

State Ethics Commission

Conflict of Interest Law Seminar

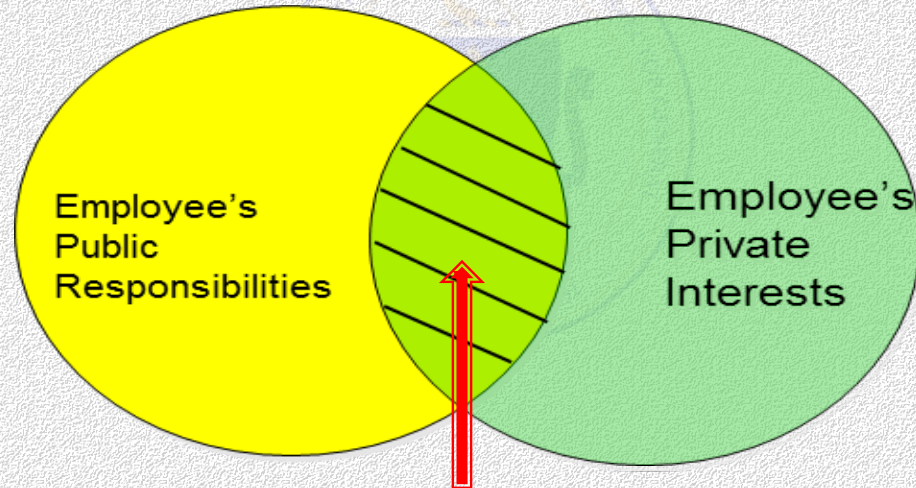
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State Ethics Commission
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State Ethics Commission

Conflicts 101

Professional Life **vs.** Personal Life



Focus of the Conflict of Interest Law



State Ethics Commission

State Ethics Commission

- Is a five-member, independent, non-partisan state agency whose members are appointed by the Governor, the Attorney General and the Secretary of State
- Provides advice, education and enforcement of M.G.L. c. 268A and 268B
- Has jurisdiction over all state, county and municipal employees and volunteers, paid or unpaid, full-time, part-time or intermittent



State Ethics Commission

Website

www.mass.gov/orgs/state-ethics-commission

- Educational materials
- Formal Legal Opinions
- Enforcement Decisions
- Disclosure Forms
- Links to the Online Training Program and Summary of the conflict of Interest Law for Municipal Employees



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A Municipal Employee is defined as

- **A Person**

- Performing services for or holding a municipal office, position, or employment in a municipal agency,
- Whether by election, appointment, contract or engagement,
- Whether serving with or without compensation,
- On a full-time, part-time, intermittent, or consultant basis,
- Excludes town meeting members and charter commission members.



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Conflict of Interest Law Educational Requirements

- Online Training Program
- Summary of the Conflict of Interest Law



Summary of the Conflict of Interest Law for Municipal Employees

This summary of the conflict of interest law, General Laws chapter 268A, is intended to help municipal employees understand how that law applies to them. This summary is not a substitute for legal advice, nor does it mention every aspect of the law that may apply in a particular situation. Municipal employees can obtain free confidential advice about the conflict of interest law from the Commission's Legal Division at our website, phone number, and address above. Municipal counsel may also provide advice.

The conflict of interest law seeks to prevent conflicts between private interests and public duties, foster integrity in public service, and promote the public's trust and confidence in that service by placing restrictions on what municipal employees may do on the job, after hours, and after leaving public service, as described below. The sections referenced below are sections of G.L. c. 268A.

When the Commission determines that the conflict of interest law has been violated, it can impose a civil penalty of up to \$10,000 (\$25,000 for bribery cases) for each violation. In addition, the Commission can order the violator to repay any economic advantage he gained by the violation, and to make restitution to injured third parties. Violations of the conflict of interest law can also be prosecuted criminally.



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Obtaining Legal Advice



Speak to the Attorney of the Day

- Advice is confidential
- Advice can be given by telephone (617) 371-9500
- Online request for advice, www.mass.gov/orgs/state-ethics-commission
- No third party or past conduct advice given
- Disclosure forms available on the website



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Conflict of Interest Law Disclosures

- Must be in writing
- Must contain all relevant facts
- Must be submitted in advance
 - Town employees file with their Appointing Authority
 - Elected Town officials file with the Clerk's office
- Disclosures are public records

DISCLOSURE OF APPEARANCE OF CONFLICT OF INTEREST AS REQUIRED BY G. L. c. 268A, § 23(b)(3)	
PUBLIC EMPLOYEE INFORMATION	
Name of public employee:	
Title or Position:	
Agency/Department:	
Agency address:	
Office Phone:	
Office E-mail:	
In my capacity as a state, county or municipal employee, I am expected to take certain actions in the performance of my official duties. Under the circumstances, a reasonable person could conclude that a person or organization could unduly enjoy my favor or improperly influence me when I perform my official duties, or that I am likely to act or fail to act <u>§9.4 (99)(b)</u> of kinship, rank, position or undue influence of a party or person. I am filing this disclosure to disclose the facts about this relationship or affiliation and to dispel the appearance of a conflict of interest.	
APPEARANCE OF FAVORITISM OR INFLUENCE	
Describe the issue that is coming before you for action or decision.	
What responsibility do you have for taking action or making a decision?	
Explain your relationship or affiliation to the person or organization.	
How do your official actions or decision matter to the person or organization?	



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Gift Restriction Rules

- Bribery: prohibits corrupt gifts, offers, and promises given to influence official acts (*Quid Pro Quo*).
- Gifts/Gratuities: prohibits gifts valued at \$50 or more and given because of official acts performed or to be performed.
- Gifts: prohibits gifts valued at \$50 or more and given because of official position.



GRATUITIES, AN ETHICAL
DILEMMA



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Gift Restriction Rules

- [Section 23\(b\)\(3\)](#)- Standards of Conduct: gifts valued at less than \$50 are not prohibited, but if the receipt of a gift creates the appearance that the town employee could be improperly influenced in the performance of official duties, a written disclosure is required.

DISCLOSURE OF APPEARANCE OF CONFLICT OF INTEREST
AS REQUIRED BY G. L. c. 268A, § 23D(3)

PUBLIC EMPLOYEE INFORMATION	
Name of public employee	
Title or Position	
Agency/Department	
Agency address	
Office Phone	
Office E-mail	
<small>In my capacity as a state, county or municipal employee, I am expected to take certain actions in the performance of my official duties. Under the circumstances, a reasonable person could conclude that a person or organization could unduly enjoy my favor or improperly influence me when I perform my official duties, or that I am likely to act or fail to act as a result of kinship, rank, position or undue influence of a party or person. I am filing this disclosure to stabilize the facts about this relationship or affiliation and to dispel the appearance of a conflict of interest.</small>	
APPEARANCE OF FAVORITISM OR INFLUENCE	
Describe the issue that is coming before you for action or decision.	
What responsibility do you have for taking action or making a decision?	
Explain your relationship or affiliation to the person or organization.	
How do your official actions or decision matter to the person or organization?	



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Gifts That May Be Prohibited

- Meals
- Event Tickets ([Advisory 04-1](#))
- Free Travel or Expense Reimbursements
- Gift Certificates
- Floral Arrangements/Fruit Baskets
- Lottery Tickets
- Gifts offered through sales promotions



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Regulatory Exemptions relating to Gift Restrictions

(Disclosure and Prior Approval Required in Certain Circumstances)

- Travel Expenses where the purpose of the travel serves a legitimate public purpose
- Incidental Hospitality that serves a public purpose
- Random Drawings
- Unsolicited Perishable Items

Advisory 19-1: Gifts and Gratuities



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Regulatory Exemptions relating to Gift Restrictions

(Disclosure and Prior Approval Required in Certain Circumstances)

- Passes to School Events Provided by the School District
- Class Gifts to Teachers
- Public Employee Discounts and Waived Membership Fees
- Gifts Among Public Employees
- Retirement Gifts



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Nepotism/Self-Dealing

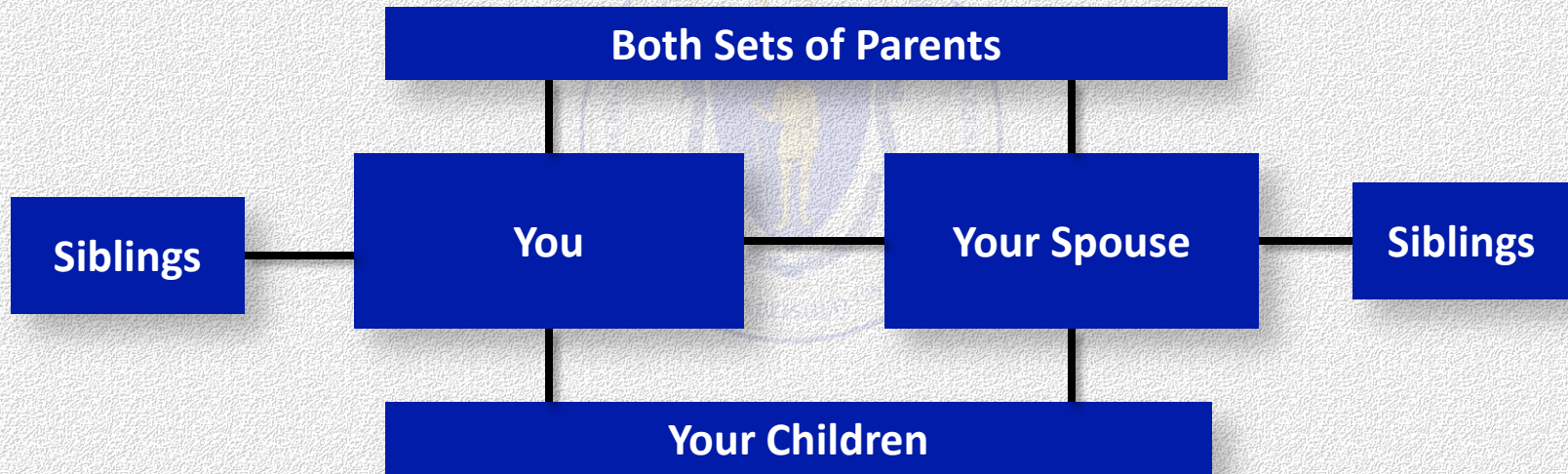
A town employee **may not participate** in matters in which he, his immediate family, a partner, a business organization with which he has certain affiliations or someone with whom he is negotiating for prospective employment **has a financial interest.**

- Disclosure filed with the appointing authority/Determination by the appointing authority
- No exemption available for elected town officials
- Financial interests of town employees who are abutters or competitors



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Nepotism: Definition of Immediate Family Members



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BOARD MEMBERS: THE RULE OF NECESSITY

- AVAILABLE TO ELECTED BOARDS ONLY
- THE BOARD CANNOT ACHIEVE A QUORUM
- NO OTHER BOARD IS AVAILABLE TO DECIDE THE ISSUE
- BOARD SHOULD OBTAIN LEGAL ADVICE
- BOARD MEMBERS WILL NEED TO DISCLOSE CONFLICTS IN THE MEETING MINUTES

Advisory 05-05: The Rule of Necessity



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BOARD MEMBERS: IF YOU NEED TO ABSTAIN?

- CAN I REMAIN AT THE TABLE?
- CAN I SIT IN THE AUDIENCE?
- MUST I LEAVE THE ROOM?



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Code of Conduct

A town employee shall not knowingly:

- Act in a manner such that a reasonable person would conclude that he or she might act with bias
 - One-step written disclosure to dispel appearance of conflict
- Use official position to secure unwarranted privileges for him or others.
- Use public resources for private or personal use or political activity.
- Disclose confidential information.



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Code of Conduct: Political Activity

- Soliciting campaign support from colleagues, subordinates or constituents
- Campaign activities in public buildings
- Cannot use public resources for political purposes



Advisory 11-1: Public employee political activity



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Code of Conduct: Private Commercial Relationships

Advisory 14-1: Public employees' private business relationships and other private dealings with those over whom they have official authority or with whom they have official dealings



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Duty of Loyalty

Divided Loyalties

While a town employee, unless you are a special municipal employee:

- You may not represent 3rd party interests before any town board, even if you are not paid.
- You may not be paid by anyone to work on any matters in which any agency of the town is a party or has a direct and substantial interest.



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Divided Loyalties



- Positions classified as special municipal employees are less restricted
- Town employees may always represent their own interests
- Contractors/Consultants cannot compensate a town employee to work on any project where the conflict of interest law restricts the town employee



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Duty of Loyalty

Divided Loyalties: Special Municipal Employees

Positions that have been expressly classified by the Board of Selectmen

- Are unpaid, or
- Compensated for less than 800 hours in a year, or
- By terms, classification or conditions of employment, permits personal or private employment during normal working hours

(Generally can include members of boards and committees)



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Regulatory Exemption related to Divided Loyalties restriction

- Exemption to Permit Town Employees Who Are Parents to Advocate for Their Children (Disclosure Required for Supervisory Employees)
- Exemption Permitting Persons Serving as Members of Town Boards Pursuant to a Legal Requirement That the Board Have Members With a Specified Affiliation to Participate Fully in Determinations of General Policy



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Financial Interests in Contracts

A town employee may not have a financial interest in a contract in which the town is an interested party.

- Contracts to provide goods or services
- Multiple positions, one of which is paid
- “Inside Track” issues

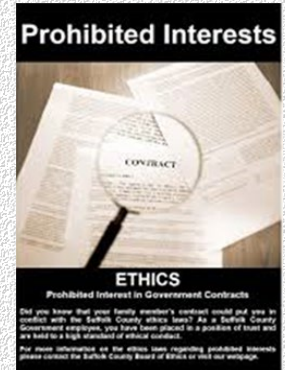


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Financial Interests in Contracts

A town employee may not have a financial interest in a contract in which the town is an interested party.

- Law applies less restrictively to designated “special” municipal employees
- Restriction does not apply to elected or unpaid positions
- Town employees can also serve on the Board of Selectmen
- Other exemptions are available



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Restrictions on Appointment

- Board members are ineligible for appointment to positions supervised by their board until 30 days after they resign from the board.
- Town employees who also serve on the board of selectmen are ineligible for any other appointment to another town position while a selectman and for 6 months thereafter.
- Housing Authority employees who also serve as elected town officials are ineligible for appointment to any other town position until 6 months after they leave the elected position.



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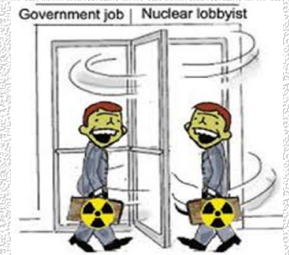
Former Town Employees: Revolving Door Restrictions

The forever ban

- A former town employee is prohibited from receiving compensation from or representing a third party in any particular matter **in which he participated as a town employee.**

The one year cooling off period

- A former town employee is prohibited for one year from appearing personally on behalf of a third party if, within two years prior to his last day of town service, **the matter was under his official responsibility.**



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Finally:

- When in doubt . . . 
- If a bell goes off or a flag goes up. . . **CALL**
 - **(617) 371-9500** 
 - **(800) 485-4766**
- Visit: www.mass.gov/orgs/state-ethics-commission

