

General Laws Chapter 268A, Section 23

STANDARDS OF CONDUCT

In addition to the other provisions of this chapter, and in supplement thereto, standards of conduct, as hereinafter set forth in this section, are established for all state, county and municipal employees. When a current employee is found to have violated these provisions, appropriate administrative action as is warranted may also be taken by the appropriate constitutional officer, by the head of a state, county or municipal agency.

No current officer or employee of a state, county or municipal agency shall:

- (1) accept other employment which will impair his independence of judgment in the exercise of his official duties;
- (2) use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others;
- (3) 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.

No current or former officer or employee of a state, county or municipal agency shall:

- (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 interests.

Upon qualification for office following an appointment or election to a municipal agency, such appointed or elected person shall be furnished by the city or town clerk with a copy of this section. Each such person shall sign a written acknowledgement that he has been provided with such a copy.

Massachusetts

CONFLICT of INTEREST LAW

For Municipal Employees

Who is covered by the law?

The conflict of interest law (Chapter 268A of the General Laws), enacted in 1962, covers all state, county and municipal employees, whether elected or appointed, full or part-time, paid or unpaid. The law also regulates the activities of former employees and partners of current and former employees.

Some municipal employees are designated as special municipal employees by the city council, board of selectmen, or board of aldermen. For these individuals, some sections of the law (for example, Sections 17 and 20) apply in less restrictive ways.

You may be designated as a special municipal employee if you are not a mayor, an alderman, a city councillor, or a selectman in a town with a population in excess of 5,000, provided:

- * you are not paid; or
- * you hold a part-time position which allows you to engage in other employment during normal working hours; or
- * you were not paid by the municipality for more than 800 hours during the preceding 365 days.

All employees who hold equivalent offices or positions in the same municipal agency must have the same classification. For instance, if one member of a school committee is classified as a special municipal employee, all members should be so classified. Only in towns of 5,000 or less may selectmen designate themselves as special employees.

This pamphlet presents a brief overview of the conflict law and suggests activities which you, as a municipal employee, must avoid. It does not give a comprehensive review of the law or answer individual questions. A more detailed Guide to the law as it applies on the local level is also available from the State Ethics Commission (One Ashburton Place, Room 1413, Boston, MA 02108).

AS A MUNICIPAL EMPLOYEE, YOU ARE ENTITLED TO THE OPINION OF YOUR CITY SOLICITOR OR TOWN COUNSEL ON ANY QUESTION ARISING UNDER THE CONFLICT LAW RELATED TO YOUR DUTIES, RESPONSIBILITIES OR INTERESTS. IF YOU HAVE ANY QUESTIONS ABOUT YOUR OWN ACTIVITIES, REQUEST AN OPINION.

What kinds of activities are covered by the law?

BRIBES (Section 2)

This Section of the conflict law prohibits the most obvious kinds of corruption: cases where you are offered payment to perform official duties (or not to perform them) in a certain way. The law imposes penalties, not only on employees who seek or receive payoffs or kickbacks, but also on private parties who offer or pay them.

EXTRA PAY OR GIFTS (Section 3)

Extra payments, gifts or privileges offered because of (but not necessarily to influence) your official actions are prohibited. In other words, it is illegal to accept anything of "substantial value" beyond your salary in return for performing work that you were hired or elected to perform, even if given by a private party simply out of gratitude for a job well done.

OUTSIDE ACTIVITIES (Section 17)

The law limits what you may do for someone other than your municipality or the municipal agency which employs you - in other words what you may do "on the side." This Section is designed to protect the municipal employee and municipality from the problems resulting when people "serve two masters."

While you are a municipal employee, you cannot be compensated by anyone else in relation to any "particular matter" in which the municipality is a party or has a direct and substantial interest. (A "particular matter" is defined as an activity involving decision making or judgement and refers to specific projects and proceedings rather than general issues). Working for others in such matters is prohibited even if the interest is held by a different agency within your municipality.

For example, a full-time municipal public works employee is prohibited from serving as a consultant to a private contractor in the preparation of a bid which is to be submitted to the housing authority from the same municipality. Similarly, you cannot act as agent or attorney for anyone in such matters, even if you are not paid.

NOTE: This is one of the Sections of the law which applies differently to special municipal employees.

ACTIVITIES OF FORMER MUNICIPAL EMPLOYEES (Section 18)

This Section aims to prevent the "revolving door syndrome." It prohibits former employees from deriving unfair advantages by improperly using friendships and associations formed or confidential information obtained while serving the government. Section 18 is not designed to prevent you from using general expertise developed while a municipal employee. It focuses on "particular matters" in which you participated or for which you had official responsibility while you were a municipal employee.

If you participated in a "particular matter" as a municipal employee, you can never become involved in that same "particular matter" after you leave municipal service, except on behalf of the municipality. (This same restriction applies to the partners of former municipal employees for one year).

If you had "official responsibility" for a "particular matter" in your municipal position even if you did not actually participate in it, you may not appear personally before any agency of the municipality on behalf of a private party in connection with the matter for one year after leaving government.

There are also certain restrictions on the activities of partners of current municipal employees. Partners of employees may not act as agent or attorney for anyone other than the municipality in connection with "particular matters" of interest to the municipality in which the municipal employee participates or which are part of that employee's official responsibility.

ACTIONS ON THE JOB (Section 19)

The law recognizes that your financial interests and those of your partners or close relatives could influence the way you do your job. To discourage "self-dealing," the law prohibits you from participating in a "particular matter" in which you or any of the following have a financial interest: your immediate family (including you, your spouse and the parents, children, brothers and sisters of you and your spouse); your partner(s); a business organization in which you serve as an officer, director, trustee, partner, or employee (including a non-profit organization); any person or organization with whom you are negotiating or have any arrangement concerning prospective employment.

If such a matter comes up, you would be allowed to participate in it ONLY IF your appointing official makes a written determination that your interest is not so substantial as to affect the integrity of your services.

MUNICIPAL CONTRACTS (Section 20)

Section 20 works to prevent you from using your position to benefit from municipal contracts and to avoid the public perception that municipal employees have an "inside track" on municipal contracts. In general, as a municipal employee, you are prohibited from having a direct or indirect financial interest in a contract made by any agency of the same municipality. However, there are a number of exceptions to this general prohibition. Some of these exceptions depend on the relationship between the agency you regularly work for and the contracting agency; others turn on whether you qualify as a special municipal employee; and still others relate to very specific situations. As a general proposition, there will be very few instances when you will be able to contract with your own agency. However, there will be instances where you will be able to contract with other agencies as long as certain specific conditions set out in the statute are met.

IF YOU LEARN THAT YOU HAVE A FINANCIAL INTEREST IN A MUNICIPAL CONTRACT, YOU MUST, WITHIN 30 DAYS, FULLY DISCLOSE YOUR FINANCIAL INTEREST TO THE AGENCY INVOLVED AND DISPOSE OF YOUR INTEREST OR OTHERWISE OBTAIN AN EXEMPTION.

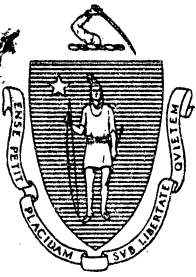
STANDARDS OF CONDUCT (Section 23)

Section 23 of the conflict of interest law provides a general code of ethics for all public employees. Under that code, as a current public employee you may not:

1. accept other employment which will impair your independence of judgment in the exercise of your official duties;
2. use or attempt to use your official position to secure unwarranted privileges for yourself or others; or
3. by your conduct give reasonable basis for the impression that any person can improperly influence or unduly enjoy your favor in the performance of your official duties, or that you are unduly affected by the kinship, rank, position or influence of any party or person.

As a current or former employee you may not:

1. accept employment which will require disclosure of confidential information; or
2. improperly disclose or use confidential information.



THE COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

ONE ASHBURTON PLACE ROOM 1413
BOSTON, MASSACHUSETTS 02108
727-0060

COMMISSION MEMBERS

COLIN S. DIVER (CHAIRMAN)
DAVID BRICKMAN
FRANCES M. BURNS
REV. BERNARD P. McLAUGHLIN
JOSEPH I. MULLIGAN, JR.

ROBERT V. GRECO
EXECUTIVE DIRECTOR

January 30, 1984

Dear Clerk:

Last Fall, the Governor signed into law Chapter 409 of the Acts of 1983. That law which went into effect on January 7, 1984 amends § 23 of G. L. c. 268A (the conflict of interest law) to provide that:

Upon qualification for office following an appointment or election to a municipal agency, such appointment or elected person shall be furnished by the city or town clerk with a copy of this section. Each such person shall sign a written acknowledgement that he has been provided with such a copy.

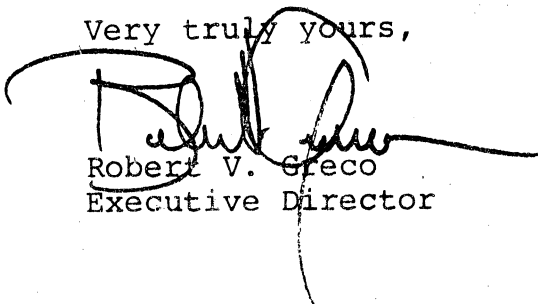
As you know, § 23 sets forth "Standards of Conduct" applicable to all state, county and municipal employees. The legislature in enacting Chapter 409 has recognized the importance of keeping municipal officials abreast of their responsibilities under the conflict law. Section 23 is, however, only one part of that law. To assist you in complying with Chapter 409, we are enclosing for your use and copying:

1. the actual text of § 23, and
2. a two-page summary of the major provisions of the conflict of interest law.

It is suggested that you supply people with both of these so that they do not get the impression that only § 23 is applicable to them.

If I can be of any further assistance in this matter, please feel free to contact me.

Very truly yours,


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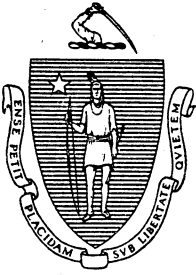
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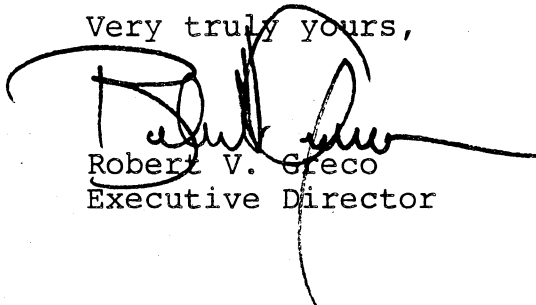
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Comm. from Paul E. Healy, City Clerk, transmitting a comm. from Robert V. Greco, Exec. Dir., State Ethics Commission Re: General Laws Chapter 268A, Section 23 & amendments thereto by Chapter 409 of the Acts of 1983, effective January 7, 1984.

*copy sent to City Manager
2/1/84 mh*

In City Council,

February 27, 1984

*2/27/1984
Placed on File
Copies to the
City Manager -*