

STATE ETHICS COMMISSION

Annual Report

Fiscal Year 2002

Commissioners

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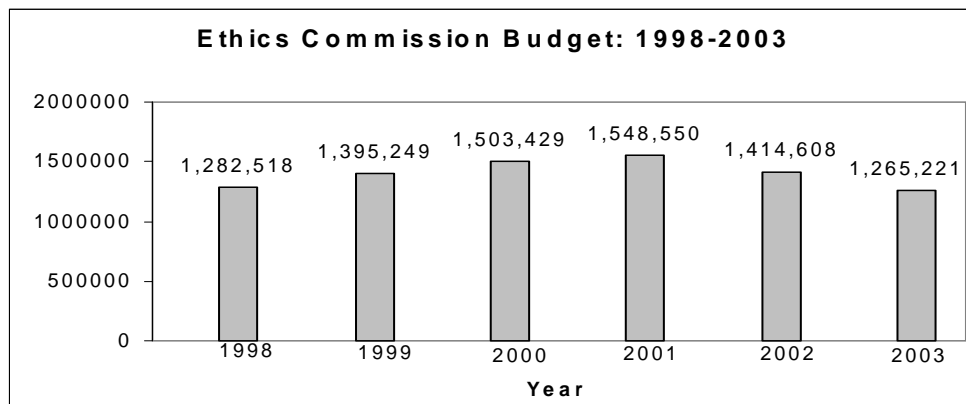
MESSAGE FROM THE CHAIRMAN

The State Ethics Commission interprets, educates, provides disclosure and enforces the conflict of interest and financial disclosure laws, Massachusetts General Laws c. 268A and c. 268B. We fulfill our responsibilities, in part, by (a) providing free, confidential, timely and binding advice and guidance to public officials and employees and the public at large; (b) conducting a comprehensive educational program of seminars, written materials and a user-friendly web site; (c) achieving a nearly 100 percent response rate from candidates, state and county officials and other major policy making persons who must file statements of financial interests (SFI); and (d) investigating and prosecuting serious violations of these laws.

The FY 02 Annual Report sets forth in detail the work of the Commission during the past fiscal year, which can be summed up best by the opening lines of Dickens' *Tale of Two Cities*, "It was the best of times, it was the worst of times."

On the one hand, the Commission has made significant strides through technical advances and increased efficiency and productiveness. For example, we have implemented a state of the art electronic filing system for SFI filers, developed a PowerPoint presentation for Commission seminars, redesigned and enhanced the Commission's web site, and most recently, developed templates to help address the Commission's backlog of staff opinions. At the same time, the timeliness of the Commission's investigations has improved significantly, e.g. the average age of pending cases has decreased by almost 35 percent. In addition, the Commission has accomplished these achievements while prosecuting, conducting and participating in a significant number of adjudicatory proceedings and court cases.

The past fiscal year has been a very difficult one for the Commission as it has for many state agencies due to significant budgetary constraints. After five years of increasing maintenance level budgets, the Commission's budget decreased from \$1,548,550 in FY 01 to \$1,414,608 in FY 02 (See Chart below). The Commission's FY 03 budget has been reduced again, by nearly \$150,000 to \$1,265,221, more than \$17,000 less than the Commission's FY 98 budget. As a result, the number of staff has decreased by 27 percent. Through attrition, early retirement and layoffs, the staff has been reduced by two attorneys, a municipal seminar specialist, a complaint intake worker, the director of administration and two support staff positions. In addition, we have made substantial administrative cuts to avoid additional layoffs. For example, the Commission's newsletter, *The Bulletin*, will be available only online via the Commission's web site. The number of municipal seminars offered will be reduced due to the loss of our municipal specialist and a travel budget cut to only \$400 from \$3,400 the previous year. In addition, as a result of our reduced support staff, the Commission's daily phone coverage will be reduced. In short, regardless of any technical and productivity strides that the Commission has made and will continue to make, we will not be able to maintain the same level of service for the public that we have provided in the past.



The members and staff of the State Ethics Commission continue to believe that most Massachusetts public employees, indeed most people, try to do the right thing. We remain committed, therefore, to providing the public with a user-friendly, responsive agency whose primary goal is ensuring compliance with the law. Even with our significantly reduced resources, we will continue to strive to educate and advise the public about the law, to provide timely disclosure of the reports filed with us, and, when necessary, to vigorously and fairly enforce the law.

Respectfully submitted,

Augustus F. Wagner, Chairman

INTRODUCTION TO THE ETHICS COMMISSION

This report covers the activities of the Massachusetts State Ethics Commission during FY 02. It is issued pursuant to §2(l) of Chapter 268B and is intended to serve as an explanation of the Commission's responsibilities and as a record of its major activities during the fiscal year.

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 governs 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. The law requires that public servants give undivided loyalty to the government for which they work and 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 statute, Chapter 210 of the Acts and Resolves of 1978 established a financial disclosure law, G.L. c. 268B, requiring public officials, political candidates and certain designated public employees to annually file 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 provides free legal advice, education and other information regarding the conflict of interest and financial disclosure laws and serves as the primary civil enforcement agency for these laws.

MEMBERSHIP

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 and employ a full-time staff. Commissioners are paid on a per diem basis but voted to forego such payments for FY 02 in response to budget cuts.

Current Members

(One seat is vacant pending appointment by the Governor)

Augustus F. Wagner, Jr., Chair

Partner
Nutter, McClennen & Fish
Hyannis, MA

R. Michael Cassidy

Dean
Boston College School of Law
Chestnut Hill, MA

Christine M. Roach

Partner
Roach & Carpenter
Boston, MA

Elizabeth J. Dolan

Superior Court Judge (retired)
Harwich, MA

Former Member

Stephen E. Moore

Partner
Lockhart & Kirkpatrick
Boston, MA

The Commission staff is made up of four separate divisions, under the supervision of the executive director. The Commission also appoints the General Counsel who is the chief legal officer of the Commission and head of the Commission's Legal Division, which provides free, confidential advice to public employees regarding the legality of proposed activities, advises the Commission during adjudicatory proceedings and represents the Commission in court. The Statements of Financial Interests Division administers the financial disclosure law and audits SFIs filed with the agency. The Communications and Public Education Division conducts free seminars for public employees, maintains the Commission's web site and publishes a wide range of educational materials. The Enforcement Division investigates and publicly prosecutes more serious violations of the laws. It resolves relatively minor violations privately with confidential educational letters.

SUMMARY OF FISCAL YEAR 2002

The Legislature appropriated \$1,414,608 for the Ethics Commission in FY 02, a decrease of 9% from the previous year. The FY 02 budget translates to a cost of approximately \$3.85 for each state, county and municipal employee under the Ethics Commission's jurisdiction and a cost of \$0.22 for each citizen of the Commonwealth of Massachusetts.¹ The Commission does not retain revenue.

The Legal Division handled 3,438 oral and written requests for confidential advice regarding the conflict of interest and financial disclosure laws, reviewed an additional 178 advisory opinions issued by municipal counsels, and prepared two formal Commission Advisory Opinions. There were 90 requests for advice pending at the end of FY 02.

During FY 02, 4,957 elected officials, candidates and designated major policy-making public employees filed Statements of Financial Interests with the Commission. All but six had filed by the end of the fiscal year. The SFI Division responded to 579 telephone inquiries relating to either the completion or amendment of SFIs.

A total of 6,193 people attended the 232 educational seminars conducted by the Communications and Public Education Division in FY 02.

The Commission's Enforcement Division reviewed 913 complaints in FY 02, issued 189 private educational letters, conducted 49 initial investigations and recommended 43 cases for formal review by the Commission. The Division issued one order to show cause initiating a public hearing, negotiated 33 Disposition Agreements, totalling \$60,050 in civil penalties, and issued two public enforcement letters. There were also four adjudicatory hearings, which resulted in decisions and orders.

FISCAL YEAR 2002 GOALS

The conflict of interest and financial disclosure laws were enacted to promote public confidence in government and in the integrity of the Commonwealth's elected and appointed officials while still attracting talented public servants. The State Ethics Commission's FY 02 Statement of Goals were derived from the fundamental principles codified by the Legislature in Chapters 268A and 268B. The Commission has five major goals:

Administration: To cultivate a user-friendly, responsive agency whose primary goal is to ensure the fair and timely administration of the conflict of interest and financial disclosure laws.

Education and Advice: To provide timely and consistent advice, education and information to the Commission, elected and appointed public officials and members of the general public.

Disclosure: To provide accurate public disclosure of the statements of financial interest of elected and appointed officials; to use computer and Internet technology to facilitate the filing of SFIs.

Enforcement: To act as the primary civil law enforcement agency of the conflict and disclosure laws through impartial and timely enforcement of serious violations of these laws.

Legislation: To recommend and promote legislation that helps to clarify, simplify, and further the fundamental values of the conflict and disclosure laws.

¹These costs were calculated using information from the U.S. Census Bureau and the U.S. Department of Labor. The 2001 estimated population for Massachusetts is 6,379,304. The estimated number of state and local employees (county and municipal employees) is 374,600. These figures do not include uncompensated state, county and municipal officials such as voluntary board members who are also covered by the law.

ADVICE AND OPINIONS

Individuals covered by G.L. c. 268A and G.L. c. 268B are entitled to receive confidential advice about whether proposed activities are permissible under the laws. The Legal Division consists of a chief, who also serves as the Commission's General Counsel, four attorneys and an administrative assistant. In addition to providing advice, the Legal Division advises the Commission during adjudicatory proceedings and represents the Commission in court.

COMMISSION OPINIONS

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 Division tries to answer written requests for advisory opinions within four weeks. Most requests for advice are handled over the telephone on the day of the call. In FY 02, the Commission's Legal Division handled 393 requests for advice through informal letters, and 3,045 requests via telephone calls.

Formal opinions are issued by the Commission. They address new issues and generally take longer to complete. Although advisory opinions issued by the Commission are confidential, the Commission publishes summaries of formal advisory opinions as well as public versions of such opinions with the identifying information deleted. Informal opinions are based on prior formal Commission rulings, issued by an attorney and are not published. The Commission issued two formal advisory opinions in FY 02. Copies of these opinions are available from the Ethics Commission.

MUNICIPAL 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 with 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 FY 02, the Commission reviewed 178 municipal opinions, concurring with 82 of them and not concurring in 21 instances. The Commission staff provided clarification of 60 municipal opinions. Thirteen municipal attorneys were advised that their advice was consistent in part but inconsistent in part with Commission precedent.

LITIGATION

In *Angelo Scaccia v. State Ethics Commission*, the Commission, following a hearing on remand from the Massachusetts Supreme Judicial Court, denied a motion for a new trial and ordered Scaccia to pay a reduced penalty. Scaccia appealed the Commission's decision in Superior Court.

In *Life Insurance Association of Massachusetts v. State Ethics Commission*, the Commission held a hearing on remand from the Massachusetts Supreme Judicial Court for further findings.

In *Vineyard Conservation Society v. State Ethics Commission*, the Vineyard Conservation Society filed a complaint seeking, among other things, a declaratory judgment challenging a Commission advisory opinion.

LEGISLATION

The Commission initiated and approved a plan for reviewing the conflict of interest and financial disclosure laws for the purpose of drafting legislation to simplify and clarify both statutes.

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 Statements of Financial Interests.

The Financial Disclosure Division consists of the chief and a financial analyst. The division is responsible for distributing, collecting, reviewing and maintaining statements of financial interests and, in conjunction with the Enforcement Division, ensuring complete and accurate compliance.

DISCLOSURE & REVIEW	In FY 02, 4,957 public employees and elected officials were required to file SFIs. Staff review of SFIs resulted in 1,474 letters mailed to filers requesting amendment or clarification of their statements. In addition, the division responded to 579 telephone inquiries relating to either the completion or the amendment of SFIs.
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ELECTRONIC FILING	Electronic filing of SFIs via the internet was available for the first time in FY 02; 49% of those required to file did so electronically.
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INSPECTION REQUESTS	Upon written request, any individual may inspect and obtain a copy of any SFI filed with the Commission. During FY 02, the Commission honored 1,220 such requests from 130 sources, including the media, private citizens and law enforcement agencies.
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LATE FILING	Failure to file on time or to amend an inaccurate or incomplete statement within 10 days of receipt of a formal late notice is a violation of the financial disclosure law. The Commission may levy penalties of up to \$2,000 for each violation. The Commission has adopted the following schedule of penalties:
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- 1-10 days late \$ 50
- 11-20 days late \$ 100
- 21-30 days late \$ 200
- 31 days or more \$ 500
- Non-filing of an SFI \$2,000

Penalties for the repeated late submission of an SFI are double that of the schedule above.

In the event a false statement is filed, the Commission may impose additional penalties. In addition, the law provides that employees who do not file may not perform their duties or be paid.

A total of 92 filers missed the May filing deadlines and were sent formal late notices. Of these, 77 people filed during the 10-day grace period. Three filers filed after the ten day grace period but presented evidence of mitigating circumstances which prevented their timely filing. Five other filers filed after the ten day grace period and signed disposition agreements and paid civil penalties. Seven filers failed to file within the 10-day grace period and became the subjects of preliminary inquiries.

PENALTIES	The Ethics Commission assessed civil penalties totalling \$3,600 in FY 02 for violations of the financial disclosure law including, for the first time in the Commission’s history, the maximum penalty of \$2,000 for failure to file an SFI was levied on a current state employee. Penalties collected are deposited in the General Fund, as the Commission does not retain revenue.
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TRAINING AND EDUCATION

During FY 02, the Communications and Public Education Division consisted of the director, a municipal education specialist and an administrative assistant. The Division provides free educational seminars throughout the state, maintains the Commission's web site and prints educational materials including *The Bulletin* and the *Annual Report*. The Division also serves as the public information office of the Commission and responds to a weekly average of more than ten requests for information from the media and from individuals.

SEMINARS The Commission provides free seminars on the conflict of interest and financial disclosure laws. A total of 6,193 people attended the Commission's 232 seminars during FY 02. Seminar sponsors included 173 municipalities with a total of 4,123 attendees; one county agency with a total of 42 attendees; 46 state agencies with a total of 1,812 attendees; and 12 professional associations with a total of 216 attendees.

PUBLICATIONS The Commission publishes a wide variety of educational materials explaining various provisions of the conflict law and keeps constituents informed of recent rulings. Most of this information is available on the Commission's web site. The Commission's newsletter, *The Bulletin*, is distributed to an estimated 3,600 subscribers three times annually. Since spring 2002, distribution of *The Bulletin* has been done electronically. The Commission's *FY 01 Annual Report* was distributed during the fiscal year, as were copies of the annual compilation of the Commission's public actions, *State Ethics Commission Rulings*. The entire set of the Commission's *Rulings* (1978-2001) is available at the Commission's office and is also available on the Social Law Library website, www.sociallaw.com. The Commission also issued 28 press releases describing its public enforcement actions.

WEB SITE The Commission maintains a web site on the Internet at www.mass.gov/ethics which was updated, enhanced and reorganized during FY 02. The home page now offers easier navigation through a user-friendly table. New features that have been added include Frequently Asked Questions, the Question of the Month, complete texts of Commission enforcement actions and advisory opinions for the past five years, and a PowerPoint training presentation used in Commission seminars.

MEDIA AND PUBLIC RELATIONS The Commission responds to inquiries from the media and the public about the Commission and the conflict of interest and financial disclosure laws. In FY 02, the Commission issued 28 press releases and handled almost 450 inquiries from the press and the public. The Commission does not confirm or deny that informal opinions have been issued or that investigations are being conducted. It does, however, provide explanations of the law, generally directing individuals with questions to the Commission's web site for additional information.

ENFORCEMENT

The Enforcement Division consists of four attorneys, one part-time and four full-time investigators, a complaint intake coordinator and an administrative assistant. The division investigates and, where necessary, prosecutes violation of the conflict of interest and financial disclosure laws.

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 law. In FY 02, the Enforcement Division received 833 complaints from the following sources: 67% from private citizens, 22% from anonymous sources, 3% from media reports, 1% from other law enforcement agencies, 1% from reviews of financial disclosure forms, 1% were generated by Commission staff, and an additional 5% were "self-reports" made by public employees regarding their own conduct. About 83% of the complaints alleged violations by municipal employees, 13% implicated state employees, 2% referenced county employees and 1% cited private individuals or corporations.

A total of 913 complaints were received or pending in FY 02: 57% were closed because the allegations fell outside the Commission's jurisdiction, were clearly frivolous or otherwise did not justify continued investigation; 6% were consolidated with existing cases; 21% were resolved with private educational letters without any investigating being done, and 16% were pending at the end of FY 02.

STAFF INVESTIGATIONS

About 6% of the complaints received or pending in FY 02 were assigned to an attorney/investigator team in the Commission's Enforcement Division. The Commission closed 25 cases following informal staff investigations: 14 because the situation was one in which a private educational letter was appropriate and 11 because staff determined there was little likelihood that the law had been violated. As of June 30, 2002, there were 21 ongoing informal staff investigations.

FORMAL INQUIRIES

The Commission authorized a total of 43 formal inquiries in FY 02: 40 regarding alleged violations of the conflict of interest law and three involving alleged violations of the financial disclosure law. Thirty-four of the subjects of preliminary inquiries were municipal officials or employees, eight were state officials or employees and one was a private entity. During FY 02, Enforcement Division staff completed 54 formal inquiries into alleged violations of the conflict of interest or financial disclosure laws.

PUBLIC RESOLUTIONS

In 34 instances, the Commission found "reasonable cause" to believe that the subject had violated one or both of the laws, and authorized adjudicatory proceedings against the subject; many of these cases were later resolved by Disposition Agreements between the subject and the Commission. The Commission also issued 12 confidential Compliance Letters regarding conflicts of interest, advising subjects of their violations and explaining the consequences of future misconduct. Six cases were terminated without a finding.

At the end of the fiscal year, the Commission had three public hearings pending; in seven additional cases, the Commission had found "reasonable cause" to believe laws had been violated, but had yet to institute the formal hearing process.

In FY 02, the Commission entered into 33 Disposition Agreements: 10 with state officials and 23 with municipal officials. In these signed documents, subjects admit violating G.L. c. 268A or 268B, and agree to pay civil penalties of up to \$2,000 per violation.

The Commission also issued two Public Enforcement Letters, stating that there was reasonable cause to believe that the conflict law had been violated, but resolving the matter with the subject's consent through this public letter because it believed education rather than a penalty was appropriate.

PENALTIES

The Ethics Commission assessed civil penalties for violations of the conflict of interest law totalling \$60,050 in FY 02. Penalties collected are deposited in the General Fund, as the Commission does not retain revenue.