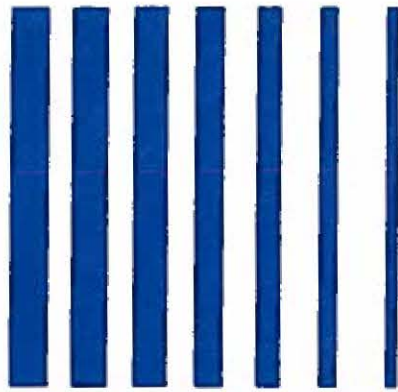


STATE
ETHICS
COMMISSION



MASSACHUSETTS

ANNUAL REPORT • FISCAL YEAR 1993

STATE ETHICS COMMISSION ANNUAL REPORT FISCAL YEAR 1993

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STATE ETHICS COMMISSION

This report covers the activities of the Massachusetts State Ethics Commission during FY93. It is issued pursuant to the mandate of §2(l) of Chapter 268B and is intended to serve both as an explanation of the Commission's responsibilities and as a record of its major activities during the fiscal year.

INTRODUCTION TO THE ETHICS COMMISSION

History

Since 1963, the Massachusetts conflict of interest law has regulated the conduct of public officials and employees in the Bay State. Massachusetts General Laws c. 268A 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. It also sets standards of conduct required of all state, county and municipal employees and officials, articulating the premise that public servants owe undivided loyalty to the government they work for and must act in the public interest rather than for private gain. Until the law was revised in 1978, it was enforced solely as a criminal matter under the jurisdiction of the Attorney General and the various local District Attorneys.

In addition to strengthening the conflict of interest statutes, Chapter 210 of the Acts and Resolves of 1978 established a financial disclosure law requiring public officials, political candidates and certain designated public employees to file annually a statement of their financial interests and private business associations. Chapter 210 also created the State Ethics Commission, and empowered it to interpret and enforce G.L. c. 268A and 268B. The Commission now serves as the primary civil enforcement agency for the conflict of interest and financial disclosure laws. It also provides free legal advice, education and other information regarding these laws.

The non-partisan Commission consists of five members appointed to staggered, five-year terms. Three 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 of the Commission as a whole -- 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. The Legal Division provides free, confidential advice to public employees regarding the legality of proposed activities; it also represents the Commission in court. The Statements of Financial Interests ("SFI") Division administers the financial disclosure law and audits SFIs filed with the agency. The Public Education Division conducts free seminars for public employees and publishes a wide range of educational materials. The Enforcement Division investigates and prosecutes alleged violations of the laws.

Summary of Fiscal 1993

Despite the continuing restraint of limited resources, the Ethics Commission maintained high levels of programmatic effectiveness and legal standards. During the year, 18% of the Commission's staff positions were vacant due to lack of funding. The Legislature appropriated \$1,073,540 for the Ethics Commission in FY93. The Commission does not retain revenue.

In FY93, the Legal Division handled 4,890 oral and written requests for confidential advice regarding the conflict of interest and financial disclosure laws, and reviewed an additional 158 advisory opinions issued by municipal counsels. It also prepared 36 formal Commission Advisory Opinions, a 38% increase over the number issued in FY92. Due to staff shortages, the division carried a backlog of about 50 unanswered requests for advice into FY94.

The Statements of Financial Interests Division operated with half its staff positions unfilled for the fourth consecutive fiscal year. However, a SFI Auditor was hired during FY93, allowing the Division to resume its former practice of reviewing all filings for accuracy and completeness. By the end of FY93, the backlog of unreviewed SFIs had been reduced by more than 1,100.

The Public Education Division taught 111 seminars in FY93 -- a 58% increase since FY92, and more than three times the number taught in FY91. The Division also updated various educational publications, and plans a

complete revision of the Commission's *A Practical Guide to the Conflict of Interest Laws for Municipal Employees* during FY94.

The Enforcement Division investigated 15.5% more complaints in FY93 than it did in FY92. It issued 143 educational letters and recommended 40 cases for formal review by the Commission. The Division also negotiated 29 Disposition Agreements, totalling \$41,348.75 in fines and forfeitures.

MEMBERSHIP

During FY93 the members of the Ethics Commission were:¹

Edward F. Hennessey, Chair Former Chief Justice Supreme Judicial Court Boston, MA	Constance J. Doty, Vice Chair Administrator Rent Equity Board Boston, MA	Herbert P. Gleason Partner Kearney and Gleason Boston, MA
Rev. F. Washington Jarvis Headmaster Roxbury Latin School Boston, MA	Paul F. McDonough, Jr. Partner Goodwin, Procter & Hoar Boston, MA	Marilyn Lyng O'Connell President Waterville Valley Foundation Waterville Valley, NH

¹ Rev. F. Washington Jarvis' term expired on September 22, 1992. Paul F. McDonough, Jr. was appointed on December 9, 1992.

ADVISORY OPINIONS

Commission Opinions

Individuals covered by G.L. c. 268A and G.L. c. 268B are entitled to receive advice about whether proposed activities are permissible under the laws. Most requests for advisory opinions are answered fully within two to three weeks. Formal opinions of the Commission serve as a legal defense in subsequent proceedings concerning the requesting individual's conduct, unless the request omits or misstates material facts.

The Commission issued 36 formal advisory opinions in FY93, a 38% increase over the number issued in FY92. Although advisory opinions issued by the Commission are confidential, the Commission publishes summaries of formal advisory opinions and also prepares public versions of such opinions with the identifying information deleted. Copies of these opinions are available from the Ethics Commission. Some of the topics addressed by the Commission's formal advisory opinions during FY93 included:

- Application of the Rule of Necessity (See EC-COI-92-24, 93-3, 93-13).
- Public employees' use of official position to solicit something of substantial value to benefit a private organization (See EC-COI-92-28, 92-38, 93-1, 93-6).
- Acceptance of gratuities by public employees (See EC-COI-93-32, 92-37, 93-8, 93-14)

- Police officers fundraising for charitable purposes (See EC-COI-93-6).
- Circumstances under which public employees may have financial interests in contracts with public agencies or hold multiple offices (See EC-COI-92-27, 92-31, 92-35, 93-4, 93-7, 93-10, 93-18.)

The Commission's Legal Division handled an additional 744 requests for advice through informal letters, and 4,110 requests via telephone calls. Total requests for legal advice increased by 23% over FY92.

Municipal Advisory Opinions

All conflict of interest opinions issued by city solicitors or town counsel must be filed with the Commission for review, to ensure that these opinions are consistent with Commission precedent. The Commission has 30 days to notify the municipal counsel of any objections to an opinion; if there are no objections, the advisory opinion can serve as a legal defense in any subsequent Commission proceeding. A municipal counsel's opinion is legally binding only in respect to the person who requested the opinion, and is not binding if material facts were omitted or misstated by the requestor, if the opinion was not obtained in advance of the relevant action, or if the requestor otherwise acted in bad faith in securing the opinion.

In FY93, the Commission reviewed 158 municipal opinions, concurring with 37% of them. The Commission staff provided clarification of 77 municipal opinions, and informed municipal lawyers in 20 instances that their advice was inconsistent with Commission precedent and therefore would not be binding on the Commission. Two other opinions were moot.

FINANCIAL DISCLOSURE

Massachusetts G.L. c. 268B requires the annual disclosure of financial interests and private business associations by all elected officials, candidates and "designated" public employees of state and county governments. "Designated" employees include individuals holding major policy-making positions within their employing agencies. Commission staff are available to assist filers in completing their SFIs. 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 the financial disclosure law. The Commission may levy fines of up to \$2,000 for each violation. In the event a false statement is filed, the Commission may levy additional fines, withhold pay or seek criminal penalties.

In FY93, 4,624 public employees and elected officials were required to file SFIs. About 7% missed the May filing deadlines, and formal notices of delinquency were mailed to 158 individuals. Of these, 142 people filed during a 10-day grace period. Four people filed shortly after the expiration of the grace period, and were fined a total of \$200. Seven delinquent filers eventually submitted their forms and are the subject of pending Preliminary Inquiries. The remaining five filers' cases were closed due to mitigating circumstances.

Upon written request, any individual may inspect and obtain a copy of any SFI filed with the Commission. In FY93, the Commission honored 1,299 such requests from 210 sources, including the media, private citizens and law enforcement agencies.

The Commission hired a SFI auditor during the second quarter of FY93: due to budget restrictions, the position had been vacant for three years. More than 1,100 previously-filed SFIs had been audited by the end of FY93. About one-third of the audited filings contained significant errors or omissions; these filers were contacted and requested to amend their filings.

PUBLIC EDUCATION

Seminars

The Commission provides free seminars on the conflict of interest and financial disclosure laws. Seminars are given on an as-requested basis, and while the vast majority are targeted to public employees and officials, seminars are also provided to other groups such as newspaper staffs, the Massachusetts Association of Professional Lobbyists and the League of Women Voters. Commission staff conducted 111 seminars during FY93, a 58% increase over the previous year. FY93 seminars sponsors included 51 state agencies, 42 municipalities, three county associations and 15 private groups. A total of 3,134 people attended Commission seminars during FY93.

Publications

The Commission provides a wide variety of educational materials explaining various provisions of the conflict law and keeps constituents informed of recent Commission rulings. The Commission's newsletter, *The Bulletin*, is distributed to an estimated 3,200 subscribers. About 3,900 copies of publications were distributed in FY93 in response to phone or "walk-in" requests for information, and 6,206 copies of publications were provided to seminar sponsors to be copied for seminar participants. The Commission distributed 5,845 copies of publications to individuals as part of enforcement actions, legal opinions, or in response to written requests for information. About 400 copies of the Commission's *FY92 Annual Report* were distributed, as were about 100 copies of the annual compilation of the Commission's public actions, *State Ethics Commission Rulings*. The Commission updated 22% of its 57 publications in FY93.

INVESTIGATION AND ENFORCEMENT

Complaints

Anyone may call, write or visit the Commission to make a complaint regarding an alleged violation of the conflict of interest or financial disclosure laws. In FY93, the Enforcement Division received 845 complaints from the following sources: 66% from private citizens, 18% from anonymous sources, 7% from media reports, 4% from other law enforcement agencies, 1% from public officials, 1% from reviews of financial disclosure forms and 2% were "self-reports" made by public employees regarding their own conduct. About 71% of the complaints alleged violations by municipal employees or officials, 20% implicated state employees or officials, 6% referenced county officials and 3% cited private individuals or corporations.

A total of 876 complaints were received or pending in FY93. About 49% were closed within two weeks of being received, because the allegations fell outside the Commission's jurisdiction, were clearly frivolous or otherwise did not justify continued investigation. About 8% of the complaints were consolidated with existing cases. Two complaints were referred to other law enforcement agencies for review, two complaints were referred to the Commission's SFI Division and eight complaints were closed after the subject sought an opinion from the Commission's Legal Division. About 11% of the complaints opened were pending at the end of the fiscal year.

Staff Investigations

About 30% of the complaints received or pending in FY93 were assigned to an attorney/investigator team in the Commission's Enforcement Division. The Commission closed 202 cases following informal staff investigations: 70% because the situation was one in which a private educational letter was appropriate; 26% because staff determined there was little likelihood that the conflict laws had been violated; and 3% were dismissed,

consolidated with existing cases or referred to other agencies. About 15% of the informal staff investigations led to formal inquiries. As of June 30, 1993, there were 116 ongoing informal staff investigations.

Formal Inquiries

The Commission authorized a total of 40 formal inquiries in FY93: 30 regarding alleged violations of the conflict of interest law and 10 involving alleged violations of the financial disclosure law. Twenty-two of the subjects of preliminary inquiries were municipal officials or employees, 15 were state officials or employees and three were county officials or employees.

Enforcement Division staff completed 25 formal inquiries during FY93, including investigations begun during previous fiscal years. In 15 instances, the Commission found "reasonable cause" to believe the conflict of interest or financial disclosure laws had been violated. The Commission also issued five confidential Compliance Letters regarding conflicts of interest, advising subjects of their violations and explaining the consequences of future misconduct. Two inquiries were concluded by the issuance of Public Enforcement Letters describing the facts of each case and the violations of law; such letters are issued with the subjects' consent and without any admission of guilt by the subject. In two instances, the Commission found "no reasonable cause" to believe the financial disclosure law had been violated. One financial disclosure case was terminated without a finding.

Public Resolutions

In FY93, the Commission entered into 29 Disposition Agreements. In these signed documents, subjects admit the violation and agree to pay civil fines up to \$2,000 per violation of G.L. c. 268A or 268B. At the end of the fiscal year, the Commission had one public hearing pending; in two additional cases, the Commission had found "reasonable cause" to believe laws had been violated, but had yet to institute the formal hearing process.

Penalties

In FY93 the Ethics Commission levied civil penalties totalling \$41,348.75 on 39 individuals and public entities found to have violated the conflict of interest and financial disclosure laws.

FY93 ENFORCEMENT ACTIONS

In the Matter of Mark Breen (July 6, 1992)

The Ethics Commission fined Massachusetts Housing Finance Agency (MHFA) staff attorney Mark Breen \$4,000 for violating the state's conflict of interest law, G.L. c. 268A, by acting as a private attorney for an Irish immigrant in his attempt to obtain a MHFA mortgage. In a Disposition Agreement reached with the Commission, Breen admitted that his actions violated §§4(c) and 23(b)(3) of G.L. c. 268A and agreed to pay the fine. Section 4(c) prohibits state employees from representing anyone other than the Commonwealth in a matter that is of substantial interest to the Commonwealth. Section 23(b)(3) prohibits public employees from acting in a manner that would cause an objective observer to conclude they would act with bias or be unduly influenced by any person or entity in the performance of their official duties.

In the Matters of John Shay and Frederick Foresteire
(July 7, 1992)

The Ethics Commission fined Everett School Committee member John Shay and Everett School Superintendent Frederick Foresteire for violating the Massachusetts conflict of interest law when Foresteire arranged for a school department painter to provide a "free" paint job for Shay's apartment. In separate Disposition Agreements reached with the Ethics Commission, both Shay and Foresteire admitted that their actions violated G.L. c. 268A and agreed to pay fines. Shay agreed to pay a \$500 fine for the violating §3 of the conflict law, and also agreed to pay an additional \$250 forfeiture to the Commonwealth for the unlawful benefit of the paint job. Section 3 prohibits public employees from accepting anything of substantial value (\$50 or more) that is given to them for or because of their official position. Foresteire admitted to violating §23(b)(3) by asking a school department painter to paint Shay's apartment, and agreed to pay a \$250 civil penalty for the violation. Section 23(b)(3) prohibits public employees from acting in a manner that would cause an objective observer to conclude that they would act with bias or be unduly influenced by any person or entity in the performance of their official duties.

In the Matter of Harold Partamian
(July 9, 1992)

The Ethics Commission levied a \$1,500 fine against Harold Partamian, executive secretary of the state Board of Registration in Pharmacy ("Pharmacy Board"), for his involvement in the investigation of several complaints against a pharmacy corporation which employed him as a part-time pharmacist, and for failing to report his part-time employment on his Statement of Financial Interests (SFI). Partamian admitted in a Disposition Agreement that his actions violated §6 of G.L. c. 268A and §7 of G.L. c. 268B, and agreed to pay the fine. Section 6 of the conflict law prohibits state employees from participating in their official capacity in particular matters that affect the financial interests of a business organization which employs them. Section 7 of the financial disclosure law prohibits the filing of a false SFI.

In 1982, Partamian had requested and received an Advisory Opinion (EC-COI-82-95) from the Ethics Commission concerning possible conflicts between his work for the Pharmacy Board and his part-time private employment. The Commission informed Partamian he would be unable to participate as a Pharmacy Board investigator in any matters concerning the pharmacy which employed him or concerning any of its geographical competitors. In 1987, when Partamian became the executive secretary of the Pharmacy Board, he asked the Commission to update the opinion previously issued to him. The Commission's Legal Division reaffirmed the earlier opinion, stating, "you must continue to refrain from participating as (the Board executive secretary) in any matter affecting either the pharmacy which employs you on Saturdays or its geographic competitors."

In the Matter of Rudy Banks
(July 9, 1992)

The Ethics Commission fined Rudy Banks, a member of the Board of State Examiners of Plumbers and Gas Fitters, \$250 for acting on a variance application submitted by his son. In a Disposition Agreement reached with the Commission, Banks admitted his conduct violated §6 of G.L. c. 268A and agreed to pay the fine. Section 6 prohibits state employees from participating in their official capacity in any particular matter that affects the financial interests of an immediate family member.

In September of 1990, Banks' son, Raymond Banks, applied to the Westfield plumbing inspector for a plumbing permit for the unisex bathroom at Napoli Pizza, the Agreement said. The plumbing inspector denied the permit because he had not received a satisfactory written explanation from the Board regarding the Board's granting of the variance. The plumbing inspector then wrote to the Board and insisted the law required one men's bathroom and one women's bathroom, as well as the unisex handicapped-access bathroom. In late September, Raymond Banks reapplied for the plumbing permit for Napoli Pizza; at about the same time he informed his father of the problem he was having with the local plumbing inspector. The Plumbing Subcommittee voted on

September 26, 1990 to allow a variance based on the handicapped access unisex bathroom at Napoli Pizza being used by the public and the remaining bathroom being designated a unisex bathroom for employees. Banks voted in favor of the variance. On October 3, 1990, the full Board approved the Subcommittee's decision to clarify the variance, and again, Banks voted in favor. On October 12, 1990, the Westfield plumbing inspector granted the permit to Napoli Pizza for construction of the unisex bathroom.

In the Matter of Guy Tardanico
(August 27, 1992)

The Ethics Commission fined Stoughton School Committee member Guy Tardanico \$1,000 for violating the conflict of interest law by participating in school department contract negotiations with the bargaining unit to which his wife belonged. Tardanico admitted in a Disposition Agreement reached with the Commission that his actions violated §19 of G.L. c. 268A and agreed to pay the fine. Section 19 prohibits municipal employees from officially participating in particular matters in which a member of their immediate family has a financial interest.

Between June 1990 and March of 1991, Tardanico participated as School Committee chair in numerous discussions and recommendations seeking to settle an ongoing dispute between the Stoughton Teachers' Association and the town. Tardanico advocated negotiating with the teachers' association and granting certain salary increases. In May of 1991, a fellow School Committee member voiced concerns about Tardanico having a conflict of interest, since his wife belonged to the teachers' association. Counsel for the School Committee contacted the Commission, and a Commission staff attorney advised that the best course of action was for Tardanico to leave the room when contract issues were discussed. Tardanico subsequently refrained from participating as a School Committee member in Stoughton Teachers' Association contract matters.

In the Matter of William Butters
(September 9, 1992)

The Ethics Commission fined Norwood Selectman William Butters \$1,500 for violating the conflict of interest law by participating as a selectman in matters that affected his firefighter son's financial interest, and in liquor license matters in which he himself had a financial interest. In a Disposition Agreement reached with the Ethics Commission, Butters admitted that his actions violated §19 of G.L. c. 268A and agreed to pay the sanction. He was fined \$1,000 for his actions in connection with his son's financial interest, and \$500 for his actions regarding local liquor licenses. Section 19 of the conflict law prohibits municipal officials from participating in their official capacity in any particular matter in which they, or a member of their immediate family, have a financial interest.

In the Matter of Arthur Hilson
(October 5, 1992)

The Ethics Commission fined Arthur Hilson, former Director of the Department of Public Safety at the University of Massachusetts in Amherst (UMass-Amherst), \$4,000 for violating the conflict of interest law by soliciting a \$1,000 no-interest loan from one of his employees and failing to fully repay it, and by later accepting a \$1,000 gift from the same employee at a time when she was a criminal suspect being investigated by the University's police department. Hilson was also required to forfeit the \$1,000 gift to the Commonwealth.

In a Disposition Agreement reached with the Ethics Commission, Hilson admitted his actions violated §§3 and 23 of G.L. c. 268A and agreed to pay the fine. Section 3 prohibits public employees from seeking or accepting anything of substantial value (\$50 or more) given to them for or because of their official position or duties. Section 23 prohibits a public employee from acting in a manner that would cause an objective observer to conclude the employee could be unduly influenced in his or her official capacity, or that anyone could unduly enjoy the employee's favor in official dealings.

Following the Ethics Commission's finding there was "reasonable cause" to believe Hilson's actions violated the conflict law, Hilson resigned his position at UMass-Amherst.

The Ethics Commission found no evidence that Hilson ever attempted to interfere with the investigation or advocated lenient treatment for the suspect. Nevertheless, by accepting a \$1,000 gift from a criminal suspect being investigated by his police department, Hilson violated §3 of the conflict law. By securing an immediate, no-interest \$1,000 loan from the suspect, who was his subordinate, Hilson acted in a manner which would cause a reasonable person to conclude that the suspect could unduly enjoy his official favor in personnel evaluation, promotion and disciplinary matters; thus, Hilson violated §23(b)(3). Hilson exacerbated this appearance of an impropriety by failing to repay the \$500 loan balance, especially when his failure to do so occurred while the police department's investigation of the suspect was pending.

In the Matter of Robert Sheehan
(October 6, 1992)

Granby Board of Health member Robert Sheehan Jr., was fined \$500 by the Ethics Commission for violating the conflict of interest law by witnessing 11 percolation tests and one top soil/sub soil inspection performed by his father's company. In a Disposition Agreement, Sheehan admitted that his actions violated §19 of G.L. c. 268A and agreed to pay the fine. Section 19 prohibits municipal employees from participating in their official capacity in particular matters in which members of their immediate family or a business organization for which they are serving as an employee have a financial interest.

Although Sheehan faced a maximum penalty of \$2,000 for each of the 12 violations, the Disposition Agreement cited important mitigating circumstances. According to the Agreement, when Sheehan joined the Board of Health in 1987, he sought advice from town counsel as to how to avoid conflicts of interest presented by his father's engineering business, R. F. Sheehan Associates. Town counsel correctly advised Sheehan to abstain from voting on Board of Health matters affecting his father's company, but neglected to inform him to also refrain from conducting field inspections of R. F. Sheehan Associates' work.

In the Matter of EUA Cogenex
(October 14, 1992)

EUA Cogenex, an energy management company, was fined \$2,000 by the Ethics Commission for violating the Massachusetts conflict of interest law by offering and providing entertainment to public officials in an effort to engender goodwill. A senior company official signed a Disposition Agreement admitting to violating §3 of G.L. c. 268A by inviting and hosting public officials on a cruise of Boston Harbor. Section 3 prohibits anyone from offering or giving anything of "substantial value" (\$50 or more) to any public official for or because of any official act performed or to be performed by that official.

Boston Edison's Encore Program pays for large energy consumers to retrofit and/or replace electrical equipment in order to reduce energy consumption. EAU Cogenex was selected as the electrical contractor for modifications of equipment owned by Worcester County and the municipalities of Arlington, Holliston, Newton and Walpole. As contractor, the company received a percentage of the savings generated by the equipment improvements.

On July 17, 1991, EUA Cogenex hosted a Boston Harbor cruise on a custom-designed cruising yacht. The cruise was explicitly intended to show customer appreciation and to foster goodwill. The company spent approximately \$2,229 hosting the event, including cocktails and dinner. Invitations were extended to approximately 40 individuals, including seven public officials involved with the municipal and county contracts. Two of the 28 individuals who attended the cruise were public officials.

In the Matter of Massachusetts Candy & Tobacco Distributors, Inc.
(October 14, 1992)

The Ethics Commission fined Massachusetts Candy & Tobacco Distributors, Inc. ("Massachusetts Candy & Tobacco") \$2,000 for violating §3 of G.L. c. 268A by providing entertainment to public officials in efforts to engender good will. A senior executive of Massachusetts Candy & Tobacco signed a Disposition Agreement admitting that the business violated the law by hosting public officials and their families at a day-long golf and tennis invitational. Section 3 prohibits anyone from offering or giving anything of "substantial value" (\$50 or more) to any public official for or because of any official act performed or to be performed by that official.

Massachusetts Candy & Tobacco is an industry association for wholesale distributors of candy, cigars, cigarettes, tobacco and other smokers' products; its membership includes 21 Massachusetts companies and one New York company. The association hosted its third annual "Sweet Charity Golf and Tennis Invitational" on August 13, 1991 at the Ocean Edge Resort in Brewster, Massachusetts; attendance was free and by invitation only. Approximately 180 members of the Massachusetts Legislature were invited, along with members of the association and their wholesale suppliers. Approximately 160 individuals attended, including more than 50 state legislators, legislative staff and members of their families. Massachusetts Candy & Tobacco spent over \$29,000 hosting the event, which included a barbecue lunch, golf, tennis, cocktail hour, clambake dinner and a post-dinner raffle to benefit the Jimmy Fund. Each attendee received an estimated \$141-\$152 in food, alcohol and entertainment. Many attendees participated in the Jimmy Fund raffle, which raised \$6,338.27, and thus "paid" in some fashion for a portion of their attendance costs by contributing an average of \$35 per person.

The Disposition Agreement noted that Massachusetts Candy & Tobacco hosted the Invitational for the primary purposes of providing a social event for its employees and raising money for charity. However, Massachusetts Candy and Tobacco conceded its hosting of the event was also partially motivated by a desire to engender goodwill among the public officials invited, and was therefore a prohibited act for the purposes of §3 of G.L. c. 268A.

In the Matters of Michael Murphy and P. J. Keating Co.
(October 20, 1992)

The Ethics Commission fined Winchendon's Department of Public Works superintendent Michael Murphy and a Massachusetts asphalt manufacturer \$2,000 each for the company's free paving of the superintendent's driveway. Murphy was also required to forfeit the fair market value of the paving, \$2,000, to the Commonwealth. In separate Disposition Agreements, both Murphy and P. J. Keating Company admitted that their actions violated §3 of G.L. c. 268A and agreed to pay the fines and forfeiture. Section 3 of the conflict law prohibits public employees from seeking or accepting anything of substantial value that is given to them because of their official position, and also prohibits private sector entities from offering or providing such gifts.

In June of 1987, P. J. Keating Co. submitted the low bid for the Winchendon paving contract. Murphy, as DPW superintendent, reviewed the bids and recommended the contract be awarded to Keating. The contract, which ultimately totaled \$229,554.86, was awarded to Keating. Murphy also supervised Keating's performance on the contract. At some point in 1987, Murphy approached a Keating employee who was involved in paving Winchendon streets pursuant to Keating's town contract, and asked if Keating would pave the driveway of Murphy's personal residence in Winchendon. Keating employees paved Murphy's driveway on July 29, 1987. Neither the town of Winchendon nor Murphy paid for either materials or labor; P.J. Keating Co. absorbed all costs associated with paving Murphy's driveway.

In the Matter of John Forristall
(October 21, 1992)

Winthrop Recreation Commission member John Forristall was fined \$1,500 by the Ethics Commission for selling janitorial supplies to the Recreation Commission and collecting \$1,125 in commissions for the sales.

Forristall was also required to forfeit the \$1,125 to the Commonwealth. In a Disposition Agreement, Forristall admitted that he violated §19 of G.L. c. 268A and agreed to pay both the fine and the forfeiture. Section 19 of the conflict law prohibits municipal employees from participating in their official capacity in any particular matter in which they or a business that employs them has a financial interest.

Forristall worked as a salesman for Lamco Chemical Company in addition to his part-time post as a member of the Recreation Commission, which oversees the operation of the town's Recreation Department. Lamco Chemical is a Chelsea-based business that manufactures janitorial supplies. Between July 1, 1985 and June 30, 1989, the Recreation Commission purchased approximately \$7,500 in goods from the company. Forristall was the salesman on all of the sales, and earned approximately \$1,125 in commissions on the sales.

In the Matter of Thomas Norton
(December 15, 1992)

The Ethics Commission fined Massachusetts state Senator Thomas C. Norton (D-Fall River) \$1,000 for violating the so-called "nepotism" section of the conflict of interest law by supervising his sister, Elizabeth Bevilacqua, in her job as a legislative aide to the Senate. In a Disposition Agreement, Norton admitted that his actions with regard to his supervision of his sister violated §6 of G.L. c. 268A and agreed to pay the fine. Section 6 of the conflict law prohibits state employees and officials from participating in their official capacity in any particular matter that affects the financial interests of a member of their immediate family.

The Commission's Enforcement Division had issued an Order to Show Cause against Norton in August of 1992, but the matter was resolved prior to a public hearing. The Disposition Agreement dismissed allegations that Norton's sister appeared to be a "no-show" employee. The Commission's Order to Show Cause had alleged that Norton's supervision of his sister also violated the "appearances" provisions of §23(b)(3); this allegation was based upon preliminary evidence that no records were kept of Bevilacqua's hours or work performance. Following a pre-hearing conference on the matter, Norton provided further evidence that his sister had performed substantial work as a Senate employee and that her terms and conditions of employment were the same as those of the other Senate employees supervised by Norton. Accordingly, the §23(b)(3) charge was dismissed.

Norton admitted violating §7 of G.L. c. 268B by his failure to disclose his interests in Patrick Marketing, Inc. on Statements of Financial Interests (SFIs) filed for 1986, 1987, 1988 and 1989, and his failure to disclose a \$4,500 commission received in 1986. Section 7 prohibits the filing of a false SFI, whether willfully or through a failure to exercise reasonable care and ordinary diligence in completing and filing the forms. Norton agreed to amend his financial disclosure forms to reflect his interests in Patrick Marketing and receipt of the 1986 commission.

In the Matter of Paul Gaudette
(December 30, 1992)

The Ethics Commission required a \$300 forfeiture from Dracut Building Inspector Paul Gaudette, who violated §23(b)(3) of G.L. c. 268A. Gaudette admitted in a Disposition Agreement that he violated the "appearances" provisions of the conflict law by accepting rent-free use of a Martha's Vineyard vacation home from Dracut developer Douglas Dooley, and agreed to forfeit the value of the benefit he received. Section 23 of the conflict law prohibits public employees from acting in a manner that would cause an objective observer to conclude the employees could be unduly influenced in their official capacity by any person or entity.

The Commission determined that Gaudette believed Dooley's generosity was motivated out of friendship and was therefore not a violation of the gift provisions of §3; however, it also found that Gaudette's personal ties with Dooley "only serve to enhance the appearance of favoritism that arises when a public official accepts an item of substantial value from someone who is subject to his official regulation."

In the Matter of Charles J. Manca
(January 28, 1993)

The Ethics Commission fined Gardner Mayor Charles J. Manca \$500 for violating §23(b)(3) of G.L. c. 268A by signing a recycling contract with his brother's company. Manca admitted in a Disposition Agreement that he violated the law and agreed to pay the fine. Section 23(b)(3) prohibits a public official from acting, knowingly or with reason to know, in a manner that would cause an objective observer to conclude that anyone could improperly influence the official because of kinship, friendship, or any other reason.

Manca Brothers, Inc. is a Massachusetts corporation engaged in the business of trash removal and recycling. In 1991, Manca Brothers submitted the low bid for a container recycling contract, and on September 17, 1991, Mayor Manca signed the contract, the Disposition Agreement said. By law, the mayor is required to sign all city contracts worth \$5,000 or more. The estimated value of the recycling contract was \$6,000. Manca stated that he did not realize he was signing a contract with his brother's company; however, the Commission stated in the Disposition Agreement, the mayor should have established a process by which any contracts or other particular matters in which he had a conflict could be identified.

In the Matter of Donald Eunson
(February 26, 1993)

A Public Enforcement Letter was issued to Bedford Police Chief Donald Eunson stating that G.L. c. 268A prohibits public agency department heads from personally buying back vehicles that have been traded in by their agencies. The Commission issued the clarifying Letter after finding that it was a "systemic" practice for agency heads to trade in town vehicles, then re-purchase the vehicles at a substantial discount for personal use. The letter states that substantial discounts off a purchase price are considered prohibited "gifts" under §3 of the conflict law. Section 3 prohibits public employees from seeking or accepting anything of substantial value (\$50 or more) given to them for or because of their official position or duties.

Eunson was cited by the Commission for helping his son to get a bargain purchase price on a police vehicle being traded in to Natick Auto Sales (Natick Ford).

In the Matter of Robert Burgmann
(March 15, 1993)

Former Sandwich Planning Board Chair Robert Burgmann was fined \$1,000 for sending an official memorandum to the Sandwich Board of Health asking that a local developer be required to install a nitrate-reducing septic system designed by a company Burgmann worked for and partially owned. Burgmann signed a Disposition Agreement in which he admitted violating §19 of G.L. c. 268A and agreed to pay the fine. Section 19 prohibits municipal officials from participating in their official capacity in particular matters that affect their own financial interest.

In the Matter of Robert Donaldson
(March 24, 1993)

Former Tolland Health Agent Robert Donaldson was fined \$3,000 for witnessing percolation tests on lands that were listed with his real estate agency or that he expected would be listed with the agency once the land "perced" successfully. Donaldson admitted in a Disposition Agreement that he violated §19 of G.L. c. 268A and agreed to pay the fine. Section 19 of the law prohibits municipal employees from participating in their official capacity in particular matters that affect the financial interests of business organizations that employ them.

Donaldson served as Tolland's Health Agent from 1985 until 1991. During that time, Donaldson also worked as a real estate broker for Misty Mountain Realty, which he owned with his wife. Misty Mountain Realty was located in Tolland, and was the only real estate firm in the town. Donaldson routinely advised potential real estate clients that a successful "perc" test was required before the land could be represented as buildable to buyers; he would then witness the "perc" tests as town health agent.

The Disposition Agreement cited five situations in which Donaldson witnessed the perc tests on land and then brokered the sale of that land through Misty Mountain Realty. The Agreement imposed a \$3,000 sanction for the overall course of conduct, and only concerns Donaldson's actions after 1986, due to the Commission's six-year statute of limitations.

In the Matter of Roland Seguin

(April 9, 1993)

Roland Seguin, a former member of the Fairhaven Tourism Committee, was fined \$750 for violating §19 of G.L. c. 268A. In a Disposition Agreement, Seguin admitted to violating the law when he purchased a series of commemorative plates on the town's behalf: the plates were purchased from companies Seguin represented as salesman, and he received commissions on the sales. Seguin was also required to forfeit \$600, the approximate benefit he received from the illegal sales. Section 19 prohibits municipal employees from participating in their official capacity in any particular matter that affects their own financial interests.

In the Matter of Kevin C. Santos

(April 21, 1993)

The Ethics Commission brought an action in Superior Court against former Dartmouth Selectman Kevin C. Santos, charging that Santos had an illegal financial interest in an ambulance contract with the town. Santos allegedly demonstrated repeated bad faith from December 1989 until 1992, by ignoring the Commission's written advice that he was in violation of §20 of G.L. c. 268A, and must either divest his financial interest in STAT Ambulance Services, Inc. or resign his position as a Dartmouth Selectman. Section 20 prohibits municipal employees from having a financial interest in a contract with the municipality they serve.

The Commission also alleges that Santos deliberately misled Commission staff when they contacted him to determine whether he had complied with the directive. The Superior Court action seeks forfeiture and penalties of up to three times the amount of Santos' economic gain from the contract; the Commission calculates that the illegal benefit was at least \$25,000.

In the Matter of Anthony Benevento

(April 28, 1993)

The Ethics Commission fined former Swampscott Assessor Anthony Benevento \$5,000 for violating §23(b)(3) of G.L. c. 268A. In a Disposition Agreement, Benevento admitted violating the law by unilaterally increasing valuations on properties owned by individuals with whom he had a bad personal relationship. Section 23(b)(3) prohibits public officials from acting in a manner that would cause an objective observer to conclude they would be unduly influenced by personal biases in carrying out their official duties.

In the fall of 1990, a professional appraisal firm re-evaluated the approximately 5,500 properties in Swampscott for tax purposes. A copy of the firm's preliminary valuations was presented to the Board of Assessors on October 9, 1990. The valuations reflected an across-the-board decrease in residential property valuations, with an average reduction of approximately 10%. The Board of Assessors voted to accept the valuations on October 23, 1990. Later that day, Benevento unilaterally increased by 15% the valuation of a property that had been built on a lot across the street from Benevento's home, and which partially blocked his view of the ocean. Benevento also substantially increased the valuation of two properties owned by friends of his neighbor.

Although the procedures are not in writing, the Board of Assessors' standard policy required a majority vote to approve any change in violation. The other assessors were not aware of the three increases Benevento made.

On June 2, 1992, the state Department of Revenue issued a report concerning its investigation of the matter. The report found that although the valuation increases could not necessarily be classified as overvaluations, the unprofessional manner in which the changes were carried out gave the appearance of impropriety.

In the Matter of Dominic DiVirgilio
(April 29, 1993)

Dedham Department of Public Works Commissioner Dominic DiVirgilio was fined \$3,500 for violating §23 of G.L. c. 268A, and was required to reimburse Dedham for \$825 that was wrongfully billed to the town. In a Disposition Agreement, DiVirgilio admitted violating the law by: receiving autobody work on his private car from John's Autobody, a regulated town vendor under DiVirgilio's official authority; billing the town of Dedham for repairs that John's Autobody Shop allegedly performed to a town truck when no such work was done; awarding more than \$25,000 in municipal diesel fuel business to a friend's company in violation of the competitive bid laws; and allowing a town-owned cement mixer to be used free of charge by a private construction company. Section 23 of G.L. c. 268A prohibits public employees from using their official position to secure unwarranted privileges of substantial value for themselves or anyone else, and also bars public employees from acting in a manner that would cause a reasonable person to conclude they would act with bias or be unduly influenced by kinship, friendship, rank or position in connection with performing their official duties.

In the Matter of Robert Columbus
(May 26, 1993)

The Ethics Commission fined Stoneham Building Inspector Robert Columbus \$750 for violating the conflict of interest law by issuing building permits to himself and his sons. In a Disposition Agreement, Columbus admitted to violating Section 19 of G.L. c. 268A by issuing the various permits, and agreed to pay the fine. Section 19 prohibits municipal employees from participating in their official capacity in any particular matter that affects either their own financial interests or the financial interests of members of their immediate family.

In the Matter of Leonard Mach
(June 30, 1993)

Leonard Mach, former Acting Administrator for the Massachusetts Treatment Center at Bridgewater, was fined \$500 for violating §6 of G.L. c. 268A. In a Disposition Agreement, Mach admitted violating the law by participating in his son's appointment to a more secure job at the facility at a time when layoffs were likely. Section 6 of the conflict law prohibits state employees from participating in their official capacity in any particular matter that affects the financial interests of a member of their immediate family, unless they qualify for an exemption.

Leonard Mach served as Acting Administrator at the Bridgewater facility from February 1991 until February 1992. His son, Gary, was employed at the treatment center as a mental health case worker. There is no evidence that Leonard Mach played any role in the hiring of his son in 1987. In October 1991, the treatment center was authorized to certify two mental health case worker positions as "temporary certified civil employee" positions. At the time, Gary Mach was classified as a provisional employee, and thus had less seniority than a temporary certified civil service employee. After receiving recommendations from an independent selection committee, Leonard Mach signed forms indicating that all but two candidates failed to meet the entrance requirements for the positions: the two exceptions were Gary Mach and another candidate recommended by the selection committee. Leonard Mach also signed civil service forms indicating that his son and the other recommended candidate were selected for the mental health case worker appointments. The Commission

rejected assertions that Leonard Mach's actions were merely ministerial because the job status changes would not have been accepted without his signature. However, the Commission imposed a relatively small fine so as to reflect several mitigating factors: Leonard Mach tried to distance himself from the decision-making process when his son was involved; the selection committee made the key appointment decisions; and there is no evidence that Leonard Mach attempted to influence the committee's decision-making process.



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