



**Town of Framingham
Board of Selectmen**

Policy on Ethical Conduct #10-8

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Level: Department () Division () Town Wide (x)

Policy Statement

All Department personnel (civilian and sworn) shall abide by this policy and will take the code of ethics oath upon hiring. The purpose of this policy is to:

- ensure, along with the State Conflict of Interest Law (“COIL”), that private financial interests and personal relationships of persons serving the Town, whether as paid employees or elected or appointed volunteers, (“TOWN Employees”) do not conflict with their public obligations,
- inform Town Employees of the importance of acting in ways that do not create either actual conflicts or the appearance of conflicts,
- emphasize those aspects of the “COIL” that are of particular concern as a matter of policy to the Board of Selectmen,
- inform Town Employees of the ways in which conflicts or the appearance of conflicts may lawfully be avoided or, if having occurred, may be cured, and
- inform the public in non-technical terms of certain important provisions of the “COIL” as it may apply to matters of local concern and of the importance that the Board of Selectmen attaches to the fair and effective application of that law.

This policy is not intended to replace or to contradict the provisions of state law. It is a summary of certain provisions of the “COIL” which the Board of Selectmen believe should be part of the basic knowledge about town government of all Town Employees. It is not meant to serve as formal advice or as a substitute for either private legal counsel or for the methods provided by the “COIL” by which Town Employees can obtain opinions or guidance from Town Counsel or the Ethics Commission. Town Employees

who are uncertain how the COIL applies to them or what their responsibilities under that law may be are encouraged to seek such guidance.

Town Employees should take particular note of the provisions of this policy that appear in large bold face type. Those provisions are summary statements of basic principles to be observed by all Town Employees.

References

Massachusetts General Law, Chapter 268A (Conflict of Interest Law)

- Section 17: Receiving gifts or compensation from someone other than the Town, or acting for others than the Town.
- Section 19: Participating for the Town in matters in which Town Employee has a financial interest.
- Section 20: Having a financial interest in a Town contract.
- Section 21: Canceling official actions influenced by Town Employee misconduct, and other sanctions.
- Section 23(b) (3): Avoiding giving reasonable grounds for belief that improper conduct has occurred.

Massachusetts General Law, Chapter 268B (Public Disclosure by Public Officials and Employees)

Section 3 (g): Advisory Opinions of State Ethics Commission

State Ethics Commission Rules of Practice and Procedure, 930 CMR

Section 1.03 Advisory Opinions to Municipal Employees

Special Terms

Town Employee: A person performing services for or holding an office, position, employment, or membership in a Town agency, whether by election, appointment, employment, whether serving with or without compensation, on a full, regular, part-time or consultant basis, but excluding Town Meeting Members when acting as such.

Participate: To act on behalf of the Town as a Town Employee in any of the following ways: approving, disapproving, deciding, recommending, advising, investigating or otherwise.

Immediate Family: The Town Employee or the employee's spouse, parents of the employee or employee's spouse, children, brothers and sisters.

Special Town Employee: A Town Employee who has been expressly classified by the Board of Selectmen and who is eligible for such classification under the COIL.

Policy Description

I. THREE COMMON TYPES OF CONDUCT THAT MUST BE AVOIDED

The Conflict of Interest Law (“COIL”) is concerned primarily with conduct which may affect the ability of persons who are serving the Town as Town Employees to render such services with undivided loyalty to the interests of the Town and its residents. In addition, the law requires such persons to not engage in conduct that could reasonably lead objective observers to believe that a violation of the law might occur, the so-called prohibition against “the appearance of conflict.”

In some situations conduct that might violate the law can be made harmless by the person making a public disclosure of the circumstances. In some cases the disclosure alone is sufficient. In other cases a person holding an appointed position may receive permission to proceed in the matter after disclosure to the appointing authority.

If a person is uncertain whether the “COIL” applies to a proposed action, an opinion may be obtained from Town Counsel or the State Ethics Commission. A favorable opinion that is based on an accurate disclosure of the circumstances will protect the person against disciplinary action by the Ethics Commission and possible criminal prosecution.

If a violation occurs, depending on its nature and severity, the person may be subject to civil or criminal penalties including fines and imprisonment. In addition, if the violation has harmed the financial interests of the Town in its dealings with others, the action taken in violation of the law may be cancelled.

The types of conduct that most frequently are likely to violate the law can be summarized as follows:

A) **YOU MAY NOT RECEIVE PAYMENT FROM SOMEONE ELSE OR ACT FOR SOMEONE OTHER THAN THE TOWN IN PERFORMING YOUR DUTIES FOR THE TOWN.**

A person subject to the law may not receive or ask for compensation from any person other than the Town in connection with the person’s performance of duties for the Town. In plain terms, a person may not accept or solicit a bribe or a gift, or be paid by anyone other than the Town for participating in one’s official duties for the Town. Similarly, a person subject to the law may not act for anyone other than the Town in any matter in which the Town is a party or has a direct or substantial interest, whether or not the person has any official responsibility in connection with the matter. (C. 268A, Sec. 17)

B) YOU MAY NOT ACT FOR THE TOWN IN A MATTER IN WHICH A YOU HAVE A FINANCIAL INTEREST

A Town Employee may not act for the Town in any matter in which the person has a financial interest. (*C. 268A, Sec. 19*)

YOU MAY NOT HAVE A FINANCIAL INTEREST IN A TOWN CONTRACT

A Town Employee may not have a financial interest in a contract made by the Town even if the person had no official responsibility in connection with making the contract. A contract of employment between a Town Employee and the Town is permitted. (*C. 268A, Sec. 20*)

C) YOU MAY NOT ACT IN A WAY THAT WOULD CAUSE A REASONABLE PERSON WHO IS AWARE OF THE CIRCUMSTANCES TO THINK YOU COULD BE IMPROPERLY INFLUENCED OR SHOW FAVORITISM IN PERFORMING YOUR DUTIES AS THE RESULT OF FAMILY RELATIONSHIPS OR UNDUE INFLUENCE OF ANOTHER PERSON. C. 268A, Sec. 23(b)(3).

A Town Employee may violate this section even if the employee's conduct does not amount to an actual violation of another section. This section cautions against acting in a way that would give a reasonable person, not one who is unduly suspicious or distrustful of anyone in public office, reason to conclude from the way you act, or from your relationship to someone having an interest in the outcome of your official actions, that your performance could be the result of improper influence or family, business or professional relationships.

The three types of conduct summarized above are not the only provisions of the law with which the "COIL" and this policy are concerned. They are, however, among the most common sources of difficulty and are basic to an understanding of the law.

II. SPECIAL TOWN EMPLOYEES

The COIL authorizes the Board of Selectmen in its discretion to designate certain Town Employees (other than Selectmen) as Special Town Employees. Special Town Employees may be exempt from certain provisions of the COIL depending on the nature of the responsibilities of their position. If any member of a board or committee receives the designation all must receive it. The COIL establishes minimum requirements for eligibility that include unpaid volunteers and certain part time paid Town Employees. The Board of Selectmen has not designated any position as a Special Town Employee, but may do so in appropriate circumstances in particular cases.

III. THREE PRINCIPLES THAT RUN THROUGHOUT THE “COIL”

- A) **THE “COIL” PROHIBITS YOU FROM TAKING ACTION THAT WOULD IMPROPERLY BENEFIT NOT ONLY YOU PERSONALLY, BUT OTHERS WITH WHOM YOU MAY HAVE FAMILY OR OTHER RELATIONSHIPS.**

The “COIL” prohibits you from participating in matters in which you know that any of the following have a financial interest:

- your spouse and your (and your spouse’s) parents, children, brothers and sisters,
- your partner,
- a business in which you are an officer, director, trustee, partner or employee, and
- a person or organization with whom you are negotiating for or have any arrangement concerning future employment.

- B) **IF YOU ARE PROHIBITED FROM PARTICIPATING IN A MATTER BECAUSE OF A CONFLICT OR THE APPEARANCE OF A CONFLICT, YOU MAY NOT ACT IN ANY WAY IN CONNECTION WITH IT.**

The “COIL” uses the term “participate” to include a wide variety of activities that commonly take place when a matter is under consideration for action or decision. As a result, if you have a conflict or to avoid the appearance of a conflict you are prohibited from:

- voting on the matter or on action relating to it,
- expressing in your official capacity your approval or disapproval,
- making a recommendation,
- giving advice, or
- investigating the matter.

This Policy requires that a person who is prohibited from participating in a matter coming before a board or committee of the Town because of a conflict or the appearance of a conflict must not be involved in any action of the sort described above, must be physically absent during the part of any meeting or proceeding at which such action is to be taken, and must state before departing the reason for such departure.

- C) **VIOLATIONS OF THE CONFLICT OF INTEREST LAW MAY HAVE SERIOUS CONSEQUENCES FOR THE PERSON INVOLVED AND FOR THE TOWN.**

The “COIL” is enforced by both civil and criminal penalties that are administered by the State Ethics Commission and by law enforcement agencies. The Ethics Commission has the power to impose civil penalties up to \$2000 for violations of the law. Section 17 which involves bribes or gifts offered or received carries a

penalty of a fine up to \$3,000 and imprisonment for not more than three years, or both. Section 19 which involves participating in a matter in which a prohibited financial interest is involved carries a similar fine and imprisonment for not more than two years, or both. Section 20 which involves having a financial interest in a town contract carries a fine of \$3000 and imprisonment for not more than two years or both.

A violation of Section 23 which involves avoiding the appearance of a conflict does not carry criminal penalties. However, a person who is found to have violated that section may be subject to appropriate administrative action by the head of the Town agency in which the person is serving.

In addition to any other remedies provided by law for violations of Sections 17, 129, and 20:

- If a violation has influenced an action taken by the Town, the Town may cancel the action upon appropriate terms, and
- The Ethics Commission, the District Attorney of the Town may sue the person who committed the violation and received an economic benefit to recover the amount of such benefit or \$500 whichever ever is greater or in some circumstances two times the amount of such benefit.

IV. DISCLOSURE OF ACTUAL OR POTENTIAL CONFLICTS

If a Town Employee believes there may be a violation of the prohibition (Section 17) against having a financial interest in a matter in which the employee may act, the employee must fully disclose the circumstances to the appointing authority and may receive a written decision that the interest is so insubstantial as to not be likely to affect the integrity of the employee's action.

If a Town Employee intends to participate in a matter in which the employee has a financial interest, in order to avoid violating the COIL, the employee must in advance fully disclose the circumstances to the employee's appointing authority. After making such a disclosure, the employee may receive a written decision that the interest is so insubstantial as to not be likely to affect the integrity of the employee's action and the employee's participation will not violate this section.

If a Town Employee in good faith and within 30 days after learning of an actual or prospective violation of the prohibition (Section 20) against having a financial interest in a contract with the Town makes full disclosure of the interest to the contracting agency and disposes of his interest there will be no violation of this section.

If a Town Employee in advance of taking official action that may create the appearance of a conflict (Section 23(b)(3)) discloses to the appointing authority or, if no appointing authority exists, discloses in a public way, the facts that would otherwise lead to such an appearance, there will be no violation of this section.

In each instance in which the “COIL” provides for disclosure as a method of curing or avoiding a violation of the law, the Board of Selectmen acting either as the relevant appointing authority or, in conjunction with the Town Manger as the head of an agency in which the employee serves, will review directly or through its designee, the content of the disclosure to ensure that it complies with the purpose of the “COIL” and this policy. The Board or the Town Manager may designate a qualified and disinterested person to review such disclosure statements and to report to the appointing authority. The appointing authority will act when necessary to require the employee to supplement the disclosure so as to adequately inform the public of the circumstances and to enable the appointing authority to decide what further action, if any, may be necessary to ensure such compliance.

Further action by the appointing authority, depending upon the circumstances of each case, may include a direction to the employee to not participate or to limit the employee’s involvement.

A full disclosure for the purpose of this policy must include, as appropriate to the particular circumstances:

- The nature of the relationship: familial, employment, contractual, whether compensation is involved, if the relationship concerns financial matters the amounts involved and the nature of the relationship, for example, if debtor/creditor the amounts involved and current status of the debt.
- Whether the relationship is current or has been concluded. If concluded when it was concluded.
- If the relationship is with an entity, such as a corporation, trust or estate, in which the disclosing party has an interest, the nature and value of the interest.
- If the relationship involves the giving or receipt of political contributions, the period of time during which such contributions were made, the amounts thereof, and a description of any aspects of the political relationship other than that of financial support.
- If the relationship is that of attorney/client whether the relationship is current or past and the nature of the matter(s) to which the relationship pertains.
- If any person identified by name or general description in the disclosure statement has any interest in the particular matter to which the disclosure statement relates, whether direct or indirect, immediate or through family or business relationships, past, present or contemplated, include the

nature of the interest and a description of the relationship between the person making the disclosure and such other person.

- **Whether the person making the disclosure has had any communication at any time with any person identified by name or general description in the disclosure concerning the particular matter to which the disclosure statement relates, including the time of such communication(s) and the details thereof.**

V. FILING OF DISCLOSURE STATEMENTS AND RELATED DOCUMENTS

Each disclosure statement submitted by a Town Employee and related documents will be filed and indexed as follows:

Statements filed with the Board of Selectmen and the Town Clerk will be indexed under the name of the individual Town Employee making the disclosure statement.

Statements will be filed with the Clerk and other person responsible for maintaining the records of any board, committee or other agency of the Town on which the Town Employee making the disclosure serves. They will be filed with and indexed to refer to the particular matter to which the disclosure relates so that a person having an interest in the particular matter may readily have access to the disclosure statement and related documents.

VI. ATTENDANCE AT ETHICS SEMINARS

The Board will offer the opportunity to all Town Employees, full or part time, paid or volunteer, to attend at least once each year a seminar held in Town Hall on the requirements of the Conflict of Interest Law as applicable to Town Employees. All compensated Town Employees in any division under the jurisdiction of the Town Manager will be required to attend that seminar unless excused in advance in writing by the Town Manager.

VII. OPINIONS OF TOWN COUNSEL OR STATE ETHICS COMMISSION

Opinions of Town Counsel to Town Employees that are rendered under the "COIL" become public records (Sec. 22) and are to be filed with the Town Clerk. Town Counsel must file with the Ethics Commission a copy of each such opinion for review. In order to provide the public with convenient access to those opinions, Town Counsel will notify the Office of the Town Manager when such opinions have been filed with the Town Clerk. The Office of the Town Manager will maintain a current listing of those opinions and of the response, if any, of the Ethics Commission indexed according to the name of the person to whom such opinion has been rendered and the office, board, committee or agency of the Town in which such person is serving.

Town Employees may also directly request the Ethics Commission to issue a formal advisory opinion on a written statement of facts. Such a formal advisory opinion and an opinion of Town Counsel that has been submitted to the Ethics Commission to which no exception has been taken will be binding on the Ethics Commission so long as the facts have been accurately presented

The Board of Selectmen authorizes the Town Manager to request Town Counsel to provide to the Town Manager an opinion based upon the provisions of C. 268A and other relevant materials as to whether the past or prospective conduct of a Town Employee serving in an office, board, committee or other agency under the jurisdiction of the Town Manager constitutes an actual conflict of interest or gives rise to the appearance of a conflict under the provisions of that statute. Such a request and an opinion rendered upon it will not have the status of an opinion rendered under Section 22 and will be intended for the information and guidance in the administration of government under the Town Manager. At the time of requesting such an opinion the Manager shall inform the person whose conduct is the subject of the request that the request has been made, shall provide the person with a copy of the request and shall afford the person the opportunity, within a specified time, to supplement the information contained in such request. The Town Manager shall receive and forward any supplemental information to Town Counsel and shall provide the person with a copy of the opinion when rendered by Town Counsel. The request and the opinion will be subject to the provisions of the Public Records Law.