The Commonwealth of Massachusetts
State Ethics Commission

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

M E M O R A N D U M

TO: City Councillors
FR: Lee Regan, Public Education Director
RE: Educational Materials
DT: April 1, 1987

Enclosed are copies of the following educational materials issued by the Ethics Commission to help you understand the conflict of interest law:

1. Guidelines for voting on Budgets which include salaries for family members.

2. Guidelines for voting on liquor licenses when officials and/or their families own a liquor license.

3. Guidelines for invoking the Rule of Necessity.

4. Guidelines on how to avoid "appearances" of a conflict of interest.

These sets of guidelines arose in the context of repeated inquiries to the Commission staff as well as enforcement cases involving violations of the law in these areas. If you or others in your community have any questions concerning these enclosed guidelines, please call our Legal Division at 727-0060.

Also included in this packet is a list of Commission Advisories we have issued with a description of each. Feel free to call and receive any or all of our advisories.

Finally, I would be happy to set up a conflict of interest seminar for any size group of city officials and employees. Please call me at 727-0060 to arrange for a convenient time.

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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 which affects the financial interest of an immediate family member. Immediate family is defined in the conflict law as the employee and his spouse and 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 which would affect the family member's salary. The prohibition includes voting on a budget which will merely maintain the salary of an immediate 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 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 which affect an immediate family member's financial interest.

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

3. A public official <u>may</u> vote on a 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."

<u>Example</u>: 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.

4. 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 which may affect family members.

A somewhat difficult situation arises when a municipal official acts in his official capacity at town meeting in presenting a budget, recommending a change or defending a budget line item which affects 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.

<u>Example</u>: 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.

5. An exemption is available for <u>appointed</u> municipal employees which will allow them to act on a budget affecting an immediate family member's financial interest. They must receive permission to participate from the public official or board which appointed them to their job (the appointing official). To receive this permission, the employee must first advise his appointing official in writing of the conflict and make full disclosure of the financial interest of his family member in the budget. If the appointing official decides to allow the employee to participate, 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."

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

Issued March 1987

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COMMISSION FACT SHEET

LIQUOR LICENSES AND THE CONFLICT LAW

There has been a great deal of confusion concerning the propriety of municipal officials voting on liquor license matters when they, their family or the business they work for owns such a license. This fact sheet provides the basic "rules" local officials must follow to comply with the conflict law.

Section 19 of the conflict of interest law prohibits a municipal official from participating in any matter which affects his own or his immediate family's financial interest. (Immediate family is defined in the law as the municipal official and his spouse and their parents, children, brothers and sisters.) Section 19 also prohibits officials from voting on matters affecting a business for which they work or serve as a partner, director, officer or trustee.

This means that municipal officials may not vote to issue or renew liquor licenses owned by any of the above -- <u>even if</u> licenses are simply renewed automatically on a yearly basis. It also makes no difference whether the license is up for renewal alone or if the license is one of out of fifty receiving renewals at the same time. The official must always abstain from voting on liquor licenses for himself, his immediate family or a business with which he's affiliated.

The larger issue involves whether municipal officials who hold liquor licenses (or whose family or place of business holds a license) can vote on <u>any</u> liquor license matter in their community. The prohibition in the conflict law extends to voting on matters affecting the financial interest of competitors. Therefore, municipal officials may not vote on any liquor license matter of a competitive establishment in town.

In some of the smaller communities, every liquor license holder may be in competition; in larger cities perhaps the "competitive zone" is much smaller. In a recent opinion issued in January, 1987, the Commission stated that a restaurant seeking a commercial liquor license was not in competition with a private club holding a restricted liquor license. In this opinion, the Commission allowed a selectman, who was the president of the corporation, which operated the private club, to vote on the restaurant's application.

There is no one easy "rule" for local officials to rely upon when deciding who the competitors are for any liquor license holder. In a prior Commission advisory opinion, the Commission indicated that local authorities are often in a better position than the Commission to identify the local factors which would make a liquor license holder a competitor.

We suggest that appointed officials rely on their appointing authority to make such a determination. In cases where elected officials are responsible for issuing liquor licenses (i.e., the Board of Selectmen) the board member who holds a liquor license should seek guidance from town or city counsel or from the Commission.

Finally, if there is a "stalemate" concerning the issuance or renewal of a liquor license, the Board member who has a financial interest in the license may not participate to break a tie vote. However, if a Board is unable to act because a majority of members are disqualified due to a conflict of interest, the "rule of necessity" may be invoked to allow the members' participation. There is a formal process which must be followed to invoke the rule of necessity. We urge municipal officials to contact us when faced with such a situation.

Additional questions should be directed to the Legal Division of the State Ethics Commission at 727-0060.

* * *

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 conflict law.

March, 1987

THE COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION
ONE ASHBURTON PLACE - ROOM 619
BOSTON, MASSACHUSETTS 02108
727-0060

ANDREW B. CRANE
EXECUTIVE DIRECTOR

RULE OF NECESSITY

If a member of a town or city board has a conflict of interest, that member will be disqualified from acting on that board matter. In some cases, especially when more than one member is disqualified, a board cannot act because it does not have a quorum. (If the number for a quorum is not set by law, a quorum is generally a majority of the board members.) In these instances, the board can use what is called a Rule of Necessity to permit the participation of the disqualified members in order to make a quorum to allow the board to act.

The Rule of Necessity is not a law written and passed by the Legislature. Rather, the Rule of Necessity was developed because judges applied it in their court decisions.

The Rule of Necessity works in the following way:

1. It can only be used if a board is unable to act on a matter because it cannot obtain a quorum because members are disqualified from acting.

> Example: A five member board has a meeting and all members are present. Three of the five members have conflicts. A quorum is three. The two members without conflicts do not make a quorum. The board cannot act. The Rule of Necessity will permit all members to participate.

> Example: A five member board has a meeting and four members are present (one member is sick at home). Two of the four present members have conflicts. A quorum is three. The one member who is sick at home does not have a conflict. The Rule of Necessity may not be used because there is a quorum of the board which is able to act. Because one member of that quorum is absent does not permit use of the Rule of Necessity.

> Example: A five member board has a meeting and all members are present. One member has a conflict and is disqualified. The vote is a two to two tie. The Rule of Necessity may not be used to break the tie. In general, a tie vote defeats the issue being voted on.

(Stated differently, a tie vote will maintain the status quo.)

2. The Rule of Necessity should be invoked by the chairman of the board, upon advice from town or city counsel. It is advisable for town or city counsel to set guidelines for exactly when and in what circumstances the rule of necessity should be invoked.

3. If it is proper for the Rule of Necessity to be used, it should be clearly indicated in the minutes of the meeting that the board was unable to obtain a quorum due to disqualification of members and, as a last resort, that those disqualified will now participate under the authority of the Rule of Necessity.

4. The Rule of Necessity may only be used as a last resort. Every effort must be made to find another board capable of acting in place of the board which could not obtain a quorum.

5. A board member who is disqualified from acting because of a conflict of interest may not be counted to make up a quorum on that particular matter; the member may be counted to make up a quorum for all other aspects of the board meeting.

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COMMISSION FACT SHEET

AVOIDING "APPEARANCES" OF CONFLICTS OF INTERESTS

STANDARDS OF CONDUCT (Section 23)

The appearance of a conflict of interest will often be created when a public employee's personal interests or relationships overlap with his or her public obligations. The Standards of Conduct (§23 of the conflict law) provides a general code of ethics for all public employees and officials when faced with this overlap of private interests and official responsibilities.

This fact sheet explains the provisions of the Standards of Conduct.

UNWARRANTED PRIVILEGES

Municipal officials or employees are prohibited from using or attempting to use their official positions to secure for themselves or others unwarranted privileges of substantial value which are not properly available to similarly situated individuals. Substantial value has been set at $50 by the courts and the Commission.

> Example: A city employee submits a request for reimbursement for travel expenses he said that he incurred in attending a conference. The employee did, in fact, attend the conference, but did not incur the full expenses for which he seeks reimbursement. This conduct would violate the conflict law since it is an attempt to use his official position to secure an unwarranted privilege of substantial value for himself.

> Example: A full-time employee in the Mayor's Office uses the office computer after hours to set up a data base for his wife's accounting business. This violates the conflict law. Using city equipment and resources for personal business is using an official position to obtain an unwarranted privilege of substantial value not properly available to others.

"APPEARANCES" OF CONFLICTS

Public officials and employees must avoid conduct which creates a reasonable impression that any person can improperly influence or unduly enjoy their official favor, or that they are likely to act or fail to act because of kinship, rank, position or undue influence of any party or person. A reasonable impression of favoritism or bias may arise when a public official acts on matters affecting a friend's, a business associate's or a relative's financial interest.

Current state law allows public officials to act on matters, even if it creates the appearance of a conflict, if they openly admit all the facts surrounding the appearance of bias prior to any official action. (Prior to April, 1986, when section 23 was amended by the Legislature, if there was an "appearance" of a conflict, it automatically constituted a conflict of interest mandating that the public official abstain from acting on the matter.)

Specifically, the law now states that if a reasonable person having knowledge of the relevant circumstances would conclude that a public official or employee could be improperly influenced, that person can dispel this impression of favoritism by disclosing all the facts which would lead to such a conclusion. For example, it may be necessary for a public official to disclose a personal relationship with someone appearing before his or her board.

Appointed officials must disclose in writing to their appointing authority (the person or board who appointed them to their job). This disclosure must be kept available for public inspection. An elected official's public disclosure must be made in writing and filed with the city or town clerk. These public disclosures must be made <u>prior</u> to any official participation or action. In addition, if an appearance of a conflict of interest arises in a public meeting, officials would be well advised to make a verbal disclosure for inclusion in meeting minutes.

Once a public disclosure has been made, the official may participate in the matter notwithstanding the "appearance" of a conflict. When officials do act on matters affecting individuals with whom they have a private relationship, they must act objectively and be careful not to use their official position to secure any unwarranted privilege or benefit for that person.

NOTE: The conflict law (in section 19) expressly prohibits public officials from acting on any matter which affects the financial interest of themselves, their immediate family members or businesses for which they serve as employee, partner, officer director or trustee. Immediate family is defined in the law as the employee and his spouse and their parents, children, brothers and sisters. The public disclosure process is not available for public officials when faced with matters affecting this group--they simply must abstain from participating in the matter.

> Example: An elected planning board member participates in the planning board's consideration of a subdivision plan submitted by a contractor who previously built the planning board member's house. Her participation in the planning board's consideration would create a reasonable basis for the impression that the contractor could unduly enjoy her favor in the performance of her official duties. To dispel this appearance of bias, the planning board member must disclose in writing her private relationship with the contractor and file the disclosure with the town clerk. She may then vote on the subdivision plan.

> Example: The longtime friend of the chief of the town's Highway Department applies for a job in the Highway Department. If the chief gets involved in the hiring process, it may appear as though he would be biased in favor of his friend. To dispel the appearance of favoritism, the Highway Department chief must disclose his private relationship with the job applicant in writing to his appointing official (the Board of Selectmen). The Board of Selectmen may determine that further steps should be taken to avoid the appearance of a conflict (e.g., instruct the Highway Department Chief not to participate in the hiring).

INHERENTLY INCOMPATIBLE ACTIVITIES

A municipal employee is prohibited from accepting other employment involving compensation of substantial value ($50.00 or more) the responsibilities of which are inherently incompatible with the responsibilities of his public office. For example, in a 1984 enforcement case, a state mediator admitted he violated the conflict law by working privately for a union when he was involved in mediating a labor dispute with the same union.

USE OF CONFIDENTIAL INFORMATION

No current <u>or</u> <u>former</u> officer or employee of a municipal agency may:

> 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; or

improperly disclose material or data which are not considered public records and which are acquired by him in the course of his official duties nor use such information to further his personal interests.

<u>Example</u>: A former employee of the town personnel office sets up her own employment placement service and uses confidential information from the town's personnel records to prepare a client list for use in her private business. This violates Section 23 because she would be using confidential information acquired in the course of official duties to further her personal interests, and also because she would be using her official position to secure for herself an unwarranted privilege not properly available to similarly situated individuals (i.e., other placement services).

* * *

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March 1987

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<u>CONFLICT OF INTEREST SEMINAR</u>

The State Ethics Commission's conflict of interest seminar presents an overview of the conflict law for municipal officials and employees. The purpose of the seminar is to explain to these individuals how to avoid potential conflicts which may arise between their private interests and public positions. The goal of the presentation and question and answer period is to provide a basic understanding of the principles of the law and how to comply with them by discussing "real life" situations and conflicts that arise on the job.

The conflict law covers what municipal employees may do:

1. on the job
2. after hours
3. after they leave government service.

Some of the topics covered at our seminars include: restrictions on receiving gifts, outside employment, contracting with the town, acting on matters in which family members and business associates have a financial interest, dual office holding, and leaving municipal government to work for companies which conduct business with the town.

To arrange a seminar, please contact Lee Regan, Public Education Director at 727-0060.

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SUMMARIES OF COMMISSION ADVISORIES

ADVISORY NO. 1 - Public and Private Dealings with Vendors. This advisory alerted state officials and employees of the potential conflict of interest problems which would arise whenever they used the private services of a vendor or contractor over whom they exercise official state responsibility.
Authorized February 4, 1983.

ADVISORY NO. 2 - Guidelines for Legislators Accepting Honoraria. This advisory provided guidelines for when and under what circumstances state senators and representatives may accept honoraria and expenses for travel, lodging and meals for outside speaking engagements.
Authorized August 16, 1983

ADVISORY NO. 3 - Municipal Officials Being Appointed to Positions Under Their Own Boards. This advisory explained the conflict law's prohibition against municipal officials being eligible for appointment to positions under the supervision of their board or for 30 days thereafter and selectmen being eligible for appointment to any municipal position while serving as selectman or for six months after resigning.
Authorized March 27, 1984

ADVISORY NO. 4 - Political Activity. This advisory discusses how the "standards of conduct" section of the conflict law prohibits public employees from using public resources to conduct or support a political campaign. The advisory also highlights the provisions of Chapter 55 on political fundraising and other campaign activities.
Authorized May 8, 1984

ADVISORY NO. 5 - Independent Municipal Agencies. This advisory explains how the conflict law applies to employees of "independent" municipal agencies such as local housing authorities and local water and fire districts.
Authorized May 29, 1984

ADVISORY NO. 6 - Municipal Lawyers Representing Both Sides in the same Suit. This advisory explains how the provisions of the conflict law apply to attorneys who are called upon to represent both the municipality and the municipal employee in civil rights lawsuits and in other lawsuits based upon the employee's official acts.
Authorized September 25, 1984

ADVISORY NO. 7 - Multiple Office Holding. This advisory clarified the application of Section 20 of the conflict law to municipal employees and officials holding more than one municipal position.
Authorized January 8, 1985.

ADVISORY NO. 8 - Free Passes. This advisory alerted the entertainment industry and public officials that the longstanding practice of providing free passes to public officials for entertainment events often involves a violation of Section 3 of the conflict law.
Authorized May 14, 1985.

ADVISORY NO. 9 - State Employee Stock Ownership. This advisory reviewed the principles of the conflict law which apply to state employees who own stock in corporations which contract with state agencies.
Authorized February 25, 1986.

ADVISORY NO. 10 - Police Chiefs Paid Details. This advisory provided guidelines to Boards of Selectmen and City Councils to aid them in restructuring a police chief's employment arrangement so as to permit paid details without violating the conflict law.
Issued June 26, 1986

ADVISORY NO. 11 - Nepotism. This advisory explains to public officials and employees exactly what constitutes a "nepotism" violation and what the Commission's enforcement policy is regarding these violations.
Issued December 15, 1986.

ADVISORY NO. 12 - County Charter Commissions. This advisory provides guidelines for all members of county charter commissions and specifically deals with the restrictions the conflict law places on county employees who serve on county charter commissions (with an emphasis on county commissioners who serve ex officio on the charter commissions).
Authorized January 12, 1987

For copies of these advisories call the Public Education Division of the State Ethics Commission at 727-0060.

 8-264

Comm. from Lee Regan, Public Education Director, Mass. State Ethics Commission, transmittigg guidelines to provide a better understanding of the conflict of interest law.

In City Council,

April 13, 1987

Placed on File
Copy to all Councillors

Copy sent to all Councillors
4/24/87 mh