



State Ethics Commission

**Conflict of Interest
Law Seminar-**



State Ethics Commission

“The basis of effective government is public confidence, and that confidence is endangered when ethical standards falter or appear to falter.”

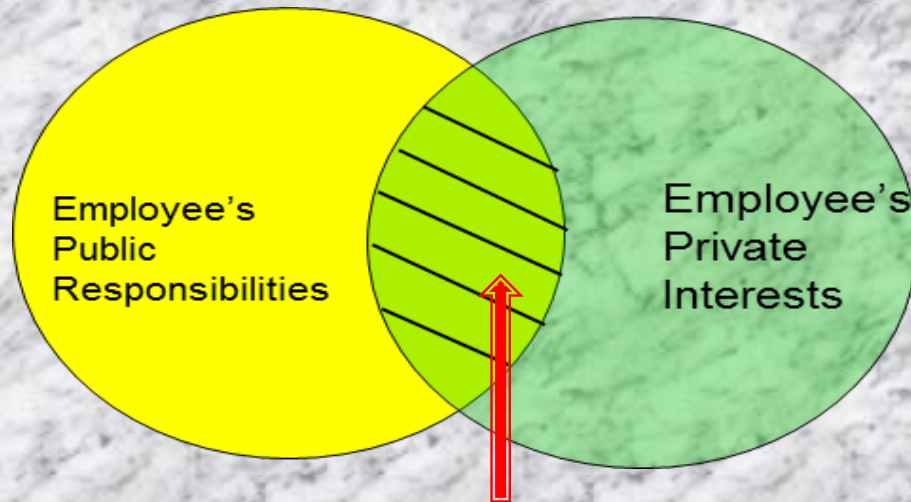
~ John F. Kennedy
Address to Congress
April 27, 1957



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CONFLICTS 101

Professional Life ↔ Personal Life



Focus of the Conflict of Interest Law



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Who is a public employee?

- Anyone performing services for a public agency
- Sometimes- vendors/contractors/consultants doing business with the public agency.
 - All city, town and school department employees
 - 5 factor test applies to Owner's Project Manager, Designers, General Contractor and sub-contractors

Advisory 06-01: Consultants Who Provide Services to Gov't Agencies May be Public Employees Subject to the Conflict Law



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Who is a public employee?

5-factor test used by the Ethics Commission to determine whether employees of the OPM or of a Design firm are public employees

- **Are the employee's services required**
- **Type and size of the vendor company**
- **Degree of specialized knowledge or expertise required**
- **The extent the employee performs or directs services**
- **The extent the employee has provided similar past services.**



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Who is a public employee?

Q: Are all employees in a firm public employees if some are?

A: No, only those that meet the 5 factor test become public employees



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Who is a public employee?

Are employees of the OPM and Design Firm public employees when employed on a project for a school district?

- If the person is specifically identified in the contract documents by name or inclusion of resume, and the public agency has the contractual power to prevent substitution of others because of the specialized skills required, then Yes.
- If the person is not named in the main **[public solicitation/]** procurement documents, and the consultant has the ability to hire whoever he/she wants without the power of a public agency to veto substitutions, then No.



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Gift Restriction Rules

Gifts and Gratuities- the conflict of interest law prohibits gifts or any item of value to public employees that are valued at \$50 or more and given:

- for or because of some official act performed or to be performed (rule applies to both the giver and public employee), or
- for or because of official position (rule applies to the public employee only).



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Gift Restriction Rules

Gifts valued at less than \$50 are not prohibited, but if the gift creates the appearance that your service on behalf of the municipality could be improperly influenced in the performance of your duties, filing a written disclosure with the school district/municipality may be required to dispel the appearance problem.

- Multiple instances of gift giving from the same source can be aggregated.**



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Examples of Prohibited Gifts

Connection to Official Act

- *Example:* The Designer approves a construction change order for which the general contractor is eligible. The GC sends the Designer a \$50 restaurant gift certificate to say thank you. The Designer may not accept the gift certificate.

Because of Official Position

- *Example:* The OPM is given tickets worth \$50 or more to a sporting event by a school furniture vendor not connected to the contract because he/she is the OPM, and not because of any friendship between the parties. The OPM may not accept the tickets.



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GIFTS THAT MAY BE PROHIBITED

- Meals
- Event Tickets [Advisory 04-01](#)
- Free Travel or Expense Reimbursements
- Gift Certificates
- Floral Arrangements/Fruit Baskets
- Lottery Tickets
- Gifts offered through sales promotions



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Regulatory Exemption: Gifts

**930 CMR 5.08: Gifts Worth \$50 or More and Related to
Official Action or Position: Exemptions**

(Disclosure and Prior Approval Required in Certain Circumstances)

- **Travel Expenses where the purpose of the travel serves a legitimate public purpose**
- **Incidental Hospitality That Serves a Public Purpose**
- **Public Employee Discounts and Waived Membership Fees.**
- **Unsolicited Perishable Items.**



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Conflict Law discussion

Q: Can an OPM accept an invitation from a estimating company to a sporting/hospitality event if business will be discussed?

Q: Can a furniture vendor or manufacturer wine and dine an interior design professional who is in-house at a design firm?



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Conflict Law review

Q: If you are a consultant and you are not a public employee, does the conflict of interest law apply to you?

A: Yes, the gift restriction rules may apply as well as restrictions limiting your ability to hire a public employee to work on the contract.



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Section 23: CODE OF CONDUCT

A consultant deemed a public employee shall not knowingly:

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



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Conflict Law discussion

Q: Can you work on other contracts in the same city or town if you are deemed a public employee in connection with a school building contract?

A: It depends.

If the city or town has designated professionals providing contract service to municipal agencies as “Special Municipal Employees”, the conflict law applies less restrictively. If not, the law imposes restrictions which could prevent a consultant employee from working on other contracts for public agencies in the municipality.



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Special Municipal Employees

Board of Selectmen can classify certain town positions as “Special Municipal Employees.” Any town position that is

- **Unpaid**
- **If paid, then for less than 800 hours in a year, or**
- **By the terms, classification or conditions of employment, permits personal or private employment during normal business hours**

Conflict Law allows special municipal employees some flexibility to work on other municipal contracts.



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Special Municipal Employees

School project vendors/contractors/consultants who are deemed to be public employees may qualify to be designated as “Special Municipal Employees”

Conflict law allows special municipal employees some flexibility to work on other town projects.



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Regulations may be available

930 CMR 6.13: Provides exemption allowing vendors/contractors/consultants who are deemed to be town employees to work on additional projects in the same town.

930 CMR 6.26: Provides exemption allowing vendors/contractors/consultants who are deemed to be public employees to continue to work on contracts in the same town that pre-date their becoming a town employee.



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2009 ETHICS REFORM LEGISLATION

- **Conflict of interest law education requirements**
 - Summary of the Law**
 - Online Training Program**
- **False Claims Prohibited**



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Obtaining Advice from the Commission

Speak to the Attorney of the Day

- **Advice is Confidential**
- **Advice can be given by telephone (617-371-9500), email, or letter.**
- **Online request for advice, www.mass.gov/ethics.**
- **No third party or past conduct advice given.**



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What can happen if I violate the conflict of interest law?

- **For significant violations, the Ethics Commission can impose civil penalties of up to \$10,000 for a violation of all sections of the law except for the bribery section, which can carry civil penalties of up to \$25,000.**
- **Companies can be held liable for the actions of employees.**
- **Criminal penalties can apply.**



State Ethics Commission Quick Tips

When in doubt **DON'T**

If a bell goes off or a flag goes up **CALL**

617/371-9500

888/485-4766

Visit us on the Web at **www.mass.gov/ethics**