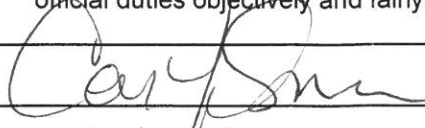


DISCLOSURE OF APPEARANCE OF CONFLICT OF INTEREST  
AS REQUIRED BY G. L. c. 268A, § 23(b)(3)

RECEIVED  
JAN 07 2015

PUBLIC EMPLOYEE INFORMATION		TOWN	SEND
Name of public employee:	Carolyn Smart		
Title or Position:	Selectman		
Agency/Department:	Town of Townsend		
Agency address:	272 Main Street Townsend MA		
Office Phone:	cell 978-771-3416		
Office E-mail:	csmart@townsend.ma.us		
<p>I am expected to perform official duties as a state, county, or municipal employee, and I have a relationship or affiliation with a person or organization involved. A reasonable person would conclude that the person or organization can unduly enjoy my favor or improperly influence me when I perform my official duties, or that I am likely to act or fail to act as a result of someone's kinship, rank, position or undue influence.</p> <p>I am filing this disclosure to explain the facts about this relationship or affiliation and to dispel the appearance that I have a conflict of interest.</p>			
APPEARANCE OF FAVORITISM OR INFLUENCE			
Describe the issue that is coming before you for decision or action.	Vote for additional wages for the employees of the Townsend Building Dept		
What responsibility do you have for taking action or making a decision?	1 vote of 3 member Board		
Describe your relationship or affiliation with someone involved.	none		
Optional: Additional facts – e.g., why there is a low risk of undue favoritism or improper influence.	My husband is a contractor and has in the past pulled building permits. None currently.		

If you cannot confirm this statement, you should recuse yourself.	WRITE AN X TO CONFIRM THE STATEMENT BELOW.
	<input type="checkbox"/> Taking into account the facts that I have disclosed above, I feel that I can perform my official duties objectively and fairly.
Employee signature:	
Date:	1-6-15

Attach additional pages if necessary.

Not elected to your public position – file with your appointing authority.

Elected state or county employees – file with the State Ethics Commission.

Members of the General Court – file with the House or Senate clerk or the State Ethics Commission.

Elected municipal employee – file with the City Clerk or Town Clerk.

Elected regional school committee member – file with the clerk or secretary of the committee.

DISCLOSURE BY SPECIAL MUNICIPAL EMPLOYEE  
OF FINANCIAL INTEREST IN A MUNICIPAL CONTRACT  
AS REQUIRED BY G. L. c. 268A, § 20(c)

RECEIVED  
JAN 20 2015

SPECIAL MUNICIPAL EMPLOYEE INFORMATION	
Name of special municipal employee:	Susan Bresnican TOWN OF TOWNSEND TOWN CLERK
Put an X beside one statement.	<p>I am a <b>special municipal employee</b> because:</p> <p><input type="checkbox"/> I am a selectman in a town with a population of 10,000 or fewer people;</p> <p><input checked="" type="checkbox"/> I am not a mayor, alderman or city councilor, and</p> <p><input type="checkbox"/> I serve in a municipal position for which <b>no compensation</b> is provided, or</p> <p><input checked="" type="checkbox"/> I earned <b>compensation for fewer than 800 hours</b> in the preceding 365-day period, or</p> <p><input type="checkbox"/> By the classification of my position by my municipal agency or by the terms of a contract or my conditions of employment, I am <b>permitted to have personal or private employment during normal business hours</b>.</p> <p><input type="checkbox"/> I work for a company or organization which has a contract with a municipal agency, and I am a <b>"key employee"</b> because the contract identifies me by name or it is otherwise clear that the municipal is contracting for my services in particular, and the <b>contract states that I am a special municipal employee or indicates that I meet one of the three requirements listed above</b>.</p>
Title/ Position	Payroll Clerk accounts Payable Clerk
Fill in this box if it applies to you.	<p>If you are a special municipal employee because a municipal agency has contracted with your company or organization, please provide the name and address of the company or organization.</p> <p>N/A</p>
Municipal Agency/ Department:	This is "my Municipal Agency." Town of Townsend
Agency Address:	272 Main Street Townsend, Ma 01469
Office phone:	978-597-1700
Office e-mail:	
	Check one: <input type="checkbox"/> Elected or <input checked="" type="checkbox"/> Non-elected
Starting date as a special municipal employee.	4/2013 in accounting 7/2014 in Treasury & Payroll



<div>BOX # 1</div> <div>Select either STATEMENT #1 or STATEMENT #2.</div> <div>Write an X by your financial interest.</div>	<div>ELECTED SPECIAL MUNICIPAL EMPLOYEE</div> <div>I am an <b>elected special municipal employee</b>.</div> <div><div>STATEMENT #1: I had a financial interest in a contract made by a municipal agency <b>before</b> I was elected to a compensated special municipal employee position. I will continue to have this financial interest in a municipal contract.</div><div>STATEMENT #2: I will have a <b>new</b> financial interest in a contract made by a municipal agency.</div></div> <div>My financial interest in a contract made by a municipal agency is:</div> <div><div>A compensated, non-elected position with a municipal agency.</div><div>A contract between a municipal agency and myself.</div><div>A financial benefit or obligation because of a contract that a municipal agency has with another person or with a company or organization.</div><div>Other work because a municipal agency has a contract with my company or organization and I am a "key employee" because the contract identifies me by name or it is otherwise clear that the municipal is contracting for my services in particular.</div></div>
<div>BOX #2</div> <div>Select either STATEMENT #1 or STATEMENT #2.</div> <div>Write an X by your financial interest.</div>	<div>NON-ELECTED SPECIAL MUNICIPAL EMPLOYEE</div> <div>I am a <b>non-elected special municipal employee</b> (compensated or uncompensated).</div> <div><div>STATEMENT #1: I had a financial interest in a contract made by a municipal agency, other than an employment contract, <b>before</b> I took a non-elected, compensated special municipal employee position. I will continue to have this financial interest in a municipal contract.</div></div> <div>My financial interest in a contract made by a municipal agency is:</div> <div><div>A contract between a municipal agency and myself, but not an employment contract.</div><div>A financial benefit or obligation because of a contract that a municipal agency has with another person or with a company or organization.</div></div> <div>OR</div> <div><div>STATEMENT #2: I will have a <b>new</b> financial interest in a contract made by a municipal agency.</div></div> <div>My financial interest in a contract made by a municipal agency is:</div> <div><div><input checked="" type="checkbox"/> A compensated, non-elected position with a municipal agency.</div><div>A contract between a municipal agency and myself.</div><div>A financial benefit or obligation because of a contract that a municipal agency has with another person or with a company or organization.</div><div>Other work because a municipal agency has a contract with my company or organization and I am a "key employee" because the contract identifies me by name or it is otherwise clear that the municipal is contracting for my services in particular.</div></div>
<div>Name and address of municipal agency that made the contract</div>	<div>FINANCIAL INTEREST IN A MUNICIPAL CONTRACT</div> <div>This is the "contracting agency."</div> <div>Town of Townsend 272 Main Street Townsend, Ma 01469</div>
<div>Write an X to confirm this statement.</div>	<div><input checked="" type="checkbox"/> In my work as a special municipal employee for my Municipal Agency, I <b>do not participate in or have official responsibility for any of the activities of the contracting agency.</b></div>



<b>FILL IN THIS BOX OR THE NEXT BOX</b>	<b>ANSWER THE QUESTION IN THIS BOX IF THE CONTRACT IS BETWEEN THE MUNICIPAL AGENCY AND YOU.</b>  - Please explain what the contract is for.  adding hours in the Treasury department and will be paid hourly.
	<b>ANSWER THE QUESTIONS IN THIS BOX IF THE CONTRACT IS BETWEEN THE MUNICIPAL AGENCY AND ANOTHER PERSON OR ENTITY</b>  - Please identify the person or entity that has the contract with the municipal agency. - What is your relationship to the person or entity? - What is the contract for?
What is your financial interest in the municipal contract?	- Please explain the financial interest and include the dollar amount if you know it.  I will be paid hourly.
Date when you acquired the financial interest	7/2014
What is the financial interest of your immediate family?	- Please explain the financial interest and include the dollar amount if you know it.  there is no financial interest to my family.
Date when your immediate family acquired the financial interest	
Employee signature:	John Breane
Date:	11/20/2015

Attach additional pages if necessary.

File your completed, signed Disclosure with the city or town clerk.

**DISCLOSURE OF APPEARANCE OF CONFLICT OF INTEREST  
AS REQUIRED BY G. L. c. 268A, § 23(b)(3)**

<b>PUBLIC EMPLOYEE INFORMATION</b>	
Name of public employee:	Kathleen M. Spofford
Title or Position:	Town Clerk
Agency/Department:	Town of Townsend / Town Clerk
Agency address:	272 Main St, Townsend, MA 01469
Office Phone:	978-597-1704
Office E-mail:	kspofford@townsend.ma.us
	<p>In my capacity as a state, county or municipal employee, I am expected to take certain actions in the performance of my official duties. Under the circumstances, a reasonable person could conclude that a person or organization could unduly enjoy my favor or improperly influence me when I perform my official duties, or that I am likely to act or fail to act as a result of kinship, rank, position or undue influence of a party or person.</p> <p>I am filing this disclosure to disclose the facts about this relationship or affiliation and to dispel the appearance of a conflict of interest.</p>
<b>APPEARANCE OF FAVORITISM OR INFLUENCE</b>	
Describe the issue that is coming before you for action or decision.	Stephen S. Spofford is my spouse. He is running for the position of Trustee of Veterans Memorials at the Annual Town Election.
What responsibility do you have for taking action or making a decision?	As Town Clerk I will run the Annual Town Election which my husband will be running for an open position.
Explain your relationship or affiliation to the person or organization.	Spouse.
How do your official actions or decision matter to the person or organization?	I will not campaign for my husband, sign his election papers as registrar, unless necessary due to absence of one of the registrars.

**R E C E I V E D**  
FEB 25 2015

TOWN OF TOWNSEND  
TOWN CLERK

Optional: Additional facts – e.g., why there is a low risk of undue favoritism or improper influence.	This is not a paid position and I will have no financial gain.
If you cannot confirm this statement, you should recuse yourself.	<p>WRITE AN X TO CONFIRM THE STATEMENT BELOW.</p> <p><input checked="" type="checkbox"/> Taking into account the facts that I have disclosed above, I feel that I can perform my official duties objectively and fairly.</p>
Employee signature:	<i>Barthelme McSpafford</i>
Date:	February 25, 2015

Attach additional pages if necessary.

Not elected to your public position – file with your appointing authority.

Elected state or county employees – file with the State Ethics Commission.

Members of the General Court – file with the House or Senate clerk or the State Ethics Commission.

Elected municipal employee – file with the City Clerk or Town Clerk.


Elected regional school committee member – file with the clerk or secretary of the committee.



DISCLOSURE OF APPEARANCE OF CONFLICT OF INTEREST  
AS REQUIRED BY G. L. c. 268A, § 23(b)(3)

RECEIVED  
MAR 06 2015  
TOWN OF TOWNSEND  
TOWN CLERK

PUBLIC EMPLOYEE INFORMATION	
Name of public employee:	Carolyn Smart
Title or Position:	Selectman / Water Dept Employee
Agency/Department:	
Agency address:	
Office Phone:	978-597-2212
Office E-mail:	csmart@townsend.ma.us
	<p>In my capacity as a state, county or municipal employee, I am expected to take certain actions in the performance of my official duties. Under the circumstances, a reasonable person could conclude that a person or organization could unduly enjoy my favor or improperly influence me when I perform my official duties, or that I am likely to act or fail to act as a result of kinship, rank, position or undue influence of a party or person.</p> <p>I am filing this disclosure to disclose the facts about this relationship or affiliation and to dispel the appearance of a conflict of interest.</p>
APPEARANCE OF FAVORITISM OR INFLUENCE	
Describe the issue that is coming before you for action or decision.	<del>rating</del> rating projects that have been submitted by BOS / Water Dept
What responsibility do you have for taking action or making a decision?	none
Explain your relationship or affiliation to the person or organization.	Selectman / employee
How do your official actions or decision matter to the person or organization?	They don't

Optional: Additional facts – e.g., why there is a low risk of undue favoritism or improper influence.	
If you cannot confirm this statement, you should recuse yourself.	WRITE AN X TO CONFIRM THE STATEMENT BELOW. <input type="checkbox"/> Taking into account the facts that I have disclosed above, I feel that I can perform my official duties objectively and fairly.
Employee signature:	
Date:	3-4-15

Attach additional pages if necessary.

Not elected to your public position – file with your appointing authority.

Elected state or county employees – file with the State Ethics Commission.

Members of the General Court – file with the House or Senate clerk or the State Ethics Commission.

Elected municipal employee – file with the City Clerk or Town Clerk.

Elected regional school committee member – file with the clerk or secretary of the committee.

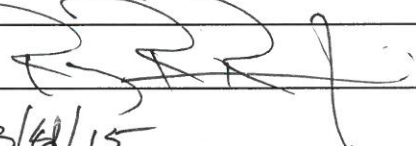
DISCLOSURE OF APPEARANCE OF CONFLICT OF INTEREST  
AS REQUIRED BY G. L. c. 268A, § 23(b)(3)

RECEIVED  
MAR 06 2015

TOWN OF TOWNSEND  
TOWN CLERK

PUBLIC EMPLOYEE INFORMATION	
Name of public employee:	Roger Raposa
Title or Position:	SUPERINTENDENT
Agency/Department:	CEN/PARK
Agency address:	
Office Phone:	978 537 1715
Office E-mail:	CENCLERK@TOWNSEND.MA.US
<p>In my capacity as a state, county or municipal employee, I am expected to take certain actions in the performance of my official duties. Under the circumstances, a reasonable person could conclude that a person or organization could unduly enjoy my favor or improperly influence me when I perform my official duties, or that I am likely to act or fail to act as a result of kinship, rank, position or undue influence of a party or person.</p> <p>I am filing this disclosure to disclose the facts about this relationship or affiliation and to dispel the appearance of a conflict of interest.</p>	
APPEARANCE OF FAVORITISM OR INFLUENCE	
Describe the issue that is coming before you for action or decision.	CAPITOL PLAN SCORE FOR MOWER/BLOWER COMBINATION USED BY MY DEPT.
What responsibility do you have for taking action or making a decision?	
Explain your relationship or affiliation to the person or organization.	
How do your official actions or decision matter to the person or organization?	



<b>Optional:</b> Additional facts – e.g., why there is a low risk of undue favoritism or improper influence.	
If you cannot confirm this statement, you should recuse yourself.	<b>WRITE AN X TO CONFIRM THE STATEMENT BELOW.</b> <input checked="" type="checkbox"/> Taking into account the facts that I have disclosed above, I feel that I can perform my official duties objectively and fairly.
Employee signature:	
Date:	3/6/15

Attach additional pages if necessary.

Not elected to your public position – file with your appointing authority.

Elected state or county employees – file with the State Ethics Commission.

Members of the General Court – file with the House or Senate clerk or the State Ethics Commission.

Elected municipal employee – file with the City Clerk or Town Clerk.

Elected regional school committee member – file with the clerk or secretary of the committee.

DISCLOSURE OF APPEARANCE OF CONFLICT OF INTEREST  
AS REQUIRED BY G. L. c. 268A, § 23(b)(3)

RECEIVED  
AUG 31 2015

TOWN OF TOWNSEND  
TOWN CLERK

<b>PUBLIC EMPLOYEE INFORMATION</b>	
Name of public employee:	Kathleen M. Spofford
Title or Position:	Town Clerk (Elected)
Agency/Department:	Town of Townsend
Agency address:	272 Main St, Townsend, MA 01469
Office Phone:	978-597-51704
Office E-mail:	kspofford@townsend.ma.us
<p>In my capacity as a state, county or municipal employee, I am expected to take certain actions in the performance of my official duties. Under the circumstances, a reasonable person could conclude that a person or organization could unduly enjoy my favor or improperly influence me when I perform my official duties, or that I am likely to act or fail to act as a result of kinship, rank, position or undue influence of a party or person.</p> <p>I am filing this disclosure to disclose the facts about this relationship or affiliation and to dispel the appearance of a conflict of interest.</p>	
<b>APPEARANCE OF FAVORITISM OR INFLUENCE</b>	
Describe the issue that is coming before you for action or decision.	My husband, Stephen S. Spofford is running for the position of Selectman.
What responsibility do you have for taking action or making a decision?	In my duties as Town Clerk, I am responsible for running the elections.
Explain your relationship or affiliation to the person or organization.	Stephen S. Spofford is my husband.
How do your official actions or decision matter to the person or organization?	It will not make a difference who the candidate is the wardens count the votes and deliver the results to the Town Clerk's office. I will perform my duties as fairly + objectively as if my husband was not running for office.
<b>Optional:</b> Additional facts – e.g., why there is a low risk of undue favoritism or improper influence.	In my capacity as Town Clerk, I will run the elections as I have in all previous elections without preference to any candidate. I will perform my duties as required by MGL ch 51, § 3, 54, 55, 55B + 233.
<b>WRITE AN X TO CONFIRM THE STATEMENT BELOW.</b>	
If you cannot confirm this statement, you should	<input checked="" type="checkbox"/> Taking into account the facts that I have disclosed above, I feel that I can perform my official duties objectively and fairly.

recuse yourself.	
Employee signature:	Kathleen Milpfeffer
Date:	August 28, 2015

Attach additional pages if necessary.

Not elected to your public position – file with your appointing authority.

Elected state or county employees – file with the State Ethics Commission.

Members of the General Court – file with the House or Senate clerk or the State Ethics Commission.

Elected municipal employee – file with the City Clerk or Town Clerk.

Elected regional school committee member – file with the clerk or secretary of the committee.



INSTRUCTIONS FOR DISCLOSURE BY STATE, COUNTY OR MUNICIPAL EMPLOYEE  
AS REQUIRED BY G. L. c. 268A, § 23(b)(3)

APPEARANCE OF FAVORITISM OR INFLUENCE

WHEN TO USE THIS DISCLOSURE FORM

You are **expected to perform official duties as a state, county or municipal employee**. A reasonable person could conclude that someone can **unduly enjoy your favor** or **improperly influence you** when you perform your official duties, or that you are **likely to act or fail to act** as a result of **kinship or the rank, position or undue influence** of some party or person. For example, you have a relationship or affiliation with a person or organization that is a party, or represents a party, or may be affected by your official actions, or takes a public stance about those actions or the outcome. Taking this affiliation or relationship into account, you have concluded that you can be **fair and objective** when you perform your official duties. **Before you perform your official duties**, you must file a **§ 23(b)(3) disclosure**.

For example, you should file a § 23(b)(3) disclosure under the following circumstances:

- You will perform official duties in a situation that involves or affects **non-immediate family members** (e.g., a grandparent, aunt, uncle, cousin, niece or nephew), **close friends, former or present colleagues or customers, or professionals with whom you have a business relationship**.
- You are a **member or leader of a trade association or a civic organization**, and the association or organization has an interest in the public work you will do.
- You are an **officer, director, trustee, partner or employee of a non-profit organization which is not a business organization**, and the non-profit has an interest that will be affected when you perform your official duties.

It may be helpful to include the following Information in your disclosure:

- The **nature of the official duties** you are supposed to perform;
- The **nature of the issue that is coming before you** for action or decision;
- Your **relationship or affiliation with a person or organization involved**;
- **Facts** that would indicate that you would not show undue favor toward the person or be improperly influenced by the person or organization, or that you would not be likely to act or fail to act as a result of kinship or the rank, position or undue influence of a party or person.

In the disclosure, you must state that you feel you can be **fair and objective** when you perform your official duties, taking into account the involvement of the person or organization you identified.

If you feel that you **cannot perform your duties fairly and objectively** because of an affiliation or relationship you have with someone involved, you should **voluntarily recuse yourself**.

FILING THE DISCLOSURE

Complete the **disclosure** below.

If you are a **non-elected public employee**, file the disclosure with your **appointing authority**. After you file the disclosure, you do not need authorization from your appointing authority before you perform your official duties.

If you are an **elected public employee**, file the disclosure in a public manner **as instructed at the bottom of the disclosure below**.

**OTHER § 23(b)(3) DISCLOSURES**

Pursuant to regulations, there are other specific disclosure forms to report the following types of gifts in accordance with § 23(b)(3):

- **Gifts unrelated to your official action, position or duties – 930 CMR 5.06;**
- **Travel expenses – 930 CMR 5.08(2)(d)4;**
- **In-state travel for educational purposes – 930 CMR 5.08(2)(e);**
- **Honorary degrees – 930 CMR 5.08(5);**
- **Awards for meritorious public service or lifetime achievement – 930 CMR 5.08(6).**

If you receive gifts of these types, these regulations require you to file a disclosure if **a particular matter regarding a giver** came before you within **six months before you accepted the gift** and/or within **six months after you accepted the gift**. Please review the instructions for the disclosure you need.

If you need advice about completing the disclosure, please call the Attorney of the Day at (617) 371-9500 or e-mail the State Ethics Commission at [opinions@eth.state.ma.us](mailto:opinions@eth.state.ma.us).

Kathy Spofford

**From:** Wilson, David A (ETH) <dave.d.wilson2@state.ma.us>  
**Sent:** Thursday, August 27, 2015 10:32 AM  
**To:** kspofford@townsend.ma.us  
**Cc:** Omodei, Theresa Meli (ETH)  
**Subject:** Our August 27, 2015 Telephone Conversation  
**Attachments:** DISC 23(b)(3) Favor or Influence NEW2 7-10-12.doc; INST 23(b)(3) Favor or Influence NEW2 7-10-12.doc

Kathy,

Following up on our telephone conversation, the form and instructions for making your section 23(b)(3) appearance of conflict of interest disclosure is attached. Below is the full text of the Commission regulation, 930 CMR 6.20, governing your situation:

**6.20: Exemption Permitting Town Clerks to Perform Certain Election-related Functions**

(1) **Purpose.** The purpose of 930 CMR 6.20 is to permit town clerks to perform election-related functions that town clerks are statutorily required to perform, and functions that are not likely to be outcome-determinative.

(a) During elections in which the town clerk, and/or an immediate family member of the town clerk, is a candidate for any office or offices, and

(b) In towns in which the clerk is appointed, during elections in years in which the town clerk's term expires, and the person or persons who appoint the clerk are candidates for any office or offices.

The basis for this exemption is the unique role played by town clerks relating to elections, and the existing extensive regulation of their functions in state election law.

(2) **Exemption.**

(a) A town clerk may perform the election-related functions that he or she is statutorily required to perform under M.G.L. chs. 51, 53, 54, 55, 55B, and 233, either in his or her capacity as a clerk, or as a member of a board of registrars of voters, without violating M.G.L. c. 268A, § 19, notwithstanding that:

1. The clerk is a candidate for an office or offices in that election; or
2. An immediate family member of the clerk is a candidate for an office or offices in that election; or
3. In towns in which the clerk is appointed, and during elections in years in which the town clerk's term expires, the person or persons who appoint the clerk are candidates for any office.

(b) This exemption as it relates to action by the clerk as a member of the board of registrars of voters applies only when the clerk acts with other members of said board, and does not apply in situations where the board of registrars has delegated its duties to the clerk. Town clerks acting under this exemption remain subject to all other restrictions of M.G.L. c. 268A, including §§ 17, 20, and 23.

Examples: A town clerk who is a candidate for an office or offices may: make determinations with respect to provisional voters as required by M.G.L. c. 54, § 76C; assist a voter who will be absent on the day of the election in completing a ballot as required by M.G.L. c. 54, § 91; receive and enter election results as required by M.G.L. c. 54, §§ 105 and 105A; process absent voting ballots as required by M.G.L. c. 54, §§ 94 and 95; and receive objections to certificates of



nomination, nomination papers, and withdrawals as required by M.G.L. c. 55B, § 7. An appointed clerk whose appointing authority is a candidate for an office or offices may act as stated in this example. This list is not intended to be exclusive.

Examples: A town clerk, acting as a member of a board of registrars pursuant to M.G.L. c. 51, § 15, may: perform the duties with respect to absent voting ballot applications required by M.G.L. c. 54, § 91; perform the duties with respect to voter registration required by M.G.L. c. 51, §§ 36 through 47; and perform the duties with respect to nomination papers required by M.G.L. c. 53, § 61. An appointed clerk whose appointing authority is a candidate for an office or offices may act as stated in this example. This list is not intended to be exclusive.

Example of What is Not Permitted: A town clerk who is a member of the board of registrars of voters, and who is a candidate for an office or offices, or whose appointing authority is a candidate for office and it is during the year in which the clerk's term expires, may not, acting by herself and without the participation of other members of the board of registrars of voters, check her own or her adversary's nomination papers or those of her appointing authority and their adversaries, or certify the number of names on her own nomination papers or her adversary's or those of her appointing authority or their adversaries, as required by M.G.L. c. 53, § 7, because state law requires participation by the full board. This list is not intended to be exclusive.

(c) A town clerk who is a candidate for an office or offices may perform election-related functions that are not required by statute, but that are typically assigned to or performed by the clerk, if such functions are not likely to be determinative of the outcome of the election.

Example: A town clerk who is a candidate for an office or offices, or whose appointing authority is a candidate for office and it is during the year in which the clerk's term expires, may perform duties with respect to marking shelves and guard rails in a polling place, which are delegated to her by the Select Board, since such tasks are not likely to be determinative of the outcome of the election. This list is not intended to be exclusive.

To summarize our discussion, you should make the section 23(b)(3) disclosure as soon as your husband decides to become a candidate (the disclosure is filed with your office and maintained as a public record), then follow 930 CMR 6.20 and act fairly and impartially in all your official actions. Should you have any questions about the regulation, please feel free to contact me.

Very truly yours,  
  
David A. Wilson  
Legal Division Deputy Chief  
State Ethics Commission  
One Ashburton Place, Room 619  
Boston, MA 02108  
617 371-9500 or 9519  
[David.A.Wilson@MassMail.State.MA.US](mailto:David.A.Wilson@MassMail.State.MA.US)

The information contained in this communication, including any attachment(s), is confidential, is solely for the use of the intended recipient(s), and may be exempt from public disclosure or subject to the attorney/client or work-product privileges. If the reader of this message is not an intended recipient, you are hereby notified that any dissemination, use, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please delete it and destroy all copies.

DISCLOSURE BY SPECIAL MUNICIPAL EMPLOYEE  
OF FINANCIAL INTEREST IN A MUNICIPAL CONTRACT  
AS REQUIRED BY G. L. c. 268A, § 20(c)

RECEIVED  
AUG 31 2015

TOWN OF TOWNSEND  
TOWN CLERK

SPECIAL MUNICIPAL EMPLOYEE INFORMATION	
Name of special municipal employee:	Carolyn Smart
Put an X beside one statement.	<p>I am a <b>special municipal employee</b> because:</p> <p><input checked="" type="checkbox"/> I am a selectman in a town with a population of 10,000 or fewer people;</p> <p><input type="checkbox"/> I am not a mayor, alderman or city councilor, and</p> <p><input type="checkbox"/> I serve in a municipal position for which <b>no compensation</b> is provided, or</p> <p><input type="checkbox"/> I earned <b>compensation for fewer than 800 hours</b> in the preceding 365-day period, or</p> <p><input type="checkbox"/> By the classification of my position by my municipal agency or by the terms of a contract or my conditions of employment, I am <b>permitted to have personal or private employment during normal business hours</b>.</p> <p><input type="checkbox"/> I work for a company or organization which has a contract with a municipal agency, and I am a <b>"key employee"</b> because the contract identifies me by name or it is otherwise clear that the municipal is contracting for my services in particular, and the <b>contract states that I am a special municipal employee or indicates that I meet one of the three requirements listed above</b>.</p>
Title/ Position	Selectman and Assistant Town Clerk
Fill in this box if it applies to you.	If you are a special municipal employee because a municipal agency has contracted with your company or organization, please provide the name and address of the company or organization.
Municipal Agency/ Department:	This is "my Municipal Agency." Town of Townsend
Agency Address:	272 Main Street Townsend MA 01469
Office phone:	978-597-1704
Office e-mail:	clerk@townsend.ma.us
	Check one: <input checked="" type="checkbox"/> Elected or <input type="checkbox"/> Non-elected
Starting date as a special municipal employee.	Elected 7-28-14 Hired 9-1-15

<div>BOX # 1</div> <div>Select either STATEMENT #1 or STATEMENT #2.</div> <div>Write an X by your financial interest.</div>	<div>ELECTED SPECIAL MUNICIPAL EMPLOYEE</div> <div>I am an <b>elected special municipal employee</b>.</div> <div><div>STATEMENT #1: I had a financial interest in a contract made by a municipal agency <b>before</b> I was elected to a compensated special municipal employee position. I will continue to have this financial interest in a municipal contract.</div><div>STATEMENT #2: I will have a <b>new</b> financial interest in a contract made by a municipal agency.</div></div> <div>My financial interest in a contract made by a municipal agency is:</div> <div><div><input checked="" type="checkbox"/> A compensated, non-elected position with a municipal agency.</div><div><input type="checkbox"/> A contract between a municipal agency and myself.</div><div><input type="checkbox"/> A financial benefit or obligation because of a contract that a municipal agency has with another person or with a company or organization.</div><div><input type="checkbox"/> Other work because a municipal agency has a contract with my company or organization and I am a "key employee" because the contract identifies me by name or it is otherwise clear that the municipal is contracting for my services in particular.</div></div>
<div>BOX #2</div> <div>Select either STATEMENT #1 or STATEMENT #2.</div> <div>Write an X by your financial interest.</div>	<div>NON-ELECTED SPECIAL MUNICIPAL EMPLOYEE</div> <div>I am a <b>non-elected special municipal employee</b> (compensated or uncompensated).</div> <div><div>STATEMENT #1: I had a financial interest in a contract made by a municipal agency, other than an employment contract, <b>before</b> I took a non-elected, compensated special municipal employee position. I will continue to have this financial interest in a municipal contract.</div></div> <div>My financial interest in a contract made by a municipal agency is:</div> <div><div><input type="checkbox"/> A contract between a municipal agency and myself, but not an employment contract.</div><div><input type="checkbox"/> A financial benefit or obligation because of a contract that a municipal agency has with another person or with a company or organization.</div></div> <div>OR</div> <div><div>STATEMENT #2: I will have a <b>new</b> financial interest in a contract made by a municipal agency.</div></div> <div>My financial interest in a contract made by a municipal agency is:</div> <div><div><input type="checkbox"/> A compensated, non-elected position with a municipal agency.</div><div><input type="checkbox"/> A contract between a municipal agency and myself.</div><div><input type="checkbox"/> A financial benefit or obligation because of a contract that a municipal agency has with another person or with a company or organization.</div><div><input type="checkbox"/> Other work because a municipal agency has a contract with my company or organization and I am a "key employee" because the contract identifies me by name or it is otherwise clear that the municipal is contracting for my services in particular.</div></div>
<div>Name and address of municipal agency that made the contract</div>	<div>FINANCIAL INTEREST IN A MUNICIPAL CONTRACT</div> <div>This is the "contracting agency."</div>
<div>Write an X to confirm this statement.</div>	<div><input type="checkbox"/> In my work as a special municipal employee for my Municipal Agency, I <b>do not participate in or have official responsibility for any of the activities of the contracting agency.</b></div>



**DISCLOSURE OF APPEARANCE OF CONFLICT OF INTEREST  
AS REQUIRED BY G. L. c. 268A, § 23(b)(3)**

<b>PUBLIC EMPLOYEE INFORMATION</b>	
Name of public employee:	Carolyn Smart TOWN OF TOWNSEND TOWN CLERK
Title or Position:	Selectman
Agency/Department:	Board of Selectmen – Town of Townsend
Agency address:	272 Main Street West Townsend, MA 01471
Office Phone:	(978) 771-3416
Office E-mail:	<a href="mailto:csmart@townsend.ma.us">csmart@townsend.ma.us</a>
	<p>In my capacity as a state, county or municipal employee, I am expected to take certain actions in the performance of my official duties. Under the circumstances, a reasonable person could conclude that a person or organization could unduly enjoy my favor or improperly influence me when I perform my official duties, or that I am likely to act or fail to act as a result of kinship, rank, position or undue influence of a party or person.</p> <p>I am filing this disclosure to disclose the facts about this relationship or affiliation and to dispel the appearance of a conflict of interest.</p>
<b>APPEARANCE OF FAVORITISM OR INFLUENCE</b>	
Describe the issue that is coming before you for action or decision.	Alcohol Licenses that are approved by the Board of Selectmen.
What responsibility do you have for taking action or making a decision?	I am a member of a 3 person Board that approves liquor licenses. One of the licensees is an abutter. The VFW Post 6538 is adjacent to my property
Explain your relationship or affiliation to the person or organization.	I have no personal or professional relationship other than a neighbor
How do your official actions or decision matter to the person or organization?	I have to vote to authorize the use of alcohol, which the business relies upon. I will recuse myself from any votes in the future, providing there's sufficient members present that can vote to authorize and/or reject.
<b>Optional:</b> Additional facts – e.g., why there is a low risk of	There is a low risk as I am not affiliated just a neighboring property.



undue favoritism or improper influence.	
If you cannot confirm this statement, you should recuse yourself.	WRITE AN X TO CONFIRM THE STATEMENT BELOW.  ____ Taking into account the facts that I have disclosed above, I feel that I can perform my official duties objectively and fairly.
Employee signature:	<i>Carol Small</i>
Date:	<i>12-18-15</i>

Attach additional pages if necessary.

Not elected to your public position – file with your appointing authority.

Elected state or county employees – file with the State Ethics Commission.

Members of the General Court – file with the House or Senate clerk or the State Ethics Commission.

Elected municipal employee – file with the City Clerk or Town Clerk.

Elected regional school committee member – file with the clerk or secretary of the committee.

**DISCLOSURE OF APPEARANCE OF CONFLICT OF INTEREST  
AS REQUIRED BY G. L. c. 268A, § 23(b)(3)**

**RECEIVED**  
SEP 01 2015  
TOWN OF TOWNSEND  
TOWN CLERK

<b>PUBLIC EMPLOYEE INFORMATION</b>	
Name of public employee:	Gordon Clark
Title or Position:	Selectman
Agency/Department:	Town of Townsend
Agency address:	272 Main Street Townsend, MA 01469
Office Phone:	(978) 597-1700 ext 1719
Office E-mail:	selectmen@townsend.ma.us
	<p>In my capacity as a state, county or municipal employee, I am expected to take certain actions in the performance of my official duties. Under the circumstances, a reasonable person could conclude that a person or organization could unduly enjoy my favor or improperly influence me when I perform my official duties, or that I am likely to act or fail to act as a result of kinship, rank, position or undue influence of a party or person.</p> <p>I am filing this disclosure to disclose the facts about this relationship or affiliation and to dispel the appearance of a conflict of interest.</p>
<b>APPEARANCE OF FAVORITISM OR INFLUENCE</b>	
Describe the issue that is coming before you for action or decision.	An immediate family member as defined in MGL Chapter 268A is employed with the Town as a Confidential Administrative Coordinator with the Police Department.
What responsibility do you have for taking action or making a decision?	As a Selectman, issues regarding the Police Department do come before the Board for consideration.
Explain your relationship or affiliation to the person or organization.	The immediate family member is my spouse.
How do your official actions or decision matter to the person or organization?	There would not be any decision that I anticipate making that would affect her position and if one would come before me I would recuse myself.
<b>Optional:</b> Additional facts – e.g., why	

there is a low risk of undue favoritism or improper influence.	
If you cannot confirm this statement, you should recuse yourself.	<p><b>WRITE AN X TO CONFIRM THE STATEMENT BELOW.</b></p> <p><input checked="" type="checkbox"/> Taking into account the facts that I have disclosed above, I feel that I can perform my official duties objectively and fairly.</p>
Employee signature:	<i>Goul n Chs</i>
Date:	<i>9/1/2015</i>

Attach additional pages if necessary.

Not elected to your public position – file with your appointing authority.

Elected state or county employees – file with the State Ethics Commission.

Members of the General Court – file with the House or Senate clerk or the State Ethics Commission.

Elected municipal employee – file with the City Clerk or Town Clerk.

Elected regional school committee member – file with the clerk or secretary of the committee.

<b>FILL IN THIS BOX OR THE NEXT BOX</b>	<p><b>ANSWER THE QUESTION IN THIS BOX IF THE CONTRACT IS BETWEEN THE MUNICIPAL AGENCY AND YOU.</b></p> <ul style="list-style-type: none"> <li>- Please explain what the contract is for.</li> </ul> <p><i>Elected member of the Board of Selectman not compensated. Appointed by Town Clerk as Assistant Town Clerk position is compensated \$18.19 per hour</i></p>
	<p><b>ANSWER THE QUESTIONS IN THIS BOX IF THE CONTRACT IS BETWEEN THE MUNICIPAL AGENCY AND ANOTHER PERSON OR ENTITY</b></p> <ul style="list-style-type: none"> <li>- Please identify the person or entity that has the contract with the municipal agency.</li> <li>- What is your relationship to the person or entity?</li> <li>- What is the contract for?</li> </ul> <p style="text-align: right;"><b>RECEIVED</b> SEP 01 2015 TOWN OF TOWNSEND TOWN CLERK</p>
What is your financial interest in the municipal contract?	<ul style="list-style-type: none"> <li>- Please explain the financial interest and include the dollar amount if you know it.</li> </ul> <p><i>Assistant Town Clerk \$18.19 per hour Selectman not compensated</i></p>
Date when you acquired the financial interest	<p><i>9-1-15</i></p>
What is the financial interest of your immediate family?	<ul style="list-style-type: none"> <li>- Please explain the financial interest and include the dollar amount if you know it.</li> </ul>
Date when your immediate family acquired the financial interest	
Employee signature:	<p><i>Carol Smart</i></p>
Date:	<p><i>9-1-15</i></p>

Attach additional pages if necessary.

File your completed, signed Disclosure with the city or town clerk.



From: Brian Riley <[BRiley@k-plaw.com](mailto:BRiley@k-plaw.com)>  
To: "'Carolyn Smart'" <[csmart@townsend.ma.us](mailto:csmart@townsend.ma.us)>  
CC: "[asheehan@townsend.ma.us](mailto:asheehan@townsend.ma.us)" <[asheehan@townsend.ma.us](mailto:asheehan@townsend.ma.us)>,  
Subject: RE: Ethics

Carolyn: I agree that the §20(c) exemption is the appropriate one, so you only need to file the disclosure form with the Town Clerk. Since the Town's population is under 10,000, the members of the Board of Selectmen are automatically "special municipal employees," making you eligible for the §20(c) and (d) exemptions. Section (d) is required to be used if, in the first position (Board of Selectmen), the official is required to "participate in or have official responsibility for any of the activities of the contracting agency." In this case, the "contracting agency" is the Town Clerk since it is her appointment by statute. In general, as you know, the Board of Selectmen has broad authority over many Town departments as the Town's chief executive authority, and this often creates a need for a §20(d) exemption if a Selectman seeks a paid position. In this case, however, the Town Clerk is an elected office with well-defined statutory duties and authority, including the authority to appoint an Assistant Town Clerk. While certain Selectmen employee policies may apply to the Town Clerk, in my opinion, the Board does not "participate in or have official responsibility for" the activities of the Town Clerk's office as these terms are interpreted by the State Ethics Commission. Therefore, the §20(c) exemption is appropriate.

As you know, the other requirements of Chapter 268A will apply to you in both capacities, including a prohibition on participating as a Selectman in any matter in which you have a financial interest as Assistant Clerk. Kathy reminded me this morning that this will create a problem while Colin's seat is vacant for getting the Town Clerk payroll approved - I will send the Board and Andy a follow-up opinion on this, but I think you and Gordy will need to use the "Rule of Necessity".

Any questions, let me know.

Brian W. Riley, Esq.  
Kopelman and Paige, P.C.  
101 Arch Street  
12th Floor  
Boston, MA 02110  
(617) 556-0007  
(617) 654-1735 (Fax)  
[briley@k-plaw.com](mailto:briley@k-plaw.com)

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-----Original Message-----

From: Carolyn Smart [<mailto:csmart@townsend.ma.us>]  
Sent: Monday, August 31, 2015 1:58 PM  
To: Brian Riley

Subject: Ethics

Hi Brian: Hope all is well.

I was offered the position of Assistant Town Clerk by Kathy on Friday and will begin tomorrow. I contacted Ethics before I applied to the position and they sent me a letter to which I attached to the disclosure form I just filed 20 (c)

They did say I should ask my Town Counsel to verify that this position qualifies for a 20 (c) and not 20 (d). As we know Kathy is the appointing authority for that position however I just wanted to be sure I am filing out the right paperwork as ethics suggested.

Thank you for help as always,  
Carolyn



Commonwealth of Massachusetts  
**STATE ETHICS COMMISSION**

One Ashburton Place - Room 619  
Boston, Massachusetts 02108

**CONFIDENTIAL**

Hon. Barbara A. Dortch-Okara (ret.)  
Chair

Karen L. Nober  
Executive Director

August 11, 2015

Carolyn Smart  
491 Main Street  
West Townsend, MA 01474

Dear Ms. Smart:

I am writing in response to your recent request for written advice under the conflict of interest law, G.L. c. 268A, and to confirm the telephone advice provided to you on July 30, 2015. You are an elected and uncompensated Selectman in the Town of Townsend ("Town"). You have asked if you may take on a second, paid position working in the Town's Clerk's Office, which position is appointed by the Town Clerk.<sup>1/</sup>

This opinion is based on my understanding of the facts from our telephone conversation which are incorporated herein by reference. Based on the information you provided,<sup>2/</sup> I gave you the following advice. As a Selectman, you are a municipal employee for purposes of the conflict of interest law. Because the Town's population is under 10,000, you are a *special* municipal employee in that position. Your inquiry raised questions under § 19, § 20 and § 23 of the conflict of interest law as follows.

**Section 20.** Section 20 prohibits a municipal employee from having a direct or indirect financial interest in a contract made by a municipal agency in which the municipality is an interested party, unless an exemption applies. An issue arises for you under § 20 because while a Selectman, you want to take on a compensated position in the Town Clerk's Office. In order to do so, you will need an exemption under § 20.

<sup>1/</sup> You state that your position as a part-time billing clerk in the Water Department ended on June 30, 2015 and that you used the exemption set forth in 930 CMR 6.02(3) to add on the Selectman position while working for the Water Department.

<sup>2/</sup> In providing this opinion, I relied on the facts as you stated them and did not make 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*). 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.

Section 20 contains two exemptions applicable to special municipal employees. Section 20(c) provides that § 20 does not apply to a special municipal employee who does *not* participate in or have official responsibility<sup>3/</sup> for *any* of the activities of the contracting agency and who files with the municipal clerk, a full disclosure of his interest in the contract. As such, if, as a Selectman, you do not participate in, or have official responsibility for, any activities of the Town Clerk's Office, you may use the § 20(c) exemption. A § 20(c) form is available from the Disclosure Forms section of the Commission's website. In contrast, if, as a Selectman, you do participate in, or have official responsibility for, *any* of the activities of the Town Clerk's Office, you must use the § 20(d) exemption. That exemption requires approval by your fellow Selectman (you may not participate because of § 19 discussed below) and filing with the Town Clerk. A § 20(d) form is available from the Commission's website. If you need a § 20(d) exemption and your fellow Selectman do not approve it, then you may not hold both positions at the same time.

For purposes of determining whether you need to use the § 20(c) or § 20(d) exemption, you may avoid participation simply by abstaining as a Selectman in matters involving the Town Clerk's Office. However, you may never shed your official responsibility. As such, in order to determine which exemption you must use, you should consult with Town Counsel as to whether or not the Board of Selectmen has official responsibility for any of the activities of the Town Clerk's Office.

**Section 19.** Section 19 provides that a municipal employee may not participate in any particular matter in which he, an immediate family member,<sup>4/</sup> a partner or a business organization in which he is an officer, director, trustee, partner or employee, has a financial interest. It also prohibits a municipal employee from participating in any particular matter in which any person or organization with whom he is negotiating or has any arrangement concerning prospective employment 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. Section 19 encompasses any financial interest without regard to the size of that interest or whether it is positive or negative. The financial interest, however, must be direct and immediate or reasonably foreseeable.

---

<sup>3/</sup> Official responsibility is defined as "the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and whether personal or through subordinates, to approve, disapprove or otherwise direct agency action." It includes matters in which you may have abstained from participating as well as matters delegated to a subordinate to handle. G.L. c. 268A, § 1(i).

<sup>4/</sup> Immediate family is defined as "the employee and his spouse, and their parents, children, brothers and sisters." G.L. c. 268A, § 1(e).



As applied to you, you may not participate as a Selectman in any particular matter in which you or any other person or entity set forth in § 19 has a financial interest. For example, you may not participate in approving your own request for a § 20(d) exemption if you need to use that exemption. In addition, while you are discussing employment with the Town Clerk's Office, you may not participate as a Selectman in any particular matter in which the Town Clerk's Office has a financial interest, such as a request for funds to replace some office furniture. Finally, if you are working in the Town Clerk's Office, you may not participate as a Selectman in any budget line item that affects your financial interest, such as your compensation or benefits, or sign a payroll warrant if it includes a payment to you.

If you abstain from participating as a Selectman in particular matters in which you or any other person or entity set forth therein has a financial interest, you will comply with § 19. In order to avoid participating, we recommend that you step down from the Selectmen's table when any particular matters in which you are unable to participate come before it. You should also make a verbal statement for inclusion in the meeting minutes that you are abstaining from participation. Although the safest course of action to avoid participating is to leave the room entirely, you may remain in the room during a public meeting sitting with the members of the general public. You should not be in the room during any executive session meetings in which you are unable to participate.

Please note, however, that § 19 contains an exemption procedure for *appointed* municipal employees which would apply to you *only* as an employee in the Town Clerk's office. Under § 19(b)(1), if you file a written disclosure with your appointing authority, of the relevant facts concerning a conflict because of a financial interest, your appointing authority, in its discretion, may give you a written determination that the financial interest is not so substantial as to affect the integrity of your services to the Town. A § 19 form is available from the Commission's website. If you receive this written determination, you may then participate in the particular matter.

**Section 23.** Section 23(b)(2) provides in relevant part that a municipal employee may not use his official position to secure unwarranted privileges or exemptions of substantial value (\$50 or more) for himself or others. Under § 23(b)(2), the Commission has consistently prohibited municipal employees from using their municipal titles, municipal time and municipal resources to promote a private interest. Section 23(b)(2) will prohibit you from using your Selectman position to obtain special benefits for yourself, such as a job in the Town Clerk's Office.

Section 23(b)(3) prohibits a municipal 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. For example, issues may arise under this section if a matter involving the Town Clerk's Office comes before you as a Selectman,

Carolyn Smart  
August 11, 2015  
Page 4

while you are negotiating with, or employed by, the Town Clerk's office, *even if you are not required to abstain under § 19*. Such circumstances would create an impression of a conflict of interest or bias in your official actions. To dispel the appearance of a conflict, § 23(b)(3) requires that prior to participating, you file a full written disclosure with your appointing authority. A § 23(b)(3) form is available from the Commission's website. This written disclosure is a public record.

If, after having filed a written disclosure, you choose to participate as a Selectman in a matter which affects the Town Clerk's Office, which participation is not prohibited by § 19, you should take care under § 23 to base any such decisions on the merits, using objective standards and following all requisite procedures. If you are unable to judge the matter impartially, then you should abstain. For more information about the restrictions in § 23, see *Advisory 05-01 – Standards of Conduct* which is available from the Educational Materials section of the Commission's website.

**Conclusion.** I hope that this advice is helpful. Please note that the examples in this letter are meant to be illustrative only, and not inclusive. You may obtain other reference materials on the Commission's website. Both this letter and your request for advice are confidential by statute. This means that you are free to disclose this advice to anyone you wish, but that the Commission may not disclose your request or any other identifying information unless you consent, or unless you misrepresent the contents of this letter. If you have any additional questions or need any further assistance, please do not hesitate to contact the Commission.

Very truly yours,



Lauren E. Duca  
Deputy Chief/SFI, Legal Division



Kathy Spofford

**From:** Brian Riley <BRiley@k-plaw.com>  
**Sent:** Wednesday, September 02, 2015 4:24 PM  
**To:** asheehan@townsend.ma.us  
**Cc:** Carolyn Smart (csmart@townsend.ma.us); gnclark613@gmail.com;  
kspofford@townsend.ma.us  
**Subject:** Potential Conflicts of Interest - Payroll Warrants

RECEIVED  
SEP 03 2015  
TOWN OF TOWNSEND  
TOWN CLERK

Andy: In an exchange I had with Kathy Spofford yesterday, I realize that there will be a tricky conflict of interest situation regarding the Board of Selectmen approving payroll warrants from now until a new third Selectman is elected in November. Section 19 of Chapter 268A provides that no municipal employee shall participate in any particular matter in which he, his immediate family or his business or employer has a financial interest. The State Ethics Commission ("Commission") has long held that approving a payroll or payment warrant is a "particular matter" under §19, even though in some cases it may seem like a ministerial approval. As it stands now, Selectmen Clark has a §19 issue due to his wife's paid position in the Police Department, while Selectman Smart is now employed as the Assistant Town Clerk. While both Selectmen would, under normal circumstances, be required to abstain from approving the payroll warrant (at least a warrant with their own or a family member's salary), we in fact need both of them to sign to have a quorum approve the warrant.

In my opinion, the simplest way to handle this problem will be for the Board to invoke the so-called "Rule of Necessity" each time it must approve a Town payroll warrant. When a third Selectman is elected, the Board can go back to what was (I believe) being done before, with multiple warrants.

With only a three member Board, at least two members are required to approve a payroll warrant, so if either Selectman has to recuse himself or herself because of a financial interest, there is no quorum without a third member. I initially told Kathy that we may need to use G.L. c.41, §56, which provides in part that if there are not enough Selectmen to sign a payment warrant due to a vacancy, "the remaining selectman or selectmen, together with the town clerk, may approve the warrant." While this would seem to allow Selectman Smart and the Town Clerk sign a payroll warrant for the Police Department, this obviously would not help with the payroll for the Town Clerk's office.

In my opinion, therefore, the best and perhaps only way to handle this §19 issue is for Selectmen Clark and Smart to invoke the "Rule of Necessity" whenever there is a payroll warrant to be approved. The Rule is not found in Chapter 268A but rather came out of a court case, but the Commission approves of it being used as a "last resort." Ordinarily, the Commission advises that the Rule should only be used if the only reason that the is no quorum is due to conflicts of interest – for example, a three member board and two are prohibited from acting by §19. In this case, it is more the vacant third seat that poses the problem. However, the Commission has acknowledged that if a Town misses payroll for any reason, that is a very serious problem and violates various labor laws. In such a case, where the Board is legally obligated to act within a certain frame but cannot achieve a quorum, the Commission has sanctioned the use of the Rule where the lack of a quorum is based on other reasons:

**While the absence of one or more board members is generally not sufficient cause to invoke the rule of necessity, when a board is legally required to take action by a certain time and is unable to do so because of the lack of a quorum, the rule of necessity may be invoked.**

**Example: A statute requires selectmen to approve payroll warrants on a weekly basis. One selectman of a three-member board is absent and the board cannot otherwise obtain a quorum**

due to the disqualification of one selectman whose immediate family member works for the town. The rule of necessity may be invoked.

When invoking the Rule of Necessity, the Commission advises as follows:

**If it is proper for the rule of necessity to be used, it should be clearly indicated in the minutes of the meeting that as a result of disqualification of members due to conflicts of interests, the board lacked a sufficient number of members necessary to take a valid vote and, as a last resort, that all those disqualified may now participate under the rule of necessity. Each disqualified member who wishes to participate under the rule of necessity first must disclose publicly the facts that created the conflict.**

In this case, Selectmen Clark and Smart can disclose that the payroll warrant contains compensation for a family member and for herself, respectively, and that the Rule of Necessity is being used so that both may sign the Town’s warrant.

When there are three Board members again, the best solution will likely be to have at least two warrants – for example, one for the Police Department and one for the other departments – so that the Selectman with the conflict is able to not sign off. We can finalize this plan after the election.

Here is a link to the Commission’s entire Rule of Necessity advisory: <http://www.mass.gov/ethics/education-and-training-resources/educational-materials/advisories/advisory-05-05-rule-of-necessity.html>

Very truly yours,

Brian W. Riley, Esq.  
Kopelman and Paige, P.C.  
101 Arch Street  
12th Floor  
Boston, MA 02110  
(617) 556-0007  
(617) 654-1735 (Fax)  
[briley@k-plaw.com](mailto:briley@k-plaw.com)

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DISCLOSURE OF APPEARANCE OF CONFLICT OF INTEREST  
AS REQUIRED BY G. L. c. 268A, § 23(b)(3)

RECEIVED  
SEP 09 2015

TOWN OF TOWNSEND  
TOWN CLERK

<b>PUBLIC EMPLOYEE INFORMATION</b>	
Name of public employee:	Carolyn Smart
Title or Position:	Selectman
Agency/Department:	Board of Selectmen
Agency address:	272 Main Street, Townsend, MA 01469
Office Phone:	978-771-3416
Office E-mail:	csmart@townsend.ma.us
	<p>In my capacity as a state, county or municipal employee, I am expected to take certain actions in the performance of my official duties. Under the circumstances, a reasonable person could conclude that a person or organization could unduly enjoy my favor or improperly influence me when I perform my official duties, or that I am likely to act or fail to act as a result of kinship, rank, position or undue influence of a party or person.</p> <p>I am filing this disclosure to disclose the facts about this relationship or affiliation and to dispel the appearance of a conflict of interest.</p>
<b>APPEARANCE OF FAVORITISM OR INFLUENCE</b>	
Describe the issue that is coming before you for action or decision.	Compensation wage update for municipal employees
What responsibility do you have for taking action or making a decision?	I will be discussing and voting on the compensation update.
Explain your relationship or affiliation to the person or organization.	For full disclosure, I am employed as the Assistant Town Clerk and my position is on the compensation plan.
How do your official actions or decision matter to the person or organization?	I will have to vote to approve and send to town meeting for funding. The position of Assistant Town Clerk is on the compensation plan, however there is no change in wages recommended for the position. In accordance with the Ethics Commission I will ask my position be removed from the discussion.
<b>Optional:</b> Additional facts – e.g., why there is a low risk of undue favoritism or	I have no financial gain in the matter before me.

improper influence.	
If you cannot confirm this statement, you should recuse yourself.	<b>WRITE AN X TO CONFIRM THE STATEMENT BELOW.</b> <input type="checkbox"/> Taking into account the facts that I have disclosed above, I feel that I can perform my official duties objectively and fairly.
Employee signature:	<i>Cheryl Sauer</i>
Date:	<i>Sept 9, 2015</i>

Attach additional pages if necessary.

Not elected to your public position – file with your appointing authority.

Elected state or county employees – file with the State Ethics Commission.

Members of the General Court – file with the House or Senate clerk or the State Ethics Commission.

Elected municipal employee – file with the City Clerk or Town Clerk.

Elected regional school committee member – file with the clerk or secretary of the committee.