

CONFLICT OF INTEREST LAW OVERVIEW

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THE LEADER IN PUBLIC SECTOR LAW
ATTORNEYS AT LAW

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Who is a municipal employee?



When am I prohibited from acting because of a financial interest?



When do I have to file a disclosure?

CONFLICT OF INTEREST LAW

Red Flag Rule

Conflict of Interest Law is complex and complicated

The law does not provide for “disclosures” after the fact

The best way to protect yourself is to completely avoid acting on anything that makes you feel “uncomfortable,” whether because of your relationship with the applicant or someone close to them, or because you or those close to you might have a financial interest in the matter

The other option, if you or someone close to you does not have a financial interest in the matter, is to make a disclosure (if elected, with the clerk or make a statement on the record at a meeting; if appointed, with the appointing authority)

Remember that abstention is not the same as recusal – if you do not want to participate, you must get up and leave the table



Conflict of Interest for “Municipal Employees”

General Laws c. 268A – Conflict of Interest Law

17 - Agency – a municipal employee may not act as agent for any entity other than the municipality, except under very limited circumstances

19 - Financial Interests – a municipal employee may not participate in a matter in which they, a business in which they are an owner, director or employee, or an immediate family member has a financial interest

20 - Multiple Positions/Contracts – a municipal employee may not have a second paid position with the Town, or a contract with the Town, except under limited circumstances

23 - Code of Conduct – a municipal employee may not participate in a matter in which it appears they might act for reasons other than the Town’s best interests



“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 town meeting, and (2) members of a charter commission established under Article LXXXIX of the Amendments to the Constitution.

“Special Municipal Employee” – a position that is treated less stringently under certain sections of the COI law:

has been designated by the Select Board;

is unpaid, or part-time up to 800 hours per year; and

applies to position, not individual.

“Immediate family” – the municipal employee, the employee’s spouse, and each of the employee’s and spouse’s parents, children, brothers, and sisters.

“Disclosure” – a writing stating relevant facts and, either submitted by a municipal employee to the employee’s appointing authority, or, if no appointing authority exists, in a manner that is public in nature, such as filing with the Town Clerk.



Chapter 268A, § 1 – Key Definitions

G.L. c. 268A, § 23 establishes a so-called “Code of Conduct” applicable to all municipal employees, regardless of whether they are compensated.

G.L. c. 268A, § 23(b)(2) – a municipal employee may not solicit or receive anything of substantial value (\$50) for or because of their position or use or attempt to their office to obtain for any unwarranted privilege of substantial value “not properly available to similarly situated individuals”; examples include using information from your Town position to benefit yourself or someone else in a private capacity, such as a teacher tutoring their student for money or using a mailing list, phone or address lists available to you in your Town position to solicit new customers for private business or a political campaign; using Town equipment or other resources for personal use

G.L. c. 268A, § 23(b)(3) – a municipal employee may not “act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances,” to conclude that the employee are acting with bias, favoritism or otherwise for personal reasons.

****MUNICIPAL EMPLOYEES CAN REFUTE SUCH A CONCLUSION BY FILING A DISCLOSURE WITH THEIR APPOINTING AUTHORITY OR, IF ELECTED, WITH THE TOWN CLERK, PRIOR TO TAKING ACTION ON THE MATTER****

“Code of Conduct” - General Standards





Restrictions on Gifts

G.L. c. 268A, § 3: May not accept gift of “substantial value” [\$50 or more], if given “for or because of” any official act performed or to be performed under your official responsibility (tickets to a playoff game)

Regulations, 930 CMR 5.00: Some gifts are exempt from G.L. c. 268A, § 3; some require written disclosure; others are prohibited.

Exempted gifts: If entirely unrelated to employee office or any official action, e.g., birthday present, Town employee phone discount plan, raffle prize, etc.

Certain Gifts - Allowed if Disclosed



- ❑ Written disclosure required **if** related to office or action and less than \$50
- ❑ Disclosure also necessary to avoid appearance of impropriety (see earlier slide concerning code of conduct issues)
- ❑ File disclosure with appointing authority or, if none, Town Clerk
 - Exemptions: Several specific exceptions; for example, travel expenses if for legitimate, job-related public purpose. Training events/conferences = OK, for legitimate public purpose; appointing authority has to “ok” public purpose.
 - Includes “incidental hospitality” [cost of admission, refreshments]. 930 CMR 5.08



Receiving Money from or Acting as an Agent for a Private Party

- G.L. c. 268A, § 17: May not (a) receive compensation from anyone other than the Town, or (b) act as “agent or attorney” for anyone other than the Town, with regard to any particular matter in which the Town is a party or has a “direct and substantial” interest.
 - Purpose is to avoid appearance of, or actual, divided allegiance;
 - **Note**: Special municipal employees are prohibited only from acting as agent before **their own** board or office.

Acting as an “Agent”

- **Definition:** A person who represents another person or organization in dealings with a third party, i.e., almost any instance where a municipal employee is acting on behalf of someone else by:
 - contacting or communicating with a Town office whether by letter, phone, in person
 - acting as a liaison with private party
 - providing documents to a Town office; or
 - serving as spokesperson before a Town authority



Acting as an “Agent” - Exemption

You can always
advocate for yourself
before any Town board,
department, or officer.



Doing so is not “acting
as an agent”

Financial Interests

G.L. c. 268A, § 19: A municipal employee may not participate in their official capacity in any particular matter in which they, their “immediate family member,” or their private business or employer has a financial interest regardless of the size of financial interest.

G.L. c. 268A, § 19(b)(1) Exemption – **available for appointed officials only** – may disclose apparent conflict prior to participating and seek written approval from appointing authority; approval is not automatic and appointing authority must conclude that conflict will not interfere with service being provided to municipality.

Financial interest is **any** amount, large or small, positive or negative

Includes abutters to abutters within 300 feet, property diagonal from or directly across the street, or matter that would otherwise affect value of property

Hiring or supervising immediate family members will be a conflict under this section; even “delegating” authority to another staff person to hire or supervise a family member will be a conflict



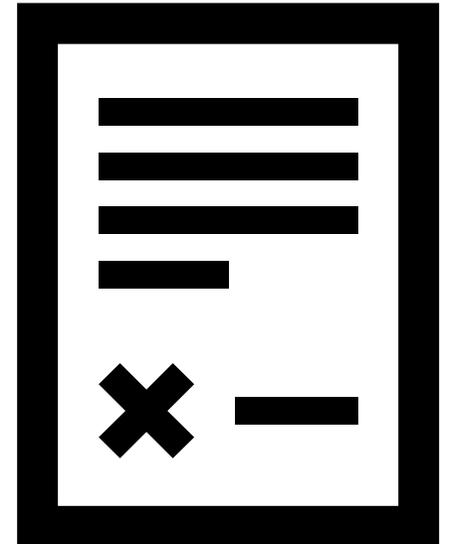
Contracts & Multiple Positions

G.L. c. 268A, § 20: A municipal employee may not have a financial interest in a “contract” with the Town

A “contract” includes a typical contract for services, AND it includes a second position, if paid, unless employee qualifies for one of the G.L. c. 268A, § 20 exemptions.

Many exemptions exist, all fact specific – special municipal employees, part-time or call firefighter/public safety officer, housing subsidy programs, etc.

In accordance with applicable regulations, a person who has a contract with the Town (i.e., who is employed by the Town) may add any number of unpaid positions to a paid position without violating the law



Contracts & Multiple Positions

G.L. c. 268A, § 20(b): for a “regular” municipal employee to hold another paid position with the Town, an exemption is available only if:

- Contract is with different department;
- Contract is made after public notice [newspaper at a minimum];
- Employee files written disclosure with Town Clerk; and, if
- Contract for “personal services,” such as a second Town position, must be outside normal hours of primary position, no more than 500 hours/yr, head of agency files certification, and Select Board votes to approve

Contracts & Multiple Positions



G.L. c. 268A, § 20(c): for a special municipal employee who does not participate in or have official responsibility for any of the activities of the contracting agency and who files with the Town Clerk a statement making full disclosure of their interest and the interests of their immediate family in the contract



G.L. c. 268A, § 20(d): to a special municipal employee who files with the Town Clerk a statement making full disclosure of their interest and the interests of their immediate family in the contract, if the Select Board approves the exemption of their interest from § 20

Enforcement

- Complaints to State Ethics Commission are confidential
- Often resolve through private letter determination/advice
- Can go to a public hearing process
- No one board member can “force” another not to participate because of a concern about an ethics issue
 - Sometimes best to attempt to resolve outside of a public meeting
 - Chair can recess or reschedule

Violations of G.L. c. 268A, Sections 17, 19, 20 can be criminal!

Additional Resources

- State Ethics Commission Advisories:

<https://www.mass.gov/info-details/state-ethics-commission-advisories>

- State Ethics Commission Primers:

<https://www.mass.gov/info-details/conflict-of-interest-law-primers-for-public-employees>

- State Ethics Commission Application of Law to Positions:

<https://www.mass.gov/info-details/explanations-of-the-conflict-of-interest-law>

- State Ethics Commission Disclosure Forms

<https://www.mass.gov/info-details/municipal-employee-disclosure-forms>

Any questions?

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