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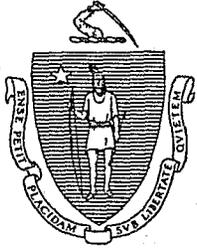
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COMMISSION ADVISORY NO. 10

Chiefs of Police Doing Privately Paid Details

The Commission has received a number of inquiries from small towns concerning how their chiefs of police might work privately paid details in conformance with the conflict of interest law, G.L.c. 268A. The following guidelines are offered to Boards of Selectmen and City Councils^{1/} to aid them in restructuring a chief's employment arrangements so as to permit such outside work without violating the conflict law. Any such restructured employment arrangement should be submitted to the Commission to verify that the conflict of interest issues have been adequately addressed by the terms and conditions actually decided upon by the selectmen.^{2/}

I. Background

Police detail work is performed in a broad range of situations, most frequently involving traffic control at utility and road construction sites. Other examples include crowd control, cash escort service for businesses and security work. Police officers perform detail work on other than their normal duty shift. These officers are, however, still serving as police officers when they provide these services and are answerable to the police chief for their conduct. The municipality bills the private entity who is being serviced. The municipality, after subtracting an administrative fee, pays the officers. All of this is done in accordance with G.L.c. 44, §53C.

^{1/}For ease of reading, this advisory is addressed to the situation of town police chiefs. For application to city chiefs, simply replace "Board of Selectmen" and "selectmen" with "City Council" and "councillors" respectively.

^{2/}City Councils should also check their City Charters and ordinances, and Boards of Selectmen their by-laws and regulations, to insure that any such negotiated contracts are in conformance with applicable local provisions.

The primary conflict of interest issues raised by police chiefs working privately paid details, and being paid pursuant to G.L.c. 44 §53C, arise under §19 and §23 of G.L.c. 268A.^{3/} The position of chief of police is generally considered a twenty-four-hour-a-day job, carrying with it the ultimate responsibility for the operation and activities of the police department. Because detail work is a police function, and officers performing detail work have all the law enforcement authority they normally possess as police officers, detail work falls within the chief's overall responsibility. If a municipality has not restructured the chief's compensation package to allow for extra pay for detail work, then the chief's salary is presumably payment for all of his duties including detail work. Therefore, if he were to receive additional public compensation for acts for which he is already being paid, he would be violating §23 by securing an unwarranted privilege.^{4/} In addition, by deciding which details to assign himself to work, the chief would be participating in a particular matter in which he has a financial interest in violation of §19.^{5/}

II. Considerations in Restructuring the Chief's Employment Contract

A chief of police's employment arrangement can be restructured by the Board of Selectmen to avoid these conflict of interest issues. By acknowledging in writing that the chief's compensation shall consist of a base salary plus certain additional compensation for detail work, the Board of Selectmen will negate the potential §23 allegation that a chief's receipt of detail compensation constitutes

^{3/}Prior Commission Advisory Opinions dealing with detail payment under G.L.c. 44 §53C (specifically EC-COI-85-64, 85-65, and 85-83) have analyzed the potential conflict under G.L.c. 268A §3(b). In the future, however, any opinions concerning this subject area will more properly focus on §19 and §23.

^{4/}Section 23(b)(2) states that no municipal employee shall "use or attempt to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similiarly situated individuals."

^{5/}Section 19 prohibits a municipal employee from "participat[ing] as such an employee in a particular matter in which to his knowledge he, his immediate family or partner, a business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment has a financial interest."

dual compensation.^{6/}

The conflict issues under §19 require closer scrutiny. Currently, a police chief falls within the §19 prohibition against a municipal employee participating in a matter in which he has a financial interest whenever he assigns himself to work a private detail. An exemption procedure contained in §19 provides a workable alternative. Section 19(b) states, in pertinent part, that it shall not be a violation of this section:

...if the municipal employee first advises the official responsible for appointment to his position of the nature and circumstances of the particular matter and makes full disclosure of such financial interest, and receives in advance a written determination made by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee.

As the appointing authority of the police chief, it is the Board of Selectmen which must make such a §19 determination. The Board's starting point should be to decide whether they are willing to grant a blanket §19 exemption concerning detail work or whether they will require the chief to seek such a determination on a detail-by-detail basis. If a blanket exemption is chosen, the Board should set out terms and conditions, including:

1. a maximum dollar amount the chief can earn as detail compensation annually, or alternatively, a maximum number of hours the chief can work details annually;
2. whether detail work can be performed during "normal" (i.e. weekday) working hours;
3. procedures to ensure that the chief does not assign himself either the "choice" details (at the expense of other members of the department) or regular, exclusive details with a particular private entity; and

^{6/}It should be noted that if the chief were to be paid directly by private parties for detail work (as opposed to through the statutory compensation mechanism outlined in G.L.c. 44 §53), he would violate §3 in that he would be receiving something of substantial value for himself for or because of an act within his official responsibility.

4. procedures for when an emergency arises while the chief is doing detail work, e.g.

(a) requiring the chief to make arrangements with the entity for which he is working the detail which allows him to leave if he is needed elsewhere, or

(b) establishing a procedure whereby the chief will request that the police department of a neighboring town or the state police cover the matter.

Selectmen might well conclude that it would be preferable to approve such details on an individual basis. While the Commission does not encourage the practice of granting blanket exemptions, Selectmen may exercise this option provided that the terms and conditions are clearly established in writing.

Finally, it should be emphasized that the purpose of a Commission review of a Board's restructuring of a police chief's employment arrangement is not to pass judgement on a Board's decisions, but rather to ensure that a G.L.c. 268A issue has not been inadvertently left unaddressed. As long as the Board takes the above-noted considerations into account, the applicable §19 and §23 conflicts will be remedied. Board members should feel free to contact Commission staff with any questions they may have.

ISSUED: June 26, 1986