

# Summary of the Conflict of Interest Law for Municipal Employees

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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.

## I. Are you a municipal employee for conflict of interest law purposes?

You do not have to be a full-time, paid municipal employee to be considered a municipal employee for conflict of interest purposes. Anyone performing services for a city or town or holding a municipal position, whether paid or unpaid, including full- and part-time municipal employees, elected officials, volunteers, and consultants, is a municipal employee under the conflict of interest law. An employee of a private firm can also be a municipal employee, if the private firm has a contract with the city or town and the employee is a "key employee" under the contract, meaning the town has specifically contracted for her services. The law also covers private parties who engage in impermissible dealings with municipal employees, such as offering bribes or illegal gifts. Town meeting members and charter commission members are not municipal employees under the conflict of interest law.

## II. On-the-job restrictions.

**(a) Bribes. Asking for and taking bribes is prohibited. (See Section 2)**

A bribe is anything of value corruptly received by a municipal employee in exchange for the employee being influenced in his official actions. Giving, offering, receiving, or asking for a bribe is illegal.

Bribes are more serious than illegal gifts because they involve corrupt intent. In other words, the municipal employee intends to sell his office by agreeing to do or not do some official act, and the giver intends to influence him to do so. Bribes of any value are illegal.

**(b) Gifts and gratuities. Asking for or accepting a gift because of your official position, or because of something you can do or have done in your official position, is prohibited. (See Sections 3, 23(b)(2), and 26)**

Municipal employees may not accept gifts and gratuities valued at \$50 or more given to influence their official actions or because of their official position. Accepting a gift intended to reward past official action or to bring about future official action is illegal, as is giving such gifts. Accepting a gift given to you because of the municipal position you hold is also illegal. Meals, entertainment event tickets, golf, gift baskets, and payment of travel expenses can all be illegal gifts if given in connection with official action or position, as can anything worth \$50 or more. A number of smaller gifts together worth \$50 or more may also violate these sections.

*Example of violation:* A town administrator accepts reduced rental payments from developers.

*Example of violation:* A developer offers a ski trip to a school district employee who oversees the developer's work for the school district.

**Regulatory exemptions.** There are situations in which a municipal employee's receipt of a gift does not present a genuine risk of a conflict of interest, and may in fact advance the public interest. The Commission has created exemptions permitting giving and receiving gifts in these situations. One commonly used exemption permits municipal employees to accept payment of travel-related expenses when doing so advances a public purpose. Another commonly used exemption permits municipal employees to accept payment of costs involved in attendance at educational and training programs. Other exemptions are listed on the Commission's website.

*Example where there is no violation:* A fire truck manufacturer offers to pay the travel expenses of a fire chief to a trade show where the chief can examine various kinds of fire-fighting equipment that the town may purchase. The chief fills out a disclosure form and obtains prior approval from his appointing authority.

*Example where there is no violation:* A town treasurer attends a two-day annual school featuring multiple substantive seminars on issues relevant to treasurers. The annual school is paid for in part by banks that do business with town treasurers. The treasurer is only required to make a disclosure if one of the sponsoring banks has official business before her in the six months before or after the annual school.

**(c) Misuse of position. Using your official position to get something you are not entitled to, or to get someone else something they are not entitled to, is prohibited. Causing someone else to do these things is also prohibited. (See Sections 23(b)(2) and 26)**

A municipal employee may not use her official position to get something worth \$50 or more that would not be properly available to other similarly situated individuals. Similarly, a municipal employee may not use her official position to get something worth \$50 or more for someone else that would not be properly available to other similarly situated individuals. Causing someone else to do these things is also prohibited.

*Example of violation:* A full-time town employee writes a novel on work time, using her office computer, and directing her secretary to proofread the draft.

*Example of violation:* A city councilor directs subordinates to drive the councilor's wife to and from the grocery store.

*Example of violation:* A mayor avoids a speeding ticket by asking the police officer who stops him, "Do you know who I am?" and showing his municipal I.D.

**(d) Self-dealing and nepotism. Participating as a municipal employee in a matter in which you, your immediate family, your business organization, or your future employer has a financial interest is prohibited. (See Section 19)**

A municipal employee may not participate in any particular matter in which he or a member of his immediate family (parents, children, siblings, spouse, and spouse's parents, children, and siblings) has a financial interest. He also may not participate in any particular matter in which a prospective employer, or a business organization of which he is a director, officer, trustee, or employee has a financial interest. Participation includes discussing as well as voting on a matter, and delegating a matter to someone else.

A financial interest may create a conflict of interest whether it is large or small, and positive or negative. In other words, it does not matter if a lot of money is involved or only a little. It also does not matter if you are putting money into your pocket or taking it out. If you, your immediate family, your business, or your employer have or has a

financial interest in a matter, you may not participate. The financial interest must be direct and immediate or reasonably foreseeable to create a conflict. Financial interests which are remote, speculative or not sufficiently identifiable do not create conflicts.

*Example of violation:* A school committee member's wife is a teacher in the town's public schools. The school committee member votes on the budget line item for teachers' salaries.

*Example of violation:* A member of a town affordable housing committee is also the director of a non-profit housing development corporation. The non-profit makes an application to the committee, and the member/director participates in the discussion.

*Example:* A planning board member lives next door to property where a developer plans to construct a new building. Because the planning board member owns abutting property, he is presumed to have a financial interest in the matter. He cannot participate unless he provides the State Ethics Commission with an opinion from a qualified independent appraiser that the new construction will not affect his financial interest.

In many cases, where not otherwise required to participate, a municipal employee may comply with the law by simply not participating in the particular matter in which she has a financial interest. She need not give a reason for not participating.

There are several exemptions to this section of the law. An appointed municipal employee may file a written disclosure about the financial interest with his appointing authority, and seek permission to participate notwithstanding the conflict. The appointing authority may grant written permission if she determines that the financial interest in question is not so substantial that it is likely to affect the integrity of his services to the municipality. Participating without disclosing the financial interest is a violation. Elected employees cannot use the disclosure procedure because they have no appointing authority.

*Example where there is no violation:* An appointed member of the town zoning advisory committee, which will review and recommend changes to the town's by-laws with regard to a commercial district, is a partner at a company that owns commercial property in the district. Prior to participating in any committee discussions, the member files a disclosure with the zoning board of appeals that appointed him to his position, and that board gives him a written determination authorizing his participation, despite his company's financial interest. There is no violation.

There is also an exemption for both appointed and elected employees where the employee's task is to address a matter of general policy and the employee's financial interest is shared with a substantial portion (generally 10% or more) of the town's population, such as, for instance, a financial interest in real estate tax rates or municipal utility rates.

**Regulatory exemptions.** In addition to the statutory exemptions just mentioned, the Commission has created several regulatory exemptions permitting municipal employees to participate in particular matters notwithstanding the presence of a financial interest in certain very specific situations when permitting them to do so advances a public purpose. There is an exemption permitting school committee members to participate in setting school fees that will affect their own children if they make a prior written disclosure. There is an exemption permitting town clerks to perform election-related functions even when they, or their immediate family members, are on the ballot, because clerks' election-related functions are extensively regulated by other laws. There is also an exemption permitting a person serving as a member of a municipal board pursuant to a legal requirement that the board have members with a specified affiliation to participate fully in determinations of general policy by the board, even if the entity with which he is affiliated has a financial interest in the matter. Other exemptions are listed in the Commission's regulations, available on the Commission's website.

*Example where there is no violation:* A municipal Shellfish Advisory Board has been created to provide advice to the Board of Selectmen on policy issues related to shellfishing. The Advisory Board is required to have members who are currently commercial fishermen. A board member who is a commercial fisherman may participate in determinations of general policy in which he has a financial interest common to all commercial fishermen, but may not participate in determinations in which he alone has a financial interest, such as the extension of his own individual permits or leases.

**(e) False claims. Presenting a false claim to your employer for a payment or benefit is prohibited, and causing someone else to do so is also prohibited. (See Sections 23(b)(4) and 26)**

A municipal employee may not present a false or fraudulent claim to his employer for any payment or benefit worth \$50 or more, or cause another person to do so.

*Example of violation:* A public works director directs his secretary to fill out time sheets to show him as present at work on days when he was skiing.

**(f) Appearance of conflict. Acting in a manner that would make a reasonable person think you can be improperly influenced is prohibited. (See Section 23(b)(3))**

A municipal employee may not act in a manner that would cause a reasonable person to think that she would show favor toward someone or that she can be improperly influenced. Section 23(b)(3) requires a municipal employee to consider whether her relationships and affiliations could prevent her from acting fairly and objectively when she performs her duties for a city or town. If she cannot be fair and objective because of a relationship or affiliation, she should not perform her duties. However, a municipal

employee, whether elected or appointed, can avoid violating this provision by making a public disclosure of the facts. An appointed employee must make the disclosure in writing to his appointing official.

*Example where there is no violation:* A developer who is the cousin of the chair of the conservation commission has filed an application with the commission. A reasonable person could conclude that the chair might favor her cousin. The chair files a written disclosure with her appointing authority explaining her relationship with her cousin prior to the meeting at which the application will be considered. There is no violation of Sec. 23(b)(3).

**(g) Confidential information. Improperly disclosing or personally using confidential information obtained through your job is prohibited. (See Section 23(c))**

Municipal employees may not improperly disclose confidential information, or make personal use of non-public information they acquired in the course of their official duties to further their personal interests.

### III. After-hours restrictions.

**(a) Taking a second paid job that conflicts with the duties of your municipal job is prohibited. (See Section 23(b)(1))**

A municipal employee may not accept other paid employment if the responsibilities of the second job are incompatible with his or her municipal job.

*Example:* A police officer may not work as a paid private security guard in the town where he serves because the demands of his private employment would conflict with his duties as a police officer.

**(b) Divided loyalties. Receiving pay from anyone other than the city or town to work on a matter involving the city or town is prohibited. Acting as agent or attorney for anyone other than the city or town in a matter involving the city or town is also prohibited whether or not you are paid. (See Sec. 17)**

Because cities and towns are entitled to the undivided loyalty of their employees, a municipal employee may not be paid by other people and organizations in relation to a matter if the city or town has an interest in the matter. In addition, a municipal employee may not act on behalf of other people and organizations or act as an attorney for other people and organizations in which the town has an interest. Acting as agent includes

contacting the municipality in person, by phone, or in writing; acting as a liaison; providing documents to the city or town; and serving as spokesman.

A municipal employee may always represent his own personal interests, even before his own municipal agency or board, on the same terms and conditions that other similarly situated members of the public would be allowed to do so. A municipal employee may also apply for building and related permits on behalf of someone else and be paid for doing so, unless he works for the permitting agency, or an agency which regulates the permitting agency.

*Example of violation:* A full-time health agent submits a septic system plan that she has prepared for a private client to the town's board of health.

*Example of violation:* A planning board member represents a private client before the board of selectmen on a request that town meeting consider rezoning the client's property.

While many municipal employees earn their livelihood in municipal jobs, some municipal employees volunteer their time to provide services to the town or receive small stipends. Others, such as a private attorney who provides legal services to a town as needed, may serve in a position in which they may have other personal or private employment during normal working hours. In recognition of the need not to unduly restrict the ability of town volunteers and part-time employees to earn a living, the law is less restrictive for "special" municipal employees than for other municipal employees.

The status of "special" municipal employee has to be assigned to a municipal position by vote of the board of selectmen, city council, or similar body. A position is eligible to be designated as "special" if it is unpaid, or if it is part-time and the employee is allowed to have another job during normal working hours, or if the employee was not paid for working more than 800 hours during the preceding 365 days. It is the position that is designated as "special" and not the person or persons holding the position. Selectmen in towns of 10,000 or fewer are automatically "special"; selectman in larger towns cannot be "specials."

If a municipal position has been designated as "special," an employee holding that position may be paid by others, act on behalf of others, and act as attorney for others with respect to matters before municipal boards other than his own, provided that he has not officially participated in the matter, and the matter is not now, and has not within the past year been, under his official responsibility.

*Example:* A school committee member who has been designated as a special municipal employee appears before the board of health on behalf of a client of his private law practice, on a matter that he has not participated in or had responsibility for as a school committee member. There is no conflict. However, he may not appear before the school

committee, or the school department, on behalf of a client because he has official responsibility for any matter that comes before the school committee. This is still the case even if he has recused himself from participating in the matter in his official capacity.

*Example:* A member who sits as an alternate on the conservation commission is a special municipal employee. Under town by-laws, he only has official responsibility for matters assigned to him. He may represent a resident who wants to file an application with the conservation commission as long as the matter is not assigned to him and he will not participate in it.

**(c) Inside track. Being paid by your city or town, directly or indirectly, under some second arrangement in addition to your job is prohibited, unless an exemption applies. (See Section 20)**

A municipal employee generally may not have a financial interest in a municipal contract, including a second municipal job. A municipal employee is also generally prohibited from having an indirect financial interest in a contract that the city or town has with someone else. This provision is intended to prevent municipal employees from having an “inside track” to further financial opportunities.

*Example of violation:* Legal counsel to the town housing authority becomes the acting executive director of the authority, and is paid in both positions.

*Example of violation:* A selectman buys a surplus truck from the town DPW.

*Example of violation:* A full-time secretary for the board of health wants to have a second paid job working part-time for the town library. She will violate Section 20 unless she can meet the requirements of an exemption.

*Example of violation:* A city councilor wants to work for a non-profit that receives funding under a contract with her city. Unless she can satisfy the requirements of an exemption under Section 20, she cannot take the job.

There are numerous exemptions. A municipal employee may hold multiple unpaid or elected positions. Some exemptions apply only to special municipal employees. Specific exemptions may cover serving as an unpaid volunteer in a second town position, housing-related benefits, public safety positions, certain elected positions, small towns, and other specific situations. Please call the Ethics Commission’s Legal Division for advice about a specific situation.



#### IV. After you leave municipal employment. (See Section 18)

**(a) Forever ban. After you leave your municipal job, you may never work for anyone other than the municipality on a matter that you worked on as a municipal employee.**

If you participated in a matter as a municipal employee, you cannot ever be paid to work on that same matter for anyone other than the municipality, nor may you act for someone else, whether paid or not. The purpose of this restriction is to bar former employees from selling to private interests their familiarity with the facts of particular matters that are of continuing concern to their former municipal employer. The restriction does not prohibit former municipal employees from using the expertise acquired in government service in their subsequent private activities.

*Example of violation:* A former school department employee works for a contractor under a contract that she helped to draft and oversee for the school department.

**(b) One year cooling-off period. For one year after you leave your municipal job you may not participate in any matter over which you had official responsibility during your last two years of public service.**

Former municipal employees are barred for one year after they leave municipal employment from personally appearing before any agency of the municipality in connection with matters that were under their authority in their prior municipal positions during the two years before they left.

*Example:* An assistant town manager negotiates a three-year contract with a company. The town manager who supervised the assistant, and had official responsibility for the contract but did not participate in negotiating it, leaves her job to work for the company to which the contract was awarded. The former manager may not call or write the town in connection with the company's work on the contract for one year after leaving the town.

A former municipal employee who participated as such in general legislation on expanded gaming and related matters may not become an officer or employee of, or acquire a financial interest in, an applicant for a gaming license, or a gaming licensee, for one year after his public employment ceases.

**(c) Partners. Your partners will be subject to restrictions while you serve as a municipal employee and after your municipal service ends.**

Partners of municipal employees and former municipal employees are also subject to restrictions under the conflict of interest law. If a municipal employee participated in a matter, or if he has official responsibility for a matter, then his partner may not act on behalf of anyone other than the municipality or provide services as an attorney to anyone but the city or town in relation to the matter.

*Example:* While serving on a city’s historic district commission, an architect reviewed an application to get landmark status for a building. His partners at his architecture firm may not prepare and sign plans for the owner of the building or otherwise act on the owner’s behalf in relation to the application for landmark status. In addition, because the architect has official responsibility as a commissioner for every matter that comes before the commission, his partners may not communicate with the commission or otherwise act on behalf of any client on any matter that comes before the commission during the time that the architect serves on the commission.

*Example:* A former town counsel joins a law firm as a partner. Because she litigated a lawsuit for the town, her new partners cannot represent any private clients in the lawsuit for one year after her job with the town ended.

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This summary is not intended to be legal advice and, because it is a summary, it does not mention every provision of the conflict law that may apply in a particular situation. Our website, <http://www.mass.gov/ethics>, contains further information about how the law applies in many situations. You can also contact the Commission’s Legal Division via our website, by telephone, or by letter. Our contact information is at the top of this document.

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## State Ethics Commission

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### Public School Teacher FAQs on the Conflict of Interest Law

Public school teachers – teachers who work for school districts, regional schools, and charter schools – are subject to the conflict of interest law, G.L. c. 268A. This information sheet answers some questions about the law frequently asked by teachers. The following topics are covered:

- teacher gifts;
- school field trips where a chaperone teacher's expenses are paid;
- accepting payment of travel expenses;
- teacher political activity relating to town budget overrides;
- tutoring;
- second jobs, such as coaching, and summer jobs with the same town or district;
- running for school committee; and
- receiving services from students in vocational programs, such as automobile oil changes.

#### Teacher Gifts

**Question:** My students' parents want to give me an end-of-the-year gift. May I accept it?

**Answer:** It depends on the value of the gift. Public employees, including teachers, are prohibited by §§ 3 and 23(b)(2) of the conflict of interest law from accepting gifts worth \$50 or more that are given to them because of the position they hold, or because of some action they could take or have taken in their position. Teachers and other public employees may accept gifts that are worth less than \$50, but they have to disclose in writing the fact that they have done so if, based on the circumstances, a reasonable person would think that the teacher might unduly show favor to the giver or the giver's child because of the gift. G.L. c. 268A, § 23(b)(3). Therefore, whether you may accept the gift depends on its value, and whether you must disclose a gift you are allowed to accept depends on the circumstances.

A teacher who is offered an end-of-the-year gift worth \$50 or more should not accept it, unless it is a permissible class gift. The Commission created an exemption in its regulations at 930 CMR 5.08(14) to permit class gifts to teachers in certain circumstances. Under the exemption, the parents and students of a class, acting together, may give a gift worth up to \$150 to a teacher, provided that the gift is identified only as being from the class, and the names of the givers and the amounts given are not identified to the teacher. A single class gift worth up to \$150, or several class gifts during the school year with a total value up to \$150, may be given. A teacher may not accept any other gift from someone who has contributed to a class gift. Therefore, if an individual gift is offered, before accepting it, the teacher must confirm that the giver did not contribute to the class gift.

A gift given to a teacher to use solely in the classroom or to buy classroom supplies is not considered a gift to the teacher personally, and is, therefore, not subject to the \$50 limit on personal gifts to teachers. Parents may give gifts to the classroom or the school in accordance with the rules of the school district. A teacher who receives such a gift must keep receipts documenting that the money was used for classroom supplies.

**Question:** I've been told that I cannot even accept a plate of holiday cookies from a student without filling out paperwork. Is that correct?

**Answer:** No, it is not correct. A teacher who is offered an end of the year gift worth less than \$50 by someone who did not contribute to a class gift may accept it, after confirming by asking that the giver did not contribute to the class gift. A gift worth less than \$50 must be disclosed in writing if, based on the circumstances, a reasonable person would think that the teacher might unduly show favor to the giver or the giver's child because of the gift. G.L. c. 268A, § 23(b)(3). A gift without retail value, such as a plate of cookies or other homemade food items, hand-picked flowers, handmade gifts, or other items worth less than \$10, need not be disclosed, because a reasonable person would not think that a teacher would unduly show favor to the giver. A gift that might create such an appearance of a conflict – for example, a \$40 bottle of wine given to a teacher who is going to write a college recommendation for a student – must be disclosed, in writing, to the teacher's appointing authority. A teacher who accepts a gift worth less than \$50 from a student or parent during the school year must file a disclosure if she will continue to teach the student during the rest of the year and the gift is valuable enough that it might create an appearance that she would unduly favor the student. The form that should be used for such a disclosure is form no. 8 at the following link: <http://www.mass.gov/ethics/disclosure-forms/municipal-employee-disclosure-forms/>

If a teacher gets a gift after the school year has ended and grades have been reported, and the gift is one that she may accept because the giver did not contribute to the class gift and the item given is worth less than \$50, she need not file a disclosure unless she expects to perform official duties in relation to the student again, because if she will not have further contact with the student, there will be no appearance that she might unduly favor the student.

#### School Trips Where Chaperone Teacher's Expenses are Paid

**Question:** My school traditionally sponsors a trip to Mexico for students studying Spanish. I have been asked to organize this year's trip, and to accompany the students as a chaperone. The parents of the students who go on the trip will pay my travel expenses. May I do this?

**Answer:** Yes, provided that you fill out two disclosure forms, give them to your appointing authority, and obtain prior written approval of what you wish to do. One form must be done before you begin planning the trip, and the other must be done before you travel.

A field trip situation where a teacher chaperone's travel expenses will be paid for by her employing district (or by the teacher herself) does not raise issues under the conflict of interest law. However, when a teacher chaperone's expenses will be paid by anyone else – an outside provider such as a travel agent or company, or parents – issues arise under §§ 6 or 19 and 23(b)(2) of the conflict of interest law.

Sections 6 and 19 of the law prohibit teachers from participating in any matter in which they have a personal financial interest. A teacher who arranges a trip to Mexico knowing that the parents of students traveling on the trip will pay her travel expenses has a personal financial interest in the matter. However, there is an exemption that allows a public employee to participate in a matter in which she has a financial interest if she makes a prior written disclosure to her appointing authority about her financial interest and receives prior written authorization. Before beginning to plan a field trip that will involve paid-for travel, the teacher should fill out a disclosure form and obtain prior written approval. Charter school teachers should use form no. 1a from the disclosure forms for state employees. These forms are available at <http://www.mass.gov/ethics/disclosure-forms/state-employee-disclosure-forms/>. Teachers employed by a school district should use form no. 1c from the disclosure forms for municipal employees. These forms are available here: <http://www.mass.gov/ethics/disclosure-forms/municipal-employee-disclosure-forms/>.

Section 23(b)(2) prohibits public employees from accepting gifts of \$50 or more that are given because of their official position. A teacher whose travel expenses of \$50 or more are paid because she is the teacher chaperone violates this provision, unless, before taking the trip, she disclosed details about her trip in writing and obtained a written determination from her appointing authority that her acceptance of the payment of her travel expenses by someone else serves a legitimate public purpose. The required form is form no. 11a at this link: <http://www.mass.gov/ethics/disclosure-forms/municipal-employee-disclosure-forms/>

In summary, a teacher planning a field trip that will involve someone other than the teacher herself, or the school district, paying her travel expenses of \$50 or more, has 2 forms to fill out and to have approved by her appointing authority: (1) the § 6 or 19 form before she begins to plan the trip, and (2) the travel disclosure form, before she travels.

### Payment of Teacher's Travel Expenses

**Question:** I have been invited to attend a conference and the conference organizer has offered to pay my travel expenses. May I accept?

**Answer:** There is no issue under the conflict of interest law where a teacher's district pays her travel expenses. Payment of a teacher's travel expenses of \$50 or more by anyone else is prohibited by § 23(b)(2) of the conflict of interest law, G.L. c. 268A, because it is a gift given to the teacher because of her position. However, the Commission has created a number of exemptions to this prohibition to cover situations when acceptance of such a gift serves a public interest. In some situations, a written disclosure must be made prior to travelling.

Teachers and other public employees may accept payment of travel expenses by another domestic public agency without making a disclosure. For example, there would be no issue under the conflict of interest law with teachers accepting payment of expenses by the U.S. Department of Education to attend a conference in Washington, D.C. No disclosure is required. The regulation creating this exemption is 930 CMR 5.08(2)(c).

Teachers and other public employees are also permitted to accept payment of travel expenses in connection with attendance at an educational program in Massachusetts involving professional or other continuing education. This exemption requires that the teacher accepting payment of travel expenses have a good faith belief that his attendance will serve a public interest which outweighs any special benefit to him. No disclosure is required. The regulation creating this exemption is 930 CMR 5.08(2)(e).

If a non-public entity offers to pay for out-of-state travel by a teacher, the teacher may accept only if she first fills out a disclosure form giving details of the anticipated travel, and her appointing authority concludes, in writing and in advance, that the proposed travel will serve a legitimate public purpose. The regulation creating this exemption is 930 CMR 5.08(2)(d). The required disclosure form is form no. 11a, which is available at: <http://www.mass.gov/ethics/disclosure-forms/municipal-employee-disclosure-forms/>

### Teacher Political Activity Relating to Town Budget Overrides

**Question:** My town is going to consider a tax limit override ballot question. May I serve on or assist a ballot question committee?

**Answer:** Yes, provided that you do so without pay, do not fundraise, and do not act as the agent for the campaign in any matter involving your town (such as filing required campaign finance reports). You may, outside of school and on your own time, distribute campaign literature, make get-out-the vote telephone calls, conduct campaign polls and research, drive voters to the polls, and display or hold signs as long as you do not do so on town time or by using town resources.

Teachers and other public employees have most of the same rights as other citizens to engage in private political activity. A teacher may engage in private political activity using his own or other private resources, and when he is acting for himself and not as an agent or representative of anyone else. However, a public employee may not use his public position to engage in political activity. Section 23(b)(2)(i) of the conflict of interest law prohibits the use of one's public position to engage in political activity, because a public employee who does so is using his official position to secure for himself or others (such as a candidate or a ballot question committee) unwarranted privileges of substantial value (\$50 or more) not properly available to similarly situated persons.

The campaign finance law, G.L. c. 55, restricts the ability of public employees to engage in political fundraising. The campaign finance law is enforced by the Office of Campaign and Political Finance ("OCPF"), which can answer questions about fundraising. You can call OCPF at (617) 979-8300.

**Question:** The school committee in my city has stated that it strongly supports a tax limit override ballot question. May I send home a letter in my students' backpacks urging parents to vote in support of the override?

**Answer:** No, you may not. While in general, it is permissible to notify the public that an election will be held on a certain date and encourage all voters to vote, public resources may not be used to notify only a subset of voters (such as parents of school children) in order to influence the outcome of the vote or meeting. Notifying only the parents of school children about a ballot question whether to fund a new public school, and not notifying other homeowners who do not currently have a child attending school in the district, would be prohibited, because it would not be neutral.

### Tutoring

**Question:** The parents of a child who attends school in my district, but is not one of my students, have approached me and asked whether I would be willing to tutor their son. I do not advertise my services in any way; they heard about me by word of mouth from the parents of other students I have tutored. The school has not found that the tutoring services are necessary. The parents would pay me per hour and I would go to their home to provide the tutoring, using my own materials, not school materials. May I do this?

**Answer:** Yes, you may. The facts you have described do not raise any concern under the conflict of interest law.

The conflict of interest law places some restrictions on teachers tutoring students in their own districts, but does not forbid it. The following are the types of situations that may violate the law, as explained further below:

- A teacher recommends that one of her own students receive private tutoring, and then is paid to do the tutoring.
- A teacher privately tutors her current students.
- A teacher conducts a private tutoring business after hours in his public school classroom.
- A teacher is paid by her own district in a second job to provide tutoring.
- A teacher is paid to provide services that the district has found to be necessary for a child, for instance under an IEP.
- A teacher tells one of his students that he is available for private instruction over the summer.

**Providing Tutoring You Recommended:** A teacher cannot recommend that one of his or her own students get tutoring, and then be paid to tutor that same student in a second job. This would be a conflict of interest, because the teacher has a financial interest in providing those services. This restriction is imposed by § 6 (charter school teachers), and § 19 (school district teachers).

**Privately Tutoring Current Students:** A teacher may not tutor students who are currently in her class. Even if the teacher does not recommend that her current student receive private tutoring, the teacher should not tutor her current students as this raises issues under § 23(b)(3), the appearance of a conflict section, § 23(b)(2), the use of position section, and § 19, the financial interest section.

**Using School Resources for Private Tutoring:** A teacher cannot use his position to get unwarranted privileges for himself, or to give them to anyone else. This restriction is imposed by § 23(b)(2). For example, a teacher cannot use school resources such as classrooms or materials in connection with a private tutoring business. A public school employee cannot use a school or district website to advertise private tutoring services. A school cannot send home brochures for a particular tutoring service with the children. The only exception to this is that a district may, if it chooses, create a policy permitting the use of its resources in specified circumstances by anyone (teachers or non-teachers) who meets its objective and reasonable criteria. For example, a district could create a policy under which it will list on its website any provider of private tutoring services that meets stated criteria. Any such listing, however, should include a disclaimer that the district is not endorsing any private tutoring service.

**Tutoring Paid for by the District:** Apart from their primary employment (which is viewed as a contract for conflict of interest purposes), teachers and other public employees are not allowed to have a financial interest in a contract with an agency at their same level of government, unless an exemption applies. This means that a teacher cannot have a second paid position with her school district or her charter school unless there is an applicable exemption, because the second paid position is a financial interest in a municipal or state contract. This restriction is imposed by § 7 (charter school teachers) and § 20 (school district teachers). These sections make it impossible for full-time teachers to tutor in their own district if the district is going to pay for the tutoring (as may be the case, for example, with SES services). A district that wishes to be able to pay its teachers directly to perform tutoring must include a provision in the teachers' collective bargaining agreement providing a set amount of extra pay for tutoring by teachers that will be included in the teachers' regular paychecks. This solves the problem because then teachers only have a financial interest in one contract (that is, their primary employment, which is governed by the collective bargaining agreement). This part of the law applies less restrictively to some part-time employees.

**Tutoring Required by District:** Teachers and other public employees may not be paid by or act for others in matters that are of direct and substantial interest to their public employers. Where a district has determined that a particular child needs tutoring, that is a matter of direct and substantial interest to the district. Consequently, a teacher who works for the district cannot be paid privately to provide that tutoring. For example, if tutoring is required as part of an IEP, a teacher in the district may not accept payment from the student's family to provide that tutoring. The teacher is likewise prohibited from communicating with his own school or district on behalf of a private tutoring program. This restriction is imposed by §§ 4 and 17. These provisions apply less restrictively to some part-time employees. A district paying its own teachers directly to provide tutoring pursuant to a collective bargaining agreement by including tutoring-related compensation in their regular paychecks does not create a problem under this section, because the employees are not being paid by someone other than their employer.

**Approaching Students or Parents for Work:** Teachers and other public employees may not initiate private business relationships with persons under their authority pursuant to § 23(b)(2). This means that a teacher may not approach a student, or the student's parents, seeking private tutoring work. A teacher may provide tutoring when the relationship is initiated by the parents or a student, but, if the student is, or in the future may be, under the teacher's authority, the teacher will need to do a written disclosure. The form to be used for this disclosure is form 8, which is available at: <http://www.mass.gov/ethics/disclosure-forms/municipal-employee-disclosure-forms/>

**School District Policies Prohibiting Private Tutoring:** A school district may adopt policies that are more restrictive than the conflict of interest law. For example, a school district may choose to adopt a policy prohibiting teachers from privately tutoring any students in the same school in which they teach or in the same school district in which they work. In that situation, the tutoring would be prohibited, even if it doing so would otherwise be permissible under the conflict of interest law.

In sum, a teacher who is approached by parents of a student in his district but who is not one of his own students, and is asked to tutor their child, for payment by the parents, and using no public resources in connection with that tutoring, may do so. Teachers, however, should avoid tutoring in any of the situations described above that would raise issues under the conflict of interest law or district policy.

### **Second Jobs (Coaching) and Summer Jobs with the Same District, Town or State**

**Question:** I am a full-time math teacher at the high school. I've been asked to coach the girls' basketball team. The district would pay me a stipend of \$3,000 for doing so. May I?

**Answer:** The only way that you can coach while a teacher and comply with the conflict of interest law is if the collective bargaining agreement for teachers in your district includes a provision authorizing teachers to be paid for coaching, and the additional payment is included in your regular paycheck. You cannot have a second paid arrangement with the district for which you are paid separately.

A teacher may not have a financial interest in a contract with an agency at his same level of government, unless an exemption applies. This means that a teacher cannot have a second paid position with her school district or her charter school unless there is an applicable exemption, because having that second paid position would give the teacher a prohibited financial interest in a municipal or state contract. This restriction is imposed by §§ 7 and 20. A district that wishes to be able to pay its teachers extra to perform services in addition to teaching, such as coaching, should include a provision in the teachers' collective bargaining agreement providing a set amount of extra pay for such services, to be included in regular paychecks. This solves the problem, because then the teachers only have a financial interest in one contract, that is, their primary employment, which is governed by the collective bargaining agreement. This part of the law applies less restrictively to some part-time employees.

**Question:** I am a full-time teacher in a school district, working from September through June. I would like to take a summer job during July and August working for the recreation department in the town where I teach. May I do so?

**Answer:** A teacher may not have a financial interest in a contract with an agency of the town in which he works under §§ 7 and 20, which includes a second job in the same town, unless an exemption applies. You may only take this summer job if you can satisfy the requirements of the § 20(b) exemption. This will require that the town gave public notice of the availability of the recreation department job; that you do not work more than 500 hours in the recreation department job; that the head of the recreation department certifies that no one from the recreation department is available to do the job; and that the board of selectmen (or town council) approves the exemption. You will also have to file a written disclosure with the town clerk establishing that these requirements are met. A form for that disclosure for school district teachers is form no. 2c, which is available at: <http://www.mass.gov/ethics/disclosure-forms/municipal-employee-disclosure-forms/>.

### **Running for School Committee**

**Question:** May I run for school committee in the town where I teach?

**Answer:** Yes, but you will have to give up your teaching job if elected. G.L. c. 71, § 52 provides that school committee members may not be teachers in their own districts. This restriction also applies to per diem substitute teachers.

### **Receiving Services from Students in Vocational Programs**

**Question:** The students in the auto shop program at the school where I work offer an automobile oil change service that is very competitive in price with what local businesses charge for the same service. May I take advantage of this service?

**Answer:** Yes, provided that the auto shop program offers the same service, at the same price, to the public. In general, a teacher may not have a financial interest in a contract with his school, which includes purchasing services from the school. However, an exemption from that rule permits teachers and other public employees to enter into any fee-based contractual relationship that is readily available to the public at a set price. The regulation that creates this exemption is 930 CMR 6.16.