

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

COMMISSION FACT SHEET

GUIDELINES FOR MUNICIPAL OFFICIALS VOTING ON BUDGETS WHICH INCLUDE SALARIES FOR FAMILY MEMBERS

Section 19 of the conflict of interest law prohibits a municipal official from participating in any particular matter that affects the financial interest of an immediate family member. "Immediate family" is defined in the conflict law as the employee and his or her spouse, as well as each of their parents, children, brothers and sisters.

In situations where a municipal official's family member is employed by the same city or town, the official may not participate in any discussion or vote on any budget item that would affect the family member's salary. The prohibition includes voting on a budget item that will merely maintain the salary of a family member at its present level or approving "automatic" salary step increases in a budget. The prohibition applies even in cases where a number of other employees (or all employees) are given similar increases.

A 1976 Supreme Judicial court decision, *Graham v. McGrail*, provided the basis for the following guidelines for public officials when faced with this conflict:

1. The municipal official must always abstain from voting on budget items that affect an immediate family member's financial interest.

Not only must the official abstain from voting, he or she may not participate in any official discussion of the matter. The court advised that the best course of action is simply to leave the room during the deliberation and vote of the board.

A public official may vote on the whole budget, including salaries, once the following procedure has been followed: the board must identify the budget line item which includes the family member's salary and vote on it separately. The official whose family member's salary is affected by this line item must abstain from the discussion and vote. After all such conflicts are dealt with through this line item procedure, the board may then vote on the budget as a whole package, with all members participating in the final vote to approve the "bottom line."

-2-

Example: A school committee member whose father works as a custodian for the school department must abstain from voting on the line item of the budget which includes his salary. She appropriately leaves the room during any deliberation and vote on this matter. She may vote on any other line item. She may also participate in the final vote to approve the budget as a whole at the end of this process.

2. City councils and boards of aldermen have the power to vote on the "bottom line" school department budget, but not on specific line items. Because of this, if a conflict arises, the city councillor or alderman may not take advantage of the line item procedure described above; however, there is an alternative. The Commission has ruled that city councilors and aldermen with family members working for the school department may vote on the bottom line school department budget, but they may not discuss or make nonbinding recommendations on the budget line items affecting their family members' salaries.

3. Elected town meeting members are exempt from the conflict of interest law. Town meeting members may vote on any line item or consolidated budget -- whether or not their family members' salaries are affected. The same is true for citizens who attend the town meeting in communities which have the "open" town meeting form of government. Town meeting members who hold municipal positions in the community may vote on their municipal agency's budget, including salary line items that may affect family members.

A somewhat difficult situation arises when a municipal official acts in his or her official capacity at town meeting in presenting a budget, recommending a change or defending a budget line item affecting the financial interest of a family member. If this situation comes up, we urge municipal officials to contact us for advice prior to town meeting.

Example: A finance committee member is also a town meeting member. The finance committee member is acting in his official capacity as a municipal employee at a town meeting when he presents the budget and answers questions about the budget. If his son works for the police department, a question arises as to whether he may participate in discussing the salary line item of the police department's budget at town meeting because it affects the financial interest of his son. He needs to get specific advice on this. The finance committee member, because he is also a town meeting member, may vote on the police department's budget including any salary line items which may affect his son's salary.

4. An exemption is available for appointed municipal employees, which will allow them to act on a budget affecting an immediate family member's financial interest. They must receive advance, written permission to participate from the person or board that appointed them to their job (the appointing official). To receive this permission, the employee must first advise his or her appointing official in writing of the conflict. If the appointing official decides to allow the employee to participate,

-3-

the determination must be made in writing, in advance of any action, that the financial interest of the employee's family member "is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee." Both the disclosure and the appointing authority's determination must be filed with the town clerk to allow for public review.

* * *

Any questions concerning these guidelines should be directed to the Legal Division of the State Ethics Commission.

Commission Fact Sheets are prepared and issued by the Public Education Division of the State Ethics Commission. They are intended to provide guidance to public officials and employees concerning practical applications of the law.

ISSUED: March 1987
REVISED: September 1987
REVISED: October 1991
REVISED: August 1992

Michael Brandon
27 Seven Pines Avenue
Cambridge, MA 02140

May 14, 1998

Cambridge City Council
c/o City Clerk
795 Massachusetts Avenue
Cambridge, MA 02139

Councilors:

At your last meeting I cautioned that city councilors might abridge the state conflict-of-interest law when voting on budget items that include the salaries of immediate family members unless they disclose their relatives' financial interest, refrain from participating, or seek an opinion from the city solicitor or the State Ethics Commission before casting a vote.

As I indicated, my remarks were based on a court ruling and a State Ethics Commission advisory opinion, a copy of which is attached.

Two members of the City Council, Counselors Russell and Sullivan, apparently shared my concern, since before voting on the budget, they publicly sought advice from the deputy city solicitor after disclosing that family members were employed by the city.

While both of these councilors should be commended for seeking to dispel any conflict of interest or appearance thereof, I was disturbed by certain comments made by one of them after I had left the meeting.

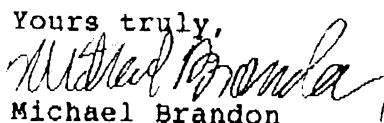
I'm told that Councilor Sullivan took the floor, accused me personally of unspecified "wild accusations," and stated that I owe the city council an apology.

I consider my remarks about possible violations of the state ethics law fully justified by the enclosed fact sheet and entirely appropriate, especially since I took pains not to allege improprieties by particular councilors.

If Councilor Sullivan was in fact objecting to my remarks about the city's outrageous sweetheart lease with Out-of-Town News, I hope he will endorse a public hearing on the matter so that I can document my allegations.

Meanwhile, I'll leave it to others to decide who is owed an apology.

Yours truly,


Michael Brandon

encl.

Consnet Communication #17 369-5

A communicaiton was received
from Michael Brandon, transmitting
a State Ethics Commission Advisory
Guidelines for Municipal Officials
Voting on Budgets which include
Salaries for Family Members.

In City Couincil May 18, 1998

PLACED ON FILE