

Conflict of Interest Law

TOWN OF WILMINGTON

April 7, 2021

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Today's Topic:

The Conflict of Interest Law,
G.L. c.268A, and its regulations:
930 CMR §§1-7

COI for “Municipal Employees”

- Certain Sections applicable to all
“Municipal Employees”

3 – Gifts related to office

17 – Compensation/acting as an agent for
private party

18 - Former employees, partners

19 - Financial interest in matter

20 - Financial interest in contracts

23 - Code of Conduct

Chapter 268A, §1 – Key Definitions

- “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 . . .

“Municipal Employee” - Exemptions

. . . excluding : (1) elected members of town meeting, and (2) members of a charter commission established under Article LXXXIX of the Amendments to the Constitution.

“Municipal Employee” - Recap

- Note how this broad definition includes:
 - paid or unpaid
 - full, part time or seasonal
 - some contractors

Special Municipal Employee

- “Special municipal employee” = A position that :
 - has been so designated by BOS
 - is unpaid, or part-time up to 800 hours per year
 - Is treated less stringently under certain sections

Chapter 268A, §1 – More Key Definitions

- “Immediate family”= The Municipal Employee, their spouse, and each of the employee’s and spouse’s parents, children, brothers and sisters.
- “Disclosure” = A writing stating the relevant facts and, either: submitted by a municipal employee to his or her appointing authority, or, if no appointing authority exists, made public by filing with the Town Clerk or in another appropriate public manner.

Restrictions on Gifts



- Section 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.
- Regulations: 930 CMR 5.00. Some gifts are exempt from §3; some require written disclosure; others are prohibited.
- Exempted gifts: If entirely unrelated to your office or any official action, e.g. birthday present, Town employee phone discount plan, raffle prize, etc.

Restrictions on Gifts - Allowed if Disclosed

- Written disclosure may be required: If related to office or action, and less than \$50. Disclosure also necessary to avoid appearance of impropriety, §23(b)(3). File disclosure with appointing authority or, if none, Town Clerk.

Restrictions on Gifts - Exemptions

- Exemptions: Several specific exceptions; for example, travel expenses if for legitimate, job-related public purpose. Training events/conferences = OK, for legitimate public purpose. Includes “incidental hospitality” [cost of admission, refreshments]. 930 CMR 5.08

Receiving Money from or Acting as Agent for Private Party

- Section 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 = To avoid the 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 "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
 - 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” - 1

- Note: The restrictions of § 17(c) are not triggered if the municipal employee does not *represent* someone before the Town.
- A municipal employee may offer advice to others and may help plan strategies “behind the scenes”, as long as his or her activity does not reach the level of “acting as agent”. (Note, however, that the municipal employee *may* violate § 17(a) if he or she accepts pay or other compensation for such activities.)

Acting as an Agent-2



- 930 CMR 6.08 – Often problems caused by Town board member involved with private non-profit that is affiliated with the same board (“Friends of the _____”). This section authorizes a board member to serve as representative on non-profit board, without violating §17.



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

Doing so is not “acting as an agent.”

Matters Involving the Employee or a Family Member

- Section 19: Whether appointed or elected, you may not participate in your official capacity in any particular matter in which you, your “immediate family” or your private business or employer has a financial interest - regardless of the size of financial interest.
- Possible Exemption, **for appointed officials only**: You may disclose and seek written approval from appointing authority – approval is **not** automatic.

Contracts or Second Positions - 1

- Section 20: You may not have financial interest in a contract with the Town (“contract” includes a second office, if paid), unless you qualify for one of the §20 exemptions.
- Many exemptions, all very fact specific – special municipal employees, part-time or call firefighter/public safety officer, housing subsidy programs, etc.

Contracts or Second Positions - 2

- Section §20(b): “regular” employee exemption elements:
 - contract with different department
 - made after public notice [newspaper or public posting]
 - written disclosure filed with T. Clerk
 - if for “personal services” [second Town position], must be outside normal hours of primary position, no more than 500 hours/yr., head of agency files certification, and BOS votes to approve

Contracts or Second Positions - 3

- Other §20 exemptions created by regulation (CMR):
 - Section 6.02 – Town employee/paid official may take on new uncompensated position without requiring §20 exemption. “Uncompensated” means a position for which no salary or stipend is offered; i.e., cannot accept position and decline payment.

Contracts - 4



- “Contract” with Town is very broadly interpreted. Includes buying from/selling to town both personal and real property. Surplus property is available provided there was “public notice” of availability. Ethics Commission regulation created exemption when municipal employee is selling property to Town, but not for purchase.

"Code of Conduct" General Standards

- Section 23: “Code of Conduct” – Several provisions go beyond the prohibitions of the above sections. Two primary paragraphs to remember:
 - 23(b)(2) – may not use or attempt to use one’s office to obtain, for yourself or others, any unwarranted privilege of substantial value (**\$50**) “not properly available to similarly situated individuals” – i.e., improper use of office or “inside information.”

"Code of Conduct", Cont'd



- 23(b)(3) – may not “act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances,” to conclude that you are acting with bias, favoritism or otherwise for personal reasons. Avoid violating this ¶ by filing written disclosure of facts before acting.

Code of Conduct – Improper Use of Office 1



- EC-COI-12-1: Fundraising or Solicitation on Behalf of the Town is generally permitted, provided:
 - (1) funds handled pursuant to G.L. c.44, §53A gift account
 - (2) no overt pressure is used
 - (3) Town employees use objective standards in dealing with anyone who was solicited
 - (4) Employee soliciting must file list of names with Town Clerk.

Code of Conduct – Improper Use of Office 2



- “Inherently Coercive” – No solicitation of any person or entity who may be “directly and significantly affected by a pending or anticipated decision of the same municipality”; employee has duty to make reasonable inquiry to identify such persons or entities

Code of Conduct –

Improper Use of Office 3



- Other Ethics Commission examples:
 - - Use of Town resources for personal business or purposes
 - - Improperly directing subordinates to act on private interests.
 - - “Don’t you know who I am?”

State Ethics Commission



- State Ethics Commission
- 1 Ashburton Place, Room 619
- Boston, MA 02108
- (617) 371-9500
- www.mass.gov/ethics
- For advice, call and ask for Legal Division's "attorney of the day"

Thank you!



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