Ethics Commission issued a Public Enforcement Letter concluding its formal investigation into alleged violations of the conflict of interest law by five municipal treasurers and a Boston-based bank. The Commission probe stemmed from a 1985 report from the Inspector General's Office regarding municipal banking practices. The IG's report cited records from seven Boston-based banks.

In resolving its case against the five treasurers -- Albert Brunelli of Franklin, Andrew Collas of Plymouth, Donald Croatti of Framingham, Frank Lewis of Everett and Theodore Scaffidi of Newton -- and the United States Trust Company, the Commission established strict limitations on the receipt of meals and entertainment expenses by public officials.

The Commission found reasonable cause to believe that the bank and treasurers violated Section 3 of the conflict law when USTC paid for and the treasurers accepted frequent lunches, dinners, theater tickets and golfing expenses totalling more than \$11,200 between 1983 and 1985.

Section 3(a) prohibits anyone with whom a public employee does official business from giving anything of substantial value to said employee. Section 3(b) prohibits public employees from accepting such gifts.

The Public Enforcement Letter indicates the Commission decided against taking formal action against the bank and treasurers because of several mitigating factors. Included among those was that prior to the IG report, the practice of banks paying for public officials' entertainment expenses was widespread, as illustrated by the IG's citing of 104 treasurers receiving such gratuities in 1984, and all seven banks named in the report appearing to be involved in the practice.

In addition, the Commission also found no evidence that the treasurers or USTC intentionally violated the conflict law, or that the treasurers provided USTC with preferential treatment as a result of the expenditures; nor was there any evidence that USTC made any personal loans to the treasurers or entered into any kind of corrupt agreement by which USTC would provide payments in exchange for specific official acts. The Commission also considered as mitigation the fact it has not previously had occasion to articulate its position regarding private parties paying for meals and beverages incidental to the transition of business, nor, prior to its May, 1985 Advisory No. 8 ("Free Passes"), had it indicated it would aggregate items of value to meet the substantial value threshold.

**In the Matter of Paul A. Nowicki
(August 31, 1988)**

Adams Treasurer/Collector Paul A. Nowicki was fined \$500 by the Commission for violating the state conflict of interest law by hiring his brother as a deputy tax collector for the town.

In its decision, the Commission indicated that although it would usually levy a fine of \$1,000 or more for a nepotism/hiring violation, the fact that Nowicki himself brought the situation to the Commission's attention warranted a reduction of the fine in this case.

According to a Disposition Agreement reached with the Commission, Nowicki acknowledged that he violated Section 19 of the law, which prohibits municipal employees from participating in their official capacity in any matter in which a member of their immediate family has a financial interest.

Nowicki hired his brother, John, as a deputy tax collector for Adams in August of 1986, the Disposition Agreement said. One year later, Nowicki attended an annual meeting of the Massachusetts Collectors and Treasurers Association, where he attended a seminar on the conflict of interest law, which included a discussion of nepotism. Following this meeting, Nowicki asked for and received his brother's resignation, and subsequently reported the violation to the Commission.

In the Matter of Joseph Zeneski
(September 2, 1988)

The State Ethics Commission issued a Public Enforcement Letter to Mansfield Department of Public Works Director Joseph Zeneski, resolving its probe of alleged violations of the conflict law by Zeneski.

The Commission found Zeneski violated the conflict law on two occasions in 1985 by reviewing work submitted by an engineering firm he had agreed to work for after leaving his DPW job.

Section 19 of the conflict law prohibits municipal employees from participating in their official capacity in any particular matter in which an organization with which they are negotiating or have any arrangement for future employment has a financial interest.

In the Matter of Peter J. Cassidy
(October 19, 1988)

The Ethics Commission ordered Swampscott Police Chief Peter J. Cassidy to pay a \$1,000 fine for violating the state's conflict of interest law by recommending four of his sons to positions on the Swampscott police force.

In a Decision and Order, the Commission said Cassidy's actions violated Section 19 of the law on nine occasions between 1983 and 1986. However, the agency decided against imposing the maximum fines due to mitigating factors, the Decision states. Cassidy was also cleared of an alleged conflict violation involving the appointment of his brother, Francis, who was found not to have a financial interest in his special police officer appointment, the Decision said.

Section 19 of the law prohibits municipal employees from participating in any particular matter in which a member of their immediate family has a financial interest.

An exemption to Section 19 allows appointed municipal officials to participate in matters of financial interest to their immediate family members provided they make a written disclosure to their appointing authority before participating, and also receive prior written approval from that authority to become involved in the matter. Cassidy made no attempt to receive such exemptions in compliance with the law, the Decision said.

In the Matter of Norman McMann
(October 24, 1988)

Bristol-Plymouth Regional School Committee member Norman McMann was fined \$10,000 for violating the state's conflict of interest law by selling more than \$12,000 worth of donuts to the Bristol-Plymouth Technical School illegally and voting to approve the improper payments.

In a Decision and Order, the Commission found McMann violated Sections 19 and 20 of G.L. c. 268A, the conflict of interest law, from April, 1984, to January, 1986, by voting to approve payment of school cafeteria warrants that included payments to a "straw" for the donut shop of which McMann was half-owner, and for having a financial interest in a daily contract with the school while simultaneously serving on the school committee.

Section 19 of the law prohibits municipal employees from participating in their official capacity in any particular matter that affects their own financial interest. Section 20 prohibits municipal employees from knowingly having a financial interest in any contract (other than their own employment contract) made with the municipality.

In the Matter of Byron Battle
(October 6, 1988)

The State Ethics Commission issued a Public Enforcement Letter to Massachusetts Undersecretary of Economic Affairs Byron Battle, formally concluding the agency's probe of Battle's alleged violation of the state's conflict of interest law by use of his state title, official letterhead, and other state resources to solicit participants for a privately sponsored tour of the Soviet Union.

The Enforcement Letter states that Battle appears to have violated Section 23 of the conflict law by making the solicitations, knowing that if he persuaded enough people to go on the tour, he and a guest could go on the trip free of charge (an estimated \$8,000 value).

Section 23(b)(2) of the conflict law prohibits state employees from using their official position to secure unwarranted privileges of substantial value for themselves or others. The courts and the Commission have set "substantial value" at \$50 or more.

The Commission decided against taking further action against Battle because he did not obtain any financial benefit from his involvement with People To People other than the use of the state resources named, which he agreed to reimburse his agency for, the letter said. In addition, Battle withdrew from the tour approximately three weeks after the solicitation went out, before any commitments to attend were made by any of the individuals solicited; he also wrote the explanatory letter to the six individuals he originally contacted about the tour, and appeared to have "some genuine confusion" as to the propriety of acting in his official capacity with respect to the tour because it had a quasi-public purpose, the Enforcement Letter said. Finally, the Commission also considered as mitigation the fact that none of the persons solicited by Battle was a regulatee of the EOE, and accordingly, there was no actual or implied coercion in the solicitation.

In the Matter of John R. Stone
(November 22, 1988)

Gill Board of Health (BOH) member John R. Stone was fined \$250 for violating the state's conflict of interest law by condemning a building and subsequently being hired to do the repair work on it.

In a Disposition Agreement reached with the Commission, Stone admitted he violated section 17 of the conflict law by doing the repair work. Section 17 prohibits municipal officials from receiving or requesting compensation from anyone other than the town in relation to particular matters in which the town has a direct and substantial financial interest.

The Commission stated there was no evidence Stone was aware his actions violated the conflict law; in addition, Stone showed sensitivity to the conflict issue by obtaining advice from a selectman. Although ignorance of the law is not considered a defense, the Commission considered these facts as mitigation in determining the amount of the fine.

In the Matter of William Highgas, Jr.
(January 11, 1989)

After public disciplinary action taken in December by the Supreme Judicial Court in its Inquiry Concerning Judge William Highgas, Supreme Judicial Court No. 4976, the Ethics Commission granted Highgas' motion to dismiss conflict of interest allegations made against him in an October 1, 1987, Order to Show Cause, which named him in connection with the same conduct for which he received the SJC reprimand.

Highgas was publicly censured by the SJC for making a disproportionate number of probate appointments to an attorney with whom Highgas had substantial financial dealings, and from whom he had accepted interest-free loans. The SJC said Highgas' conduct violated seven Canons of the judicial conduct code. The decision allows Highgas to remain on the bench, but is considered a severe rebuke. All state judges are appointed to serve until age 70 without review.

The Commission had previously fined Highgas \$1500 for violating the Financial Disclosure law by failing to disclose his financial relationship with the same attorney.

In the Matter of George Munyon
(January 19, 1989)

The State Ethics Commission fined Lunenburg Highway Department Superintendent George Munyon, Jr. \$250 for violating the state's conflict of interest law by recommending his son for a job with his department.

In a Disposition Agreement reached with the Commission, Munyon admitted he violated Section 19 of the conflict law, and agreed to pay the fine. Section 19 prohibits municipal officials from participating in any particular matter in which members of their immediate family have a financial interest.

Although an exemption to Section 19 allows municipal officials to participate in matters of a financial interest to immediate family members if they first advise their appointing authority in writing and receive a written clearance from that authority to participate, Munyon made no such effort to comply with the conflict law, the Disposition Agreement said. While Munyon showed some sensitivity to the conflict of interest problems created by the situation, his verbal consultation with Board of Selectmen members fell short of what was required to secure a Section 19 exemption. However, the Commission did consider Munyon's disclosure, albeit incomplete, as mitigation in determining the resolution of the case.

In the Matter of Charles Smith, Robert, LaFrankie, Angel Ramirez and James Boyle
(February 15, 1989)

The State Ethics Commission issued Public Enforcement Letters to four Pittsfield officials in connection with their acceptance of travel and accommodation expenses from a potential vendor for a trip to the company's Chicago headquarters, thereby allegedly violating the state's conflict of interest law.

Pittsfield Mayor Charles Smith, Superintendent of the Pittsfield Schools Robert LaFrankie, and Pittsfield School Committee members Angel Ramirez and James Boyle all allegedly violated Section 3 of the conflict law in August of 1986 by travelling to Chicago at the expense of the Service Master Company to view the custodial service provider's home offices, the Enforcement Letters said. The city subsequently entered into a contract with the company. The contract was supported by Smith, LaFrankie and Ramirez, and opposed by Boyle.

Section 3 of the conflict law prohibits public officials from accepting any item of substantial value for or because of any official act done or to be done by them.

The Commission cited its recent advisory opinion EC-COI-88-5 in the Letters, stating that the value of trip expenses in situations such as the Pittsfield matter accrue to the individual traveler and not to the municipality. In addition, the Enforcement Letters said, there are "good public policy reasons" for prohibiting these kinds of payments" -- namely to avoid the potential for vendors to improperly influence public employees through lavish 'wining and dining.'

In the Matter of Joseph P. Zora, Sr., and Joseph P. Zora, Jr.
(April 19, 1989)

The State Ethics Commission ruled that Marion Selectman Joseph P. Zora, Sr., and his son, former Marion Conservation Commission member Joseph P. Zora, Jr., violated the conflict of interest law on several occasions in 1985 by appearing before the Marion Conservation Commission (MCC) on behalf of their family-owned developing business. The Commission declined to impose a fine against either of the Zoras.

In a Decision and Order, the Commission stated Zora Sr. violated Section 17(c) of the conflict law on two occasions in April, 1985, and Zora Jr. violated Section 17(c) on four occasions in the same time period, by representing Zora Enterprises. Zora Sr. serves as president and treasurer of Zora Enterprises, and Zora Jr. serves as a director of the business.

Section 17(c) of the conflict law prohibits municipal employees from acting as agent or attorney for any outside party in a matter of direct and substantial interest to the town. Representing business partners or corporations before town boards is prohibited conduct under this section of the law.

In the Matter of George Colella
(May 12, 1989)

The State Ethics Commission imposed a \$500 fine on Revere Mayor George Colella for violating the Massachusetts conflict of interest law by hiring and supervising his daughter.

In a Disposition Agreement reached with Colella, the Commission said the mayor violated Section 19 of the law in February of 1984, when he hired his daughter, J. Elizabeth, as a part-time junior clerk-typist for the city. Colella also violated the law by acting as his daughter's direct supervisor, the Commission said. Section 19 of the conflict law prohibits city employees from participating in particular matters that affect the financial interest of their immediate family members.

Colella admitted to violating the law, and agreed to pay the fine and have his daughter resign her city job, the Disposition Agreement said.

In the Matter of Robert Gillis
(June 2, 1989)

The State Ethics Commission fined former Brockton Police Chief Robert Gillis \$250 for participating in the appointment of his son to a position with the Brockton Police Department (BPD) in violation of the state's conflict of interest law.

In a Disposition Agreement reached with the Commission, Gillis agreed to pay the fine and admitted he violated Section 19 of Massachusetts G.L. c. 268A, which prohibits municipal employees from participating in any particular matter that affects the financial interest of a member of their immediate family.

An exemption to Section 19 would have allowed Gillis to participate in the hiring of his son, provided that he made a written disclosure to his appointing authority (the mayor), received written permission from that authority to participate in the matter, and filed the determination with the city clerk. However, there was no such written disclosure made. The Commission considered as mitigation the fact that Gillis' appointing authority was aware of his actions concerning his son.

In the Matter of Arthur Tucker
(June 2, 1989)

The State Ethics Commission fined Oakham Building Inspector Arthur Tucker \$250 for participating in his official capacity in a dispute over alleged building code, property subdivision and safety violations involving a house that abutted his own property, and that he had expressed an interest in buying.

In a Disposition Agreement reached with the Commission, Tucker admitted he violated Section 19 of Massachusetts G.L. c. 268A, the state's conflict of interest law. Tucker agreed to pay the fine and to refrain from participating as a town employee in any particular matter that affects his own financial interest, absent a specific exemption.

Section 19 of the conflict law prohibits town employees from participating in matters that affect their own financial interest or the financial interest of members of their immediate family, business partner(s) or associates.

The Commission found Tucker violated Section 19 by bringing the matters of the abutting property before the Board of Selectmen, and by later asking the Selectmen to inspect the property, by issuing stop-work orders in his capacity as Building Inspector, by writing letters concerning the property, by asking that a survey board be convened and by posting the property as being dangerous and unsafe.

**In the Matter of Thomas Nolan
(June 12, 1989)**

The State Ethics Commission issued a summary decision against former Chelsea Mayor Thomas Nolan for allegedly offering not to schedule a fire captains' promotional exam in exchange for the support of 10 Chelsea firefighters in his 1987 re-election campaign. Nolan was ordered to pay the maximum \$2000 fine to the Commission within 30 days. Nolan's actions were found to violate M. G. L. c. 268A, Sections 2 and 3.

Nolan failed, despite notice, to answer the Commission's October, 1988, Order to Show Cause in connection with his alleged violations of the conflict of interest law. Under the Commission's regulations (930 CMR 1.01 (6)(f)(2)), the Commission may issue a summary decision when the record shows a Respondent's substantial failure to cooperate with the Commission's adjudicatory proceeding.

Section 2 of the conflict law prohibits municipal employees from directly or indirectly corruptly soliciting for themselves or others anything of substantial value in return for being influenced in the performance of their official duties. Section 3 (b) of the conflict of interest law prohibits municipal employees from directly or indirectly soliciting for themselves anything of substantial value for or because of any official act performed or to be performed by them.

The case was the first time the Commission considered the application of the conflict of interest law to an alleged trading of an official act in return for political support.

COURT CASES

On November 15, 1988, the Superior Court affirmed the Ethics Commission's 1985 decision which assessed a \$1000 civil penalty on William Burke, a former member of the state Public Health Council, for his violations of G. L. c. 268A, §3. See *William Burke v. State Ethics Commission*, Suffolk Superior Court Civil No. 79226.

ADVISORY OPINIONS

Introduction

Individuals covered by the conflict of interest and financial disclosure laws are entitled to receive advice about whether their proposed activities are permissible under G.L. c. 268A or G.L. c. 268B. State, county and municipal employees may submit a written request to the Commission for an advisory opinion. Most requests will be answered fully within two weeks, and all formal opinions of the Commission serve as a legal defense in subsequent proceedings concerning the requesting employee's conduct, unless the request omits or misstates material facts.

Although advisory opinions issued by the Commission are confidential, the Commission publishes summaries of advisory opinions and prepares public versions of the opinions with identifying information deleted. Copies of these opinions are available from the Commission.

Summary of FY89 Opinions

The Commission received 790 formal requests for advisory opinions during FY89. This represents a 6% increase over the 748 formal requests received in FY88. Thirty of the FY89 requests were answered with formal Commission advisory opinions; the remaining requests were handled through informal letters issued by the Commission's Legal Division. Among the topics addressed by the Commission's formal advisory opinions during FY89 were the following:

1. The propriety of public employees receiving gifts, work incentive items or discounts, and privately paid-for travel expenses (See EC-COI-88-18, 88-20, 88-22, 89-3).
2. Permissible and prohibited types of multiple office holding at the state (See EC-COI-88-15, 88-23, 88-25) and local (See EC-COI-88-9, 88-10) levels.
3. The application of the conflict law to former state employees (See EC-COI-88-14, 89-7, 89-11).
4. The jurisdictional application of G.L. c. 268A to state and municipal organizations (See EC-COI-88-19, 88-24, 89-1, 89-6, 89-15, 89-17, 89-18, 89-20).
5. The foreseeability of financial interests which require abstention (See EC-COI-89-8, 89-9).

Municipal Advisory Opinion Regulations

The Commission requires all conflict of interest opinions issued by city solicitors or town counsels to be filed with the Commission for review. The regulation is intended to insure that opinions issued to municipal employees and officials are consistent with Commission precedent. The rule requires the Commission to be bound by all municipal opinions, unless the Commission notifies the city or town counsel within 30 days of any objections to the opinion.

The opinion will be binding on the Commission in any subsequent proceedings only with respect to the person who requested the opinion and those upon whose behalf he or she requested the opinion. The Commission will not be bound by municipal opinions if material facts were omitted or misstated by the person or if the person acted in bad faith in securing the opinions.

In FY89 the Commission reviewed 202 municipal opinions. The Commission staff concurred with 189 of the opinions and informed municipal lawyers in 4 instances that their advice was inconsistent with Commission decisions, and therefore, would not be binding on the Commission. Nine other opinions were moot.

FINANCIAL DISCLOSURE

Introduction

When the financial disclosure law was enacted in 1978, Massachusetts became the forty-first state to require certain public employees and elected officials to disclose certain information concerning their private financial interests. Chapter 268B requires annual disclosure of interests and associations which might give rise to conflict or the appearance of conflict between a person's public responsibilities and his private interests. The law covers all elected officials, all candidates and certain designated employees of state and county government. Municipal officials and employees are not included among those covered by the disclosure requirements of chapter 268B.

SFI FILINGS FOR FY89

Designations

In order to determine which state and county employees should be required to file SFIs, the Commission requests that by the first of each year, the administrative head of each state and county agency submit a "designation list" of individuals holding major policy-making positions within his or her department. By January 1, 1989, the Commission had received lists from over 200 heads of state and county agencies requiring SFI filing by a total of 4823 public employees and elected officials. In FY89, the Commission fined 14 people \$710 for failure to file their statements of financial interest in a timely fashion.

Staff Inspection of SFI's - Action Toward Compliance

Failure to file on time, or to amend a deficient or incomplete Statement within 10 days of receipt of a Formal Notice of Delinquency, is a violation of c. 268B. The Commission may levy penalties, including fines of up to \$2,000, for each violation. The statute also provides criminal penalties of fines and imprisonment for filing a false Statement.

In FY89, 567 of 4,823 designated public employees and elected officials (over 88 percent) filed on time. This is a lower percentage than in FY88, when 187 of the 4,713 designated filers missed the deadline. The increase in late filers resulted from the Commission's strict enforcement of its regulation requiring statements to be received at the Commission office before the filing deadline (as opposed to being post-marked by the deadline), and confusion on the part of certain filers who left public service within the year and were uncertain of their filing requirements. This year, formal Notices of Delinquency were mailed to the 244 individuals (216 appointed employees and 28 elected officials) who missed the May deadlines. Of the 244, only 19 individuals failed to file in a timely manner. This is an improvement over FY88, when 26 people failed to file after formal notice. Of the 19 individuals who failed to file within 10 days of receipt of a Formal Notice:

1. The Commission authorized eight preliminary inquiries, which are in the process of being resolved.
2. Six individuals filed shortly after an 8-10-day grace period expired, incurring fines of less than \$100.
3. Two filers could not be located and their cases were closed.

Inspection of SFI Forms

Chapter 268B provides that any individual who submits a written request to the Commission may inspect and obtain a copy of any Statement filed with the Commission. In FY89, the Commission honored requests from 235 different sources, including requests from private citizens, journalists and representatives of law enforcement agencies.

The statements of 987 filers were reviewed by persons making such requests, the bulk of them in May, June and July, just following the Commission's receipt of Statements filed for calendar year 1988. This represents a decrease from the 1300 filers whose SFIs were distributed in FY88; however, the 987 individuals whose statements were requested in FY89 often had multiple requestors asking for their SFIs - a total of 2,620 statements were provided to the 235 requestors in FY89.

Education, Assistance and Review

Throughout the year, Commission staff is available to assist filers in completing their Statements. In FY89 1,200 filers were required to amend their Statements. The majority of the amendments were the result of misunderstanding of the SFI instructions and were relatively minor in nature.

In FY89, the Commission began a project to redesign the SFI forms and instructions to update and clarify certain aspects of the financial disclosure process. Revised versions of the SFI forms and instructions are scheduled for distribution in FY90.

PUBLIC EDUCATION

The Public Education Division is designed to provide public employees, members of the media and the communities of the commonwealth with educational materials and a non-threatening forum in which to familiarize themselves with the Ethics Commission and the Conflict of Interest and Financial Disclosure Laws.

Seminars

The Public Education Division conducts conflict of interest seminars for public employees and officials to help them avoid potential conflicts between their private interests and public duties, and to make them aware of the resources available to them for answering questions regarding the law, and for reporting alleged violations of the law.

The Commission staff conducted 60 seminars during FY89. These 60 Seminars included 2,550 attendees from:

- 20 state agencies
- 28 municipalities
- 9 municipal associations
- 2 Bar associations
- 1 county association

Publications

The Commission writes, publishes, and distributes guides, pamphlets, advisories and fact sheets which explain various provisions of the conflict law and keep constituents informed of recent Commission rulings. The Public Education Division also writes and distributes the Commission's newsletter, which is sent to an estimated 3,000 subscribers.

In FY89, approximately 31,500 publications/educational materials were distributed:

- 3,900 On average ten callers (including reporters) per day request information and five "walk-ins" take information from the lobby
- 18,000 2,550 seminar attendees on average took seven publications
- 9,000 The Bulletin/issued three times a year
- 400 The Annual Report
- 200 Rulings

In FY89, the Public Education Division wrote and distributed several new educational materials:

Fact Sheets for Board of Health members who wish to install septic systems (a revised version of the same publication written in FY88), and for public employees regarding business and entertainment expenses incurred in connection with their public jobs; and

Summaries of the Conflict of Interest Law for School Committee Members, Town/City Clerks who are also Justices of the Peace, former State Employees and former Municipal Employees.

During FY89, the Public Education Division began collaborating with several other state agencies on two far-reaching educational projects for public employees. In conjunction with the Executive Office of Public Safety, Department of Personnel Administration, OMIS, and the Office of Campaign and Political Finance, the Commission's Public Education Division has begun work on Governor Michael S. Dukakis' "integrity initiative" to promote the highest ethical standards in public service. The integrity initiative includes the issuance of an Executive Order calling for the training of all state managers in the conflict law and related issues, and the preparation and distribution of a handbook on integrity issues. The Executive Order also requires all cabinet secretaries to work with the Ethics Commission in developing standards of conduct in addition to those set forth in the Conflict of Interest Law for all executive branch agencies.

Members of the Public Education Division served as consultants on the handbook, which is due to be published in FY90. The Public Education staff is also scheduled to participate in an estimated 10-20 training sessions for the Commonwealth's 4200 managers in FY90 and FY91.

In addition, the Public Education Division began work in FY89 with the Criminal Justice Training Council to add educational sessions on the conflict law to the standard curriculum for Police Academy recruits and also for continuing education sessions for in-service officers. A Practical Guide to the Conflict Law for Police Officers was published in FY90.

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