

# APPENDIX 1



# Police Protective Fund

For more information, Call Toll free (800)579-4444

## Advisory Board

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Jim Lyde

**Dear Friend,**

On behalf of the Police Protective Fund, **thank you** for your interest in our organization.

Today, law enforcement officers face a **dangerous and uncertain** future. The men and women of law enforcement are confronted with a new enemy - **terrorism** on the home front. Last year one hundred and forty two law enforcement **officers were killed in the line of duty.**

The Police Protective Fund honors the herosim and commitment of our officers with our free **Line-of-Duty-Death** Benefit - offering much needed assistance to the family of an enrolled officer. In a time of crisis, few law enforcement organizations offer a more valuable benefit. In order to continue providing this urgently needed \$10,000 Line of Duty Death Benefit - **FREE OF CHARGE** - it is **VITAL** that we receive the support of generous individuals such as you. As long as funds are available, the Police Protective Fund is committed to providing this benefit to **every enrolled officer.**

The mission of the Police Protective Fund is not to **memorialize fallen officers**, but to prevent their murders in the first place. We are proud to serve the needs of law enforcement officers and their families by providing officer safety education and increasing public awareness about the dangers of law enforcement. **Currently over 15,000 enrolled officers** receive valuable safety materials.

Once again, **thank you for your contribution.** The programs we provide to officers and their families would simply not be possible without your support.

Sincerely,

Jim Lyde  
Director of Public Affairs & Senior  
Advisory Board Member

**P.S. I have already made arrangements to put your pledge to work. Please take a moment to return your check in the envelope provided today!**



FROM : Carl F Barron

FAX NO. : 617-547-6636

Jun. 24 2003 11:54AM P1



**Police Protective Fund**  
340 COOLEY ST PMB 274  
SPRINGFIELD MA 01128-1144



617-484-5113

Sponsor Confirmation No: **4R10442**

Pledge Date: 6/17/03

**Amount Pledged: \$30.00 PATRON**

**Thank you.... Per phone conversation with: CARL**

Please Remit by: 6/25/03

0:28:53 ED  
08 5



**CARL BARRON**  
40 RANDOLPH ST  
BELMONT MA 02478-3540

442

**Police Protective Fund**  
340 COOLEY ST PMB 274  
SPRINGFIELD MA 01128-1144

You have enclosed an additional \$2.00 to help defray the mailing costs. Please return this statement, along with your gift in the envelope provided. Please call 800-579-4444 TOLL-FREE for more information. Please make check out to Police Protective Fund. Thank you for your pledge! ~ CUT ALONG DOTTED LINE TO REMIT.

# APPENDIX 2

President ..... Anthony Grassi  
Treasurer ..... James DeFrancesco  
5 Western Avenue  
Cambridge, MA 02139

Newspaper Cambridge Chronicle/Cambridge Tab  
Verification ..... 617-349-3370  
Station ..... 617-349-3300  
Tax ID ..... 04-2939772

Hi (Mr., Mrs.) \_\_\_\_\_

This is \_\_\_\_\_ I'm calling on behalf of the **Cambridge Police Mutual Aid Association**. How are you? This year we are recording calls for quality purposes. ( Small Talk) The reason for the call is we are sponsoring an "Celebrity Hockey Game" featuring "Boston Black & Gold Legends" (former Boston Bruins) VS. the **Cambridge Police All-Stars** on Friday, October 10, 2003 at 7:00 PM at the Gore Street Rink. We will also be publishing a hockey program book. The proceeds will help support the betterment of the organization.

In return for your support of the **Cambridge Police Mutual Aid Association**, you will receive tickets to the hockey game.

Platinum Donation ..... \$100.00  
Gold Donation ..... \$75.00  
Silver Donation ..... \$55.00  
Bronze Donation ..... \$35.00

Thank you for your support.

Here's how we work it. Make the check payable to the **Cambridge Police Mutual Aid Association**.

Write (For Deposit Only) on the back of the check . Are you going to be home during the day? (If Yes) someone will be on your street between 9-5 during the day.

(If NO) someone will be on your street between 5-9 at night.

Please do us a favor, if you happen to go out, please leave the check in an envelope marked **Cambridge Police Mutual Aid Association** on your front door or under the door mat.

Once again, thank you very much.

FRIDAY  
OCT 10, 2003  
7:00 PM  
\$15.00

GORE ST RINK

CAMBRIDGE POLICE ALL-STARS

VS.

Former Boston Bruins

LEGENDS

BLACK&GOLD

BOSTON

Celebrity Hockey

7:00 PM

OCT 10, 2003

President ..... Anthony Grassi  
 Treasurer ..... James DeFreancesco  
 5 Western Avenue  
 Cambridge, MA 02139

Newspaper Cambridge Chronicle/Cambridge Tab  
 Verification ..... 617-349-3370  
 Station ..... 617-349-3300  
 Tax ID ..... 04-2939772

Hi (Mr., Mrs.) \_\_\_\_\_

This is \_\_\_\_\_ I'm calling on behalf of the **Cambridge Police Mutual Aid Association**. How are you? (Small talk). This is just a quick recorded courtesy call. The reason for the call is we are sponsoring an "**Celebrity Hockey Game**" featuring "**Boston Black & Gold Legends**" (former Boston Bruins) VS. the Cambridge Police All-Stars on Friday, October 10, 2003 at 7:00 PM at the Gore Street Rink. We will also be publishing a hockey program book. The proceeds will help support the betterment of the organizations. We are calling all the local businesses this year for ad support and we thought we could count on you for an ad to help make it a big success. Can I tell you what they are going for ?

The book size is 8 1/2 x 11 inches:

<i>Outside Back Cover</i> .....	<b>\$2500</b>
<i>Inside Covers</i> .....	<b>\$1995</b>
<i>Full Page</i> .....	<b>\$1495</b>
<i>2/3 Page</i> .....	<b>\$995</b>
<i>1/2 Page</i> .....	<b>\$850</b>
<i>1/3 Page</i> .....	<b>\$750</b>
<i>1/4 Page</i> .....	<b>\$595</b>
<i>1/6 Page</i> .....	<b>\$365</b>
<i>1/8 Page</i> .....	<b>\$285</b>
<i>1/10 Page</i> .....	<b>\$195</b>

Can we count on you this year?

Thank you for your support.

Here's how we work it. Make the check payable to the **Cambridge Police Mutual Aid Association**. We will have someone in the area tomorrow with a receipt for your records.

We would also appreciate it if you could give us a business card or logo for ad copy.

Confirm address and confirm time for pick-up.

Once again, thank you very much.

**OCT 10, 2003**  
**7:00 PM**  
**Celebrity Hockey**  
**BOSTON BLACK & GOLD LEGENDS**  
 Former Boston Bruins  
 VS.  
**CAMBRIDGE POLICE ALL-STARS**  
**GORE ST. RINK**  
**FRIDAY OCT 10, 2003**  
**7:00 PM**  
**\$15.00**

# APPENDIX 3

To: Massachusetts Chiefs of Police and Fire Chiefs

From: Jamie Katz, Chief of the Public Charities Division  
Massachusetts Office of the Attorney General

Re: Badge fraud solicitation in Massachusetts

Date: May 20, 2003

As many of you know, the Public Charities Division of the Office of the Attorney General takes actions against professional fundraisers and charities that engage in charities fraud. We field many calls and complaints from members of the public and from both police and fire departments about fundraising campaigns for police and fire-related charities in the Commonwealth. We review all complaints that we receive and we conduct dozens of investigations each year of possible fundraising fraud. When we determine that individuals acting for fundraisers or charities have engaged in misrepresentations or deceit to induce citizens to contribute to charities, we take whatever enforcement action we deem is appropriate.

The last few months have brought an unusually large number of complaints about solicitations. We have heard from a number of you and we have directed some fundraisers to change their tactics, negotiated with others, and in some cases issued cease and desist letters to stop solicitation by other fundraisers. With this memorandum, we'd like to let you know of a lawsuit we're filing and also provide you with additional information that you may be able to use to educate individuals in your town, including perhaps the press, as to the largest fundraisers who act on behalf of police and fire organizations.

First, we have filed a complaint in Suffolk Superior Court against the American Police Officers Association and their fundraisers, the Professional Fund-Raisers, Inc. for their failure to comply with Massachusetts charities registration requirements. Notwithstanding the failure of these organizations to comply with our registration and filing requirements, they have started soliciting in Massachusetts. In our lawsuit, we seek to stop their fundraising campaign until they have fully complied with the law.

Second, we have recently cooperated with the Federal Trade Commission in its efforts to thwart charities fraud. We have exchanged information with the FTC about solicitation campaigns in Massachusetts. The FTC is announcing today a number of lawsuits that target defendants that the FTC believes have engaged in charities fraud.

Third, we would like to provide you with some information that comes from documents submitted to us by charities that you and others in your community may find useful. Enclosed is a chart that gives information about certain of the largest police and fire-related charities, including their total revenue and the proportion of their funds that they spend on charitable programs. A second enclosure sets out a typical phone solicitation script used by a national telemarketer. Again, the script (except for the name of the prospective donor that we have inserted) is taken directly from documents filed with our office.

We hope that this information will help answer question you or others in your department and community may have. The information may also be of interest to local newspaper.

It is important to note that while charities often receive only a small amount of the funds raised by professional fundraisers and are also not legally obligated to spend any specific percentage of their funds on charitable programs, a very recent United States Supreme Court decision has held that a state may maintain a fraud action against a charity that makes false or misleading representations designed to deceive donors about how their donations will be used. Illinois ex rel Madigan v. Telemarketing Associates, Inc, 538 U.S. \_\_\_\_ [2003].

In general, in order to feel comfortable about prospective charities that solicit them, donors should find out what percentage of their donation is actually going to the stated charitable purpose. Prospective donors should ask telemarketers:

--Whether the caller is a paid solicitor employed by a professional fundraiser.

--What percentage of donations the fundraiser keeps.

--What percentage of donations is spent on charitable programs.

--Whether they can send the donation directly to local police or fire departments or officers.

If donors want additional information or have complaints about particular charitable solicitations, they may contact the Public Charities Division (617-727-2200). For more information on the Internet, they may check out our website at [www.ago.state.ma.us/charity.asp](http://www.ago.state.ma.us/charity.asp) or go to [www.guidestar.com](http://www.guidestar.com) to get financial information about particular charities.

We hope these materials prove useful to you and to prospective donors in your community. As always, if you have questions or concerns, please feel free to contact me directly at 617-727-2200, ext. 2110.

**AMERICAN FEDERATION OF POLICE AND CONCERNED CITIZENS <sup>1</sup>**

Total 2001 Revenue Raised by Professional Fundraisers	\$4,659,489	
Amount Kept by Fundraiser	\$2,226,067	48%
Management and General Expenses of Charity	\$ 282,5022	6%
Amount Spent on Charitable Programs	\$2,344,851	49%
Donations Are Deductible		
Address of Charity	3801 Biscayne Blvd., Miami, FL 33137	

**FIRE FIGHTERS CHARITABLE FOUNDATION**

Total 2001 Revenue Raised by Professional Fundraisers	\$4,942,708	
Amount Kept by Fundraisers	\$4,232,112	85%
Management and General Expenses of Charity	\$ 91,275	2%
Amount spent on Charitable Programs	\$ 555,801	11%
Donations Are Deductible		
Address of Charity	92 Beach Street, Suite 100, Westerly, RI 02891	

**FRATERNAL ORDER OF POLICE, MASS STATE LODGE**

Total 2001 Revenue Raised by Professional Fundraiser	\$394,315	
Amount Kept by Fundraiser	\$366,712	93%
Management and General Expenses of Charity	\$ 18,690	5%
Amount Spent on Charitable Programs	\$ 0	0%
Donations Not Deductible		
Address of Charity	PO Box 365348, Hyde Park, MA 02136	

**MASS CALL/VOLUNTEER FIREFIGHTER ASSOCIATION <sup>2</sup>**

Total 2001 Revenue Raised by Professional Fundraiser	\$821,711	
Amount Kept by Fundraiser	\$776,410	94%
Management and General Expenses of Charity	\$ 62,714	8%
Amount Spent on Charitable Programs	\$ 45,301	6%
Donations Not Deductible		
Address of Charity	19 West Vaughn Street, Lakeville, MA 02347	

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<sup>1</sup>Figures submitted by organization total more than 100%.

<sup>2</sup>Figures submitted by organization total more than 100%.

**MASSACHUSETTS RESERVE POLICE FEDERATION**

Total 2001 Revenue Raised by Professional Fundraiser	\$724,088	
Amount Kept By Fundraiser	\$602,745	83%
Management and General Expenses of Charity	\$ 86,391	11%
Amount Spent on Charitable Programs	\$ 39,844	5%
Donations Not Deductible		
Address of Charity	1574A Washington Street, Holliston, MA 01746	

**NATIONAL ASSN. OF CHIEFS OF POLICE <sup>3</sup>**

Total 2001 Revenue Raised by Professional Fundraiser	\$1,402,713	
Amount Kept by Fundraiser	\$ 617,980	44%
Management and General Expenses of Charity	\$ 265,078	19%
Amount Spent on Charitable Programs	\$ 722,414	51%
Donations Are Deductible		
Address of Charity	3801 Biscayne Blvd., Miami 33137	

**NATIONAL ASSN OF POLICE AND LAY CHARITIES**

Total 2001 Revenue Raised by Professional Fundraiser	\$ 294,494	
Amount Kept By Fundraiser	\$ 196,329	67%
Management and General Expenses of Charity	\$ 20,754	7%
Amount Spent on Charitable Programs	\$ 76,564	26%
Donations Are Deductible		
Address of Charity	3509 Conn. Ave. NW, Wash., D.C.	

**NEW ENGLAND ASSN. OF CHIEFS OF POLICE**

Total 2001 Revenue Raised by Professional Fundraiser	\$135,727	
Amount Kept By Fundraiser	\$ 14,364	11%
Management and General Expenses of Charity	\$ 62,987	46%
Amount Spent on Charitable Programs	\$ 49,361	36%
Donations Not Deductible		
Address of Charity	c/o Yazbak PO Box 128, Slatersville, RI	

**NEW ENGLAND POLICE OFFICERS SAFETY ASSN., INC.**

Total 2001 Revenue Raised by Professional Fundraiser	\$151,000 (2002 projection)	
Amount Kept By Fundraiser	\$127,500 (2002 projection)	84%
Management and General Expenses of Charity	\$ 5,000 (2002 projection)	3%
Amount Spent on Charitable Programs	\$ 7,500 (2002 projection)	5%
Address of Charity	240 E. Greenwich Ave., West Warwick, RI 02893	

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<sup>3</sup>Figures submitted by organization total more than 100%.

**POLICE ACTIVITIES LEAGUE OF THE BAY STATE**

Total 2001 Revenue Raised by Professional Fundraiser	\$782,683	
Amount Kept By Fundraiser	\$640,356	82%
Management and General Expenses of Charity	\$104,279	13%
Amount Spent on Charitable Programs	\$ 23,270	3%

Donations Are Deductible

Address of Charity                      85 Ardsmoor Rd., Melrose, MA 02176

**POLICE PROTECTIVE FUND**

Total 2001 Revenue Raised by Professional Fundraiser	\$2,880,162	
Amount Kept By Fundraiser	\$2,525,271	87%
Management and General Expenses of Charity	\$ 73,231	2.5%
Amount Spent on Charitable Programs	\$ 189,113	6.5%

Donations Are Deductible

Address of Charity                      114 W. 7<sup>th</sup> St., Suite 3, Austin, TX 78703

May 20, 2003

**Sample Professional Telemarketing Script taken from filings maintained by  
Public Charities Division, Mass. Office of the Attorney General**

“Hello Mr. Smith. This is \_\_\_\_\_ calling on behalf of the Massachusetts Police Support Society. The call is being recorded for your protection!

“ Mr. Smith, in these troubled times, do you think police protection is important? Do you have fears about security? The police are conducting the 2003 Spring Fund Drive and donations help support benefits for families of police officers killed in the line of duty, lobbying efforts on behalf of public safety issues and the general welfare of the police.

“As a paid fundraiser with( initials of telemarketer), I’m going to send you the 2003 police bumper sticker. Please display it on your vehicle to show your support for the Massachusetts Police Support Society!

“Mr. Smith, the police need your support and the donation levels are \$25, \$50 and \$100. Which one is best for you?”

If you decline to support the police, the caller continues:

“Sir, let me get you involved as a booster for just \$10 or \$20. Once again, this helps care for the families of police officers killed in the line of duty! I’m sure one of these levels will be more comfortable!”

If you still decline to support the police, the caller says:

“Let me at least put you down for a pledge, which also helps support police work on public safety issues and you’ll still receive the bumper sticker. Fair enough?”

# APPENDIX 4

# The Commonwealth of Massachusetts State Ethics Commission

John W. McCormack State Office Building, Room 619  
One Ashburton Place, Boston 02108  
Telephone (617) 727-0060  
Fax (617) 723-5851

All identifying information  
has been deleted from this  
opinion as required by  
Chapter 268B, section 3(g).

## CONFLICT OF INTEREST OPINION EC-COI-93-6

### FACTS:

You are a police officer in the Town of ABC and the President of the ABC Police Relief Association (the Association). The Association is a private, voluntary organization of ABC police officers that raises funds for charitable purposes, including a drug and alcohol abuse prevention program and special events for children.

The Association wishes to solicit donations from ABC residents and businesses. It may wish to employ a professional solicitor for this purpose.

### QUESTION:

What limitations does G.L. c. 268A establish for your and the Association's solicitation activities?

### ANSWER:

You and the Association may solicit funds from the public, but §23(b)(2) of G.L. c. 268A prohibits police officers,<sup>1/</sup> in their solicitation of funds from the public, from:

1. Making statements or engaging in conduct exploiting official police powers, i.e., that would lead reasonable persons to infer that good or bad consequences in official dealings with the police might flow from a decision whether or not to donate.
2. Using official resources of substantial value, including paid time as on-duty police officers, or (even when off-duty) official telephones, copying or fax machines, other public supplies or facilities, official stationery or letterhead, any municipal seal or coat of arms, or badges or uniforms.

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<sup>1/</sup>This advice applies to police officers' private solicitation activities whether taken personally or through their private association or agents, acting on their behalf with their knowledge or reason to know, as discussed in part 3 below.

In addition, G.L. c. 68, §§18-35<sup>2/</sup> and G.L. c. 41, §98E,<sup>3/</sup> statutes not administered or enforced by this Commission, apply to your and the Association's solicitation activities.

#### DISCUSSION:

You and other ABC police officers are "municipal employees" for the purpose of the state conflict of interest law. G.L. c. 268A, §1(g). As such, you and they are subject to §23(b)(2) of the conflict law, which prohibits current public employees from using their "official position[s] to secure for [themselves] or others unwarranted privileges or exemptions which are of substantial value and are not properly available to similarly situated individuals."

Whenever public employees solicit anything of substantial value<sup>4/</sup> for a non-governmental purpose, the Commission has consistently scrutinized the solicitation for compliance with §23(b)(2). In particular, we have examined whether public employees are soliciting from those with whom they have official dealings, and whether the solicitation is using public resources for non-governmental purposes. We must therefore analyze your solicitation activities in both of these respects.<sup>5/</sup>

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<sup>2/</sup>These statutes regulate charitable solicitations in general and are enforced by the Attorney General. You may obtain information about them from the Attorney General's Division of Public Charities.

<sup>3/</sup>As discussed in part 1 below, §98E requires anyone soliciting the public using the word "police" or "firefighter" (or any derivative thereof) to use the name of the police or firefighters organization (here, the "ABC Police Relief Association") sponsoring the solicitation.

<sup>4/</sup>Anything valued at \$50 or more is "of substantial value." *Commonwealth v. Famigletti*, 4 Mass. App. Ct. 584, 587 (1976); *Commission Advisory No. 8 (Free Passes)* (1985). Since amounts solicited for a common purpose are aggregated, see *EC-COI-92-23; 92-2*, we assume in this opinion that the total value of all the donations you solicit will be at least \$50 and thus "of substantial value."

<sup>5/</sup>Because the application of G.L. c. 268A to solicitations by associations of police officers is an important question of first impression, we publicly invited legal arguments from any interested person. We acknowledge helpful submissions by the law firms of Sandulli, Grace, Shapiro & Horwitz (on behalf of the Massachusetts Coalition of Police, AFL-CIO); Roche, Carens & DeGiacomo; Brooks & Lupan; and Cosgrove, Eisenberg & Kiley, P.C. (on behalf of the Massachusetts Police Association).

### 1. Soliciting from regulated persons.

The Commission has consistently held that §23(b)(2) prohibits public employees, in both their public and private capacities, from soliciting anything of substantial value from persons within their regulatory jurisdiction<sup>6/</sup> for a non-governmental purpose, unless the solicitation is specifically authorized by law.<sup>7/</sup> See, e.g., *EC-COI-92-28* (Governor may not solicit donations to non-governmental entity from corporations subject to state regulation); *EC-COI-92-12* (state board member prohibited from privately soliciting individuals under his regulatory authority); *EC-COI-92-2* (legislator's financial aid committee prohibited from soliciting anyone with an interest in legislative business, broadly defined); *EC-COI-90-9* (state official prohibited from soliciting vendors of his agency to support political candidate). The Commission has based this conclusion on its long experience with what the opinions just cited call the "inherently exploitative" or "inherently coercive" circumstances of such solicitations. For examples of Commission enforcement actions presenting such circumstances, see *In re Pezzella*, 1991 SEC 526, 528 (disposition agreement fining Governor's staff member for unauthorized solicitation of Governor's appointee to advance friend's private interest); *In re Singleton*, 1990 SEC 476 (disposition agreement fining a fire chief for attempting to use his official position to solicit private business); *In re Burke*, 1985 SEC 248 (fining official for using his official position to obtain access for private purposes to persons his agency regulated);<sup>8/</sup> *In re*

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<sup>6/</sup>The Commission has reached the same conclusion about soliciting others with whom a public employee has official dealings, including subordinate employees and agency vendors. See *EC-COI-92-7*.

<sup>7/</sup>General Laws c. 268A, §3(b) also prohibits a public employee from either soliciting or receiving anything of substantial value "for himself" from such persons. See *EC-COI-92-2*. Because your and the Association's solicitations seem from your facts to be on behalf of others than the member police officers themselves, this discussion focuses on §23(b)(2).

In addition, §23(b)(3) may apply. It prohibits a public employee from engaging in conduct that gives a reasonable basis for the impression that any person or entity can improperly influence him or unduly enjoy his favor in the performance of his official duties, but allows the employee to dispel any such impression by written public disclosure. However, its requirements are no more restrictive here than those of §23(b)(2), and in any event could be satisfied by written public disclosure to the police officers' appointing authority.

<sup>8/</sup>The Commission relied primarily on §3 in this case, which was decided at a time when the Commission lacked authority to enforce §23. See *Saccone v. State Ethics*

*Lannon*, 1984 SEC 208 (disposition agreement fining school superintendent for soliciting loans from subordinate teacher);<sup>2/</sup> *In re Antonelli*, 1982 SEC 101 (fining county treasurer for soliciting personal loan from banks seeking deposits of county funds); *Compliance Letter 82-2*, 1982 SEC 80 (soliciting city employees, vendors and city-regulated businesses for contributions to Mayor's wife's "birthday party" violated predecessors of §23(b)[2], [3]).<sup>10/</sup>

Our usual concern about solicitation by public employees is exacerbated here by the substantial and pervasive authority of police officers over all residents of and businesses in the municipality, including the statutory powers to carry weapons and make arrests, see G.L. c. 41, §98, and to make warrantless administrative inspections of certain regulated businesses. See G.L. c. 140, §66; *Commonwealth v. Eagleton*, 402 Mass. 199 (1988). In this connection, we note that the Attorney General's Division of Public Charities has officially warned of the special problems that solicitations by police and firefighter organizations pose, and has cautioned citizens "not [to] feel threatened or intimidated by [such a] solicitation, or pressured to make a donation." Attorney General, *Report on Charitable Fundraising 8* (Nov. 1992).

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*Commission*, 395 Mass. 326 (1985); St. 1986, c. 12, §§2, 6 (amending and reenacting §23 and conferring Commission jurisdiction to enforce it as of April 8, 1986). See also *In re Burke*, 1985 SEC 248, 249 nn.4 & 5, 253 n.12.

<sup>2/</sup>The Commission relied on the predecessor of §23(b)(3) here, in circumstances where it would also find a violation of §23(b)(2) today. See *EC-COI-92-7*.

<sup>10/</sup>We decline to abandon this longstanding interpretation of §23(b)(2) and its predecessors, as we have been urged on various grounds. In particular, any interpretation of "privileges" that excludes gifts of money is belied by the Legislature's 1986 reenactment of what is now §23(b)(2), see note 8 *supra*, adding the "knowingly, or with reason to know" and "substantial value" requirements, following our well publicized *Compliance Letter 82-2*. See *Lorrillard v. Pons*, 434 U.S. 575, 580-81 (1978) (when, after agency construes statute, legislature reenacts it without material change, legislature is presumed to adopt agency construction); *Commonwealth v. Miller*, 385 Mass. 521, 524 (1982) (same for judicial construction); 2B N. Singer, *Sutherland on Statutory Construction* §49.09 (5th ed. 1992). Furthermore, the "privilege" here may be best viewed, not as the gifts of money themselves, but as the special consideration from potential donors that police officers are able to obtain for private purposes by exploiting their official powers. Finally, any reading of the phrase "similarly situated individuals" (also added in the 1986 reenactment) to refer only to other police officers would deprive the statute of much of its meaning; instead, we read it here to apply to others soliciting charitable donations.

On the other hand, the Legislature has specifically addressed these solicitations by enacting G.L. c. 41, §98E, which provides in its entirety: "No person or persons shall solicit the public in any manner or form using the word 'police' or 'firefighter' or any derivative thereof without using the name or names of the city or town police or firefighters organization sponsoring such solicitation." Conscious of our duty to construe statutes relating to the same subject together "so as to constitute an harmonious whole consistent with the legislative purpose," *Saccone v. State Ethics Commission*, 395 Mass. 326, 334 (1985), we recognize that §98E in effect condones some solicitations by police and firefighter organizations, subject to the identification requirement it establishes. See *EC-COI-92-28* n.4; *92-12* n.10 (both suggesting that campaign finance law's exemption of elected officials from prohibition against compensated public employees' soliciting or receiving political campaign contributions, in G.L. c. 55, §13, in effect generally allows such officials to solicit political contributions in their private capacities for purpose of §23(b)(2)). In effect, notwithstanding our usual "per se" interpretation of §23(b)(2) as prohibiting all unauthorized solicitations by public employees of those they oversee, §98E allows private solicitations by police and firefighter associations under certain conditions.

It does not follow from §98E, however, that no other statute regulates solicitations by associations of police officers. "Statutes which do not necessarily conflict should be construed to have consistent directives so that both may be given effect." *Kargman v. Commissioner of Revenue*, 389 Mass. 784, 788 (1983). Certainly, G.L. c. 68, §§18-35 apply; these statutes are concerned, for example, with false or deceptive solicitations, and are enforced by the Attorney General's Division of Public Charities.

The same rule of construction applies to §23(b)(2) of the conflict law. See, e.g., *EC-COI-92-12* (comprehensive statutory regulation of campaign finance in G.L. c. 55 did not prevent applying §23(b)(2) to soliciting campaign contributions in some contexts). This is especially true in view of the courts' consistent recognition of the conflict law as "comprehensive legislation [enacted to] strike at . . . inequality of treatment of citizens and the use of public office for private gain." *Everett Town Taxi, Inc. v. Board of Aldermen of Everett*, 366 Mass. 534, 536 (1974); *McMann v. State Ethics Commission*, 32 Mass. App. Ct. 421, 427 (1992) (both quoting Special Commission on Code of Ethics, *Final Report*, H. 3650, at 18 [1962]). Here, §23(b)(2) at least forbids statements or conduct by police officers that exploit their official powers. Since §23 (as appearing in St. 1986, c. 12, §14) imposes liability for violations committed "knowingly, or with reason to know," the test is not whether the public employee subjectively intends the statement or conduct to be coercive, but whether reasonable persons would infer from it that good or bad consequences in their official dealings with the police might flow from their decisions whether or not to donate.

Thus, examples of prohibited solicitation activities would include: representing that a donation (including purchasing tickets to a fundraising event or purchasing an

advertisement in a publication) could result in preferential police treatment, or that failure to donate could result in police reprisals;<sup>11/</sup> implying that a decision whether or not to donate could affect the timing or quality of police services;<sup>12/</sup> and the practice (mentioned in our public request for comments, *see note 5 supra*) of sending stickers or decals intended for display on donors' private automobiles, from which, in our judgment, reasonable persons would infer the hope of favorable treatment -- or of avoiding adverse treatment -- by the police.<sup>13/</sup> On the other hand, if police officers (personally and through their association and agents, *see part 3 below*) do not engage in such prohibited activities, and do not use official resources (*see part 2 below*), G.L. c. 268A will not prohibit them from soliciting funds for their private association from the public -- whether through advertisements, telephone or door-to-door solicitations, or fundraising events.

## 2. Prohibited use of official resources.

We have also consistently held that §23(b)(2) prohibits public employees from using official resources for private purposes. *E.g., Commission Advisory No. 4 (Political Activity)* (1992) (public resources "are intended for the conduct of public business, not for advancing the personal, private or political interests of public employees"); *Public*

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<sup>11/</sup>In a civil action by the Attorney General under G.L. cc. 68, 93A, the Superior Court recently enjoined a professional solicitor for a police organization from "falsely" making such a representation. *Commonwealth v. G.M.C. Advertising, Inc.*, No. 91-3472 (Mass. Super., Suffolk Apr. 22, 1992). Our construction of §23(b)(2) forbids such representations whether they are true or false, if reasonable persons would infer that they might be true.

<sup>12/</sup>*See, e.g., In re Singleton*, 1990 SEC 476, 477-78 (fire chief told contractor from whom he was soliciting private construction business that "it could take forever to obtain [necessary Fire Department] inspections").

<sup>13/</sup>In *State Police Ass'n of Massachusetts v. Massachusetts Police Ass'n*, No. 79-2219 (Mass. Super., Middlesex 1979), a consent judgment enjoined an organization of municipal police officers and its professional solicitor from (among other things) falsely representing that automobile bumper stickers sent to donors would give them "a break" if stopped by a state police officer, a representation which the plaintiff state police union alleged to be the defendants' practice. We also note the following statement in a January 15, 1993 letter to this Commission from Kenneth T. Lyons, National President, International Brotherhood of Police Officers, NAGE, AFL-CIO: "I can assure you that many citizens respond . . . because they believe the window decals prove beneficial if they are involved in any kind of traffic violation."

*Enforcement Letter 92-3* ("public resources may only be allocated for public business, and may not be utilized to address individual concerns of public employees"); *EC-COI-92-5* (using state seal or state coat of arms for campaign purposes "benefits a personal rather than a public interest," hence prohibited by §23[b][2]).

Far from limiting this principle, G.L. c. 41, §98E (quoted in part 1 above) supports it. That statute seems clearly intended to distinguish police officers' private solicitations from their public duties; that is the same purpose served by §23(b)(2) in prohibiting use of public resources for private purposes. While we recognize and commend the many beneficial purposes for which police associations raise funds, §23(b)(2) -- and the principle it embodies, of public employees' accountability for their use of public resources -- applies "even if [these purposes] are public-spirited in nature." *Public Enforcement Letter 92-3*.

Therefore, police officers may not solicit for their private association while on duty. Even when off duty, they may not use official resources of substantial value, including official telephones, copying or fax machines, or other public supplies or facilities.<sup>14/</sup> They may not use official stationery or letterhead, any municipal seal or coat of arms, or badges or uniforms, in their private solicitation activities, because these public insignia "could reasonably be perceived as an endorsement by a public agency of the solicitation[,] give[] the appearance that the solicitation is officially sponsored [or] foster a sense of credibility [that] the solicitation might not otherwise have had." *EC-COI-92-5*. See *Public Enforcement Letter 89-4*, 1988 SEC 369; *In re Buckley*, 1983 SEC 157. For similar reasons, they may not use their official police rank,<sup>15/</sup> since we have found an appointed public employee's official title to be a public resource for this purpose. *EC-COI-92-39* and cases cited.

### 3. Application to associations and agents.

Section 23(b)(2) applies not only to personal acts of public employees, but also to acts of their agents, so long as the public employees know or (in the words of §23) have "reason to know" of those acts taken on their behalf. Thus, we have previously applied §23(b)(2) to public employees' associational activities. In *Compliance Letter 82-2*, 1982 SEC 80, we attributed to Boston Mayor Kevin White the solicitation activities of a

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<sup>14/</sup>For example, the telephone number printed on the Association's stationery appears to be that of the Police Department. This use of public resources for your Association's private purposes must be discontinued (unless authorized by statute or by-law).

<sup>15/</sup>We believe they may truthfully answer questions asking whether they are police officers.

"Birthday Celebration Committee" composed of his close associates, since he knew the general nature of the solicitation activities, although he did not know exactly whom the "Committee" was soliciting.<sup>16/</sup> More recently, in *EC-COI-92-23*, we advised Town Clerks that they would violate §23(b)(2) if their private association accepted funds from a private news service in return for the Clerks' calling the service with immediate election results.

We acknowledge the constitutional rights to associate and to solicit funds for charitable purposes. *See, e.g., Riley v. National Federation of the Blind of North Carolina*, 487 U.S. 781 (1988). However, narrowly tailored regulation is permissible to promote the compelling government interest in the integrity of public employees. *See Pickering v. Board of Education*, 391 U.S. 563, 568 (1968); *National Treasury Employees Union v. United States*, 788 F. Supp. 4 (D.D.C. 1992). There is an important public interest in regulating even the off-duty activities of police officers to promote public integrity, especially if (as here) the activities do not constitute "pure" speech. *See O'Brien v. DiGrazia*, 544 F.2d 543 (1st Cir. 1976), *cert. denied*, 431 U.S. 914 (1977); *Broderick v. Police Commissioner of Boston*, 368 Mass. 33 (1975); *Wilmarth v. Town of Georgetown*, 28 Mass. App. Ct. 697, 701-03, *further appellate review denied*, 408 Mass. 1103 (1990). We are satisfied that our narrow application of §23(b)(2) here, to prohibit both specific exploitation of official police powers and the use of official resources for the purpose of private solicitations, easily meets the constitutional standard.<sup>17/</sup>

Therefore, this opinion's advice applies to police officers when acting through the Association and its agents, including any "professional solicitor" (defined in G.L. c. 68, §18) that it retains. We note that G.L. c. 68, §22 requires most contracts between charitable organizations and professional solicitors to be in writing and to be filed with the Attorney General's Division of Public Charities, and you would be well advised to include contract provisions that incorporate this opinion's conclusions in order to indicate reasonable efforts to seek compliance with §23(b)(2) by the association's professional solicitor.

**DATE AUTHORIZED:** January 26, 1993

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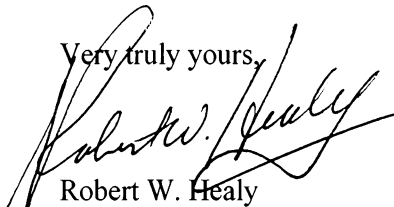
<sup>16/</sup>By reenacting what is now §23(b)(2) following this widely publicized compliance letter, adding only requirements that would not alter the result, the Legislature is presumed to have adopted this construction of §23(b)(2). *See note 10 supra.*

<sup>17/</sup>Since your facts indicate that the Association raises funds solely for charitable purposes, we need not consider here what effect, if any, G.L. c. 150E might have on our analysis if the Association engaged in collective bargaining.

The Attorney General regulates charities and fundraising in Massachusetts. The Chief of the Public Charities Division, Jamie Katz, was contacted. His office has issued a memorandum expressing concerns about some professional fundraisers and charities that have been engaging in fraud. While no Cambridge Police organizations are cited in his report, many of the same concerns expressed by Cambridge residents are addressed in current litigation that the Attorney General has initiated. These include little money going for charitable purposes and failure to comply with charities registration and filing requirements. (Appendix 3) The Public Charities Division reports that the Cambridge Police Mutual Aid Association failed to comply with an audit requirement in 1999 and, thus, are not in full compliance with the regulations. This matter was brought to the attention of the officers of the Association and they have made arrangements to comply with the Attorney General's requirements.

Lastly, the Council voiced concerns about the propriety of police officers participating in solicitation in the community. The Attorney General and the State Ethics Commission have expressed similar concerns. In Massachusetts, police fundraising is statutorily permissible. The legislature has specifically addressed the questions of police solicitations by enacting M.G.L. c. 41, §98E. It provides, "No person or persons shall solicit the public in any manner or form using the word 'police' or firefighter' or any derivative thereof without using the name or names of the city or town police or firefighters organization sponsoring such solicitation." However, M.G.L. c. 268A establishes some restrictions upon this activity. It prohibits statements or conduct by police officers that exploit their official powers. It imposes liability for violations committed "knowingly, or with reason to know," that the conduct is coercive. Prohibitions include: representing that a donation (including purchasing tickets to a fundraising event or purchasing an advertisement in a publication) could result in preferential police treatment, or that failure to donate could result in police reprisals. (Appendix 4) It also prohibits the use of official resources for private solicitations such as those described above. The Cambridge Police Mutual Aid uses 5 Western Avenue as its mailing address and it is where the public often mails the checks that are solicited. The Association was advised to change this practice and they agreed to arrange to have a post office box in order to receive the mail for the Association so as not to use official resources for the private solicitations.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert W. Healy". The signature is fluid and cursive, with a large initial "R" and "H".

Robert W. Healy  
City Manager

RWH/mec  
Attachment



6.

CITY OF CAMBRIDGE • EXECUTIVE DEPARTMENT

*Robert W. Healy, City Manager*    *Richard C. Rossi, Deputy City Manager*

795 Massachusetts Avenue, Cambridge, Massachusetts 02139

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August 4, 2003

To the Honorable, the City Council:

In response to Awaiting Report Item Number 03-68, regarding a report on investigating the fundraising tactics currently being practiced by those parties working on behalf of the Police Department, Police Commissioner Ronnie Watson reports the following:

I am writing in response to the Council Order regarding the fundraising tactics currently being practiced by those parties working on behalf of organizations using the phrase, "Cambridge Police" as part of their official name.

The Council received numerous complaints and inquiries concerning recent police fundraising. The complaints include suspicion as to whether this is a legitimate charity, the aggressive nature of the solicitations, and whether it is proper for the police to be soliciting in the community where they serve.

This matter was investigated and it was found that the only association comprised of members of the Cambridge Police Department that is currently soliciting from the public is the Cambridge Police Mutual Aid Association. There have also been solicitations from other police organizations, such as the Police Protective Fund. (See Appendix 1) The Cambridge Police Superior Officers' Association has solicited funds in the past and may do so in the future, but is not currently fundraising.

The Cambridge Police Mutual Aid Association was organized by members of the Cambridge Police Department in 1888. It provides death, retirement, sickness and hospitalization aid to members of the organization. The members are required to pay dues in order to receive benefits from the Mutual Aid Association. In addition, they solicit funds from the public to supplement their ability to provide benefits to its members. They began a telephone solicitation campaign on May 1, 2003, finished the solicitations on June 19, 2003 and completed all business on July 18, 2003. A professional fundraising company, Eastern Advertising, Inc., is conducting the solicitations. No individual Cambridge Police officers actually make the calls. Mr. Peter Leavitt, president of the company, stated that he is responsible for the campaign. A script is used when telephone calls are made (Appendix 2). They do, in fact, offer to pick up the check from the contributor. Eastern Advertising receives 60% of the proceeds and the Cambridge Mutual Aid Association receives 40% of the proceeds. They expect to raise about \$200,000 during this campaign, which will be divided between the two groups in that proportion. Mr. Leavitt reports that they record each conversation because they want to monitor the call to make sure that the persons they are calling are not being intimidated or coerced. They are selling advertisements to businesses and selling tickets to a celebrity hockey game to individuals. (Appendix 2)

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**Consent Agenda #6**

Transmitting communication from Robert W. Healy, City Manager, relative to **Awaiting Report Item Number 03-68**, regarding a report on investigating the fundraising tactics currently being practiced by those parties working on behalf of the Police Department.

**In City Council August 4, 2003**

**REFERRED BACK TO CITY  
MANAGER FOR A REPORT ON  
THE AUDIT**