



The Commonwealth of Massachusetts

State Ethics Commission

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CAMBRIDGE, MASS.

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ROBERT V. GRECO
GENERAL COUNSEL

MAUREEN MCGEE
EXECUTIVE DIRECTOR

January 13, 1983

To: City Councillors, Selectmen, City Solicitors and
Town Counsel

From: Robert V. Greco, General Counsel

Re: Special Municipal Employees

Chapter 268A governs the conduct of public officials and employees (referred to collectively in the law as "employees") at the state, county and municipal level of government. The term "employee" at each level is defined very expansively. Someone is considered an employee of a particular level of government if he performs services for it or holds any office, position, employment or membership in any of its agencies. It does not matter whether he is paid or unpaid or whether he works full-time or part-time. For instance, people working on an intermittent basis or as consultants are also covered. However, certain provisions of the law distinguish between regular, full-time employees and special employees. That distinction is important since those provisions apply in a less restrictive fashion to special employees.

On the local level, the provisions relating to "special" employees are often misunderstood and misapplied. The careful systematic designation of certain positions as that of "special municipal employees" does not weaken the law. Rather it provides needed accommodation for employees whose connection with a municipal government is limited. It appropriately imposes fewer restrictions on part-time or volunteer municipal employees than on those holding full-time paid positions.

As the law has read up to now, a municipal employee is a "special" if the city council or board of selectmen in his city or town has classified his position as a "special" employee. However, no standards were set out in the statute to guide the council or board except for the statement that the "classification shall be made by employing standards

reasonably related to the terms and provisions of [Chapter 268A] and all employees who hold equivalent offices, positions, employment or membership in the same municipal agency shall have the same classification."

Chapter 612 of the Acts and Resolves of 1982 (Section 3) has amended the definition of "special municipal employee". That amendment will take effect on March 29, 1983. While the decision as to who will be a "special" is still left with the city council or board of selectmen, restrictions on eligibility for this "special" status are now imposed. These are the same restrictions that have always been imposed on special state and special county employees. Specifically the change in the law provides that

no municipal employee shall be classified as a "special municipal employee" unless he occupies a position for which no compensation is provided or which, by its classification in the municipal agency involved or by the terms of the contract or conditions of employment, permits personal or private employment during normal working hours, or unless he in fact does not earn compensation as a municipal employee for an aggregate of more than 800 hours during the preceding 365 days.

Accordingly, when this provision is combined with the other portions of the law left unchanged, the following "rules" or standards now apply to the designation of "special municipal employees":

- * A mayor, a member of a board of alderman or a member of a city council can never be a "special municipal employee."
- * A selectman in a town with a population in excess of 5,000 persons can never be a "special."
- * A person is eligible for special employee status only if
 - a. he is not paid, or
 - b. he is specifically permitted to have private employment during normal working hours, or
 - c. he did not earn compensation for more than 800 hours during the preceding 365 days.

Typically, the "special" category could include members of part-time boards and commissions or individuals serving on a consultant basis.

- * All employees who hold equivalent offices, positions, employment or membership in the same municipal agency shall have the same classification. For example, designating only one member of a school committee as "special" would be inappropriate. Either all the members of the committee are "specials" or none of them are.

In conclusion, the process by which individuals are designated as "special municipal employees", when fairly and equitably applied, is a vital part of the conflict law. While it obviously must not be abused to solve individual problems or make inappropriate exceptions for single individuals, it is important that it be used to distinguish those categories of employees who should bear the full burden of the law's restrictions from those who need not.

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Comm. from Robert V. Greco, Gen. Counsel, State
Ethics Comm. Re: Special Municipal Employees.

In City Council,

January 24, 1983

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