



## State Ethics Commission

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### Advisory 05-01: The Standards of Conduct

This Advisory explains the provisions of the Standards of Conduct contained in Section 23 of G.L. c. 268A, the conflict of interest law. The Standards of Conduct provide a general code of ethics for all public employees when faced with the overlap of private interests and official responsibilities. Conflict of interest law violations under Section 23 may be created when a public employee's personal interests or relationships overlap with his or her public obligations and may result in penalties of up to \$2,000 per violation. The term "public employee" includes both elected and appointed state, county and municipal employees, whether paid or unpaid. Unpaid volunteer board members as well as, in some instances, consultants and contractors are considered public employees for purposes of the conflict of interest law.

#### I. UNWARRANTED PRIVILEGES (G.L. c. 268A, § 23(b)(2))

Public employees are prohibited from, knowingly or with reason to know, using or attempting to use their official positions to secure for themselves or others unwarranted privileges of substantial value that are not properly available to similarly situated individuals. "Substantial value" has been set at \$50 or more by the courts and the Ethics Commission. In some instances, "substantial value" may not be readily ascertainable, such as when a public employee uses his or her position to get preferential treatment, to secure a special benefit or to retaliate against someone. In such cases, the Ethics Commission will view the totality of the circumstances to determine whether the substantial value threshold has been met. "Similarly situated individuals" can mean, in various situations, other people, businesses or entities in the city, town, state or county who are not necessarily public employees.

Using public equipment and resources for personal business is using an official position to obtain an unwarranted privilege of substantial value not properly available to others. Thus, the use of public resources valued at \$50 or more for personal, private or political purposes violates the conflict of interest law. In addition, public employees may not use the "inherently coercive authority" of their position to seek anything of substantial value.

Example: A manager may not use official time, his staff or the supplies or equipment available to him in his office in order to write books.

Example: An elected official may not invoke his position to seek preferential treatment from police officers during a traffic stop.

Example: A public employee may not generally solicit donations for a private or charitable organization from individuals with whom he conducts official business.

#### II. "APPEARANCES" OF CONFLICTS (G.L. c. 268A, § 23(b)(3))

Public employees must avoid conduct that creates a reasonable impression that any person may improperly influence them 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 employee, knowingly or with reason to know, acts on matters affecting the interest, whether financial or non-financial, of a friend, a business associate or a relative other than an immediate family member or a non-financial interest of an immediate family member. <sup>11</sup>

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

Appointed employees must make such disclosures 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 employee's public disclosure must be made in writing and filed with the city or town clerk. These public disclosures must be made prior to any official participation or action. In addition, the Commission advises public employees to make an oral disclosure for inclusion in the meeting minutes. Occasionally, an appearance of a conflict of interest arises for the first time during a public meeting. In that case, a public employee should make an oral disclosure at the meeting and file a written disclosure as soon as possible thereafter. Alternatively, instead of filing a written disclosure under Section 23(b)(3), a public employee may simply abstain from participating, i.e. debating, voting or otherwise being involved, in a matter that creates an appearance of a conflict.

Once a public disclosure has been made, the public employee may participate in the matter notwithstanding the "appearance" of a conflict. When public employees 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.

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 might unduly enjoy the planning board member's favor in the performance of her official duties. To dispel this appearance of bias, the planning board member must disclose in writing her private business relationship with the contractor and file the disclosure with the town clerk before participating. She may then participate in the board's consideration of the subdivision plan, including voting on the plan.

Example: The longtime friend of the head of a state agency applies for a job in the agency. If the agency head gets involved in the hiring process, it would appear to a reasonable person that he might be biased in favor of his friend. To dispel the appearance of favoritism, the agency head must disclose his private friendship with the job applicant in writing to his appointing official. The appointing official may then determine whether further steps should be taken to avoid the appearance of a conflict (e.g., instruct the agency head not to participate in the hiring and delegate the matter to another employee).

### **III. DEALINGS WITH SUBORDINATES (G.L. c. 268A, § 23(b)(2))**

The inherently exploitable nature of the relationship between superior and subordinate requires formal safeguards to protect against even accidental or unintended coercion or undue pressure by the superior. Section 23 of the conflict of interest law prohibits both actual exertion of undue influence and also the appearance of acting in anything but a completely objective manner. Therefore, persons in supervisory positions may not ask their subordinates to work for them in a private capacity or to contribute to any private interest or organization. In such situations, the subordinate employee may feel coerced even if there is no such intent on the part of the supervisor, and it would be impossible to avoid the "appearance" of impropriety in such situations. The limitations of Section 23 also apply to a public employee dealing with vendors and other individuals that the employee regulates.

Example: A public employee is doing substantial renovations on his home, and he knows that his administrative assistant and his brother do roofing work on the side. The public employee may not ask his assistant to re-shingle the roof, even if he is willing to pay a fair market wage for the work. If, however, the solicitation is made by the subordinate, either directly or through advertisement, rather than the superior, private employment of the subordinate by the superior may be permissible if the proper public disclosures are made to the superior's appointing official. Individuals considering such arrangements should contact the Ethics Commission's Legal Division for specific advice.

### **IV. INHERENTLY INCOMPATIBLE ACTIVITIES (G.L. c. 268A, § 23(b)(1))**

A public employee is prohibited from, knowingly or with reason to know, accepting other employment involving compensation of substantial value (\$50 or more), the responsibilities of which are inherently incompatible with the responsibilities of his or her public office. For example, a public employee who is acting as a mediator would violate the conflict of interest law by working privately for a union when he was simultaneously involved in mediating a labor dispute with the same union.

### **V. USE OF CONFIDENTIAL INFORMATION (G.L. c. 268A, § 23(c))**

No current or former officer or employee of a state, county or municipal agency may, knowingly or with reason to know:

- accept employment or engage in any business or professional activity that will require disclosure of confidential information the employee has gained by reason of his or her position or authority; nor
- improperly disclose material or data that are not considered public records, when an employee acquired such information in the course of his or her official duties; nor
- use such confidential information to further his or her personal interests.

Example: 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 her 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).

\* \* \*

For more information about the state conflict of interest and financial disclosure laws (G.L. c. 268A & c. 268B), including the subjects discussed in this Advisory, please contact:

State Ethics Commission (Ethics Comm.)  
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Boston, MA 02108  
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<sup>1/</sup> The conflict of interest law (in Sections 6, 11 and 19) expressly prohibits public employees from acting on any matter that affects the financial interest of themselves, their immediate family members or businesses for which they serve as an employee, partner, officer, director or trustee. "Immediate family" is defined in the law as the employee and his or her spouse and each of their parents, children, brothers and sisters. The public disclosure process is not available for elected public employees when faced with matters affecting these groups - the officials must abstain from participating in the matter. Public employees who are appointed or hired to their jobs should contact the Ethics Commission or consult its "Advisory 86-02: Nepotism" before taking any action on such matters.

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**DISCLOSURE OF APPEARANCE OF CONFLICT OF INTEREST  
AS REQUIRED BY G. L. c. 268A, § 23(b)(3)**

<b>PUBLIC EMPLOYEE INFORMATION</b>	
Name of public employee:	
Title or Position:	
Agency/Department:	
Agency address:	
Office Phone:	
Office E-mail:	
	<p>In my capacity as a state, county or municipal employee, I am expected to take certain actions in the performance of my official duties. Under the circumstances, a reasonable person could conclude that a person or organization could unduly enjoy my favor or improperly influence me when I perform my official duties, or that I am likely to act or fail to act as a result of kinship, rank, position or undue influence of a party or person.</p> <p>I am filing this disclosure to disclose the facts about this relationship or affiliation and to dispel the appearance of a conflict of interest.</p>
<b>APPEARANCE OF FAVORITISM OR INFLUENCE</b>	
Describe the issue that is coming before you for action or decision.	
What responsibility do you have for taking action or making a decision?	
Explain your relationship or affiliation to the person or organization.	
How do your official actions or decision matter to the person or organization?	

<b>Optional:</b> Additional facts – e.g., why there is a low risk of undue favoritism or improper influence.	
<b>If you cannot confirm this statement, you should recuse yourself.</b>	<b>WRITE AN X TO CONFIRM THE STATEMENT BELOW.</b>  <input type="checkbox"/> Taking into account the facts that I have disclosed above, I feel that I can perform my official duties objectively and fairly.
Employee signature:	
Date:	

**Attach additional pages if necessary.**

**Not elected to your public position – file with your appointing authority.**

**Elected state or county employees – file with the State Ethics Commission.**

**Members of the General Court – file with the House or Senate clerk or the State Ethics Commission.**

**Elected municipal employee – file with the City Clerk or Town Clerk.**

**Elected regional school committee member – file with the clerk or secretary of the committee.**