

State Ethics Commission

Conflict of Interest Law Seminar

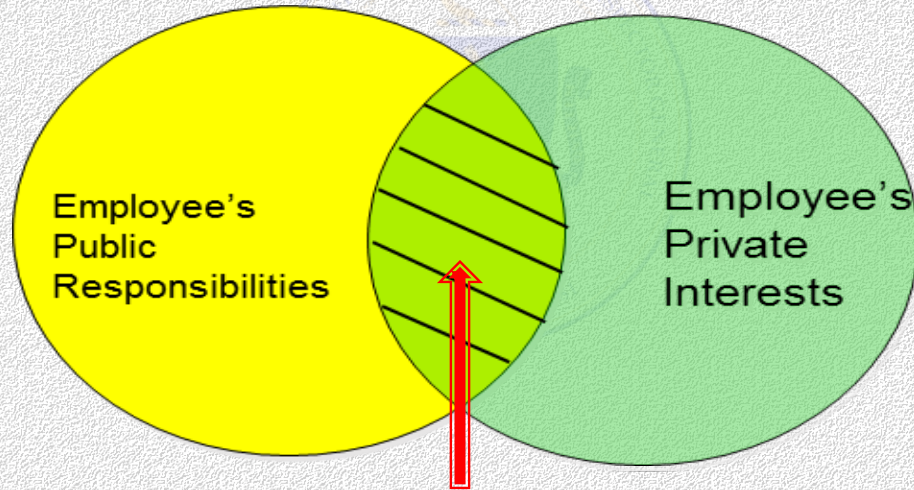
Presenter: David Giannotti, Chief
Public Education and Communications Division
State Ethics Commission
617-371-9505
David.Giannotti@mass.gov



State Ethics Commission

Conflicts 101

Professional Life **vs.** Personal Life



Focus of the Conflict of Interest Law



State Ethics Commission

State Ethics Commission

- Is a five-member, independent, non-partisan state agency whose members are appointed by the Governor, the Attorney General and the Secretary of State
- Provides advice, education and enforcement of M.G.L. c. 268A and 268B
- Has jurisdiction over all state, county and municipal employees and volunteers, paid or unpaid, full-time, part-time or intermittent



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Services provided by the State Ethics Commission

- You can obtain legal advice on how to comply with the law. Ask for the Attorney of the Day.
- We can come to your City or Town and conduct an educational seminar for your employees.
- You can file a complaint if you believe someone has violated the law.
- Call 617-371-9500 or visit our website at www.mass.gov/orgs/state-ethics-commission.



State Ethics Commission

Website

www.mass.gov/orgs/state-ethics-commission

- Educational materials
- Formal Legal Opinions
- Enforcement Decisions
- Disclosure Forms
- Links to the Online Training Program and Summary of the Conflict of Interest Law for Municipal Employees



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Obtaining Legal Advice

Speak to the Attorney of the Day

- Advice is confidential
- Advice can be given by telephone (617) 371-9500
- Online request for advice, www.mass.gov/orgs/state-ethics-commission
- No third party or past conduct advice given
- Disclosure forms available on the website



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Conflict of Interest Law Disclosures

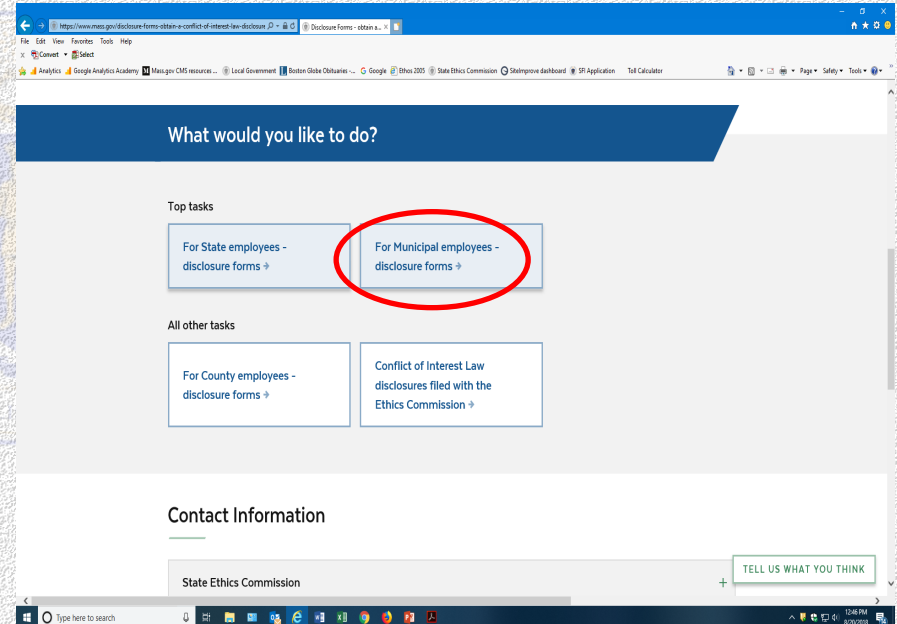
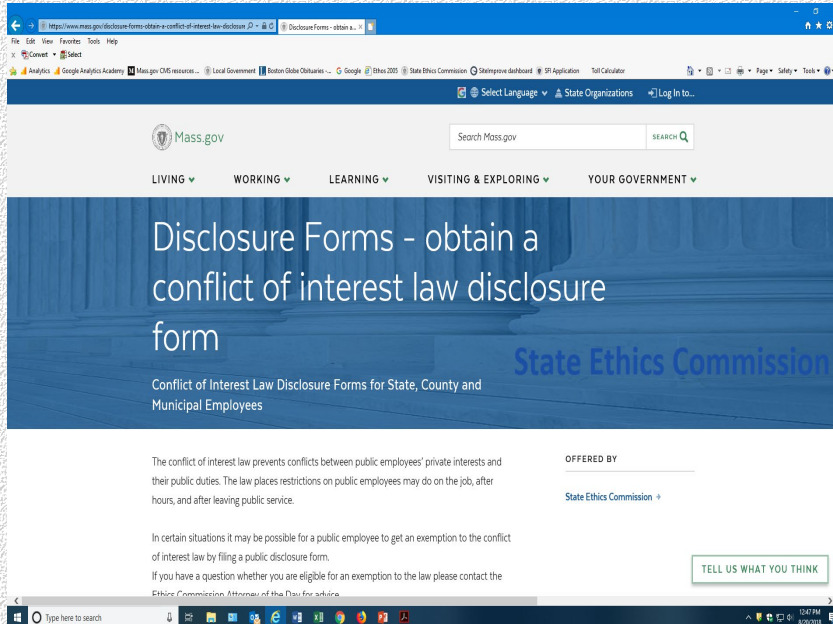
- Must be in writing
- Must contain all relevant facts
- Must be submitted in advance
 - Municipal employees file with their Appointing Authority
 - Elected municipal officials file with the City or Town Clerk's office
- Disclosures are public records

DISCLOSURE OF APPEARANCE OF CONFLICT OF INTEREST AS REQUIRED BY G. L. c. 268A, § 23(b)(3)	
PUBLIC EMPLOYEE INFORMATION	
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 <u>§ 23A (9)(b), cf</u> 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>	
APPEARANCE OF FAVORITISM OR INFLUENCE	
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?	



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Disclosure Forms: www.mass.gov/disclosure-forms-obtain-a-conflict-of-interest-law-disclosure-form



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Gift Restriction Rules

- Bribery: prohibits corrupt gifts, offers, and promises given to influence official acts (*Quid Pro Quo*).
- Gifts/Gratuities: prohibits gifts valued at \$50 or more and given because of official acts performed or to be performed.
- Gifts: prohibits gifts valued at \$50 or more and given because of official position.



GRATUITIES, AN ETHICAL
DILEMMA



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Gift Restriction Rules

- [Section 23\(b\)\(3\)](#)- Standards of Conduct: gifts valued at less than \$50 are not prohibited, but if the receipt of a gift creates the appearance that the municipal employee could be improperly influenced in the performance of official duties, a written disclosure is required.

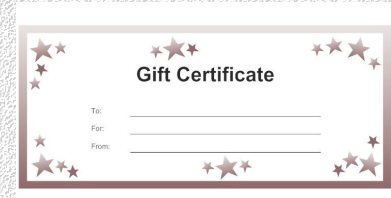
DISCLOSURE OF APPEARANCE OF CONFLICT OF INTEREST AS REQUIRED BY G. L. c. 268A, § 23(b)(3)	
PUBLIC EMPLOYEE INFORMATION	
Name of public employee:	
Title or Position:	
Agency/Department:	
Agency address:	
Office Phone:	
Office E-mail:	
<p>In my capacity as a state, county or municipal employee, I am expected 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>	
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Gifts That May Be Prohibited

- Meals
- Event Tickets ([Advisory 04-1](#))
- Free Travel or Expense Reimbursements
- Gift Certificates
- Floral Arrangements/Fruit Baskets
- Lottery Tickets
- Gifts offered through sales promotions



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Regulatory Exemptions: Gifts

930 CMR 5.08: Gifts worth \$50 or more and related to official action or position

(Disclosure and Prior Approval Required in Certain Circumstances)

- Travel Expenses where the purpose of the travel serves a legitimate public purpose
- Incidental Hospitality that serves a public purpose
- Random Drawings
- Unsolicited Perishable Items



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Regulatory Exemptions related to Gift Restrictions

930 CMR 5.08: Gifts worth \$50 or more and related to official action or position

(Disclosure and Prior Approval Required in Certain Circumstances)

- Passes to School Events Provided by the School District
- Class Gifts to Teachers
- Public Employee Discounts and Waived Membership Fees
- Gifts Among Public Employees
- Retirement Gifts



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Nepotism/Self-Dealing

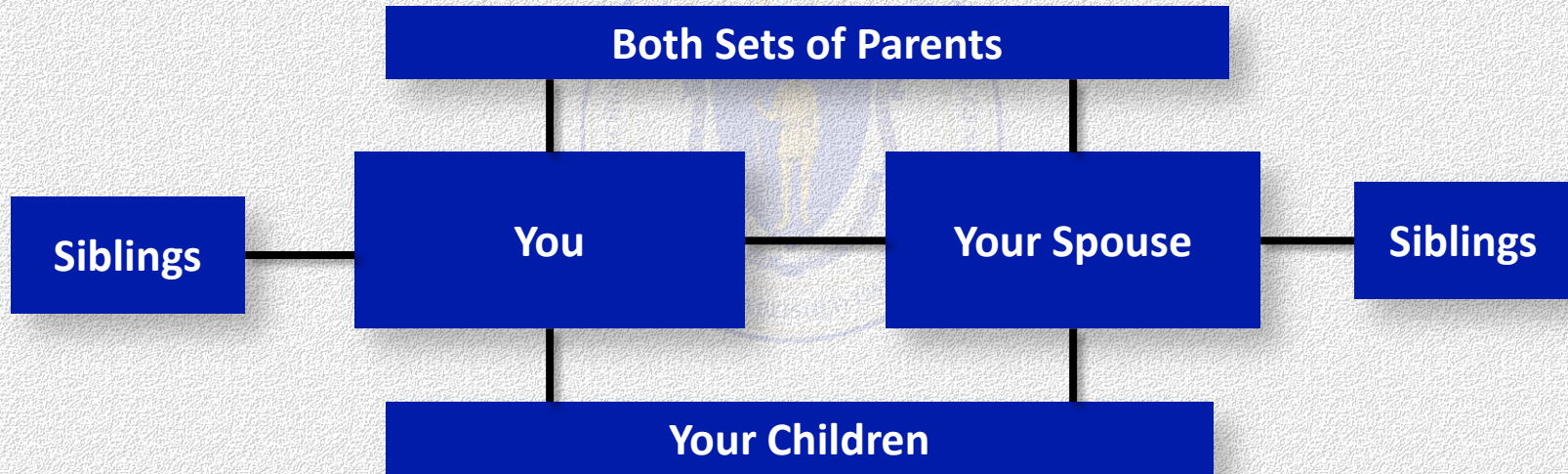
A municipal employee **may not participate** in matters in which he, his immediate family, a partner, a business organization with which he has certain affiliations or someone with whom he is negotiating for prospective employment **has a financial interest**.

- Disclosure filed with the appointing authority/Determination by the appointing authority
- No exemption available for elected officials
- Financial interests of public employees who are abutters or competitors



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Nepotism: Definition of Immediate Family Members



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Statutory Exemption related to Nepotism restriction

- if the particular matter involves a determination of general policy and the interest of the municipal employee or members of his immediate family is shared with a substantial segment of the population of the municipality.

Regulatory Exemption related to Nepotism restriction

- **930 CMR 6.00**: Exemption for School Committee Members and Charter School Trustees (Disclosure Required)



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Code of Conduct

A municipal employee shall not knowingly:

- Act in a manner such that a reasonable person would conclude that he or she might act with bias
 - One-step written disclosure to dispel appearance of conflict
- Use official position to secure unwarranted privileges for him or others.
- Use public resources for private or personal use or political activity.
- Disclose confidential information.



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Code of Conduct: Political Activity

- Soliciting campaign support from colleagues, subordinates or constituents
- Campaign activities in public buildings
- Cannot use municipal resources for political purposes



Advisory 11-1: Public employee political activity



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Code of Conduct: Private Commercial Relationships

Advisory 14-1: Public employees' private business relationships and other private dealings with those over whom they have official authority or with whom they have official dealings



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Duty of Loyalty

Divided Loyalties

While a municipal employee, unless you are a special municipal employee:

- You may not represent 3rd party interests before any municipal board, even if you are not paid.
- You may not be paid by anyone to work on any matters in which any agency of the municipality is a party or has a direct and substantial interest.



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Duty of Loyalty

Divided Loyalties: Special Municipal Employees

Selectmen in towns with 10,000 or less in population according to latest U.S. Census data

Positions that have been expressly classified by the board of selectmen and

- Are unpaid, or
- Compensated for less than 800 hours in a year, or
- By terms, classification or conditions of employment, permits personal or private employment during normal working hours



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Divided Loyalties



- Positions classified as special employees are less restricted
- Municipal employees may always represent their own interests
- Contractors/Consultants cannot compensate a municipal employee to work on any project where the conflict of interest law restricts the municipal employee



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Divided Loyalties

Statutory Exemptions:

- Disciplinary/Personnel issues if uncompensated
- Family members if appointing authority approves
- Testimony/sworn statements
- State and county employees can also be municipal employees
- Can obtain building, electrical, plumbing, gas and septic permits unless employed by the issuing department



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Regulatory Exemption related to Divided Loyalties restriction

930 CMR 6.03:

- Exemption to Permit Public Employees Who Are Parents to Advocate for Their Children
(Disclosure Required for Supervisory Employees)



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Financial Interests in Contracts

A municipal employee may not have a financial interest in a contract in which the municipality is an interested party.

- Contracts to provide goods or services
- Multiple positions, one of which is paid
- “Inside Track” issues

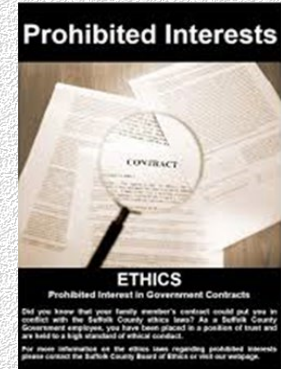


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Financial Interests in Contracts

A municipal employee may not have a financial interest in a contract in which the municipality is an interested party.

- Law applies less restrictively to designated “special” municipal employees
- Restriction does not apply to elected or unpaid positions
- Municipal employees can also serve on the Board of Selectmen, City Council or Board of Aldermen
- Other exemptions are available



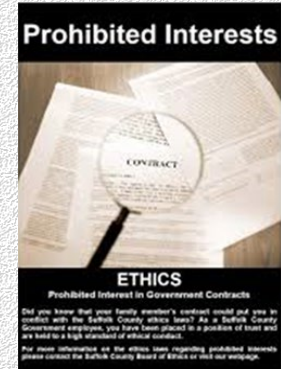
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Financial Interests in Contracts

If not a "special," a public employee may violate the conflict of interest law if they held another position with their city or town.

Special municipal employees are eligible for an exemption as long as:

- they file a disclosure with the city or town clerk making full disclosure of the other employment relationship, and, in certain instances,
- the City Council or Board of Selectmen may need to give its approval to the special to hold the additional position.

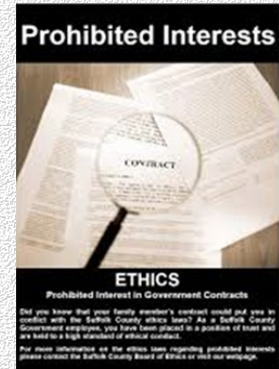


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Financial Interests in Contracts

Municipal employees who are not “special” municipal employees can take on additional paid positions or contracts as long as:

- They are not employed by the contracting agency
- They do not participate in any of the activities of the contracting agency
- The contract is made after public notice or through competitive bidding,
- The municipal employee files a disclosure with the city or town clerk,



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Financial Interests in Contracts

If the contract for is for personal services:

- (1) the services are provided outside normal work hours,
- (2) the services are not required as part of regular duties, and the employee is not compensated for more than 500 hours during a calendar year,
- (3) the head of the contracting agency files a written certification with the city or town clerk that no employee of that agency is available to perform those services as part of their regular duties, and
- (4) the city council, board of selectmen or board of aldermen approve an exemption



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Regulatory Exemptions related to Prohibited Contracts

930 CMR 6.00:

(Disclosure and Prior Approval Required in Certain Circumstances)

- Exemption of Fee-based Contractual Relationships Readily Available to the Public
- Exemption Related to Senior Tax Abatement Programs
- Exemption of Affordable Housing Programs and Community Development Programs



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Former Municipal Employees: Revolving Door Restrictions

The forever ban

- A former municipal employee is prohibited from receiving compensation from or representing a third party in any particular matter **in which he participated as a municipal employee.**

The one year cooling off period

- A former municipal employee is prohibited for one year from appearing personally on behalf of a third party if, within two years prior to his last day of municipal employment, **the matter was under his official responsibility.**



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Conflict of Interest Law Educational Requirements

- Online Training Program
- Summary of the Conflict of Interest Law



Summary of the Conflict of Interest Law for Municipal Employees

This summary of the conflict of interest law, General Laws chapter 268A, is intended to help municipal employees understand how that law applies to them. This summary is not a substitute for legal advice, nor does it mention every aspect of the law that may apply in a particular situation. Municipal employees can obtain free confidential advice about the conflict of interest law from the Commission's Legal Division at our website, phone number, and address above. Municipal counsel may also provide advice.

The conflict of interest law seeks to prevent conflicts between private interests and public duties, foster integrity in public service, and promote the public's trust and confidence in that service by placing restrictions on what municipal employees may do on the job, after hours, and after leaving public service, as described below. The sections referenced below are sections of G.L. c. 268A.

When the Commission determines that the conflict of interest law has been violated, it can impose a civil penalty of up to \$10,000 (\$25,000 for bribery cases) for each violation. In addition, the Commission can order the violator to repay any economic advantage he gained by the violation, and to make restitution to injured third parties. Violations of the conflict of interest law can also be prosecuted criminally.



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Finally:

- When in doubt . . . 
- If a bell goes off or a flag goes up. . . **CALL**
 - **(617) 371-9500**
 - **(800) 485-4766**
- Visit: www.mass.gov/orgs/state-ethics-commission

