



CITY OF CAMBRIDGE

Office of the City Solicitor
City Hall

795 Massachusetts Avenue
Cambridge, Massachusetts 02139

Tel. (617) 349-4121
Fax. (617) 349-4807 4134

Russell B. Higley
City Solicitor

Donald A. Drisdell
Deputy City Solicitor

Michael C. Costello
Assistant City Solicitor

Birge Albright
Legal Counsel

Gail S. Gabriel
Legal Counsel

Diane Wynshaw-Boris
Legal Counsel

Laura H. Yager
Legal Counsel

Linda A. Stamper
Legal Counsel

Arthur J. Goldberg
Legal Counsel

February 5, 1993

Robert W. Healy
City Manager
795 Massachusetts Avenue
Cambridge, MA 02139

Re: Calendar Item #3, 12/14/92.
Conflict of interest question involving spouses or
siblings of employees of City boards or commissions

Dear Mr. Healy:

I enclose a copy of the above-referenced Resolution, which
calls on me to prepare an ordinance

prohibiting spouses or siblings of employees
of City agencies from appearing before the
boards or commissions that their spouses or
siblings are employed with.

Before coming to a vote, this Resolution was referred to the Law
Department for a report regarding the application of the Code of
Conduct Ordinance, Cambridge Code, Chapter 2.117.

Code of Conduct Ordinance

I have examined Chapter 2.117, and I find that it does not
prohibit the relatives of employees of City boards and commissions
from appearing before said boards and commissions. However,
§2.117.040 states:

Section 2.117.040: Improper influence. No municipal official or employee shall make, participate in making or in any way attempt to use such municipal official's or such employee's position, influence or power, to influence or effect (sic) any City governmental decision or action in which such municipal official or employee knows or has reason to know that such official or employee has any economic interest. Nothing in this section shall be interpreted so as to preclude the Members of the City Council from voting on City Council Salary appropriations.

State Conflict of Interest Law

I have also examined the State Conflict of Interest Law, G.L. c. 268A, and I find that it also does not contain any flat prohibition against relatives of employees of City boards and commissions appearing before said boards and commissions.

However, as is the case with the Code of Conduct Ordinance, Chapter 268A does forbid a city employee from participating in a particular case in which he or his immediate family has a financial interest. See G.L. c. 268A, §19, which states, in part:

(a) Except as permitted by paragraph (b), a municipal employee who participates as such an employee in a particular matter in which to his knowledge he, his immediate family or partner, a business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest, shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than two years, or both.

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Chapter 268A also contains general standards of conduct. See §23, which states, in part, as follows:

§23. Supplemental provisions; standards of conduct

(a) In addition to the other provisions of this chapter, and in supplement thereto, standards of conduct, as hereinafter set forth, are hereby established for all state, county, and municipal employees.

(b) No current officer or employee of a state, county, or municipal agency shall knowingly, or with reason to know:

(1) accept other employment involving compensation of substantial value, the responsibilities of which are inherently incompatible with the responsibilities of his public office;

(2) use or attempt to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals;

(3) act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

(c) No current or former officer or employee of a state, county or municipal agency shall knowingly, or with reason to know:

(1) accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority;

(2) improperly disclose materials or data within the exemptions to the definition of public records as defined by section seven of chapter four, and were acquired by him in the course of his official duties nor use such information to further his personal interest.

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You will note that this Resolution begins with a reference to "spouses of Rent Control Board employees" who "practice before the Board and are involved with rent control related cases". I believe that this may be a reference to Patricia Cantor, General Counsel to the Rent Board, and her husband Jeffrey Petrucelly, an attorney who occasionally represents clients before the Rent Board.

When Ms. Cantor was appointed General Counsel to the Rent Board in January, 1983, it was decided that she would not participate in any case in which her husband or anyone from his office was involved. This policy is spelled out in a memorandum from Roger Mervis to Board members, dated December 8, 1982, and a memorandum from Pat Cantor to the Hearing Examiners and others, dated January 18, 1983. I am enclosing copies of these memoranda.

In 1984, Mr. Petrucelly and Ms. Cantor obtained a Conflict of Interest Opinion (No. EC-COI-84-97) from the State Ethics Commission. The facts stated as the basis for this opinion were as follows:

FACTS:

You are an attorney in private practice and occasionally represent clients before the Cambridge Rent Control Board (Board). Your spouse is the general counsel to the Board. At the time your spouse was employed by the Board, the Board and the City of Cambridge established the following procedure. In all cases where you or an associate of your firm is involved, the spousal relationship is disclosed to the opposing party, and your spouse is disqualified from any participation in the case, including all internal agency discussion and consideration of the case. You are also presently involved in one lawsuit in court challenging a regulation of the agency. The suit was commenced prior to your spouse's employment, and she has not participated in any manner in this case ... (footnotes omitted).

The question was stated as follows:

Does the fact that you represent clients before an agency to which your spouse is general counsel constitute a violation of G.L. c. 268A?

The Commission gave the following answer:

No, as long as your spouse continues to refrain from all participation in any matter, concerning any of your clients' cases.

The discussion was as follows:

As general counsel to the Board, your spouse is a municipal employee and therefore is subject to the provisions of G.L. c. 268A, the conflict of interest law. The provision of that law which is relevant to your question is §23. It provides in pertinent part that no municipal employee shall use or attempt to use his official position to secure unwarranted privileges for himself or others. Nor shall the employee by his conduct give reasonable basis for the impression that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is unduly affected by the kinship, rank, position or influence of any party or

person. These provisions would be implicated, for example, if your spouse were to accord you or your associates or clients special treatment in the course of adjudicatory proceedings, or cause one of her co-workers to accord such treatment. Section 23 also provides that no municipal employee shall disclose confidential information acquired in the course of his or her employment, nor use such information to further his or her personal interests. See generally EC-COI-84-16. You state the Board has already taken steps to screen your spouse from any involvement in any matter in which you or one of your associates represents clients. You also state that opposing parties are informed of the spousal relationship and the screening measures at the outset of any matter before the Board. The Commission concludes that these measures provide adequate safeguards for the avoidance of §23 violations (footnotes omitted).

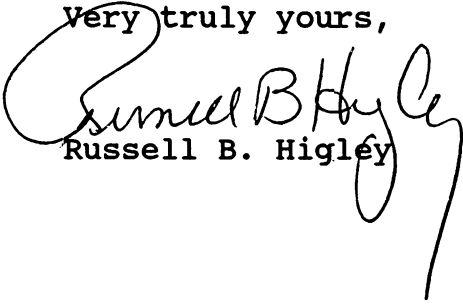
I am also enclosing a copy of an opinion obtained by Mr. Petrucelly and Ms. Cantor, dated May 23, 1985, from the Massachusetts Bar Association Committee on Professional Ethics.

SUMMARY

Neither the Cambridge Code of Conduct Ordinance nor the Massachusetts Conflict of Interest statute (G.L. c. 268A) prohibit the relatives of employees of City boards and commissions from appearing before said bodies. Rather, the approach of both the Ordinance and the statute is to require that the employee be disqualified from participating in any case which he or she has an interest. The Ordinance speaks of the employee's "economic interest" (§2.117.040). The statute refers to the employee's "financial interest", but also extends the coverage to include the financial interest of the employee's

... immediate family or partner, a business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment.

Very truly yours,


Russell B. Higley

RBH/jab
Enclosures

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CITY OF CAMBRIDGE
CAMBRIDGE, MASSACHUSETTS 02139

TEL. 349-4300
FAX. 349-4307

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

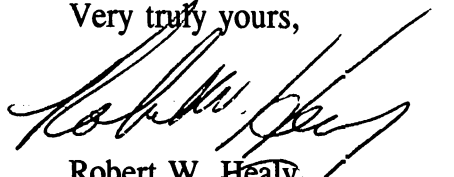
RICHARD C. ROSSI
Deputy City Manager

March 1, 1993

To The Honorable, The City Council:

Please find attached a response to Awaiting Report Item No. 12, regarding a report from the Law Department regarding the implication of the Code of Conduct Ordinance, involving spouses of siblings of employees of City boards or commission, received from Russell B. Higley, City Solicitor.

Very truly yours,



Robert W. Healy
City Manager

RWH/mev
attachment

~~Consent Agenda # 2~~ S-III

Awaiting Report Item # 12 regarding a report from the Law Department regarding the implication of the Code of Conduct Ordinance involving spouses of siblings of employees of City boards or commissions.

*for Original Order, see
Ordinances 1992 #44*

In City Council,

March 1, 1993

Placed on file