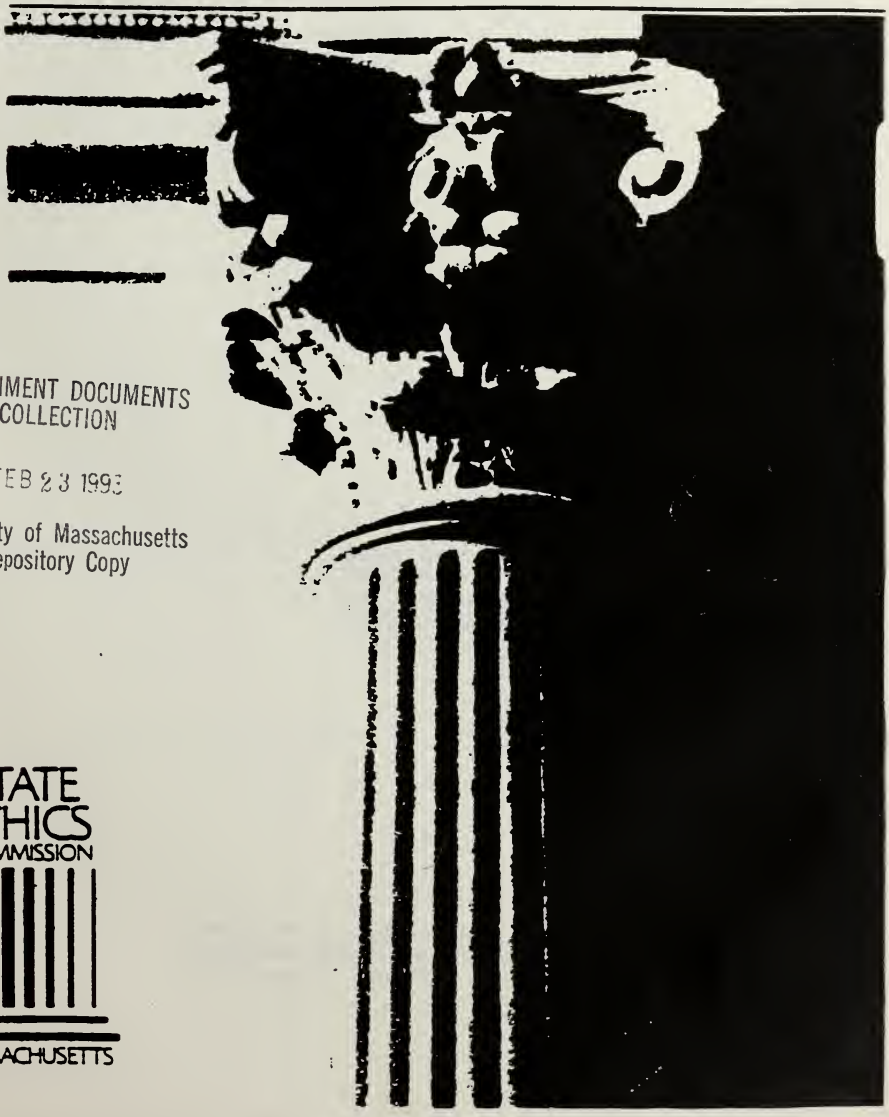
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A Practical Guide to the **Conflict of Interest Law** for Police Officers

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A PRACTICAL GUIDE TO THE CONFLICT OF INTEREST LAW FOR POLICE OFFICERS

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THE MASSACHUSETTS CONFLICT OF INTEREST LAW (Chapter 268A of the General Laws) was enacted in 1962 to promote confidence in government.

THE MASSACHUSETTS STATE ETHICS COMMISSION was established in 1978 by the Legislature as an independent civil enforcement agency to enforce the conflict of interest and financial disclosure (Chapter 268B) laws.

The Commission is a bipartisan, five-member board appointed by the Governor, the Secretary of State and the Attorney General. The members serve part-time for staggered five year terms. The Commissioners appoint an Executive Director who heads a full-time staff employed in four divisions: Enforcement, Legal, Financial Disclosure and Public Education.

Note: The conflict of interest law applies to state, county, city and town officials and employees -- all elected or appointed, full, part-time, paid and unpaid positions. This Guide uses the terms "municipal employee" and "municipal official" interchangeably to cover anyone who serves local government, either elected or appointed. This Guide also uses the terms "state employee" and "state official" to identify anyone who works for a state department, agency or other office in state government. Because this Guide is designed for police officers, the terms "police officer" and "police department employee" are also used.

*Many terms used in this Guide can be found in the Glossary.

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PREFACE

This Guide provides general guidance to police officers on how to comply with the conflict of interest law. It is not meant to serve as formal advice or as a substitute for legal counsel.

While this Guide is geared primarily toward municipal police officers, the conflict of interest law also applies to officers who work for state or county agencies or departments, and are therefore state or county employees. The rules of law differ slightly for state, county, and municipal employees, and the Guide briefly addresses the difference between state and municipal guidelines within each section. For more detailed information on the conflict law as it applies to state or county employees, please contact the State Ethics Commission and request a copy of the Public Education Division's "Practical Guide" for state employees, or its pamphlet for county employees.

If after reading this booklet you have questions about particular situations, you may request an advisory opinion from either the Ethics Commission or your town or city lawyer. The Ethics Commission urges police officers to take advantage of this opinion process (See page 29 for information on how to obtain an advisory opinion).

This Guide reviews the conflict of interest law in effect as of July, 1989. The conflict law may be amended from time to time by the state Legislature; be sure to consult the current version of the law or call the Commission's Legal Division at (617) 727-0060 for advice concerning the most recent application of the law.

INTRODUCTION TO THE CONFLICT OF INTEREST LAW

A. PURPOSE OF THE LAW

The purpose of the conflict law is to ensure that the private financial interests and personal relationships of public employees -- including police officers -- do not conflict with their public obligations. The law is broadly written to prevent an officer from becoming involved in a situation that could result in a conflict or give the appearance of a conflict.

The law restricts what a public employee may do:

1. on the job
2. after hours (or "on the side")
3. after leaving public service

B. WHO THE LAW GOVERNS

1. Municipal Employees

The conflict law regulates the conduct of public officials and employees (referred to collectively in the law as "employees") at the state, county and municipal levels of government. The term "employee" at each level is defined expansively. You are considered a municipal employee if you hold any office, position, employment or membership in any municipal agency. It does not matter whether you are paid or unpaid or whether you serve full-time or part-time. People who work as consultants or on an intermittent basis are generally covered, as well. For example, unpaid members of local town or city boards or commissions are municipal employees, as are private citizens serving on a special advisory committee appointed by the mayor or board of selectmen to make recommendations on a specific issue. However, elected town meeting members or attendees at an open town meeting and members of a local charter commission are not considered "municipal employees" for purposes of the conflict of interest law.

As a police officer, you will be considered either a municipal or state employee for the purposes of the conflict of interest law, depending on which level of government you serve.

2. "Special" Municipal Employees

"Special municipal employee" status can be assigned to certain police positions by a vote of the board of selectmen, board of aldermen or city council. Certain sections of the conflict law apply less restrictively to "specials." All other sections of the conflict law apply exactly the same way to special public employees and regular public employees. You are eligible to be designated as a special municipal employee if:

1. you are not paid; or
2. you hold a part-time position that allows you to work at another job during normal working hours; or
3. you were not paid by the city or town for more than 800 working hours (approximately 20 weeks full-time) during the preceding 365 days.

In both municipal and state employment, it is the job or position that is designated as having special status, not the individual. Therefore, all employees holding the same office or position must have the same classification as special. For instance, one police department part-time secretary cannot be classified as a special unless all of the department's part-time secretaries are similarly classified.

3. State Employees

You are considered a state employee if you hold any office, position, employment or membership in any state agency. Again, it does not matter whether you are paid or unpaid, full- or part-time, including consultant (e.g."03") work.

4. "Special" State Employees

On the state level, you are automatically a special state employee if:

1. you are an unpaid elected or appointed official; or

2. you hold a part-time appointed position that by the terms of the contract or conditions of employment allows you to work at another job during normal working hours and before you begin any private employment you notify the Ethics Commission (Disclosure forms are available in the Commission's office).

In addition, appointed state employees may be expressly classified as special state employees by their appointing official if the state employees were not paid for an appointed position for more than 800 working hours (approximately 20 weeks full-time) during the preceding 365 days. If you are not paid by the hour, calculate seven hours for every day or part of a day worked.

In both municipal and state employment, it is the job or position that is designated as having special status, not the individual. Therefore, all employees holding the same office or position must have the same classification as special. For instance, one police department part-time secretary cannot be classified as a special unless all of the department's part-time secretaries are similarly classified.

5. Municipal Agencies

A municipal agency includes all departments, offices, councils, divisions, boards, bureaus, commissions, institutions or tribunals of city or town government. In other words, all entities established by the community, such as the council on aging, the historical commission, the licensing board and the town by-law committee, are municipal agencies under the conflict law.

6. Regional Organizations

The status of regional bodies such as regional school districts is not clearly defined in the conflict law. However, the State Ethics Commission has ruled that many of these regional organizations are "municipal agencies" for purposes of the law because these organizations provide services to the community that individual towns would traditionally provide.

Some of the regional organizations determined by the State Ethics Commission on a case by case basis to be municipal agencies are:

Regional School Districts
Local Water and Fire Districts
Community Development Corporations
Local Arts Lottery Councils
Private Industry Councils

Certain regional bodies that are part of a state-wide organizational structure are not municipal agencies, but rather are considered state agencies. For example, regional transit authorities or regional mental health centers are considered state agencies for purposes of the conflict law.

7. Independent State Authorities

Independent state authorities, districts and commissions are considered state agencies for purposes of the conflict law. Some of these agencies are:

MBTA
Massport
The Massachusetts Turnpike Authority
The Massachusetts Water Resources Authority
Massachusetts Convention Center Authority
Massachusetts Municipal Wholesale Electric Company

HOW THE CONFLICT OF INTEREST LAW AFFECTS POLICE OFFICERS

A. RESTRICTIONS "ON THE JOB"

1. BRIBES (Section 2)

The conflict law prohibits all public employees from seeking or receiving bribes, gifts, promises, or anything else of value in return for an official favor or a promise of action or inaction. In addition, the law prohibits public employees from accepting anything of value in exchange for committing any fraud on a state, county or municipal agency (or allowing anyone else to commit such a fraud). Finally, the law prohibits public employees from being influenced in giving testimony under oath or rendering themselves unavailable to testify. (The conflict law does not prohibit a public employee from receiving witness fees and other expenses allowed by law for testimony.)

A police officer violates Section 2 if he or she acts with a "corrupt intent." As a general rule, whenever there is an agreement that an officer will receive something of value from a private party for certain official action (or inaction), that agreement is sufficient evidence that the police officer is acting with corrupt intent.

The bribery section of the conflict law also applies to private parties; anyone who bribes or attempts to bribe a public employee violates the conflict law and faces criminal sanctions.

The item of value that is solicited or accepted does not need to be money. Trips, for example, or improvements to one's home would be covered. In addition, the item of value need not be for the benefit of the public employee personally, but may be for the benefit of another person or an organization.

2. GIFTS (Section 3)

It is illegal to request or accept anything of "substantial value" from anyone with whom you have or are likely to have official dealings (absent some family or social relationship that would explain the gift), even if the motivation for the gift is to express gratitude for a job well done or to foster goodwill.

It is also illegal for a private party to offer or give anything of substantial value to a police officer or other department employee if it is given "for or because of" some act the official has performed or will perform; this is true even if there is no corrupt intent on the part of either the giver or the receiver.

Example: A police department purchasing agent awards several city office supply contracts to a stationery supplier who submits the lowest bids. At the end of the year, the general manager of the stationery firm offers the purchasing agent a set of luggage worth over $50 as a token of goodwill. The purchasing agent violates Section 3 if he accepts the gift. The supplier violates Section 3 simply by making the offer of luggage to the purchasing agent.

In 1985 the Commission issued an Advisory which established "substantial value" as anything worth $50 or more. Items of "substantial value" range from cash, additional compensation and tips to meals, free tickets and passes to entertainment events. In addition, free or discounted services such as construction or accounting work are considered gifts.

Example: A police officer accepts a free meal from a restaurant owner in his or her service district. Both the officer and the restaurateur would violate Section 3 of the conflict of interest law if the meal were worth $50 or more. In addition, if officers establish a pattern of accepting meals, tickets or other "perks" from individuals they deal with in their official capacity, even if the individual meals or other gifts cost less than $50, the Ethics Commission will combine the costs of such gratuities and the officers may be found in violation of the law.

If a police officer were to ask for meals or other gifts in return for any official act -- for example a guarantee of a prompt response on any call from the gift-giver -- the officer would violate Section 2 of the law, the bribery section.

Business travel and related expenses are also considered to be gifts if they are given directly to a public employee without the safeguards of standard department or agency reimbursement procedures.

Example: The police department you work for is negotiating a contract with a computer company to improve the department's access to criminal records and other files. You are part of the contract negotiating team. In the course of discussions with the computer company, it appears to both sides that a site visit to the company's New York headquarters would be helpful. If the computer company offered to arrange and pay for the travel, room and board for the site visit, you would violate Section 3 if you accepted their offer.

The Ethics Commission recommends that in cases where travel is deemed to be necessary to conduct business, either the municipal agency -- in this case the police department -- should pay for the travel, or else the vendor should arrange to pay for the travel by making payments to the agency (not the individual employees) specifically earmarked for such expenses. Employees who go on the business trip may then be reimbursed through the department according to usual agency procedures.

By following these guidelines, police officers can avoid both the appearance of conflict that results from "wining and dining," as well as the potential for real abuse. For more detailed information on accepting or being offered "gifts," see Commission Advisory No. 8, the "Free Pass Advisory," and/or the Commission's Fact Sheet, "Business and Entertainment Expenses for Public Employees," available from the Commission office.

3. RESTRICTIONS ON OFFICIAL ACTIONS (Section 19, Section 6)

Police officers must not act in their official capacities on matters in which they have a personal financial stake. The law also recognizes that the objectivity and integrity of an officer can be compromised if he or she acts on matters affecting the financial interests of people or businesses with whom the officer is closely related.

Section 19 of the conflict law does not prevent municipal police officers from having private financial interests or dealings in their town, but it does restrict what official actions, if any, they can take with respect to their private financial interests.

a. Acting on Private Financial Interests

To prevent public employees from using their positions to further private interests, the law prohibits public employees from participating in a "particular matter" in which they know that they personally, their immediate family or a business they are closely associated with has a financial interest. Public employees are specifically prohibited from acting on matters affecting:

1. themselves
2. their "immediate family" (the employee and his or her spouse and each of their parents, children, brothers and sisters);
3. their partner;
4. a business organization in which they are serving as an officer, director, trustee, partner or employee (for example, if a police department employee is an unpaid trustee of a private school she may not

participate in a particular matter in which the school has a financial interest, even if she has no personal, direct financial interest herself); or

5. any person or organization with whom they are negotiating for or have any arrangement concerning future employment.

In summary, police officers may not act in their official position on any matter affecting the financial interest of themselves, their family or their businesses.

Example: A police officer in town wishes to rent a building he owns to the police department for the annual police fundraiser. In his official capacity as a police officer, he may not discuss, recommend, analyze or decide whether the department will rent the building from him.

A police department employee is prohibited from participating in a final decision affecting personal financial interests and in participating in any of the steps along the way.

Finally, the "financial interest" at stake need not be present or immediate. Police officers may not participate in a matter if they have a "reasonably foreseeable" financial interest in that matter.

Example: A police officer is also a part-time real estate developer. She currently has no projects in the municipality she serves as a police officer, but is negotiating to develop several condominiums in town. A meeting is held in the officer's department to discuss whether the police should provide officers for after-dark security for all construction sites in town, or whether local developers should be required to hire a private security service. Because she may be developing buildings that will require one or the other type of security, the officer has a "financial interest" in the decision by her department whether to provide the security service. She would therefore be prohibited from participating in that decision.

b. Acting on a competitor's Financial Interest

The conflict law restricts police officers from taking any official action that would have affect the financial interest of their business competitors. Such action will ultimately affect the employee's own financial interest. The employee may also not take official action on matters concerning the competitors of his or her immediate family, business or employer.

There is no one easy "rule" for local officials to rely upon when deciding who an employee's competitors are in any particular instance.

In a prior advisory opinion concerning a liquor license, the Commission indicated that local authorities are often in a better position than the Commission to identify the local factors that would make a liquor license holder a competitor. In that opinion, we suggested the appointed official rely on his appointing authority to make such a determination.

Example: A police officer who is part-owner of a firing range must abstain from any decision by the police force she works for on whether the department should obtain a group membership at her range for police department employees. The officer must also abstain from any discussion or decision on the matter if a firing range or gun club that is a competitor to her own range is being considered for the same group membership.

c. Acting on Matters Affecting Family (Nepotism)

The conflict law prohibits a police officer from participating in any particular matter affecting the financial interests of an "immediate family member." The purpose of the broad prohibition against acts of nepotism is to prevent potential conflicts or the appearance of favoritism that arise whenever a public official's personal loyalty to a family member competes with the need to make objective personnel decisions. "Immediate family member" is defined in the law as the employee and his or her spouse and each of their parents, children, brothers and sisters.

The following specific acts are prohibited:

1. hiring a family member;
2. any significant involvement in a hiring process in which a family member is an applicant, e.g., interviewing or creating a test for applicants;
3. any significant involvement in the reappointment, promotion, reclassification, demotion or firing of any family member;
4. determining a family member's salary (including approving "automatic" increases such as annual step increases);
5. conducting a job performance review of a family member;
6. day-to-day supervision of a family member;
7. delegating the task of dealing with an immediate family member to a subordinate.

Example: If your sister, who works in a police department in another city, applies for a transfer to your department, you may not participate in any way in the decision whether or not she should be hired by your office.

Participation in discussions and recommendations regarding the hiring of an immediate family member, even if you do not make the final decision, are also prohibited under Section 19.

An exemption is available for appointed public employees, allowing them to act on matters that affect the financial interest of immediate family members provided they make a written disclosure to their appointing authority and obtain written permission from that authority to participate prior to any action being taken (This is discussed in under "Disclosure and Authorization Procedure" below). However, elected officials may not take advantage of this procedure -- they must always abstain from participating in a matter involving an immediate family member.

d. Appearances of Favoritism

Some relatives such as cousins, aunts and nephews are not "immediate family" members for purposes of the conflict law. However, a public official's actions regarding these relatives may violate the Standards of Conduct (Section 23) of the conflict law.

Section 23 prohibits a public official from giving the impression that he or she can be improperly influenced by someone or that a relative or friend could receive preferential treatment because of kinship or other ties. A public official must be careful to avoid this appearance of favoritism. The law states that appointed public employees, which police officers are, can dispel this appearance by making a written disclosure to their appointing authority. The law requires that the appointing authority keep the disclosure open to inspection by the public. Slightly different guidelines apply to elected officials.

Under the Standards of Conduct, public employees are also prohibited from using their positions to secure an unwarranted privilege of substantial value (anything over $50) for someone else. Thus, if a police chief hired a nephew who was unqualified for the job -- even if the chief publicly disclosed the relationship -- the police chief would violate the law because it would be an "unwarranted privilege" for the nephew to be paid for a job he could not adequately perform.

For more detailed information on exactly what constitutes a nepotism violation and what the Commission's enforcement policy is regarding these violations, see Commission Advisory No. 11, available from the Commission's office.

e. Exemptions 1 and 2

Exemption 1. Disclosure and Authorization Procedure

Police officers may participate in a matter that affects their own, their immediate family's or their business' financial interest only if they receive permission from the public

official who appointed them to their job. To receive the exemption, officers must first advise their appointing official of the nature and circumstances of the particular matter in which they want to participate and make full disclosure of the financial interest involved. The appointing official may then decide whether to allow the person to participate or to have someone else handle the matter. Any such determination must be in writing with a copy available for public inspection at the city or town clerk's office.

This exemption is not available to elected public employees because they have no "appointing official." They must always abstain from participating in matters involving their own, their immediate family members' or their business' financial interest.

> Example: A local developer has submitted plans to the local planning board to begin construction on a certain property. The police chief, who must sign off on the plans regarding the effect of the construction on traffic patterns, lives adjacent to the proposed construction site. Because the new construction could affect the property values in the area, the police chief has a financial interest in the approval of the plans and must not sign off on the plans unless he has made an written disclosure to his appointing authority (usually the Board of Selectmen), and received written permission to participate in the matter prior to doing anything regarding the plans.

Exemption 2. Determinations of General Policy

Certain decisions made by police officers affect either the municipality as a whole or a substantial segment of its population. The decision to raise local taxes to add more officers to the police force, for example, affects financially not only the police department, but all town residents. A strict application of the conflict law in this circumstance would prohibit all town officials from participating in these decisions. This result would severely hinder the operation of a municipality. Therefore, Section 19 does not restrict one's participation in a particular matter if the issue involves a "determination of general policy" and the interest of the public employee or members of the employee's immediate family is shared with a substantial segment of the population of the municipality.

f. State Employees

Section 6 is the section of the conflict law that deals with prohibited financial interest for state police employees. Section 6 spells out the same restrictions for state employees that Section 19 applies to municipal employees participating in matters that affect the financial interests of members of their immediate family. Copies of all Section6 exemptions must also be filed with the Ethics Commission.

4. MISUSE OF OFFICIAL POSITION
(Section 23)

Section 23, referred to in the law as the "Standards of Conduct", provides a general code of ethics for all public employees. As a general rule, the Standards of Conduct may apply whenever there is an overlap or direct connection between a public employee's official duties and responsibilities and his or her private activities, interests or relationships. This overlap of personal and public interests can at a minimum create an appearance of a conflict of interest.

A police department may establish and enforce additional standards of conduct above and beyond those in the conflict law. Section 23 contains the following specific provisions:

a. Unwarranted privileges

Police officers are prohibited from using or attempting to use their official positions to secure for themselves or others unwarranted privileges of substantial value that are not properly available to similarly situated individuals. Substantial value has been set by the Commission at $50 or more.

Example: A police officer submits a request for reimbursement for travel expenses he said that he incurred in attending a conference. The employee did, in fact, attend the conference, but did not incur the full expenses for which he seeks reimbursement. This conduct would violate the conflict law since it is an attempt to use his official position to secure an unwarranted privilege of substantial value for himself.

Example: A full-time employee in the police department uses the office computer after hours to set up a data base for his wife's accounting business. This violates the conflict law. Using city equipment and resources for personal business is using an official position to obtain an unwarranted privilege of substantial value not properly available to others.

b. "Appearances" of conflict

Public employees must avoid conduct that creates a reasonable impression that they will act with bias.

The law states that if a reasonable person having knowledge of the relevant circumstances would conclude that a public official or employee could be improperly influenced, the public official can dispel this impression of favoritism by disclosing all the facts that would lead to such a conclusion. For example, it may be necessary for a police officer who is involved in a decision-making process to disclose a personal relationship with someone applying for the job or contract being evaluated.

Appointed officials must disclose in writing to their appointing authority. This disclosure must be kept available for public inspection. An elected official's public disclosure must be made in writing and filed with the city or town clerk. These public disclosures must be made prior to any official participation or action.

Once this public disclosure has been made, the official may participate in the matter notwithstanding the "appearance of a conflict." When officers do act on matters affecting individuals with whom they have a private relationship, they must act objectively and be careful not to use their official position to secure any unwarranted privilege or benefit for that person. Use of an official position to secure an unwarranted privilege for people is always prohibited, regardless of whether the disclosure procedure is followed.

> Example: The longtime friend of the chief of the town's police department applies for a job on the police force. If the chief gets involved in the hiring process, it may appear as though his friend could enjoy undue favoritism. To dispel the appearance of favoritism, the police department chief must disclose his private relationship with the job applicant in writing to his appointing official (the board of selectmen) prior to any action. This disclosure must be available for public inspection. It is then within the authority of the board of selectmen to determine whether any further steps need to be taken to avoid the appearance of a conflict.

c. Inherently incompatible activities

A police department employee is prohibited from accepting other employment involving compensation of substantial value ($50 or more) the responsibilities of which are inherently incompatible with the responsibilities of his or her public office. For example, in a 1984 enforcement case, a state mediator admitted he violated the conflict law by working privately for a union when he was involved in mediating a labor dispute with the same union.

d. Use of confidential information

No current or former officer or employee of a police department may:

1. accept employment or engage in any business or professional activity that will require the employee to disclose confidential information gained by reason of the employee's official position or authority; or

2. improperly disclose material or data that is not considered public records and that is acquired in the course of official duties, nor use such information to further personal interests.

Example: A former employee of the town police department sets up her own private investigation service and uses confidential information from the police departments files and records to prepare client and suspect lists for use in her private business. This violates Section 23 because she would be using confidential information acquired in the course of official duties to further personal interests, and also because she would be using her official position to secure for herself an unwarranted privilege not properly available to similarly situated individuals (i.e., other P.I. services).

5. RESTRICTIONS ON PARTNERS OF MUNICIPAL EMPLOYEES (Section 18)

The law prohibits partners of police officers from deriving an unfair advantage as a result of their association with the police department employee. Therefore, the partner of a police department employee may not act as agent or attorney for a private party before the city or town in connection with a matter in which the police officer has ever participated or over which the employee has official responsibility.

Police officers are also prohibited from shifting to their partners what they themselves are prohibited from doing.

Example: A police officer is a partner in a law firm. The officer has official responsibility for certain cases being investigated by the police department. His law partners cannot represent anyone other than the town before any local board in connection with the cases under the officer's official responsibility. It does not matter if the officer takes no action on the cases, or disqualifies himself from that proceeding.

6. RESTRICTIONS ON PARTNERS OF STATE EMPLOYEES (Section 5)

The law applies the same way to the partners of state employees as it does to the partners of municipal employees, but the relevant section of the law is Section 5.

B. RESTRICTIONS "AFTER HOURS"

1. OUTSIDE JOBS (Section 17, Section 4)

a. Application to Municipal Police Officers

Section 17 limits what a municipal police officer may do "on the side" for someone other than the city or town that the employee works for. A person cannot serve two masters; whenever a police officer works for private interests in matters in which the city or town also has an interest, there is a potential for divided loyalties at the expense of the municipality. Therefore, Section 17 prohibits any police department employee:

1. from acting as agent or attorney for a private party before city or town boards; or

2. from being paid by a private party in relation to any matter in which the city or town has a "direct and substantial interest."

The term "attorney" applies to lawyers and may also include any person exercising a power of attorney. The term agent refers to anybody acting in a representative capacity on behalf of someone else, regardless of whether the person is a lawyer.

Section 17 also prohibits anyone from giving, promising or offering such compensation to a police department employee.

With respect to Section 17, you should note at the outset:

1. Not all outside activity is prohibited, only outside activity that relates to particular matters of direct and substantial interest to the city or town. This outside activity is prohibited whether or not it benefits or is adverse to the city or town's interest.

2. The restriction applies as long as any municipal agency has a direct and substantial interest in the matter; it makes no difference whether the police department has the interest.

3. "Anyone other than the city or town or a municipal agency" includes private individuals or organizations, as well as other levels of government (state, county or federal).

4. Compensation includes money, as well as anything of value received for services rendered. For example, the opportunity to participate in an investment qualifies as compensation, as would various fringe benefits. Reimbursements for expenses are not compensation.

5. Finally, when a police department employee acts as agent or attorney for someone other than the city or town in connection with a particular matter of direct and substantial interest to the city or town, the employee violates Section 17 even if the services are unpaid.

Example: A full-time police officer cannot be paid by a developer to help prepare plans for a private security system for a private development that will be presented to the city's planning board for approval. Although the officer does not work for the planning board, Section 17 would prevent him from performing such services, even on his own time, because the action of the planning board is a particular matter of direct and substantial interest to the city.

Example: A police department employee serves in his off-duty hours as an unpaid trustee of a church in his town. The church and the town are negotiating a land exchange. If the police officer represents the church in discussions with the town on this matter (the land exchange), he is acting as agent for the church in connection with a particular matter in which the town is a party. This is prohibited.

b. Application to "Special" Municipal Employees

The conflict law imposes fewer restrictions on special municipal employees. Section 17 applies to special police officers only when there is a connection between the special police department employee's outside activity and the work of the employee's agency or department.

A special police department employee is prohibited from receiving compensation from, or acting as an agent or attorney for, someone other than the city or town only if the particular matter involved is one:

1. in which he or she participated at any time as a police department employee or special police department employee;
2. that is or has been (within the preceding year) the subject of the employee's official responsibility; or
3. that is pending in the police department in which the employee is serving -- if the employee serves more than 60 days in any 365 day period. To serve more than 60 days means to perform work on more than 60 days; work on any part of a day will be considered work for one full day. The employee is responsible for keeping accurate records in this regard.

If none of these conditions is met, the special police department employee may represent an outside interest before town agencies.

> Example: A computer programmer is hired by the city's police department as a part-time consultant. By virtue of this city consulting job, the programmer is a police department employee; the city council has designated this position as a "special" position. A computer company that has a contract with the city's personnel office offers a job to the programmer to work on this contract. The programmer may work for the company because the contract with the personnel office is not a particular matter she participates in or has official responsibility for (in her police department position) and the matter is not pending in the police department for any type of action.

c. Municipal Exemptions 1 through 5

Exemption 1. If a police officer's job responsibilities require the employee to represent interests other than the municipality's, the officer does not violate Section 17 even though he or she may be acting as agent for someone other than the town regarding a matter in which the town has a substantial interest. It is rare, however, that police officers are expected to represent outside interests before the town.

> Example: A police officer may assist a citizen in filling out a complaint against the police department as part of his official duties. This would not violate the conflict law even though he is acting as their "agent."

Exemption 2. A police department employee may provide unpaid assistance to someone who is subject to employment discipline or other municipal personnel proceedings.

Exemption 3. Appointed municipal employees may act as the paid or unpaid agents or attorneys for themselves and for members of their immediate family or any person for whom they serve as a guardian, executor, administrator or other fiduciary, so long as the employees do not participate in, and do not have responsibility over, the matter involved. An employee's appointing authority must approve the arrangement in writing prior to any action. Elected officials may represent only themselves before town boards; they may not represent members of their immediate family.

Exemption 4. A present or former special police department employee may assist another person for compensation in working on a contract for the benefit of the police department, so long as the head of his or her agency certifies in writing that "the interest of the city or town requires such aid or assistance," and the certification has been filed with the city or town clerk.

Exemption 5. A police department employee may give testimony under oath or sworn statements and receive witness fees from one other than the city.

d. Application to State Employees and "Special" State Employees (Section 4)

The same guidelines listed above apply to state police employees, except that it is the state and state agencies, rather than the city, town or municipal agencies, to which the officer owes his or her loyalty. The relevant section of the law for state employees is Section 4.

e. State Exemptions

All of the municipal exemptions regarding outside employment, except Exemption 1, also apply to state employees. In addition, the following exemptions apply to state police employees:

1. State employees may hold paid elected or appointed offices in a city, town or district. However, they may not vote or act on any matter within the purview of the state agency where they work or over which they have official responsibility; and

2. A state employee (except for Revenue Department employees) may be paid for filing or amending state tax returns.

2. PROHIBITED CONTRACTS & MULTIPLE JOBS (Section 20, Section 7)

a. Application to Municipal Police Officers

In general, municipal police officers are prohibited from having a direct or indirect financial interest in a "contract" made by a municipal agency. This means that police officers may not use their police positions to obtain city or town contracts or other municipal jobs for themselves. This restriction will avoid any public perception that police officers have an "inside track" on getting municipal contracts and jobs.

Contracts include agreements to provide goods and services. Employment also constitutes a contract with the municipality. Therefore, generally, public employees are prohibited from holding more than one paid position or contracting with a city or town agency.

Example: A full-time police officer is half owner of a business that provides photographic equipment. The officer will violate Section 20 if his business enters into a contract with the police department to upgrade the department's photo equipment for booking arrested individuals.

Example: A part-time police officer works for a large data processing firm. The police department has asked her firm to computerize their files and records. They enter into a contract to do so. The officer could continue to work for her firm, but she would be prohibited under Section 20 from working for the firm on the police department records project, or from receiving any financial benefit from that contract.

Police officers may qualify for one of the exemptions under Section 20 to allow them to contract or hold multiple positions with the town or city for which they work. A police department employee must fulfill certain specific conditions before receiving an exemption. (See exemptions 1 through 8, starting on page xx.)

Section 20 is the most complex section of the conflict law; we suggest you call the Commission or contact your city solicitor or town counsel for specific advice on Section 20.

b. Multiple Office Holding

Section 20 generally prohibits an appointed municipal official or employee from holding more than one paid position in the same city or town because employment constitutes a "contract" with the municipality. However, election to public office is not a contractual relationship; therefore, public officials can hold any number of elected paid positions and not be in conflict.

Despite the general prohibition against holding more than one paid position in the same town, there are a number of exemptions to this rule, as explained below. There are special rules for selectmen, city solicitors and clerks that are not addressed in this publication.

For more detailed information on multiple office holding, see Commission Advisory No. 7 available from the Commission's office.

c. Application to Spouses

A spouse's financial interest in a municipal contract is not necessarily attributed to the police department employee. Therefore, if the spouse has a financial interest in a city or town contract this does not automatically place the police department employee in violation of the law. However, a police department employee will not avoid violating Section 20 merely by having the contract "technically" in a spouse's name while continuing to share in the contract proceeds.

Example: An employee of the police department (Jane) is married to the owner of an electronics store (Bob). Bob has a contract selling and leasing radio equipment to the police department. Jane does not, by law, have a financial interest in Bob's contracts simply because she is married to him. Therefore, Bob may have a contract

with the town. However, if Jane were a partner or part-owner in her husband's store or if she exercised control over the management of the store, she would have a financial interest in the contracts. Her financial interest would prohibit the electronics store from contracting with the police department.

d. Municipal Exemptions 1 through 8

As a general rule, there will be very few instances when police officers will be able to contract or hold second jobs with their own agency. However, there will be instances where officers are allowed to contract or hold second jobs with other agencies.

Exemption 1. The most comprehensive exemption is found in Section 20(b). It states that if you are a public employee, you may have a contract or a second job with a municipal agency if:

a. you do not work for the contracting agency;
b. you do not work for any agency that regulates the activities of the contracting agency;
c. you do not participate in or have official responsibility for activities of the contracting agency;
d. the contract is made after public notice or competitive bidding; and
e. you file with the clerk a disclosure of your and your immediate family's financial interest in the contract.

Example: A full-time employee of the police department also owns a company that produces electrical equipment. He may sell lighting fixtures to the school department provided the contract is competitively bid or publicly advertised and he makes the necessary disclosure to the town clerk. However, if the officer worked for the school department (the contracting agency), or if the contract were not awarded after advertising or competitive bidding, he would violate the law by having such a contract.

If the contract is for personal services, in addition, you must fulfill the following criteria:

a. the services must be provided outside the normal working hours of your primary job;
b. the services may not be required as part of your regular duties;
c. you may not be compensated for the services for the second contract for more than 500 hours in a calendar year;
d. the head of the contracting agency must file a written certification with the clerk that no employee of the contracting agency is available to perform those services as a part of his or her regular duties.

Example: A full-time secretary in the police department may contract with the local licensing board to provide typing services, provided he does the work on his own time (e.g., nights or weekends); he does not bill the board for more than 500 hours in any one calendar year; he makes the necessary disclosure to the clerk; the board gives members of the general public the opportunity to seek the contract; and the head of the licensing board certifies that no one at the board is available to do the work.

Exemption 2. Special municipal employees may have a financial interest in a contract made by the same city or town if the employee meets one of the following conditions:

a. the special municipal employee does not participate in or have official responsibility for any of the activities of the contracting agency, and has filed with the city or town clerk a statement making full disclosure of the financial interest in the contract; or
b. the special municipal employee has filed with the city or town clerk a statement making full disclosure of the interest in the contract and the city council, board of selectmen or aldermen has approved his or her exemption from this section. This means that if a special municipal employee gets formal approval, that employee may have a financial interest in a contract with the agency he or she works for, e.g., a police officer contracting with the police department.

Example: An engineer works part-time for the city's police department and has been classified a special municipal employee. As a special, she may have a consulting contract with the highway department regarding road construction if she has filed with the city clerk a disclosure of her interest in the consulting contract. In addition, if she receives approval from the board of selectmen and files a disclosure statement, she may contract with the police department (her own agency).

Exemption 3. Section 20 does not prohibit municipal police officers from receiving benefits from programs funded by the United States or any other source in connection with the rental, improvement, or rehabilitation of their residence.

Example: A police department employee who owns and resides in a home that qualifies for federal subsidies for home weatherization may obtain such a subsidy, even though the program is administered by, and the funds distributed by, a municipal agency of the same town in which she is employed.

Exemption 4. Section 20 does not prohibit a police department employee from being eligible for a housing subsidy program administered by a local housing authority. However, the housing authority employee who has responsibility for the administration of the subsidy program may not be eligible for a subsidy.

Exemption 5. Section 20 does not prohibit an individual who is already a police department employee from also serving as selectman (or as councillor in a municipality with a town council form of government) in the same town as long as the selectman:

a. does not vote or act as selectman on any matter that is within the authority of the police department; and
b. receives compensation for only one office or position in the town (individuals may choose which pay they wish to receive).

A selectman who does not hold a municipal position before being elected may not be appointed to such a position afterwards. In fact, once one's term as selectman expires or one resigns, there is a six-month waiting period before being eligible to be appointed to a municipal position. However, a selectman may be routinely reappointed to a previously held position.

Example: A police officer may serve as elected selectman as long as he does not vote or act on any matter that is within the authority of the police department, and he receives only one salary. His original police contract may be renewed. However, he is not eligible for promotion to chief of the police department (considered a new appointment) while he is a selectman, or for six months after his term as selectman ends. After a selectman is elected, he may not be appointed to any new municipal position during his term as selectmen or for six months after his term ends.

Note: The limitation on Selectmen described above in Exemption 5 does not apply to selectmen in towns with a population of under 10,000 who have been designated as special municipal employees. Selectmen designated as specials may hold additional paid town positions if they meet the requirements detailed in Exemption 2 (page 22).

Exemption 6. A state employee may hold a paid or unpaid elected or appointed office in a city or town. However, in the municipal position, an employee may not vote or act on any matter that comes under the authority of the state agency the employee works for or over which the employee has official responsibility. This exemption is found under Section 4 of the conflict law.

Example: A full-time employee of the State Police Drug Task Force may not serve as a municipal police drug agent because every matter that she would be acting on in her municipal job would be within the purview of the state task force.

Exemption 7. A clerk of a city or town may hold additional municipal positions for compensation as long as this arrangement is not disapproved of by the selectmen, town meeting, town counsel (in a town) or mayor and city council (in a city). (See G.L. c. 41, Section19I).

Exemption 8. A police officer in a town with a population of less than 3,500 may hold more than one paid appointed position if the board of selectmen formally approves the additional appointments. The officers do not need to be designated as specials in communities with a population of less than 3,500.

e. Application to State Police Employees

There is a similar prohibition under Section 7 of the law against public employees -- including police officers -- holding multiple jobs and/or contracts at the state level.

Again, contracts include employment with the commonwealth, as well as agreements to provide goods and services.

f. Exemptions for State Employees

Municipal exemptions 1, 2, and 6 also apply to state employees. In addition, five other exemptions for state employees exist under Section 7, the section of the conflict law that deals with contracts and multiple office holding for state employees. Briefly stated, the additional exemptions for state employees under Section 7 provide:

1. a state employee will not be in conflict for having a financial interest in a contract with the state if the employee --within 30 days of learning that he or she has a financial interest in a state contract -- discloses that interest and disposes of it, or terminates the contract; and
2. if a state employee owns less than one percent of the stock of a corporation, the company may contract with the state and the state employee will not be in conflict; and
3. state employees may teach part-time for pay in an educational institution of the commonwealth, as long as they do not participate in or have official responsibility for the financial management of the educational institution. Educational institutions include state colleges and universities and the community colleges. This exemption has also been found to apply to state employees who teach part-time courses that are mandated by law, such as educational courses at correctional facilities; and
4. state employees may work on a part-time basis for a mental health, public health or correctional facility, or any other facility principally funded by the state that provides services on an uninterrupted and continuous basis, such as halfway houses;

(Note -- There are additional provisions to this exemption. Please contact the State Ethics Commission or consult the agency's "Practical Guide to the Conflict of Interest and Financial Disclosure Laws for State Employees" on page 17 for additional information.)

5. a state employee may provide services or furnish supplies, goods and materials to a recipient of public assistance if:

   a. the services, supplies, goods or materials are provided in accordance with a schedule of charges promulgated by the Public Welfare Department or the Rate Setting Commission; and
   b. the recipient has the right under law to choose and in fact does choose the person or firm that will provide the services or furnish the supplies, goods or materials.

C. RESTRICTIONS AFTER YOU LEAVE GOVERNMENT SERVICE

1. MISUSE OF GOVERNMENT CONNECTIONS (Section 18, Section 5)

Former police officers may not use their past friendships and associations within government, or use confidential information obtained while serving the government, to derive unfair advantages for themselves or others. The law does not prohibit a police officer from using general expertise that he or she developed while a police department employee; rather, the law limits what actions a former city employee may take regarding individual decisions or other "particular matters" in which the employee actually participated or over which he or she had official responsibility while a police department employee. (The prohibition against using confidential information is contained in Section 23, page 14.)

The law also applies to the business partners of former police officers. The law prohibits partners from deriving an unfair advantage as a result of their association with a former police department employee. In addition, former police officers may not shift to their partners what they themselves are prohibited from doing.

a. Application to Former Municipal Employees Officers

1. Perpetual Ban

If a municipal police officer participated in a "particular matter" as a police department employee he or she can never become involved in that same matter after leaving police service except on behalf of the city or town.

Specifically, the law states that a former municipal employee may not act as agent or attorney for, or receive compensation directly or indirectly from, anyone other than the municipality in connection with any particular matter in which the municipality is a party or has a direct and substantial interest and in which he or she participated as a police department employee.

Example: A member of the police force who is also an attorney participates in the investigation and subsequent arrest of an individual. After the officer leaves the police force, she is asked to represent the individual in a wrongful arrest suit against the police department. Because she participated as a police department employee in the matter, she may not act as the attorney in the lawsuit.

Example: The superintendent of a police department selects a computer vendor to install PCs in the department. Shortly afterward, he resigns his superintendent position and is hired by the computer company to act as sales representative for the company on the police department contract. The law prohibits him from accepting this employment because he participated in the award of that contract while a police department employee. However, the superintendent could work for the computer vendor on other jobs in which he did not participate as a police department employee. The superintendent may also, in the future, work on a town contract he had no responsibility for and did not participate in as a police department employee.

2. One Year "Appearance" Ban

The law also restricts the actions of a town or city employee who had official responsibility for a matter even though the employee did not personally participate in it. For one year after an official leaves municipal service, he or she may not appear before any municipal agency on behalf of a private party if:

a. the appearance is in connection with a particular matter in which the municipality has a direct and substantial interest; and
b. the matter was within the employee's official responsibility within the two-year period before leaving public service. Note that this prohibition lasts for only one year, and restricts only appearances (whether paid or unpaid) before municipal agencies.

Example: The head of the homicide unit has official responsibility for all cases involving alleged murder in the city. If the homicide chief is also a lawyer, he may not represent a suspect in any case that was in the department within two years of leaving his police department post, whether or not he participate in the case.

b. Application to Business Partners of Former Municipal Employees

The partner of a former municipal police department employee is restricted for one year after the former employee leaves police service from personally representing or being paid by a private party in connection with a matter that the former police department employee participated in as a public employee.

Example: A member of the police department leaves the force to become a partner in a consulting firm. When the officer leaves the police force, she is forever prohibited from representing private clients in connection with matters in which she actually participated as a police officer. Her partners may not, for one year after the police officer leaves the department, represent anyone (except the town) in connection with matters in which the former officer participated.

The term "partner" is not restricted to those who enter into formal partnership agreements. The following criteria are examined to determine if a partnership exists: whether the person shares in the advantages or risks of ownership, contributes to capital or operating expenses, owns a transferable interest in the assets of the entity, or reasonably appears as having a stake in the ownership of the business to an objective third person.

In addition, if a group creates the public appearance of a partnership (for example, by using joint stationery, business cards, and business listings), the group will be treated as a partnership even though profits may not be shared.

Example: Three contractors do not have a formal partnership agreement, but share office space, common expenses and advertising and work together and share profits on some projects. Because they would reasonably appear to be partners to an outsider, the three contractors will be treated as partners for purposes of the conflict law. Accordingly, if one of the contractors is a former police department employee, the other two will be prohibited for one year after the police department employee/partner leaves police service from working on any matter in which the former police department employee participated while on the force.

If a partner of a former police department employee is also a member of another partnership in which the former employee has no interest, there are no restrictions on the activities of the latter partnership.

c. Application to Former State Employees and the Business Partners of Former State Employees

The conflict law applies the same way to former state police officers and their partners that it does to former municipal police officers; however, the relevant section of the law is Section 5.

In addition to the "forever ban," and the "one year appearance ban," former state employees are also restricted from acting as legislative agents for anyone other than the commonwealth before their former state agencies. A "legislative agent" is defined in G.L. c. 3, §39 as anyone who for compensation or reward does any act to promote, oppose or influence legislation or the adoption, defeat or postponement of a standard, rate, rule or regulation.

The Commission stated in a 1984 case that "The need to insulate the legislative process from the former employee's inevitable special knowledge and access during this initial period is the same whether the former employee is doing the lobbying directly or instead is advising and directing the lobbying activities of someone else."

D. OTHER INFORMATION ON THE CONFLICT OF INTEREST LAW

1. HOW TO OBTAIN LEGAL ADVICE

You may call the State Ethics Commission's Legal Division at 727-0060 for informal, confidential advice on the conflict law, or you may seek a written advisory opinion from your city solicitor or town counsel or from the Ethics Commission. If you have a question about your own activities, we urge you to request an opinion prior to engaging in the activity in question. Requests to the Commission for an advisory opinion must be in writing and must be about a real, not hypothetical, situation that presents a problem under the conflict of interest law.

2. INVESTIGATIONS

a. How to File a Complaint

Anyone can file a complaint concerning a conflict of interest -- in person, over the phone or by letter. The law requires the Commission to keep the identity of all complainants confidential and the Commission's enabling statute (M.G.L. c. 268B, Section8) protects a complainant from retribution for filing a complaint with the Commission.

The Commission can initiate investigations based on these complaints, on referrals from other civil and criminal enforcement agencies or on its own based on information obtained through other sources, such as news reports.

If you believe that a violation of the conflict of interest law has occurred or is occurring, you may call or visit the State Ethics Commission office at Room 619, One Ashburton Place, Boston, (617) 727-0060, and speak with a member of the Commission's enforcement staff.

b. Investigation Procedures

The Enforcement Division reviews each complaint received. If the complaint falls within the Commission's jurisdiction, an initial "screening" is done to determine if the facts warrant a formal investigation. The screening is an informal fact gathering stage. Many enforcement cases end confidentially at the conclusion of the screening with a private educational letter sent to the subject of the investigation. In these cases, no formal charge of a violation is brought and the matter remains confidential.

After the screening, if the staff determines a case should be formally investigated, authorization is sought from the appointed Commissioners to conduct a Preliminary Inquiry. During the Preliminary Inquiry the Commission has subpoena powers for testimony under oath.

After a preliminary inquiry is conducted, the Commissioners vote on whether "reasonable cause" exists to believe that the law has been violated. If the Commissioners find "reasonable cause" the subject of the complaint is entitled to a public hearing before the Commission to present evidence and testimony on his own behalf. At the conclusion of a public hearing the Commissioners issue a Decision and Order stating whether there was a violation of the conflict law and what fine, if any, will be assessed. A person has the right to appeal the Commission's decision to Superior Court. In the alternative, the person may settle the case by admitting publicly that he or she violated the law and agreeing to pay a civil penalty for each violation.

If the Commission finds "no reasonable cause" to believe the law has been violated, the case is closed and records and proceedings of the investigation remain confidential.

c. Penalties

The Commission is authorized to impose civil fines of up to $2,000 per violation of the conflict law. In addition, the Commission may bring a civil action against any individuals who have acted to their economic advantage in violation of the law, and may recover on behalf of the commonwealth or a municipality,

damages in the amount of the economic advantage or $500, whichever is greater. In certain circumstances, the Commission may also recover multiple damages.

Further, any violation that has substantially influenced an action taken by a police agency is grounds to avoid, rescind or cancel that action. For example, if a police department decided to hire a certain company to supply weapons for the department, and one of the officers who voted to award the contract was found to be in conflict, the contract could be rescinded.

The law also carries criminal penalties including fines and terms of imprisonment. Criminal prosecutions under the law are the responsibility of the Attorney General and District Attorneys. The Ethics Commission has the authority to refer cases to or concurrently investigate cases with these other law enforcement agencies.

d. Statute of Limitations

In general, the State Ethics Commission will review cases that are not more than six years old. The Commission has established rules governing the Statute of Limitations. These rules state that the Statute of Limitations begins on the date that the State Ethics Commission (or another law enforcement agency, such as the District Attorney) learns about an alleged violation of the conflict law. This is usually the date when someone makes a complaint. The State Ethics Commission has three years from the date it learns of an alleged violation to issue an Order to Show Cause, which starts public proceedings against an individual.

An Order to Show Cause may not be issued more than six years after the alleged violation occurred. Therefore, if a police officer violated the law in 1980, if the Commission did not learn of the violation until 1988, the Ethics Commission could not take any action against the officer.

3. PUBLIC EDUCATION

Public education has been a primary commitment of the State Ethics Commission since its establishment in 1978.

The Public Education Division conducts seminars for police officers and other state, municipal and county officials to help avoid potential conflicts that may arise between an employee's private interests and public positions. The Commission staff will travel anywhere in the state to conduct a seminar tailored to any group of public employees or citizens.

The goal of the presentation and question and answer period is to provide an understanding of the basic principles of the law and how to comply with it by discussing "real life" conflicts that arise on the job.

Some of the topics covered at our seminars include: restrictions on receiving gifts, outside employment, contracting with municipal agencies, acting on matters that financially affect family members and business associates, holding more than one town job, and leaving the government to work for companies you dealt with as a public employee. To arrange for a seminar on the conflict law, call (617) 727-0060 and ask for the Director of Public Education.

The Public Education Division also provides other publications free of charge or for a nominal fee including: the Commission's newsletter, The Bulletin; pamphlets for public employees on the conflict of interest and financial disclosure laws; a yearly compilation of Enforcement Actions and Advisory Opinions; and an Annual Report.

APPENDIX

COMMISSIONS OR AGENCIES THAT OVERSEE ETHICAL CONDUCT:

The following is a list of agencies that oversee the ethical conduct of public employees, including judges and legislators, as well as private sector lawyers. These agencies are responsible for interpreting and/or enforcing the statutes and regulations that are noted.

1. **Massachusetts Municipal, County and State Employees:**

State Ethics Commission
One Ashburton Place
Room 619
Boston, MA 02108
(617) 727-0060

M.G.L. c. 268A and c. 268B.

2. **Federal Employees:**

Federal agencies have a designated "ethics in government officer" who handles questions and refers complaints to the appropriate law enforcement agency concerning the federal conflict of interest statute. You may also contact the Inspector General's office within each federal agency for advice and information. In addition, the Office of Government Ethics (202-632-7642) will handle questions of a general nature.

Federal employees are covered by:

1. The Ethics in Government Act of 1978, Public Law 95-521.
2. Executive Order 11222 issued 5/21/65 (Standards of Ethical Conduct for Executive Agency Personnel).
3. Code of Federal Regulations 5 CFR 735.101 to 735.306 (Regulations promulgated by the Office of Government Ethics).

3. **Judges:**

Commission on Judicial Conduct
14 Beacon Street
Suite 102
Boston, MA 02108
(617) 725-8050

(Rule 3:09 of the Rules of the Supreme Judicial Court Code of Judicial Conduct.)

Judges, as state employees, are also covered by the conflict of interest law enforced by the State Ethics Commission.

4. Legislators:

House Ethics Committee
State House, Room 163
Boston, MA 02133
(617) 722-2040

House Rules 16 and 16A.

Senate Ethics Committee
State House, Room 517
Boston, MA 02133
(617) 722-1544

Senate Rules 10, 10A, and 12A.

Legislators, as state employees, are also covered by the conflict of interest law enforced by the State Ethics Commission.

5. Private Sector Lawyers:

Massachusetts Board of Bar Overseers
11 Beacon Street
Boston, MA 02108
(617) 720-0700

Rule 3:01 of the Rules of the Supreme Judicial Court.

For information on:

Campaign and Fundraising Activities

Office of Campaign & Political Finance
One Ashburton Place
Room 1005
Boston, MA 02108
(617) 727-8352

M.G.L. c. 55.

Open Meeting Law

Contact your local District Attorney's Office.

M.G.L. c. 30A Sections 11A, 11A 1/2, 11B and 11C;
c. 34 Section 9;
c. 39 Sections 23A, 23B and 23C.

Public Records

Public Records Division
Secretary of State's Office
Room 1701
One Ashburton Place
Boston, MA 02108
(617) 727-2832
M.G.L. c. 4, Section 7 cl.37.

Glossary

This Glossary contains the definitions of those terms that are defined in the conflict law. They are designated with an asterisk.* In addition, we have given the ordinary meaning of terms used in the Guide that the conflict law does not specifically define.

Agent: anybody acting in a representative capacity on behalf of someone else, regardless of whether the person is a lawyer.

Attorney: a lawyer; any person exercising a power of attorney.

Business Organization: business companies and agencies such as sole proprietorships, corporations, partnerships, and trusts; also includes non-profit corporations, associations and municipalities.

*Compensation: any money, thing of value or economic benefit conferred on or received by any person or entity in return for services rendered or to be rendered by himself or another.

*Competitive bidding: all bidding, where the same may be prescribed by applicable sections of the General Laws or otherwise, given and tendered to a state, county or municipal agency in response to an open solicitation of bids from the general public by public announcement or public advertising, where the contract is awarded to the lowest responsible bidder.

Contract: any type of agreement or arrangement between two or more parties where each undertakes certain obligations in consideration of the promises made by the other(s); for example, construction or consulting contracts, employment arrangements, contracts for the sale of goods or to provide services, grants awarded by the city or town to individuals or corporations, and agreements between a municipal agency and a state agency.

*Immediate family: the employee and his spouse, and their parents, children, brothers and sisters.
Note: Cousins, nephews, aunts, uncles, are not considered to be immediate family members. Also, under the definition of immediate family, some brothers-in-law are immediate family, others are not; if your brother in-law is your spouse's brother, he is immediate family but if he is your sister's husband, he is not immediate family for purposes of the law.

*Municipal agency: any department or office of a city or town government and any council, division, board, bureau, commission, institution, tribunal or other instrumentality thereof or thereunder.

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

*Official act: any decision or action in a particular matter or in the enactment of legislation.

*Official Responsibility: the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and whether personal or through subordinates, to approve, disapprove or otherwise direct agency action.

Note: Many special municipal employees, including most consultants, have responsibility over only the specific project for which they were hired. On the other hand, members of boards or commissions are often special municipal employees but will normally have "official responsibility" for every matter that is pending in their agency.

*Participate: participate in agency action or in a particular matter personally and substantially as a state, county or municipal department employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise.

*Particular matter: any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding 1. enactment of general legislation by the general court, and 2. petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property.

Note: The definition of particular matter focuses on activity that involves making decisions and exercising judgment. It covers specific decisions and proceedings rather than general issues or subject areas. For example, a town's appropriation to train police in cardio-pulmonary resuscitation (CPR) is a particular matter. However, the general subject of CPR training is not.

A contract is a particular matter. However, if a contract is renewed the year after its original award, that second contract is a new particular matter, distinct from the original grant.

While the enactment of general legislation is not included in the definition of particular matter, the term does cover enactment of special legislation. Special laws are those directed at a specific situation or individual or entity -- for example, a law

exempting a specifically identified parcel of land from local zoning restrictions. General laws, in contrast, usually establish a rule of future conduct applicable on a wider scale of people or things and apply uniformly to all individuals similarly situated.

A particular matter of direct and substantial interest to a city or town includes: 1) All particular matters that affect the financial interests of the city or town -- for example, contracts, grants and determinations of local tax liability (e.g., property, excise); 2) any city or town regulatory or adjudicatory proceeding such as permits, applications, licensing, zoning, eminent domain or assessment proceedings; 3) civil litigation involving a city or town or a municipal agency as a party (but not a lawsuit between two private parties where the city or town is not involved even though that lawsuit is pending in a state court); and 4) decisions about the use of municipal property and funds.

Partner: Any person who joins with any other person(s) formally or informally in a common business venture. The term is not restricted to those who enter into formal partnership agreements. The following criteria are examined to determine if a partnership exists: whether the person shares in the advantages or risks of ownership, contributes to capital or operating expenses, owns a transferable interest in the assets of the entity, or reasonably appears as having a stake in the ownership of the business to an objective third person. In addition, if a group creates the public appearance of a partnership (for example, by using joint stationery, business cards, and business listings), the group will be treated as a partnership even though profits may not be shared.

*Person who has been selected: any person who has been nominated or appointed to be a municipal employee or has been officially informed that he will be so nominated or appointed.

3/23/90



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