



Commonwealth of Massachusetts
STATE ETHICS COMMISSION

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Boston, Massachusetts 02108-1501

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March 22, 2006
CITY OF BROOKLINE

CONFIDENTIAL

Jennifer Dopazo, Esq.
333 Washington Street
Brookline, MA 02445

Dear Atty. Dopazo:

After further consultation here at the Commission, I am writing in response to your request for advice under the conflict of interest law, G.L. c. 268A. I apologize for the delay in responding to your request.

Question

Are members of the District Planning Council who own houses or businesses within the Coolidge Corner Interim Planning Overlay District, and who therefore have financial interests in the matters they will decide as Council members, eligible for an exemption under § 19(b)(3)?

Answer

No, but they may file a disclosure concerning their financial interests and seek approval from the Selectmen of an exemption under § 19(b)(1). Council members who own personal property or businesses that abut or are located near the District also should seek approval of § 19(b)(1) exemptions.

Facts

This opinion is based on my understanding of the facts from your letter and our recent telephone conversations. Additional sources of facts are an e-mail you sent me dated January 30, 2006, and an attachment, the Coolidge Corner District Plan Overview and Proposed Approach, December 2005, by Jeffrey Levine, AICP, Acting Director of the Brookline Department of Planning & Community Development and Catherine Cagle, Director of the Brookline Economic Development Department.

Facts provided by these sources include the following:

A Comprehensive Plan for the Town of Brookline set up a system for district and neighborhood planning. District plans were described in the Comprehensive Plan as follows:

The District Plans will look at the portions of Brookline where development pressure is more intense and the need for proactive planning



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is most needed. District Plans would each be developed by a District Planning Council of neighborhood representatives, Town meeting members, small business owners, property owners and Town officials. A study area would be defined for each district. District Plans would conduct buildout analyses and alternative development scenarios for each district, and then develop a vision for a preferred future of the district. The District Plans would then develop strategies for these areas in a variety of subject areas, including regulatory tools, development preferences, transportation issues, and open space priorities. District Plans would be managed by Town staff in the Department of Planning & Community Development, with the assistance of staff in other departments and consultants as needed and as funding is available...

The fall Town Meeting for Brookline adopted a Zoning By-law creating a Coolidge Corner Interim Planning Overlay District ("CCIPOD"). The by-law states that the CCIPOD

is being created to provide the Town with a window of opportunity to create a Coolidge Corner District Plan that will provide strategies for neighborhood conservation while maintaining and enhancing the commercial core of the area. The existing zoning districts permit a level of residential development that threatens the character and quality of existing neighborhoods and the commercial core.

The by-law makes special provisions regarding multiple or attached dwellings in the District, and requires additional findings to be made regarding applications for special permits or variances within the District.

The project began in the fall of 2005, and has a target completion date of December 2006. The Board of Selectmen created a District Planning Council to guide development of the District Plan. Council members will serve on a voluntary basis, and will not be paid. The Council includes (without listing alternates) a Selectman, a Planning Board member, representatives from three neighborhood associations, representatives from eight precincts, four business or commercial property owners, members of the Brookline Greenspace Alliance and of the Preservation Commission, and members from the Economic Development Advisory Board, the Transportation Board, and the Housing Advisory Board.

The Council's charge is as follows:

The District Planning Council will provide input to Town staff and consultants as to the key issues and opportunities in the Coolidge Corner area, comment on draft documents prepared as part of this project; work

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with Town staff and consultants at public meetings and workshops as part of this project; and to complete the various elements of a District Plan, including recommendations for neighborhood preservation and a common vision for sites that are likely to be developed in the next 5 to 10 years in Coolidge Corner. Council members are expected to attend its meetings as well as at least nine additional public meetings.

Funding for the project will come from a grant for \$30,000 from the Massachusetts Office for Commonwealth Development to assist in analysis of land use, open space and preservation. The source of the grant was a "Smart Growth Technical Assistance Grant" administered by the state Executive Office of Environmental Affairs. The Town's Community Development Block Grant will provide \$42,500 to provide technical assistance for transportation analysis and other tasks as appropriate.

The Department of Planning & Community Development is assigned the task of drafting two RFP's for consultant assistance for the project, one for transportation assistance and one for real estate/ development assistance. A subcommittee of the Council will review responses to the RFP's and possibly interview top respondents. The Council as a whole is expected to provide input and make recommendations with regard to the following: existing conditions in the District, transportation needs and changes, a working concept for neighborhood preservation, issues of open space and preservation; a preferred redevelopment scenario of 3-4 key parcels in the commercial core; and zoning changes. Part of the mandate is to develop a "[d]etailed evaluation of the likely future development of surrounding neighborhoods if no action is taken and alternatives that protect these neighborhoods." It is expected to participate in preparing a draft and a final District Plan. The Council's mission is to "guide development of the District Plan," and its tasks require it to work closely with the Department of Planning & Community Development and other town departments and Boards to accomplish its mission.

You have informed us that some members of the Council own personal property or businesses within the District. The concern is that these Council members or their immediate families or businesses have a financial interest in property located in the District, so that participation in matters affecting their own financial interest could be a violation of G.L. c. 268A, § 19. In particular, you have asked whether these Council members are required to file disclosures pursuant to G.L. c. 268, § 19(b)(1) and obtain written determinations from the Selectmen before they can participate on the Council. Alternatively, you ask whether § 19(b)(3) applies, so that no such disclosures under § 19(b)(1) would be needed. One question under § 19(b)(3) is whether "the interest of the municipal employee or members of his immediate family is shared with a substantial segment of the population of the municipality." You have indicated that, according to the Town Clerk, the general population of the Town of Brookline is 57,856, and the estimated population of the areas covering the District is 14,000, or 24% of the general population.

Discussion

Municipal employee status

Based upon the information provided as described above,¹ I can give you the following advice.²

The first question is whether the District Council and its members are generally subject to the conflict-of-interest law. Under G.L. c. 268A, § 1(f), a “municipal agency” is defined to include “any department or office of a city or town government and any council...thereof or thereunder.”³ Therefore, the District Council is included within the definition of “municipal agency.” A person who performs services for, or is a member of, a municipal agency, whether compensated or uncompensated, is a municipal employee under § 1(g) of the statute.⁴ Consequently, for purposes of the conflict of interest law, the members of the District Council are considered to be municipal employees.⁵

¹ In providing this opinion, we have relied upon the facts as you have stated them and have not made any independent investigation of those facts. Pursuant to G.L. c. 268B, § 3(g), an opinion rendered by the Commission “shall be binding on the commission in any subsequent proceedings concerning the person who requested the opinion *and who acted in good faith, unless material facts were omitted or misstated by the person in the request for an opinion.*” (emphasis added).

² This opinion is intended to provide solely prospective advice under the conflict-of-interest law, not to address the propriety of conduct that has already occurred, nor the applicability or effect of any other body of law or regulation regarding such conduct. Only the Enforcement Division of the State Ethics Commission can address past conduct. If you believe that you may have violated the conflict-of-interest law, you can report such a violation directly to the Enforcement Division.

³ A “municipal agency” is further defined as any department or office of a city or town government and any council, division, board, bureau, commission, institution, tribunal or other instrumentality thereof or thereunder. G.L. c. 268A, § 1(f).

⁴ In relevant part, G.L. c. 268A, § 1(g) defines “municipal employee” as a person performing services for or holding an office, position, employment or membership in a municipal agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis, but excluding (1) elected members of a town meeting and (2) members of a charter commission established under Article LXXXIX of the Amendments to the Constitution.

⁵ The Council is not described in the Town’s materials as an advisory board, and in fact it appears to have been assigned duties and functions beyond that of commenting and providing advice. In instances where committees have been described as advisory, the Commission has applied a multi-factor analysis to determine whether members of the committees are public employees. These factors include: (1) the impetus for the creation of the committee (whether required by statute, rule, regulation or otherwise); (2) the degree of formality associated with the committee and its procedures; (3) whether members of the committee perform functions or tasks expected of government employees, or

Section 19

You have asked whether owners of personal property and businesses located within the District are required to comply with the requirements of §19(b)(1), or are exempt from the restrictions of § 19 by reason of § 19(b)(3).

Section 19 provides, in pertinent part, that a municipal employee may not participate⁶ in any particular matter⁷ in which he, an immediate family member,⁸ a partner, a business organization in which he is an officer, director, trustee, partner, or employee has a financial interest. The definition of participation includes participating in the formulation of a matter for a vote, as well as voting on the matter.⁹ Section 19 encompasses any financial interest without regard to the size of said interest. The financial interest, however, must be direct and immediate

will they be expected to represent outside viewpoints; and (4) the formality of the committee's work product, if any. EC-COI-94-10. Creation by act of a governing body, a higher degree of formality in a committee's procedures and work product, and performance of tasks ordinarily expected of public employees suggests that members of the committee are public employees under the statute. Here, the Council was created by an act of the Selectmen. Some of its members are town officials, others represent private viewpoints. The Council's charge is to define goals, hold public meetings, analyze reports, and comment on proposed changes. The Council will assist in evaluating particular parcels that are likely to be redeveloped, and in developing a preferred development plan. Council members will participate in producing a comprehensive District Plan document that will be presented to the Board of Selectmen and Planning Board as an amendment to the Comprehensive Plan for the Town. A subcommittee of the Council will review responses to RFP's for consultant assistance to the IPOD project and will recommend consultants, thereby participating in decisions about expenditure of grant money. If the multi-factor analysis were applied to the Council, the conclusion would be that its members are municipal employees.

⁶ "Participate," participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, § 1(j).

⁷ "Particular matter," any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, § 1(k).

⁸ "Immediate family," the employee and his spouse, and their parents, children, brothers and sisters. G.L. c. 268A, § 1(e).

⁹ *Graham v. McGrail*, 370 Mass. 133, 138 (1976).

or reasonably foreseeable.¹⁰ Financial interests which are remote, speculative or not sufficiently identifiable do not require disqualification under G.L. c. 268A.¹¹

- Financial interests

1) Residential property in the District.

Council members have a financial interest in any residential real estate which they own or rent and which is located within the District. To the extent that any decisions concerning the District Plan may have an impact on their financial interest, for example, either increasing or decreasing the property value of the real estate, or even maintaining it, or likewise effecting the rental rate, Council member members would be prohibited under § 19 from participating in the decision-making process unless some exemption applies.

2) Business property in the District.

Council members who own business property also would fall within § 19 prohibitions. In addition, if a Council member does not own a business, but is an officer, director, trustee, partner or employee of a business organization situated within the District, § 19 would require the Council member not to participate if decisions regarding the District Plan could have a financial impact on the business organization.

3) Immediate family has residential or business property in the District

A Council member, unless exempted, also must not participate in a particular matter which could have an impact on the financial interest that an immediate family member has in his or her residential or commercial real estate or business within the District.

4) Abutting or nearby property

Changes effected by the District Plan are likely to have a financial impact not only on property within the District, but also on surrounding property. Acknowledging this, part of the mission for those participating in creating the District Plan is to analyze its impact on surrounding neighborhoods. Under Commission precedent, property owners are presumed to have the requisite financial interest in § 19(a) in matters affecting abutting property, unless the

¹⁰ See, e.g., EC-COI-92-12; 90-14; 89-33; 89-5.

¹¹ See, e.g., EC-COI-89-19 (financial interest not sufficiently identifiable); 87-16 (financial interest speculative and not sufficiently identifiable).

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property owner is able to clearly demonstrate that there is not a financial interest.¹² Interest in some property which is near the District, though not directly abutting it, also will fall within § 19. A financial interest is presumed where the employee is a "party in interest" under G.L. c. 40A (property is directly opposite or an abutter to an abutter within three hundred feet of property line) or he is a person "aggrieved" for purposes of G.L. c. 131 (Wetlands Act).¹³ Even if an individual is not a "party in interest" as defined by a statute, a financial interest could arise where one's property rights stand to be "significantly affected."¹⁴ Whether a property owner would have a reasonably foreseeable financial interest in the matter in question depends on what effects a proposed act or acts will have on his property.¹⁵ A financial interest is presumed if a matter would alter their property value, rights or utilization.¹⁶ If decision on a matter will affect a financial interest in property that a Council member owns near the District, then he may not participate unless an exemption applies.

5) Prospective employment

Also included in the prohibition of § 19(a) is the financial interest of any person or organization with whom a Council member is negotiating or has any arrangement concerning prospective employment.

- Section 19(b)(3) exemption

Council members who have any of the financial interests discussed above either must abstain from participating in any particular matter which may effect the financial interest, or must be exempted from the prohibitions of § 19 in order to participate. You have asked whether the exemption stated in § 19(b)(3) applies. Presumably, this exemption would be advantageous as a practical matter since it would not require individual Council members to file disclosures or seek approval from the Selectmen of an exemption. My analysis indicates, however, that, at least on the basis of the information available at this time, the § 19(b)(3) exemption does not apply.

Section § 19(b)(3) allows a municipal employee who has a financial interest in a particular matter to participate "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." In prior decisions concerning §

¹² See *EC-COI-89-33; 84-96*; Public Enforcement Letter 88-1.

¹³ See *EC-COI-89-33; 84-96*; Commission Fact Sheet No. 6.

¹⁴ *EC-COI-89-33*.

¹⁵ *Id.*

¹⁶ See *EC-COI-84-96*; Public Enforcement Letter 88-1.

19(b)(3), the Commission has regarded 10% of the Town's population as "a substantial segment of the population of the municipality," although it has not clearly adopted that percentage as a standard.¹⁷

The Commission has indicated that matters of general policy, including general legislation, are those that apply to municipal employees, residents or taxpayers of a public entity in general. For example, **there would be no § 19 violation** "where town selectmen must vote on a matter that would effect the collection of revenue from all town residents, including themselves."¹⁸ The State Ethics Commission has found that the decision to adopt a "residential factor," which had the effect of applying a higher tax rate to commercial property than to residential property in New Ashford, concerned a matter of general policy since it was "one in which every taxpayer of the Town has an interest."¹⁹

The second requirement of a § 19(b)(3) exemption is that the matter of general policy must have an impact on a financial interest shared generally by municipal employees, residents or taxpayers, or large numbers of people within these groups. Included within the scope of a shared interest are the interest that residents have in the expansion of municipal services and the interest that taxpayers have in reducing municipal expenditures.²⁰ Examples of general policies that have an impact on a shared interest would be "recommendation of a comprehensive zoning by-law by a planning board, approval of the annual budget by a finance committee, recommendation of a new school building by a superintendent or school committee."²¹ While these types of shared interests would fall within the exemption, the type of interest which falls within the prohibition of § 19(a) is a "private right, distinct from the public interest."²²

In Graham v. McGrail, 370 Mass. 133 (1976), the court distinguished the financial interest implicated by § 19(a) from the interest every Town would have in a particular act or expenditure of the Town, and found that an individual's interest in his own compensation "is unquestionably a 'financial interest' under § 19(a)."²³ In Graham, a school committee member

¹⁷ EC-COI-92-34; 93-20.

¹⁸ EC-COI-89-33.

¹⁹ EC-COI-92-34. The Commission held that the "relevant classification must be one of kind rather than degree; here it is the distinction suggested by the property tax classification statutes themselves – whether a Town resident has an ownership interest in 'commercial' property." The Commission went on to find that more than 10% of all Town residents shared such an interest, so that the § 19(b)(3) exemption applied.

²⁰ EC-COI-92-34, citing *Braucher, Conflict of Interest in Massachusetts, in Perspectives of Law, Essays for Austin Wakeman Scott* 26-27 (1964).

²¹ *Id.*

²² *Id.*

²³ *Graham v. McGrail*, 370 Mass. at 139; see also EC-COI-93-20.

was required to abstain from participating with respect to a line item in which an immediate family member had a financial interest as a school employee, but was allowed to vote on the school committee budget as a whole. While the larger issue concerning the Town's general expenditures for the schools effected the school committee member in the same way it effected other residents or taxpayers, the line item concerning her immediate family member's compensation effected her family's financial interest specifically.

On the other hand, the Commission found that § 19(b)(3) did not apply where a sewer commissioner who also was a real estate developer wanted to participate in a sewer commission vote on regulations concerning the type of pipe to use for construction of all new sewer and water pipes.²⁴ The Commission again examined the relevant classification and found that it was "real estate developers, contractors, plumbers, and the like ... which will be affected on a regular basis by the regulations."²⁵ The Commission further reasoned, "By contrast, homeowners, and businesses unrelated to construction, would be affected only in the rare instance where they install or repair new or existing pipes. Moreover, some homeowners and businesses will never be affected by the regulations."²⁶ Finally, the Commission found that if it applied the 10% standard in measuring a substantial segment of the Town's population, it would have to be presented with evidence that 3,383 of the Town's population of 33,386 were owners of construction-related businesses.²⁷

The determinative issues here are whether the particular matters that the Council will address will be matters of general policy, and whether, in relation to those matters, the interest of any particular Council member in his residential property or business is shared with 10% of the population of Brookline. The Council's work will include addressing a great number of particular matters. These include zoning changes and preservation initiatives that are likely to have general application to the residents and business owners in the District. These matters, however, are not necessarily likely to have general application to the residents and business owners in the Town as a whole. The particular matters also will include evaluation of particular parcels, some of which already have been identified, as well as transportation circulation issues which will have a far greater impact on individuals who own property immediately surrounding the sites affected. These matters will affect the personal interests of some Council members more than others.

Whether the interest of a municipal employee or members of his immediate family in a particular matter is shared with a substantial segment of the population of the municipality will

²⁴ *EC-COI-93-20*.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *EC-COI-93-20*, n. 8.

depend on the nature of each particular matter and the extent to which a particular Council member's interest has to do with its impact on his private rights. The Town Clerk has informed you that the population of Brookline is 57,856 (so that 10% would be 5,785), and that the population of the District is 14,000. The total District population is greater than 10% of the total population of the Town, but no distinction has been made regarding how many members of the population, inside or outside the District, are homeowners, renters, business owners, etc.

For a Council member who owns a home inside or abutting or near the District, the question would be whether the financial interest he has in a matter concerning the District Plan is shared with 5,785 other homeowners in Brookline. A Council member who owns a business would need to share an interest in a matter with 5,785 other business owners in Brookline. Even a matter of general policy, such as a zoning change, is likely to affect homeowners or business owners within the District more directly than those in Brookline outside the District. Within the District, the value of a Council member's home which is adjacent to or near a new housing development, group of new businesses or preserved open space may be affected more directly than the value of a Council member's home at the other end of the District. A few sites in the commercial core already have been identified as a focus for discussion by the Council about redevelopment. Businesses abutting or near these sites may be impacted more immediately than those further away. With respect to any matter, the number of other homeowners or business owners whose financial interests are similarly affected by a matter will depend on the circumstances. The data currently available does not make it possible to determine whether, at any given point in the formulation of the District Plan, a particular Council member would share his own or his immediate family's financial interest in a matter with 10% of the population of Brookline.²⁸

- Section 19(b)(1) exemption

As appointed municipal employees, Council members are eligible for an exemption under § 19(b)(1) if they satisfy its requirements. Under § 19(b)(1), a Council member may file a written disclosure with his or her appointing authority, i.e., the Selectmen, of the relevant facts concerning his conflict of interest. The Selectmen, in their discretion, may give the Council member a written determination that the conflict is not so substantial as to affect the integrity of his services to the City. If a Council member receives this determination, he may participate in the particular matter. The determination must be received from the Selectmen in advance of

²⁸ Because of the conclusion I have reached with regard to the shared interest requirement of § 19(b)(3), it is not necessary to decide whether the creation of the District Plan amounts to a determination of general policy. Because creation of the District Plan will have its greatest impact only in the designated District, there is a question whether it involves a matter of general policy for the Town.

participating. Note that if the Selectmen decline to provide the written determination, however, a Council member who has made the necessary disclosure could not participate.²⁹

Since the formulation of the District Plan necessarily will require participation in matters that are likely to affect their financial interest, the most prudent course is for each Council member first to obtain the Selectmen's approval of a § 19(b)(1) exemption before participating in any matter concerning the formulation of the District Plan. Given the breadth and variety of particular matters that the Council may address, it would be advisable for each Council member to include in a § 19(b)(1) disclosure all financial interests which foreseeably could be affected. A list of financial interests in a disclosure would allow the Selectmen to approve a Council member's § 19(b)(1) exemption as to some of the financial interests, but not others, as they saw fit.

A Council member needs to file a disclosure if any of the following persons have a financial interest in a particular matter which the Council is addressing:

- 1) The Council member;
- 2) A member of the Council member's immediate family (the Council member, his or her spouse, and their parents, children, brothers and sisters);
- 3) A partner;
- 4) A business organization in which the Council member is serving as officer, director, trustee, partner or employee;
- 5) A person or organization with whom the Council member is negotiating or has any arrangement concerning prospective employment has a financial interest.

The following are categories of financial interests which a Council member should include in a § 19(b)(1) disclosure. Financial interests may include, but are not limited to, owning, leasing, renting or investing.

- 1) Residential property
 - a. Located within the District;
 - b. Abutting the District;
 - c. Located just outside the District (e.g., within 300 feet);
- 2) Residential property abutting or near a particular site within the District which is likely to be a focus of discussion or recommendations by the Council;

²⁹ In such an instance, a Council member who owns property that abuts the District could obtain a bona fide substantive opinion from a qualified real estate appraiser that changes in the District would not have an effect of any kind on the Council member's financial interest in his property. The Council member could submit the opinion to the State Ethics Commission and seek advice about whether he then could participate.

- 3) Business property
 - a. Located within the District;
 - b. Abutting the District;
 - c. Located just outside the District (e.g., within 300 feet);
- 4) Business property abutting or near a particular site within the District which is likely to be a focus of discussion or recommendations by the Council;

For their part, the Selectmen will need to decide to what extent and when to approve different categories of exemptions. The Selectmen may wish to approve exemptions that will allow Council members to participate in matters that affect the District generally, but to require Council members to file a more specific disclosure if any particular matter has a direct and immediate impact on a Council member's interest. For example, because of the heightened risk that Council members may act in their own self-interest rather than the Town's interest if their real estate abuts a specific site under discussion, the Selectmen may wish to require Council members to file a separate and new § 19(b)(1) disclosure when matters affecting abutting property arise.

A Council member who has a financial interest in a matter may participate only after obtaining approval of a § 19(b)(1) exemption from the selectmen. If a Council member does not obtain such an approval, then he must abstain. A Council member also may elect to abstain. If a Council member abstains in relation to any particular decision, we recommend that the member step down from the Council table when the issue comes before the Council. The Council member should also make a verbal statement for inclusion in the meeting minutes that he or she is abstaining from participation. Although the safest course to avoid participating is to leave the room, the Council member may remain in the room during a public meeting so long as he or she does not participate.

Situations may arise in which a Council member who owns property in or nearby the District will want to represent his own personal interests because of the specific impact of action being contemplated.³⁰ A Council member who chooses to speak on his own behalf must clearly identify that he is acting in his own personal capacity and not in any official capacity, by making a public statement for the meeting minutes. The Council member should include that same statement in any written correspondence to the Council. Furthermore, the Council member should sit in the audience before speaking at a hearing or public meeting rather than sitting with

³⁰ Although § 17 of the conflict of interest law generally prohibits you as a municipal employee from acting as an agent for someone other than the Town in relation to any particular matter in which the Town is a party or has a direct and substantial interest, representing yourself is not considered to be acting as an agent. In order to represent yourself as the owner, however, you must hold the property in your own name in contrast to it being held by a trust, corporation or partnership of which you are a beneficiary.

the Council. Finally, the Council member should leave the room during any discussion by the Council of the matter.

Section 23

In addition to § 19, Council members should be aware of requirements contained in Section 23 of the conflict of interest law. Section 23 contains standards of conduct applicable to all state, county and municipal employees. Section 23(b)(2) provides, in pertinent part, that no public employee may use his official position to secure unwarranted privileges or exemptions of substantial value for himself or others. Under § 23(b)(2), the Commission consistently has prohibited public employees from using their titles, public time and public resources to promote a private interest.³¹

Section 23(b)(3) prohibits a public employee from engaging in conduct which gives a reasonable basis for the impression that any person or entity can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, or position of any person.³² For example, issues may arise under this section if a matter involving a family member other than an immediate family or a private interest comes before a Council member, even if he is not required to abstain under § 19. To dispel the appearance of a conflict, § 23(b)(3) requires that, prior to participation, a Council member file a full written disclosure with the Selectmen. This disclosure is a public record.³³

If a Council member chooses to participate in a matter before the District Council which affects a private interest, he should take care under § 23 to base any decisions on the merits, using objective standards and following all requisite procedures. If he were unable to judge the matter impartially, then he should abstain.

Conclusion

I hope that this advice is helpful.³⁴ You may obtain other reference materials on the Commission's website at www.mass.gov/ethics. Both this letter and your letter requesting advice are confidential by statute. The Commission may not disclose your identity or any other identifying information without your prior consent. You are, however, free to disclose this

³¹ See, e.g., *EC-COI-92-28; 92-12*.

³² *EC-COI-92-40; 91-3; 89-19; 89-16*.

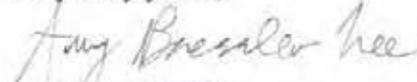
³³ See *Commission Fact Sheet No. 1, "Avoiding 'Appearances' of Conflicts of Interest."*

³⁴ Please note that the examples in this opinion are only representative and are not intended to be inclusive.

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advice to anyone you wish, but if you publicly disclose that you have requested or received advice from the Commission, the Commission could make the full text of this letter public without your consent.³⁵ You are entitled to a formal opinion of the Commission if you feel that one is necessary or desirable. If you have any additional questions or need any further assistance, please do not hesitate to call.

Very truly yours,



Amy Bressler Nee
Staff Attorney

³⁵ See G.L. c. 268B, § 3(g); 930 CMR § 3.01(8).