

Appendix P – Massachusetts Conflict of Interest Law Summary

(Provide to all newly sworn in commission members)

The conflict of interest law (Chapter 268A of the General Laws) covers all 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.

“Special Municipal Employee” Designation

Some municipal employees can be designated as special municipal employees by the city council, board of selectmen, or board of aldermen. For these individuals, the law applies less restrictively.

You may be designated as a special municipal employee if you are not a mayor, an alderman, a city councilor, 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 holding the same office or position must be treated equally—having the same classification as “special municipal employee.”

ACTIVITIES RESTRICTED OR PROHIBITED BY THE CONFLICT LAW

ACTIONS ON THE JOB (Section 19)

The law recognizes that your financial interest 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; your partner(s); a business organization in which you serve as an officer, director, trustee, partner or employee (including a non-profit organization); and any person or organization with whom you are negotiating or have any arrangement concerning prospective employment.

A “particular matter” is defined as an activity involving decision making or judgment and refers to specific projects and proceedings rather than general issues. 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. This exemption is not available to elected officials.

MUNICIPAL CONTRACTS (Section 20)

Section 20 prevents 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 your same municipality. This section of the law also prohibits an employee from holding more than one paid position in the same town or city.

However, there are a number of exceptions to this general prohibition which you can take advantage of as long as certain specific conditions set out in the statute are met; there are also exceptions for special municipal employees. We suggest you call the Commission or contact your city solicitor or town counsel for specific advice on Section 20.

ACCEPTING 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. The courts and the Commission have deemed “substantial value” to be \$50 or more, in most cases.

In addition, Section 2 of the conflict law prohibits the most obvious kinds of corruption: cases where you were offered payment to perform official duties (or not to perform them) in a certain way. The law imposes civil and criminal penalties, not only on employees who seek to receive payoffs or kickbacks, but also on private parties who offer or pay them.

OUTSIDE ACTIVITIES (Section 17)

The law limits what you may do for someone other than the municipality 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 any agency of the same municipality is a party or has a direct and substantial interest. Similarly, you cannot act as agent or attorney for anyone in such matters, even if you are not paid. (This section of the law also applies less restrictively to special municipal employees.)

STANDARDS OF CONDUCT (Section 23)

The Standards provide a general code of ethics for all public employees. Essentially, the conflict law prohibits you from using or attempting to use your official position to secure an unwarranted privilege or from giving a reasonable basis for the impression that you can be improperly influenced in the performance of your official duties. The law also prohibits you from disclosing confidential information obtained on the job and from accepting outside employment that will impair your independence of judgment in the exercise of your official duties.

FORMER MUNICIPAL EMPLOYEES (Section 18)

The conflict law aims to prevent the “revolving door syndrome”. It prohibits former employees from deriving unfair advantage by improperly using friendships and associations formed or confidential information obtained while serving the government. The law is not designed to prevent you from using general expertise developed while a municipal employee. Rather, it focuses on particular matters you worked on while 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 municipal agency on behalf of a private party in connection with that matter for one year after leaving government.

The law also restricts the activities of partners of current municipal employees. Partners may not act as agent or attorney for anyone other than the city or town in connection with particular matters in which the municipal employee participates or has official responsibility for.

Advisory Opinions

This summary presents a brief overview of the conflict law and suggests activities that you, as a municipal employee, must avoid. It is not a comprehensive review. You may call the State Ethics Commission’s Legal Division at 727-0060 for individualized advice on the conflict law, as well as seek an advisory opinion from your city solicitor or town counsel. If you have a question about your own activities, you are urged to request an opinion from your local counsel or directly from the Commission prior to engaging in the activity in question.