



CITY OF CAMBRIDGE
INTEROFFICE CORRESPONDENCE

To Russell B. Higley, City Solicitor

Date June 16, 1982

From Paul E. Healy, City Clerk

Reference

Subject Town employees serving as selectmen in the
same town

Please be advised that the City Council is in receipt of a communication from the State Ethics Commission, a copy of which is enclosed, with regard to town employees serving simultaneously in the capacity of selectmen in the same towns.

Councillor Duehay, at the City Council meeting held June 14, 1982 has requested that you submit a determination of appropriate guidelines for the Council to be followed in view of this recent change in the conflict of interest law.

Your kind attention in this matter will be greatly appreciated.

PEH/mh

Enclosure



The Commonwealth of Massachusetts

State Ethics Commission

COMMISSION MEMBERS

JAMES VORENBERG (CHAIRMAN)
MARVER BERNSTEIN
DAVID BRICKMAN
REV. BERNARD P. MCCLAUGHLIN
JOSEPH I. MULLIGAN, JR.

ROBERT V. GRECO
GENERAL COUNSEL

MAUREEN MCGEE
EXECUTIVE DIRECTOR

June 8, 1982

TO: City Councillors, Selectmen, City Solicitors, Town Counsel
FROM: Robert V. Greco, General Counsel

On May 28, 1982, the Governor signed Chapter 107 of the Acts and Resolves of 1982. Chapter 107 amends section 20 of Chapter 268A, the conflict of interest law, so that employees of a town may serve as selectmen in the same town as long as:

- a) in their capacity as selectmen they do not vote or act on any matter within the purview of any municipal agency by which they are employed or over which they have official responsibility in their other position;
- b) selectmen are not appointed to a municipal position while members of the board of selectmen or for 6 months after leaving the board; (in other words, a teacher may be elected to serve as a selectman but a selectman may not take a teaching position in the same town while serving as selectman or for 6 months thereafter); and
- c) compensation is not received for more than one office or position in a town. (Individuals may choose which compensation they wish to receive.)

(The complete text of Chapter 107 is attached for your information.)

As a result of passage of Chapter 107, the Commission will no longer be required to initiate enforcement actions against municipal employees serving as selectmen. However, Chapter 107 does not affect members of a city council who hold another position in their city. In interpreting Section 20 of Chapter 268A, the Commission has ruled that city councillors who serve the same city in some other capacity, such as a teacher, policeman or fireman, violate the law.* Consequently, complaints covering city

* However, it should be noted that the Commission ruled in EC-COI-82-26 that holding two elected offices in a city or town does not present a problem under Chapter 268A, although it may under other statutes.

councillors who serve as municipal employees in the same city will now be handled in the same manner as complaints regarding any other violations of the conflict law.

Chapter 107 also does not address the propriety of other forms of dual office holding in the same municipality.

Whether a municipal employee violates Chapter 268A by holding another municipal position will depend on whether in one or both capacities, the employee has been designated as a "special" municipal employee and either

- a) does not participate in or have official responsibility for any of the activities of the other agency in which he serves and files with the City or Town Clerk a statement making full disclosure of his interest in the second position; or
- b) files with the Clerk a statement making full disclosure of his interest in the second position and secures the approval of the City Council or Board of Selectmen.

As is always the case, municipal employees with questions regarding the application of Chapter 268A to their own situation may seek the advice of their Town Counsel or City Solicitor.

I would appreciate your taking whatever actions you could to make employees in your city or town aware of the information reviewed in this memorandum.

HOUSE No. 5877

Substituted by the House, on motion of Mr. Cellucci of Hudson and as amended on motion of Mr. Cerasoli of Quincy, for a Bill providing that a person shall not be prohibited from holding an elective or appointive office in a city, town or district because such person is an employee of such city, town or district (House, No. 1657). March 15.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Two.

AN ACT PROVIDING THAT A PERSON SHALL NOT BE PROHIBITED FROM HOLDING THE OFFICE OF SELECTMAN IN A TOWN BECAUSE SUCH PERSON IS AN EMPLOYEE OF SUCH TOWN.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 Section 20 of Chapter 268A of the General Laws is hereby
- 2 amended by adding the following paragraph: —
- 3 This section shall not prohibit an employee of a town from
- 4 holding the position of Selectman in such town nor in any way
- 5 prohibit such an employee from performing the duties of or receiv-
- 6 ing the compensation provided for such office.
- 7 Provided that no such member may vote or act on any matter
- 8 which is within the purview of the agency by which, he is employed
- 9 or over which he has official responsibility, and provided further
- 10 that no member shall be eligible for appointment to such addition-
- 11 al position while a member or for six months thereafter. Any
- 12 violation of the provisions of this paragraph which has substantial-
- 13 ly influenced the action taken by any municipal agency in any
- 14 matter shall be grounds for avoiding, rescinding or cancelling the
- 15 action on such terms as the interest of the municipality and inno-
- 16 cent third parties require. No such Selectman shall receive compen-
- 17 sation for more than one office or position held in a town, but shall
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The Commonwealth of Massachusetts

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State Ethics Commission

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CAMBRIDGE, MASS.

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State Ethics Commission

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2.

S-467

Comm. from Paul E. Healy, City Clerk, transmitting comm. from Robert V. Greco, Gen. Counsel, State Ethics Comm. enclosing a copy of Chapter 107 of the Acts and Resolves of 1982 Re: conflict of interest law.

In City Council,

June 14, 1982

6/14/82

Placed on file
Copy sent to City Solicitor
6/16/82