

# CONFLICT OF INTEREST

## Introduction

M.G.L. Chapter 268A, the conflict of interest statute, imposes ethical standards upon employees of state, county, and municipal governments. Its provisions are applicable to all "municipal employees," whether paid or unpaid, elected or appointed, full-time, part-time or employed intermittently. The statute expressly exempts only elected Town Meeting and Charter commission members. Any member of a Finance Committee is a municipal employee under Chapter 268A. Violations of the conflict of interest law are punishable by a fine of up to \$10,000 or imprisonment. It is important to get advice from your Town Counsel or the State Ethics Commission if you have any questions about the legality of particular conduct. Some Finance Committees may be designated "special municipal employees" by the Board of Selectmen. A special employee is unpaid or is paid for less than 800 hours per year. An office may also be so designated if the position specifically allows for private employment during normal working hours. A special municipal employee designation allows the employee to represent clients before Town boards (other than the one on which the employee serves) and relaxes the requirements for having financial interests in Town contracts. Prohibitions against actual and apparent conflicts of interest remain in force for special municipal employees.

### Prohibited Participation - Financial Interest

M.G.L. Chapter 268A, Section 19 prohibits any municipal employee (including "special employees") from participating as such an employee in any particular matter in which the employee, his immediate family members, business partners, private employers or organizations in which he serves as an officer, director, partner, or trustee, have a "financial interest." As with most provisions of Chapter 268A, this prohibition is broadly

construed by the State Ethics Commission.

"Participation" includes any deliberation, discussion or voting on municipal budgets or any other matter within Finance Committee jurisdiction.

If a departmental budget or any other matter in which a member has a prohibited financial interest comes before the committee, it is recommended that the member leave the room during the deliberation on that subject. See *Graham v. McGrail*, 370 Mass. 133 (1976). For example, if a member of a Finance Committee member's immediate family is employed in the assessors' office and the assessors' budget line item includes the salary of that family member, the Finance Committee member must not participate in any discussion of that budget item, nor may he be counted towards a quorum at that time. There are limited exemptions from Section 19. First, if the Finance Committee is an appointed position, a member may disclose all facts giving rise to the conflict of interest to his appointing authority prior to that matter coming before the committee. If the appointing authority makes a written determination that the financial interest involved is insubstantial and not likely to affect the integrity of the Finance Committee member's official actions, he may participate in the matter. This exemption may not be used to "cleanse" participation after the fact.

Another exemption applies "if the particular matter involves a determination of general policy and the interest of the municipal employee or members of his immediate family is shared with a substantial segment of the population of the municipality." The State Ethics Commission has determined that a "substantial segment of the population" is any number exceeding 10% of the residents of the town.

### Multiple Office Holding and Financial Interests in Contracts with the

## **Municipality**

Section 20 of Chapter 268A M.G.L. generally prohibits a municipal employee from having a financial interest, directly or indirectly, in a contract made by an agency of the same city or town. This prohibition extends to holding more than one paid, appointed position, i.e., employment "contracts." Elected offices are not considered to be contracts with the town, even if they are compensated.

Section 20 is the most complex area of the conflict of interest statute and its application is driven by the specific facts of a given situation. In general, however, it is difficult for a municipal employee to have a financial interest in a contract with the town or to hold two paid appointed positions. Special municipal employees may be eligible to do so, if they file a written disclosure of their financial interest with the Town Clerk. A special employee may have an interest in a contract with his own board or department if he also obtains a vote of the Board of Selectmen approving his exemption from Section 20. It is not a prohibited financial interest if you own less than 1% of the stock of a company that has a contract with the city or town.

Finance Committee members should also be aware that many towns and cities have by-laws or ordinances which limit or prohibit multiple office-holding. Section 20 does not prohibit a municipal employee in a town having a population of less than three thousand five hundred (3,500) from holding more than one appointed position with the town, provided that the Board of Selectmen approves an exemption from the aforementioned prohibition. The Town Counsel should be the first contact regarding any question on the application of Section 20. The next step is to bring the matter before the State Ethics Commission.

## **Acting on Behalf of Others**

Chapter 268A, Section 17 generally prohibits a municipal employee from acting as agent or representative for anyone other than the town or city in connection with a matter involving that town or city. For example, a Finance Committee member may not appear before a municipal board on

behalf of someone else. In addition, the member may not receive compensation from anyone other than the town in relation to a particular matter in which the town is a party or has a direct and substantial interest. Members may, however, appear before a town board on their own behalf.

Special municipal employees have a limited right to act as an agent or representative under Section 17, provided that (a) they have never personally participated in the matter as a municipal official, (b) the matter is not within their "official responsibility" and (c) the matter is not pending before their municipal agency. While a Finance Committee member may avoid participating in a prohibited financial interest by stepping down from the committee (see above as it relates to Section 19 of the statute), this lack of participation does not absolve the fact that a matter is within the Finance Committee's official responsibility for purposes of Section 17.

Section 18 of the statute contains restrictions that apply after a member of a Finance Committee leaves public office. The former "municipal employee" may never be paid by anyone other than the town in connection with a particular matter in which they participated while on the Finance Committee. For example, if the committee deliberated and recommended funding for a particular budget item, a former member may not be paid by any private person or organization in connection with a contract funded by that line item. There is also a one-year ban on their appearing personally before a municipal agency (other than on your own behalf) in connection with any particular matter that was under the committee's official responsibility, whether or not you participated in that matter.

## **Standards of Conduct**

Chapter 268A, section 23 imposes additional standards of conduct on all municipal employees and special employees. No municipal employee may accept private paid employment in which the responsibilities of that employment are inherently incompatible with the responsibilities of his public office. There are also restrictions on accepting any-

thing of "substantial value/" defined as anything over \$50.00. The State Ethics Commission has adopted extensive regulations on accepting items of substantial or insubstantial value, including what may be accepted in certain situations and when a written disclosure may be required. See 930 CMR 5.00. Also available on the Commission's website are various forms that may be used for making written disclosures. See [www.mass.gov/ethics](http://www.mass.gov/ethics).

Public employees must fulfill the duties of their office objectively, and not use or attempt to use their position to (a) secure unwarranted privileges for themselves or others or (b) solicit or receive anything of "substantial value." (Section 23(b)(2)) The statute prohibits any municipal employee from accepting gifts or gratuity of "substantial value" (as well as any "bribes"). Employees are also prohibited from disclosing any confidential records or data acquired in the course of their official duties.

Section 23(b)(3) prohibits any action that would lead a "reasonable person" to conclude that there is an appearance of a conflict. This would include participation in any particular matter in which a Finance Committee member's judgment or motivation appears to be biased, whether or not such participation is barred by any other section of Chapter 268A. The member may protect himself from such an allegation, however, by disclosing in writing to his appointing authority the facts which could lead to such a conclusion.

Section 23 (b)(4) prohibits any municipal employee from presenting "a false or fraudulent claim to his/her employer for any payment or benefit of substantial value."

### **Administration and Enforcement**

Chapter 268A is both interpreted and enforced by the State Ethics Commission.

If the State Ethics Commission determines a violation has occurred, they may pursue administrative enforcement against the municipal employee, which usually involves payment of a fine. The Commission may also refer a violation for criminal prosecution. The statute provides for fines or imprisonment. Certain violations may also be

enforced by rescinding or cancelling actions taken by a municipal agency.

The Ethics Commission will provide opinions to a municipal employee, but will only offer such opinions prospectively - the employee should, therefore, contact the Commission prior to participating in any matter that could lead to a violation. The Commission will not provide an opinion about someone else's conduct. In addition, Chapter 268A, Section 22, entitles any municipal employee to obtain a written opinion from the Town Counsel or City Solicitor, if the request is made in writing setting out all relevant facts. Copies of such opinions must be filed with the Town Clerk and with the Ethics Commission. The Ethics Commission has thirty days from receipt of an opinion to issue its own findings, either concurring or disagreeing with the opinion of the municipal lawyer.

### **Mandatory Education and Training Requirements**

1) Summaries of the Conflict of Interest law: the law requires the Commission to publish on its website a summary of the conflict of interest law. Each city and town clerk will be required to provide a copy to all municipal employees "within 30 days of becoming such an employee, and on an annual basis thereafter..." Each current municipal employee must sign a written acknowledgement that they have been provided with such a summary. All acknowledgements must be filed with the city or town clerk.

2) Mandatory On-line Training: the law requires the Commission to prepare and publish online training programs. All municipal employees, including Finance Committee members, will be required to complete such on-line training every two (2) years. The first round of such training occurred in April 2010. As of this writing, the Ethics Commission is in the process of preparing a municipal-specific training module. When that is released, the Commission will announce the deadline for 2012 compliance. New employees must complete the on-line training within 30 days of hiring. If you complete the training for one position or in connection with work in one municipality, you do not need to complete it a

second time for another position. Upon completion of the training program, the employee must supply a copy of the certificate of completion with the municipal employer and must be kept on file for a period of six (6) years. The training program is available on the Ethics Commission website at [www.mass.gov/ethics](http://www.mass.gov/ethics).

3) Municipal Liaison to Ethics Commission: each city and town must designate a "senior level employee of the municipality" to serve as its liaison to the Commission. Municipalities were required to designate their liaison on or before January 27, 2010. You should be aware who this individual is in your community.

*This appendix was prepared by the law firm of Kopelman and Paige, updated by Matthew G. Feher in 2010 and Juliana deHaan Rice in 2012*

## CONFLICT OF INTEREST STATEMENT

Chapter 286A of the General Laws (conflict of interest law) applies to city and town officials and employees, including unpaid members of local boards and commissions and private citizens appointed by the Moderator to make recommendations on specific issues. Elected town meeting members are exempt from the law.

The purpose of the conflict of interest law is to ensure that public employees' (that includes unpaid members of boards) private financial interests and personal relationships do not conflict with their public obligations. The law is broadly written to prevent a public employee from becoming involved in a situation which could result in a conflict or give the appearance of a conflict. The State Ethics Commission is authorized to impose substantial fines for violations of the conflict of interest law. The law also carries criminal penalties involving fines and terms of imprisonment.

If a member of a commission, committee or board has any question involving a potential conflict of interest, you are encouraged to call the:

State Ethics Commission's Legal Division  
617-727-0060

for informal, confidential advice on the conflict law. You may also seek a written advisory opinion from the Ethics Commission or from Town Counsel. Importantly, you are strongly urged to request an opinion prior to engaging in a questionable activity. Finally, in light of the importance of the conflict of interest law, the Town Moderator should not be asked to advise on a conflict of interest issue. Your concerns should be directed to the State Ethics Commission or Town Counsel. Thank you.

## **CODE OF ETHICS FOR VOLUNTEERS**

As a Volunteer in the Town of Plymouth, I realize that I am subject to a code of ethics similar to that which binds the professional. I, like them, assume certain responsibilities and expect to be held accountable for them. I understand the importance of confidentiality and will keep confidential matters confidential.

As a volunteer, I agree to serve, without pay, but with the same high standards that are expected of Town employees.

Being eager to contribute to the Town of Plymouth, I accept this code for Volunteers as my code, and I agree to follow the Town Charter, By-Laws, and the policies and guidelines of Plymouth.

**Signed:**

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**Volunteer -**

**Signed:**

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**Moderator-**