



The Commonwealth of Massachusetts

State Ethics Commission

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January 20, 1982

TO: City Councillors, Selectmen, Town Counsel, City Solicitors
FROM: Robert V. Greco, General Counsel

This is to inform you of the State Ethics Commission's policy with respect to violations of Section 20 of General Laws Chapter 268A, the conflict of interest law.

In September of 1980, the Commission rendered an advisory opinion (EC-COI-80-89) stating that it was a violation of the conflict of interest law for a selectman of a town to also be compensated for teaching in the school system of that same town.* As the opinion stated, a selectman is a municipal employee, as that term is defined in G.L. c. 268A, Section 1(g). Section 20 of G.L. c. 268A prohibits a municipal employee from having a financial interest, directly or indirectly, in a contract made by an agency of the same town. A selectman who is also a teacher would violate Section 20 since he would have a financial interest in his employment contract with the town's school system.

The Commission noted in its opinion, however, that Section 7 of Chapter 268A had been recently amended to allow a state employee in certain circumstances to teach part-time in a state educational institution and that analogous legislation was likely to be submitted to the General Court to amend Section 20. Accordingly, pending possible legislative action, the Commission stated that it would take no action during that school year to enforce the provisions of Section 20 against the selectman who sought the opinion and others similarly situated.

*The Superior Court reached the same conclusion in the case of Walsh v. Love, et al., Norfolk Superior Court Civil Action No. 132687. This conclusion was also consistent with opinions previously rendered by Attorneys General with respect to a similar prohibition regarding state employees.

That moratorium was then extended to coincide with the 1981 legislative session which ended on January 5, 1982. Although several bills were submitted and considered to amend Section 20, the legislature did not amend that section of the law. The Commission is therefore obligated to begin to handle complaints regarding violations of Section 20 in the same manner as it handles complaints regarding other sections of the conflict law.

However, the Commission does want to afford municipal officials and employees time to comply with the law voluntarily and also to allow municipalities to make alternative arrangements where necessary to avoid disruption in municipal services. Accordingly, the Commission will initiate no enforcement actions in such cases prior to May 31, 1982 and a teacher who is now a selectman will have until May 31st to comply with the law.

It must be stressed that the Commission's September 1980 opinion related solely to a selectman who did not qualify as a special municipal employee* and was a teacher in the same town. The reasoning of the opinion would apply equally to situations where selectmen or city councillors serve in some other capacity such as fireman or policeman in the same municipality. However, the Commission did not rule in the opinion that the law is violated in all situations where municipal officials or employees hold another position in the same city or town.

*Chapter 268A, Section 1(n) defines "special" municipal employee, to be

...a municipal employee who is not a mayor, a member of a board of aldermen, a member of a city council, or a selectman in a town with a population in excess of five thousand persons, and whose position or employment has been expressly classified by the city council, or board of aldermen if there is no city council, or the board of selectmen as that of a special employee under the terms and provisions of this chapter. Such classification shall be made by employing standards reasonably related to the terms and provisions of this chapter and all employees who hold equivalent offices, positions, employment or membership in the same municipal agency shall have the same classification.

Whether there is a violation in other situations will depend on whether in one or both capacities, the employee has been designated as a "special" municipal employee and either

- a) does not participate in or have official responsibility for any of the activities of the other agency in which he serves and files with the City or Town Clerk a statement making full disclosure of his interest in the second position; or
- b) files with the Clerk a statement making full disclosure of his interest in the second position and secures the approval of the City Council or Board of Selectmen.

As is always the case, municipal employees with questions regarding the application of Chapter 268A to their own situation may seek the advice of their Town Counsel or City Solicitor.

I would appreciate your taking whatever action you could to make officials and employees in your city or town aware of the Commission's policy.

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S-47

Comm. from Robert V. Greco, Gen. Counsel,
State Ethics Commission Re: policy of said
Comm. regarding violations of Section 20 of
the General Laws Chapter 268A Re: conflict
of interest law.

In City Council,

January 25, 1982

1/25/1982

Placed

on

File -